

**COMMITTEE:** CABINET  
**DATE:** 16<sup>th</sup> March 2005  
**SUBJECT:** Staff Living in Tied Accommodation

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**REPORT OF:** Director Of Finance and Corporate Services  
**Ward(s):** All  
**Purpose:** To consider a proposed amendment to the current policies in relation to staff in tied accommodation.  
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E-mail address [sue.mchugh@eastbourne.gov.uk](mailto:sue.mchugh@eastbourne.gov.uk).  
**Recommendations:** Members are recommended to re-affirm the current policies in relation to staff in tied accommodation.

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## **1.0 Introduction**

- 1.1 At the Council Meeting held on 19<sup>th</sup> January 2005 the following motion submitted in accordance with Council Procedure Rule 13 was proposed by Councillor Tutt and seconded by Councillor Marsh:-

*“That this Council recognises the loyal service provided to Eastbourne Borough Council by certain long serving staff who are living in tied accommodation. The Council therefore resolves to allow such staff who have been employed by the Council for a period exceeding 20 years to continue to live in this accommodation upon their retirement. In the event of the specific accommodation be required by their successor in order to perform their Council duties, commensurate rented accommodation will be provided.”*

Councillor Marsden proposed that this matter be referred without debate to the Cabinet on the basis that there was a need to consider in detail the full implications. This course of action was accepted by Councillor Tutt.

## **2.0 Tied Accommodation**

- 2.1 Accommodation provided as part of a contract of employment is referred to as a “Service tenancy”. Usually, the purpose of providing the accommodation is so that the employee can better perform the duties of the post.

The legal system has recognised the need for accommodation required in connection with employment and, in contrast to other types of residential tenancies, has not conferred security of tenure on this type of accommodation. Consequently, upon retirement or leaving employment, the occupying employee must vacate the premises and find alternative accommodation.

Examples of “service tenancies” currently within Eastbourne Borough Council

are as follows:

Housing – 17 properties occupied by wardens, all in housing courts.

The Downs – 2 properties (occupied by the Downland Ranger and the Downland Maintenance Worker).

The Parks – Manor Garden Cottage (occupied by an employee of Glendale under the current Grounds Maintenance Contract).

In addition to the above “Service Tenancies” there are also three properties on Bullock Down Farms which are let under farm business tenancy/agricultural tenancy terms.

### **3.0 Current Policy**

3.1 There is no evidence that the Council has formally adopted a policy in relation to staff living in tied accommodation, but the practice over many years has been to make clear to staff that they will need to leave the accommodation when their employment ceases; that they need to ensure they are making alternative plans for their longer term accommodation; where appropriate, that they should consider applying to go on the Eastbourne Borough Council housing waiting list.

3.2 The above approach has been adopted consistently for many staff departures over the years, particularly in relation to Housing staff where the majority of tied accommodation sits. There is one known instance where a former member of staff was granted a secure tenancy of previously tied accommodation in circumstances that are considered to be specific to that case.

### **4.0 Legal Requirements**

4.1 Legal advice has been sought from the Council’s Head of Legal Services and Monitoring Officer and also from external lawyers, Mayo and Perkins. The advice is set out below:

4.2 The motion contemplates the creation of tenancies or leasehold interests in the employees’ current accommodation or the provision of other commensurate accommodation. Depending on the terms, any such arrangement would result in:

- a secure tenancy under the Housing Act 1985, entitling the tenant to exercise the right to buy and to secure a substantial discount; or
- a leasehold interest falling under the enfranchisement provisions contained in the Leasehold Reform Act 1967, and conferring on the lessee the right to secure advantageous terms.

4.3 The legal position is as follows:

(a) Section 123 of the Local Government Act 1972 requires Councils to dispose of land at the best consideration reasonably obtainable. A “disposal” includes the sale of the freehold and the grant of a lease for more than seven years.

(b) Furthermore, the Council owes a “quasi-fiduciary duty” to local taxpayers to deploy its financial resources to best advantage.

