

COMMISSIONERS' INDIVIDUAL DECISION MAKING

Wednesday, 16 September 2015


Commissioners' Decision Log No. 30

1. **INCENTIVE PAYMENTS FOR TEMPORARY ACCOMMODATION (Pages 1 - 16)**

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Agenda Item 1

Individual Commissioner Decision Decision Log No: 030	 TOWER HAMLETS
Report of: Corporate Director, Development & Renewal	Classification: Partially exempt
Incentive Payments for Temporary Accommodation	

Is this a Key Decision?	No
Decision Notice Publication Date:	N/A
General Exception or Urgency Notice published?	Not required
Restrictions:	Partially exempt (para 3 – financial affairs)

EXECUTIVE SUMMARY

The report seeks the Commissioners' approval to release additional incentive payments totalling £20,359.60 to landlords who have provided properties to prevent a homelessness application being made or, once a homelessness duty has been accepted, discharge the Council's homelessness duty by way of a private rented sector offer. This is in accordance with the Council's published incentives scheme for private landlords.

The Mayor took an executive decision (Decision No. 103 - Agreement to enter into a lease to accommodate homeless households) on 6th July 2015 to authorise officers to acquire a lease for the provision of 71 units of accommodation to house homeless households who were accommodated in bed and breakfast accommodation. Part of the premium agreed through negotiations is held within the budget for the incentive scheme and, on that basis alone, the Commissioner's approval is also sought in order to release the payment to acquire the lease.

Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; and **other relevant matters are set out in the attached report.**

DECISION

The Commissioners are recommended to:

1. Agree the incentive payments, totalling £20,359.60, as set out in the restricted appendix to this report.
2. Agree to the payment of £142,000 from the budget held for the Incentive Scheme, which forms part of a larger negotiated premium, to secure a block of 71 flats for families in bed & breakfast accommodation.

APPROVALS

1. **(If applicable) Corporate Director proposing the decision or his/her deputy**

I approve the attached report and proposed decision above for submission to the Commissioners.

Signed  Date 15/9/15

2. **Chief Finance Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

Signed B. Smyth Date 15/9/15

3. **Monitoring Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

~~(For Key Decision only - delete as applicable)~~

~~I confirm that this decision:-~~

~~(a) has been published in advance on the Council's Forward Plan OR~~

~~(b) is urgent and subject to the 'General Exception' or 'Special~~

~~Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.~~

Signed  Date 16/9/15


4. **Commissioner**

I agree the decision proposed in paragraph above for the reasons set out in section 1 in the attached report.

Name Max Cahill Signed 

Date 16/9/15

Name	Signed
Date	
Name	Signed
Date	
Name	Signed
Date	

Commissioner Decision Report 15 September 2015	 TOWER HAMLETS
Report of: Corporate Director Development & Renewal	Classification: Partially exempt
Incentive payments for temporary accommodation	

Originating Officer(s)	Service Manager, Housing Options & Procurement
Wards affected	All
Key Decision?	No
Community Plan Theme	Great Place to Live

Executive Summary

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Recommendations:

The Commissioners are recommended to:

1. Agree the incentive payments, totalling £20,359.60, as set out in the restricted appendix to this report.
2. Agree to the payment of £142,000 from the budget held for the Incentive Scheme, which forms part of a larger negotiated premium, to secure a block of 71 flats for families in bed & breakfast accommodation.

1. REASONS FOR THE DECISIONS

- 1.1 The Council has had difficulty in procuring sufficient suitable accommodation to fulfil its statutory duties under section 188 and section 193 of the Housing Act 1996 for over two years.
- 1.2 This is due to the Council's inability to match market rents at a time when the subsidy for temporary accommodation has been frozen since January 2011, having been cut in April 2010.
- 1.3 Since early 2013 the number of families accommodated in bed & breakfast hotels in excess of six weeks has steadily increased and the Council has had to increase the fees it pays for temporary accommodation and to identify other ways to incentivise private landlords to supply their properties.
- 1.4 The Council has for many years provided non-refundable financial incentives to private landlords to supply properties to the Housing Options Service which can be used to either prevent a homelessness application being made or, once a homelessness duty has been accepted, discharge the Council's homelessness duty by way of a private rented sector offer.
- 1.5 In these circumstances the tenancy agreement is between the tenant and landlord. To broker the tenancy, the Council makes one-off incentive payments of between £1,500 and £4,000 depending on the size of the property and length of tenancy agreement. This is in accordance with the Council's published incentive scheme for landlords offering assured shorthold tenancies. The Council also agrees as an additional incentive to underwrite the costs of attending a one-off approved Landlord Accreditation Scheme to ensure landlords are aware of their responsibilities.
- 1.6 Agreeing the incentive payments of £20,359.60 and releasing the payment of £142,000 from the incentive scheme budget in order to secure a lease provides better value for money than bed and breakfast accommodation, and also minimises the risk of challenge where families are accommodated in bed and breakfasts for more than six weeks.

2. ALTERNATIVE OPTIONS

- 2.1 The alternative is not to make the payments or pay them at different levels. This is not recommended as it would be open to challenge by the landlords and would not be in line with the Council's publicised incentives schemes for

private landlords. A further alternative would be to cease the use of the private rented sector for the prevention or relief of homelessness via Private Licenced Accommodation or the Private Sector Access Scheme. This would likely result in a huge increase in the unlawful use of bed & breakfast accommodation and more expensive nightly-paid so-called annexes. A further alternative would be to pay higher rents to the landlords, which would result in fewer properties procured by the Council being affordable, which in turn would necessitate a higher level of subsidy being paid by the Council to secure the properties in the longer term.

3. DETAILS OF REPORT

- 3.1 The Housing Options Service employs a range of mechanisms to procure accommodation for the prevention and relief of homelessness. The Council is required to provide suitable temporary accommodation in accordance with its statutory duties to homeless households under Part VII of the Housing Act 1996.
- 3.2 The Council has been experiencing a crisis in its supply of temporary accommodation and has a number of incentive schemes in place to encourage supply.
- 3.3 The Council has for many years entered into agreements with private and social landlords for the use of properties for the prevention and relief of homelessness.
- 3.4 A number of landlords have provided properties in expectation of receiving the agreed incentive and in some instances the refund of accreditation costs. Those payments are currently pending the approval of the Commissioners.
- 3.5 The Council also has a scheme for the payment of an incentive for temporary accommodation whereby the Council takes on a Head Licence and then sub-lets to homeless households, provided the landlord supplies more than one property at a time. These incentives are to be capped at £500 for out of London properties and £1,000 for those within London.
- 3.6 Several accommodation suppliers have provided multiple properties in expectation of receiving the agreed incentive payment. Those payments are set out in the exempt appendix to this report. Another provider has 20 properties in the pipeline, 6 due to be delivered imminently.
- 3.7 On 6 July the Mayor agreed for the Council to acquire a lease for 71 units of accommodation that would be used to decant families who were in bed and

breakfast accommodation. Pending finalisation of the lease it was agreed that these properties could be acquired on a Head Licence for so they could be let without delay, thereby reducing the number of families accommodated in hotels. At the time of writing all but four of the properties have been let, all on the standard Head Licence agreement, pending finalisation of the lease.

- 3.8 The premium paid in order to secure the lease included a sum of £142,000 which was funded from the budget held for the Incentive Scheme. This formed an integral part of the commercial transaction to acquire the lease of the whole block and enabled the Council to agree a weekly rent and service charge for each unit of accommodation in compliance with the terms of the Inter Borough Temporary Accommodation Agreement, and enabled the rents set to be affordable for households subject to the welfare benefit cap.
- 3.9 Whilst it is understood that the payment of the premium to secure the lease does not amount to a grant in any respect, part of the negotiated premium to be paid was included on the Corporate Grants Register and, as such, requires commissioner approval in order that payment can be released.
- 3.10 Officers have bought forward a paper for the Commissioners' consideration, seeking delegated authority for future payments of this nature.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 Due to a combination of the increasing numbers of applications to the homelessness section, the scarcity of available temporary accommodation and the high levels of rent charged to the Council, significant service delivery and budgetary pressures are being faced by the Housing Options section, particularly in respect of the increasing need to utilise bed and breakfast accommodation.
- 4.2 This report seeks the approval of the Commissioners to the making of incentive payments to various landlords to secure the supply of short-term accommodation. These incentive payments take the form of "one-off" premium payments, and vary in amount depending on the size of the property and the length of the tenancy agreement. Similar payments have been made to landlords over recent years to ensure that properties are made available in order to discharge the Council's homelessness duty and in particular to relieve the necessity to place families in bed and breakfast accommodation.
- 4.3 Since November 2014 the Council has participated in a pan-London exercise to restrict the payments for nightly-paid accommodation. This has resulted in a reduction of some 6% on the prices paid, but has also resulted in a loss of

supply within some boroughs. This report seeks Commissioner approval for various specific payments to be made in order to obtain new properties to allocate to applicants.

- 4.4 On 6 July 2015 the Mayor approved an initiative to enter into a lease agreement for 71 self-contained flats located in the London Borough of Merton for use as temporary accommodation. In addition to the on-going rental charges and the 'one-off' Stamp Duty Land Tax (SDLT) payment, a reservation fee is being levied. This report seeks approval to pay the reservation fee which is set at £2,000 per unit i.e. £142,000 for the full 71 units.
- 4.5 All costs, including the reservation fees, were incorporated in the assessment of the scheme, with the funding being met from within existing Homeless Services temporary accommodation budgets. These budgets are supported by Homelessness Prevention Grant that is received from the Department for Communities, Localities and Culture (DCLG).
- 4.6 This report also seeks approval to make incentive payments totalling £20,359.60 in respect of various properties that the Council has managed to secure, as well as the refund of certain landlord accreditation fees – these are listed in the exempt Appendix A.
- 4.7 The discretionary payments are being made in accordance with the advertised Council scheme, and are funded from existing resources, again supported by Homelessness Prevention Grant.
- 4.8 On receipt of the incentive payment, the landlord will enter a statutory Assured Shorthold Tenancy agreement for a specified time period. As well as protecting the tenant, this ensures that the Council will have legal recourse if the incentive payment is made but the property is not made available for its intended use.

5. LEGAL COMMENTS

- 5.1. The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the "Directions"). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under

section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).

- 5.2. To the extent that the Commissioners are asked to approve incentive payments to private landlords in order to secure temporary accommodation to prevent and/or relieve homelessness, this is an executive function of the Council. This is the effect of section 9D(2) of the Local Government Act 2000, in the absence of a contrary specification in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 5.3. The Council has duties under the Housing Act 1996 to secure that accommodation is available for eligible applicants who are homeless, in priority need and not intentionally homeless.
- 5.4. The Council has a specific duty under section 188 Housing Act 1996 to provide interim temporary accommodation if there is reason to believe that an applicant may be homeless, eligible for assistance and has a priority need. Pending a decision of that duty the authority must secure accommodation for their occupation.
- 5.5. The Council may discharge its duties by making
 - (a) an offer of suitable accommodation under section 193 of the Housing Act 1996;
 - (b) a final offer of suitable accommodation by way of allocation through Part 6 Housing Act 1996; or
 - (c) an offer of an assured shorthold tenancy with a private landlord
- 5.6. The Homelessness (Suitability of Accommodation) Order 1996 specifies that when discharging a housing function the accommodation must be suitable, which includes taking into account whether or not the accommodation is affordable
- 5.7. Further, the Homelessness (Suitability of Accommodation) (England) Order 2003 provides that B&B accommodation is not to be regarded as suitable for an applicant with family commitments i.e applicants who are pregnant or applicants whose dependent children reside or might reasonably be expected to reside with them. Where no accommodation other than B&B accommodation is available for occupation by an applicant with family commitments the applicant should not occupy the B&B accommodation for a period, which exceeds 6 weeks.
- 5.8. By virtue of section 111 of the Local Government Act 1972, the Council has power to do anything which is calculated to facilitate, or is conducive or

incidental to, the discharge of any of its functions. This may involve expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights. This incidental power may support some grants in relation to preventing and/or relieving homelessness of those referred to in para 5.3 above.

- 5.9. The wording used by the Directions is that the Commissioners will exercise the power "relating to the making of grants under any statutory power or duty". There is no definition of grant given under the directions and therefore, the assumption must be that a grant is that which would be deemed to be a grant under the law.
- 5.10. There is no strict legal definition of grant. However, a grant is in the nature of a gift and is based in trust law. There will be many grants which are made by the Council for the purpose of discharging one of its statutory duties. However, as a grant is in the nature of a gift, it is considered there must be some element of discretion on the part of the Council as grantor as to whom a grant is made to and whether this is made. If the Council is under a legal duty to provide a payment to a specific individual or organisation, and cannot lawfully elect not to make such a payment, then that should not amount to a grant.

