


DECISION NO: 18/148' For Member Services use only

Concurrence No: 066249

Action under delegated authority of Chief Executive	
Action under delegated authority of Director of Finance and Cabinet Member for Finance	X
Action taken by Chief Executive in consultation with Cabinet Member(s)	

Subject: 293 Holdbrook Court – RTB and possessory title

Signature and designation of officer(s) taking action:


 _____ 19/10/18 _____ 18.10.18
Chief Executive Date Director of Finance Date

_____ 17/10/18 _____
Head of Financial Planning and Reporting Date

Name of Cabinet Member(s) Consulted:

I have been consulted and concur with the proposals set out below:

Councillor Ken Ayling
Cabinet Member for Finance

 _____ 30/10/18
Signature: Date:

Councillor
Cabinet Member for

Signature: Date:

Name of any member who has declared a conflict of interest in relation to this decision: _____

THIS DOCUMENT WILL BE PUBLISHED ON THE COUNCIL'S WEBSITE

The report overleaf sets out the decision to be taken, the reasons for the decision, and the details of alternative options, if any, considered and rejected.

Officer decisions are available for public inspection, both at the Borough Offices and on the Council's website, for a period of six years after the decision is made. Background papers are available for four years.

RECOMMENDED that:

The Council grants a Right to Buy Lease to the tenant of 293 Holdbrook Court and passes the consideration for the lease to B3 Living in return for B3 Living giving up any claim to an equitable or possessory title of the property.

Purpose

To remedy a mistake in the transfer of Housing assets to B3 Living (previously Broxbourne Housing Association).

Background

At the time of the transfer of the Council's housing stock to B3 Living in January 2006, despite the physical ownership and management of the properties transferring, not all the intended transfers were completed in legal terms.

There is a programme in hand to tidy and clear these errors however in the case of 293 Holdbrook Court additional authorisation to proceed is required because of the special circumstances involved.

The subject property is a 3 bedroom flat within the Holdbrook Estate and B3 Living have been collecting the service charge and ground rent in the belief that the property had transferred. The tenant has now exercised a right to buy and it is through this process that the error has become apparent.

In the normal course of events the council grants the RTB lease to the tenant and B3 Living would surrender its leasehold interest in the property in return for receiving the money from the RTB purchase.

However in this instance B3 Living do not have a legal interest in the property to surrender (although it is probable that they have either an equitable or possessory interest in the property due to the longevity of the actions they have been carrying out in managing the property).

When this error has occurred previously the Head of Legal Services has amended the head lease granted to B3 Living by a deed of variation, however because of the RTB and time limits this is not possible in this case and a different course of action is required.

The valuation of the RTB interest has been carried out and as B3 Living have no legal interest in the lease the monies (£141,400) should derive to the Council. However the lease of the property should have been transferred to B3 Living as stated above and they have a claim to the title due to their actions in managing the flat.

Normally the RTB lease would include a paragraph acknowledging B3 Living giving up the head lease but as this case is different it is proposed that the following paragraph is inserted within the RTB lease instead.

"2.1 it was originally agreed between the Landlord and B3 Living that No.293 should have been included in the properties demised by the Head Lease and

that should a qualifying tenant wish to exercise his or her right to buy under the Act the purchase price would be paid to B3 LIVING in return for which B3 LIVING would surrender to the Landlord any interest it has in that part or parts of the Building comprising the dwelling occupied by that qualifying tenant to enable the Landlord to grant this Lease to the Tenant".

Financial, Legal and Risk Management Implications

In accordance with the paragraph to be added to the lease the tenants will pay the consideration monies of £141,400 to B3 Living and B3 Living will not seek to enforce any claim for the equitable or possessory title of 293 Holdbrook Court to enable the lease to be granted by the Council

This value is the Right to Buy Valuation approved under the RTB Legislation for the granting of a lease to the qualifying tenant under the RTB legislation and is therefore considered to be the market value.

The Council has not considered this property to be an asset since the overall asset transfer occurred in 2006 and it is therefore equitable that the RTB price is transferred to B3 Living in the usual way when RTB's are agreed on the transferred stock.

The action is required to rectify a mistake made and outside of the normal methodology employed due to the time constraints of complying with the RTB legislation.

The acquisition price will be paid to B3 Living by the tenant.

Alternative Options Considered and Rejected

There are no alternatives.

Contribution to the Council's Objectives

N/A

Conclusion

That the Head of Legal Services be instructed to grant the RTB lease as required and that the consideration for the RTB interest is passed to B3 Living in acknowledgement of their equitable or possessory right to the leasehold title.

Contact Officer: Kevin Clark

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Date 24/08/18

Action reported to the Cabinet on:
