

To: Strategic Director of Housing	Report: For Delegated Approval	Date: 05 August 2005
From: Housing Regeneration Initiatives – Tenant Management Support	Title of Report: The Future of Tabard Gardens Tenant Management Co-operative	

1. PURPOSE

1.1 To consider the future of Tabard Gardens Tenant Management Co-operative.

2. BACKGROUND

- 2.1 Tabard Gardens Tenant Management Co-operative became operational on 3rd April 1996. It is responsible for the management of 1448 properties in the Chaucer Ward in Bermondsey. It is located within the Borough and Bankside Area.
- 2.2 The rules of the Tabard Gardens TMC and its provisions in respect to the election of a management committee are decidedly convoluted. The first stage is the election of six Area Committees. These can have up to twenty members. This was carried out earlier in the year in line with the requirement for annual elections. The Area Committees are then convened to elect an Area Chair and two other nominees to the management committee. This was carried out under the supervision of Southwark Housing, excepting for Area 5, which was inquorate. These nominees then have to be ratified by an Annual General Meeting. The AGM was then reconvened for this purpose on 10th February. It had been arranged that this meeting be chaired by the Chair of the SGTO to ensure impartiality. At that meeting eight nominees withdrew their nominations, as did those for the Allocations Sub Committee. This meant that a Management Committee could not be confirmed. The rules require a minimum of twelve members.
- 2.3 It was determined that in the absence of a Management Committee that responsibility for the management of the estate reverted to the Council with day to day management delegated to the Director of the TMC, Peter Francis.
- 2.4 Southwark Housing committed itself to conduct bye elections for the Area Committees, both to fill vacancies and to create further potential nominees to the Management Committee. The Electoral Reform Ballot Services was commissioned for this purpose. This period of nomination concluded on 6th June. The outcome was disappointing with only four new nominees coming forward for consideration for the Area Committees. There were a total of sixty four vacancies.
- 2.5 A meeting of the Area Committees was convened on the evening of Thursday, 14th July in an attempt to reconstruct a Management Committee. The outcome of this meeting was nominations as follows:

Area 1 - 3
Area 2 - 3
Area 3 - 0
Area 4 - 1
Area 5 - 0
Area 6 - 3

This gave us a grand total of 10. This is insufficient under their rules to constitute a Management Committee. The meeting broke up in considerable acrimony.

- 2.6 The failure to elect a Management Committee brings into question the competence of the Co-operative to act as the managing agent of the Council.
- 2.7 In the absence of a management Committee certain problems have arisen that have had to involve the Council. This has prompted investigations into the internal working of the TMC.

3 FACTORS FOR CONSIDERATION

The Investigations

- 3.1 The investigations were prompted by the receipt by the Housing Department of solicitor's correspondence written on behalf of a Tabard TMC employee. Subsequently officers interviewed the employee on 11th May 2005. In essence, the employee's complaint comprised three issues; the employee's relationship to the organisation and treatment therein, the matter of restructure in the organisation and its impact on the terms and conditions of employment with regard to this individual, and, the current management arrangements.
- 3.2 During the interview the employee shared other concerns and provided a resignation letter of a former colleague employed by Tabard Gardens TMC. This letter itself gave rise to further allegations of financial irregularities in terms of contractor administration and allegations of racism.
- 3.3 A formal investigation was then launched, the terms of which were as follows:
- That the concerns of the employee be subject to formal investigation within the terms of the management agreement between the Council and Tabard TMC conducted by the TMST Performance Co-ordinator with support from the Project Monitoring Officer and LBS Housing Human Resources.
 - This same investigation also included some of the issues raised in the letter of resignation of the former employee
 - The issue of contractors and professional relationships was subject to a separate investigation.
- 3.3 The Director and Operations Manager of Tabard TMC were formally interviewed where the allegations were put to them. A constant contact has been maintained and managers at Tabard TMC have been advised to make reference to their human resources services providers (First Business) in any subsequent employee matter. Relevant records and information were provided to aid the investigation.
- 3.4 Independent advice to this investigation was formally provided through LBS Housing Human Resources and they provided assistance during the interview of the former employee whose letter of resignation prompted the audit investigation.
- 3.5 Following this interview, LBS Housing HR advised that this matter fell within the LBS *Whistle Blowing Framework*. As such, it was necessary to conduct further interviews. LBS HR assisted in these further interviews. Two additional members of the TMCs staff needed to be interviewed.
- 3.6 This investigation has now concluded and a report prepared by the TMST Performance Co-ordinator. A parallel investigation into contract matters at Tabard Gardens was has

been undertaken by the Housing Department Risk Manager and a draft report has been completed.

- 3.7 It should be further noted that the Director of Tabard Gardens TMC was instructed that all further orders, and payments to its contractor Hennessey's need to be authorised by the Council (Housing Regeneration Initiatives Manager). It should be noted that this instruction has been disregarded by the Director.

Capital Programme.

- 3.8 £5.4 million has been made available for major works on Tabard Gardens estate for 2005-06. This programme is under the management of the TMC. The Council has serious concerns about the TMC's ability to deliver this programme and questions have been raised about their capacity and competence to do so. These concerns extend to the manner in which contracts are awarded, reporting on delivery and the handling of minor voids. It is not clear to the Council as to whether consultants have been appointed and if so, how. These concerns are reflected in the minutes of Tabard Gardens Regeneration Programme Delivery Group.

- 3.9 These concerns prompted the Council to offer the support of the Borough and Bankside Investment Programme Manager, Cheryl Phillips. It is fair to say that Tabard Gardens TMC has not used this support to their best advantage.

Arbitration

- 3.10 The Council has had a long standing problem with this TMC and its refusal to co-operate with, and act on the rulings of Southwark's Tenancy Arbitration Panel and the Leaseholders Arbitration Panel. This has led to County Court actions and findings against the Council. As a result of one case Borough and Bankside Area Housing Office have had to organise some works directly to one block on Tabard.

Conclusion

- 3.11 The Council is now faced with two options.

1. Sustain the TMC under enhanced supervision.
2. Terminate the management agreement.

It should be noted at this stage that officers at the TMC have not been made aware that the council is considering these options.

Supervision of the TMC

- 3.12 If we opt for supervision pending elections for the coming year we will need to put a Council manager into the Tabard Gardens office. Our experience hitherto has not been encouraging and Peter Francis has disregarded instructions from the Council, despite being under supervision. Consideration should also be given to handing the investment programme to Borough and Bankside Area Housing Office.

Termination of Management Agreement.

- 3.13 In normal circumstances, if the Council determined that the TMC was not sustainable and termination of the management agreement was the appropriate course of action it would do so under Chapter 1, Clause 10.6 of the agreement. This states:-

10.6.1.....this Agreement may be ended by the Council provided that:

- a) the reasons why the Council wishes to end this Agreement;
- b) the date on which the Agreement is to end; and
- c) the arrangements the council shall make for the future management and maintenance of the Property.

[This same clause gives the TMC the right to appeal against this notice both to the Council and the "Secretary of State" i.e. the ODPM. However, in the absence of a Management Committee there is not a competent body to launch such an appeal other than a quorate General Meeting]

However, in the absence of a Management Committee the serving of such a notice is rendered ineffective given that the other party to the original Management Agreement no longer exists. And, in these circumstances the Council needs to take decisive action to protect its interests and contain any risk that has resulted over the period of absence of a Management Committee. Termination would therefore proceed with immediate effect once the decision has been taken.

3.14 If the decision is for termination the Department needs to put together a project team involving housing management, ISMS, LMU and HR to organise all the necessary processes. It would be desirable to have a project plan in place prior to termination of Tabard TMC

3.15 Upon the decision to terminate, Tabard Estate residents will need to be written to advising the new management arrangements.

3.16 It should be noted that we have an agreement with the Tenant Services Branch of the ODPM to give them prior warning of such terminations. A copy of the earlier briefing note has been forwarded in confidence to the head of that branch.