Leasehold acquisition of 71 flats

- 5.11. In respect to the payment forming part of the premium to secure a leasehold interest in a block of 71 flats for use by families in bed and breakfast accommodation, it is clear that this does not constitute a grant.
- 5.12. The Council is permitted under section 120 of the Local Government Act 1972 to acquire land by agreement for the purposes of any of its functions, in this case its functions in relation to homeless persons. The Council negotiated terms for the acquisition of the lease which was then approved by the Mayor in a report dated 2 July 2015 and appended hereto.
- 5.13. It is understood that the decision required of the commissioners in respect to this lease transaction arises solely because part of the premium to be paid was recorded on the Corporate Grants Register.

Incentive payments of £20,359.60

- 5.14. The Council has a published financial incentive scheme, titled the 'Private Sector Access Scheme', which has been in existence for a number of years. The scheme assists the Council in discharging its statutory by offering cash payments to landlords who provide assured shorthold tenancies for persons nominated by the Council who may otherwise be considered homeless and to

whom it may have a duty outlined in the comments above. The payments range from £2,500 to £4,000 per property offered and the details of the published scheme are attached to this report.

- 5.15. When considering whether or not to make funds available for the purposes specified, the Council should consider whether or not this will be consistent with its best value arrangements. The Council is obliged as a best value authority under section 3 of the Local Government Act 1999 to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness” (the Best Value Duty).
- 5.16. Part of complying with the Council’s Best Value duty is ensuring that the Council obtains value for money. The report confirms that the effect of the grant scheme is to assist the Council in securing accommodation which is considered to be better value for money than bed and breakfast accommodation. Though it is silent on the process followed, if any, to select the private landlords, the Commissioners may consider that payment of grants represents best value overall.
- 5.17. When discharging its housing functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don’t (the public sector equality duty). Although being homeless or at risk of becoming homeless is not a protected characteristic under the Act, paragraph 6.2 confirms that BME and single parent families are disproportionately represented within the group for whom the temporary accommodation is suitable.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. When exercising its functions, including housing functions, the Council has a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 6.2. The council’s stock of temporary accommodation is used to house homeless households who would otherwise struggle to find accommodation in the private rented sector. BME and single parent families are disproportionately represented amongst the households who occupy temporary accommodation.

- 6.3. The proposal in this report involves the Council exercising its powers to incentivise private landlords to provide their properties in order to either prevent and/or relieve homelessness. The allocation and use of those units for those households with family commitments will be determined in accordance with the statutory requirements to provide such accommodation, based on a number of relevant factors including priority need and suitability of accommodation.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The proposal in this report supports the Council's best value duty by securing homes to prevent and/or relieve homelessness. The absence of any incentive scheme would mean the Council would probably fail to secure a meaningful number of self-contained units of accommodation.
- 7.2 Specifically in relation to the lease for the block of 71 flats, the lease charge is considered to be a competitive rate having regard to that which other Councils pay or are willing to pay for such accommodation and is less than the market rate for equivalent flats in the area.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no immediate environmental implications arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 This proposal is intended to mitigate the risks associated with accommodating homeless households in B&B/hotel accommodation, and in otherwise unsuitable housing by incentivising private landlords to supply properties to the Council for use as temporary accommodation as well as to prevent or relieve homelessness.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Families in self-contained accommodation will no longer be required to share amenities as they are at present in hotels. This will provide a more secure environment for these families with less risk of them becoming victims of crime than they are currently exposed to in hotels.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are serious safeguarding concerns with children being placed for extended periods in hotel/B&B accommodation. Shared hotel/B&B accommodation is not suitable for families with children, and may only be used in an emergency, subject to a maximum of six weeks in accordance with the Homelessness (Suitability of Accommodation) (England) Order 2003. This was in recognition of the harm to children's development if spending lengthy periods in cramped, overcrowded accommodation with insufficient space to play and study. Further concerns arise from the need to share cooking, bathroom and toilet facilities with other households, including in some cases, vulnerable single adults.
-

Linked Reports, Appendices and Background Documents

Linked Report

- Mayor's Executive Decision Making – Decision 103: Agreement to enter into a lease to accommodate homeless households

Appendices

- Exempt appendix – incentive payments currently in suspense

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

- Lorraine Douglas, Service Manager, Housing Options & Procurement, 020 7364 7082

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

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