(c) Finally, decisions of the Council that are “irrational” in the sense of the so-called Wednesbury principles will be ultra vires and open to legal challenge.

4.4 It is not in the interests of local taxpayers for the Council to adopt a policy of providing such advantageous benefits for its former employees. A policy in the terms proposed by the motion would be in breach of the Council’s quasi-fiduciary duty to local taxpayers.

4.5 In addition, the motion contemplates the possibility of tenancies and leases that would fall within the definition of a “section 123 disposal.” The discounts and advantageous terms conferred upon former employees would not be the best consideration reasonably obtainable.

4.6 Finally, decisions of the Council that are “irrational” in the sense of the so-called “Wednesbury principles” will be ultra vires and open to legal challenge. The “Wednesbury principles” are the foundation of judicial control of local government and derive from the case of Associated Provincial Picture Houses Ltd - v- Wednesbury Corporation (1947). This case established a two-stage test against which decisions may be challenged. First, the court can investigate the action of an authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely have refused or neglected to take into account matters which they ought to take into account. If that issue is answered in favour of the authority, the second stage of the test comes in to play. The court may nevertheless decide that the authority came to a conclusion so unreasonable that no reasonable authority could have come to it. The court may quash the decision of the authority if that decision fails either stage.”

4.7 In Roberts -v- Hopwood & Others (1925) the district auditor challenged a decision of Poplar Borough Council relating to the wages of its general labourers. The Council had resolved to pay a standardised rate, not according to duties performed, but according to the fact that its employees were adults. The underlying objective of the Council was, according to the case report, the “vanity” of wanting to be seen as a model employer. The court found that the Council could not have brought into account the considerations that ought to have influenced its decision, namely the relationship between the reward for the work and the value of the work, the purchasing power of the sums paid, and current wage rates. The decision was arbitrary and was not a real exercise of discretion. Accordingly, the Council’s decision was quashed. By 1947 the Courts had synthesised this case and others into what we now know as the “Wednesbury principles”. Roberts -v- Hopwood is also an example of a case where the authority failed to comply with its quasi-fiduciary duty to local taxpayers to deploy its financial resources to best advantage. ”

4.8 Members therefore need to be aware that it would be illegal for the Council to operate such a policy.

## **5.0 Availability of Alternative Accommodation**

5.1 Eastbourne Borough Council’s housing allocations policy should ensure that staff in tied accommodation are eligible for a Council home when they leave the employment which is linked to the tied accommodation. If staff in tied

accommodation register on the waiting list at the outset of their tied tenancy (or at least several years before their departure) they will at that time be put into Band 4 as they will at that time be adequately housed and will therefore not normally receive any priority. When they receive notice that their tied tenancy is coming to an end they will be re-assessed and put into Band 3 as they will by that time be threatened with homelessness. Their applicable date will be the date on which they originally applied. The accommodation they will be offered will be based on need, and may not be “commensurate” with the tied accommodation they previously occupied.

## **6.0 Implications**

6.1 The legal implications of the proposed policy are set out in section 4. These make it clear that the proposed policy would be illegal.

### **6.2 Financial**

Any tenancy granted to former employees would confer on them a right to buy the property at a substantial discount, equating to a considerable financial cost to the Council.

### **6.3 Human Resources**

The benefit of tied accommodation for certain staff is part of the overall remuneration package associated with that employment. The Council will support such staff during their employment to encourage them to make appropriate plans for alternative accommodation once their employment ceases.

### **6.4 Equalities**

The proposed policy would confer benefits on particular staff not available to the vast majority, including other staff in tied accommodation.

## **7.0 Summary**

7.1 Cabinet are asked to re-affirm the current policy that tied accommodation needs to be relinquished once the associated employment ends and that the affected staff be encouraged and supported in making alternative arrangements for their eventual accommodation.

**Sue McHugh**  
**Director of Finance and Corporate Services**

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### **Background Papers:**

The Background Papers used in compiling this report were as follows:

*None.*

Cabinet 050316 staff living in tied accommodation