4 ICT IMPLICATIONS

4.1 ISMS have indicated the following require consideration:

- IT Infrastructure and Communication to be upgraded to the Council standard
- Information Management: Review and amend all existing/relevant reports to incorporate properties returned to housing management as a result of rent arrears, tenancies, and, staff etc
- Support and Training: ISMS resources
- Office Systems: Provide Outlook and email accounts; Review electronic files etc for Data Protection and FOI purposes and implement amendments to HIC and Corporate Intranet
- Rents: Transfer existing balances and FTA accounts and issue payment cards etc
- Repairs: Links to appropriate contractors and determine what to do with works in progress
- Applications and Allocations: Convert nominations to offers and Applications from "tenants" to be resubmitted and attached to tenancy records
- Tenancies: Input details for all tenants (start date/contact details/tenant details etc)
- Stock and Void Information: Identify and classify voids paths
- SAP: Set up HR and Financials (invoices, purchase groups, goods in process)
- Other Considerations: Update CRM (household details and property ownership details)

5 CONCURRENT FROM BOROUGH SOLICITOR AND SECRETARY

- 5.1 The Management Agreement between the Council and Tabard Gardens Tenant Management Co-operative and also the Rules of the Tabard Garden Management Co-operative have been considered.

The situation described in the report and the serious concern about the ability of the Co-operative to manage the 1448 properties has been noted. It seems that there has been no management committee since January 2005 and that since then the Council has assumed de facto management of the Co-operative whilst efforts were made to elect a Management Committee. These efforts proved to be unsuccessful with the meeting on 14th July 2005 ending in acrimony. The Director of Housing has issued instructions to the Director of Tabard Gardens Peter Francis. One of these instructions has not been carried through.

Concern was also expressed about the ability of Tabard Gardens to deliver the major works programme which, for this year, amounts to £5.4 million. Further, the Co-operative has failed to abide by rulings of the Southwark Tribunal which has led to County Court litigation by the Council.

The concerns over the ability of the Co-operative to adequately manage the Council's tenancies and protect the welfare of our tenants are serious. Against this background the Council must act to protect the interests of its tenants and its own position. Indeed, many complaints have already been received from tenants about the standard of management.

The Management Agreement between the Council and Tabard Gardens states at Clause 5.1 that the Co-operative is "managing agent of the property... to carry out the tasks delegated to it under the terms of this Agreement".

Clause 10 sets out in detail the mechanism for ending the Agreement. Generally the Council needs to give three months notice to the Co-operative of its intention to terminate the Agreement and the Co-operative then has a right of appeal.

It is important to note that Clause 12 provides that at each Annual General Meeting the Co-operative shall consider whether it wishes to continue with the Management Agreement. At the last AGM on 10th February 2005, the Management Committee could not be appointed and so no valid business was considered. It seems therefore that no resolution to continue with this agreement was passed by the Co-operative.

The Co-operative's own rules are based on the principles set out at page 2 of their Rules. One of these states that its affairs "should be administered by persons elected or appointed in a manner agreed by the members and accountable to them". Further, Clause 17 states that until a Management Committee is elected (under Clause 22) the Management of the Co-op shall be undertaken by General Meetings. If General Meetings have not been held or have been inquorate, it follows that the business of the Co-op has not been properly conducted.

Clause 18 also states that the Co-op "shall have a Management Committee which shall manage the business of the Co-op".

As stated above, there is no Management Committee in existence. Therefore there is no body elected by the members of the Co-op to conduct their affairs. It therefore follows that the Management Agreement between the Council and the Co-op is now redundant.

As there is no Management Committee, the Council had to assume managerial control of the Co-op in February whilst efforts were made to elect a Management Committee. These efforts failed and so the Council should now formally assume all roles of the Co-op. Indeed, the conduct of the Council in assuming managerial control to date has not been questioned by the Co-op or any of its officers. This arrangement should now be formalised and the Council should now give notice that it now intends to take over management of the Co-op. Written notice of this should be given to tenants and also the Director should be called in and advised of the situation.

