

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: EQUITY SHARE WORKING GROUP

27th April 2004

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SHELTERED HOUSING EQUITY SHARE LEASES

Purpose

1. To recommended changes to the Equity Share Lease for future leaseholders.

Effect on Corporate Objectives

2. Quality, Accessible Services	Equity Share properties offer owner-occupiers access to suitable accommodation from the Council when they have an income or capital sufficient to exclude them from renting a Council home under current policy.
Village Life	The policy encourages mixed tenure in the Councils village communities.
Sustainability	As above
Partnership	

Background

3. Clause (3) of the Lease was discussed at the meeting with the Portfolio Holder for Housing held on 8th April 2004 in relation to operational changes in the management of some Sheltered Housing units. During the research for the report it became apparent that the current leases for Equity Share occupiers makes specific reference to residential staff.
4. At the meeting it was agreed that the matter should be discussed with the Councils Legal Section, and it was suggested that the Equity Share Advisory Group should consider any proposed amendments.

Considerations

5. The clause in the Equity Share lease relates to the provision of an on-site or resident Scheme Manager (Warden) to deliver the sheltered housing service to leaseholders. It was considered when the lease was drafted that this was a standard operational service provision. The same statement is not included in the Tenancy Agreements for the rented units within the same Sheltered Schemes.
6. The Legal Section has advised that 'development' is defined in the lease by reference to the number of properties 'at or near the road or roads identified'. The Landlord's covenant to provide a resident warden on the Development is 'subject to such rules and regulations as from time to time be made ... relating to the good management of the Development and notified to the Tenant'. Within the terms of the lease the Council can decide to vary the service and not provide a resident Scheme Manager, provided this is deemed to be in the interests of good management.

7. This implies therefore that the Council is not restricted by the clause as was assumed. However, most lay people reading the clause would interpret it to mean that the Council is obliged to provide a resident staff member. It is therefore likely that should that facility be withdrawn then Equity Share residents would challenge the decision. They would assert that the Council is failing to offer a resource that they are paying for.
8. In order to enable maximum managerial flexibility for the service and to make clear the terms of the lease it is proposed that the wording of the clause that refers to resident staff be deleted.
9. Legal advice confirms that it is not straightforward to amend the leases already held by existing Equity Share residents. This would require a deed of variation executed by both parties and is not proposed at this time, as the extent of the change is not considered worth the procedural legal requirements.

Options

10. The lease could remain in its present form. This risks the possibility of challenge to the Council on some sites where a resident Scheme Manager may not be appropriate. It also impacts on the flexibility for changing the nature of service provision in the future.
11. The lease could be changed for future leaseholders, and implemented immediately with minimum impact for current and future Equity Share lease holders.

Financial Implications

12. There are no financial implications

Legal Implications

13. The current wording of the Equity Share lease appears to say that a resident Scheme Manager forms part of the terms of the lease.
14. The lease could be reworded to ensure that it is clear and avoid the Council being challenged if some schemes do not have staff resident on site.
15. To amend the leases of current Equity Share occupiers requires a deed of variation executed by both parties and is not proposed at this time

Staffing Implications

16. There are no staffing implications at the present time

Risk Management Implications

17. There are no Risk Management Implications

Consultations

18. Consultation has taken place with the Legal Section.

Conclusions/Summary

19. At the present time the Equity Share lease is not clear and appears to imply that there is a requirement for the Council to provide a resident Scheme Manager on every Sheltered Scheme site.
20. It is proposed that the wording of the lease should be amended to reflect the legal advice more clearly that should the service require it the Council can provide remote staff for the Sheltered Schemes. This offers transparency and should reduce the possibility of challenge for the Council where management circumstance and service requirements mean that the Scheme Manager is not resident on site.
21. It is not intended that existing leases should be altered, only new leases. Over time this will mean that the revised leases will predominate. It is not considered necessary to amend current leases as the change is not substantive and the legal requirement to change existing leases is quite onerous.

Recommendations

22. To amended Equity Share leases for future leaseholders, to reflect more clearly that the Council is not required to provide a residential staff resource on all Sheltered Schemes.
23. That existing leases remain unchanged in view of the complicated legal procedures.

Background Papers: the following background papers were used in the preparation of this report:

Equity Share Lease
Minutes (draft) of the Portfolio Holder Meeting for Housing 8th April 2004

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