In terms of the type of notice that should be given as stated above, Clause 10 of the Management Agreement provides for the service of notices to terminate the Agreement. However, it is difficult to serve a notice when there is no Management Committee to conduct the affairs of the Co-op. This is because only the Management Committee can act on behalf of the Co-op. The remaining Director has no power under the rules of the Co-op to act on their behalf. This is another reason why the Council needs to formalise the management of Tabard Gardens.

Moreover, the failure of the AGM to resolve to continue with the Management Agreement is strong evidence that the members of the Co-op no longer wish the Management Agreement to continue.

In theory there is some risk to the Council of assuming immediate control over the Co-op. The Director could try to obtain an Injunction at the County Court to prevent the Council assuming control, but he has no power to act on behalf of the Co-op. Similarly, a complaint to the ODPM could be made, but given the very serious situation mentioned above and the risk to tenants welfare, it is difficult to see how the ODPM could intervene. In any event their role is supervisory and they do not have power to prevent the Council from assuming managerial control.

6 HR Concurrent:

- 6.1 It is proposed that the management agreement with Tabard Gardens is terminated without notice.
- 6.2 Whilst the TUPE implications of returning the management of the service to Housing department are fully considered, it is recommended that the status quo is maintained in relation to employee terms and conditions, working arrangements and existing working practices with contractors.
- 6.3 It has also been proposed that an existing Housing manager is appointed to assist the Director of Tabard Gardens with the management of the service, whilst consultation is undertaken to determine the future delivery of the service and organisational structure.
- 6.4 It is anticipated that TUPE regulations will apply to both the return of Tabard Gardens and the associated use of contractors. This will need to be explored further with input from Legal Services.
- 6.5 If TUPE is confirmed, a full consultation process will be required with staff and their representatives and possibly contractors.

6.6 As a minimum starting point, Human Resources will require full details of the staffing structure, including but not restricted to:

- 6.6.1 Job Descriptions
- 6.6.2 Payscale
- 6.6.3 Contractual Status
- 6.6.4 Current salary
- 6.6.5 All personal details
- 6.6.6 Employment files

6.7 Additionally, we will require copies of existing agreements with contractors and a list of contractors.

6.7 A full staff meeting should be convened at the earliest opportunity in order to commence consultation and inform staff of current and proposed future employment status.

7 Housing Finance Implications

7.1 A major task on the income side is ensuring continuity of rent collection. ISMS will need time to set up council rent accounts so it is desirable for tenants to continue until then with current rent payment arrangements. However, this would entail at least some payments going into Tabard bank accounts. Similarly on the expenditure side, the co-op will have received two quarters' allowances and this funding should be able to be used to meet expenses, including payroll costs, up to the end of September. The action plan therefore needs to ensure that the Council gains prompt control of Tabard's bank accounts and maintains authorisation controls.

7.2 If additional costs are incurred, e.g. in extra management support or otherwise, then funding would need to be identified. There is no contingency budget for this type of circumstance. The current level running of costs should be able to be met by virement of the allowance budget from quarter 3.

7.3 Action plan tasks should include ensuring that the co-op's accounts can be audited for 2004/05, even if not able to be formally adopted, and also to ensure that full information on 2005/06 income and expenditure is produced promptly. This would indicate the co-op's financial position to assist in controlling its finances in the short term and in establishing the capital programme position for the Area Office taking it over.

8 RECOMMENDATIONS

8.1 It is determined that the management agreement with Tabard Gardens TMC be terminated and the estate be returned to direct Council management.

Head of Housing Strategy &
Regeneration

.....
Rachel Sharpe

Date 8-8-05

Under the power delegated to me by the Council, I authorise action in accordance with the recommendation of this report.

Signature
Keith Broxup,
Strategic Director of Housing.

Date 8/8/05

Report Author: John Carty, Principal Project Officer (TMS),
Housing Regeneration Initiatives.
Lead Officer: Neil Kirby, Housing Regeneration Initiatives Manager.

Background Papers	Held At	Contact
The Tabard Gardens TMC Management Agreement.	Larcom Street	John Carty on 51207