



# City of Westminster Cabinet Member Report

<b>Meeting or Decision Maker:</b>	Cabinet Member for Housing Services
<b>Date:</b>	25 <sup>th</sup> March 2019
<b>Classification:</b>	General Release
<b>Title:</b>	Walden House Rehousing Offer
<b>Wards Affected:</b>	Churchill
<b>City for All Summary</b>	The report covers making available a rehousing offer to the residents of Walden House in advance of the expiry of the Council's lease on the building.
<b>Key Decision:</b>	No
<b>Financial Summary:</b>	The incentive payment and decanting costs for the 38 secure tenants is forecast to be £360k. This will be spread over the next four years up to the point of vacant possession in June 2023.
<b>Report of:</b>	Barbara Brownlee, Executive Director of Growth, Planning and Housing

## 1. Executive Summary

- 1.1. The Council's lease with Grosvenor Estates (Grosvenor) on Walden House is due to expire in June 2021. Grosvenor have advised that they intend to redevelop the site and therefore do not intend to grant a lease extension on a long term to Westminster City Council ("the Council"). Grosvenor has agreed to a two-year extension, to June 2023, to provide the Council with an additional period of time to use reasonable endeavours to provide residents with alternative social rented accommodation within Westminster.
- 1.2. This report outlines the recommended rehousing offer for the 38 secure tenants of Walden House, who will need to move by 2023 at the latest, when the council's lease expires.
- 1.3. The Council's first priority is the well-being of residents and to ensure they are rehoused within Westminster, with the right to remain as secure council tenants if they choose, together with providing support throughout the rehousing process. Due to the uncommon

and sensitive nature of this proposal, it is recommended that the council considers elements from both its Allocations policy (2018) and Tenant Renewal Decant policy (2015) to formulate the final rehousing offer, set out below in Sections 4 to 10 of the report.

## **2. Recommendations**

- 2.1. With regard to the Rehousing Offer to Walden House secure council tenants, it is recommended that:
- 2.2. The same number of points set to non-renewal decant applicants (450 points) are awarded as set out in section 5 of this report. Households remaining in occupation in the period prior to the lease end date will be made one direct offer of alternative accommodation
- 2.3. Each secure tenant/ joint tenant is offered a single payment of £6,300, as a gesture of goodwill for their disturbance when moving as set out in section 6 of this report.
- 2.4. The Downsizing Cash Incentive Scheme and awarding of additional downsizing points is not included in the rehousing offer. This is set out in section 7 of this report.
- 2.5. Secure tenants are offered housing meeting their assessed bedroom need as set out in section 8 of this report.
- 2.6. Households identified as overcrowded are offered housing meeting the assessed bedroom need based on the approach used in the Policy for Tenants in Housing Renewal Areas. This is set out in section 9 of this report
- 2.7. Any rights or special provision to return to a Council estate, area or neighbourhood that is being or has been redeveloped is not granted. Confirms that the Council may at its absolute discretion offer as a priority option in a local lettings scheme at a later date if it deems it practicable, but offer no guarantees it will do so. This is set out in section 10 of this report.

## **3. Reason for Decision**

- 3.1. Awarding a rehousing offer to Walden House secure tenants as a bespoke package, which combines elements from both the Council's Housing Allocation Scheme and the Policy for Tenants in Housing Renewal Areas would enable the Council to make every effort to ensure the offer is as generous as possible, whilst still remaining fair and in line the Council's housing renewal strategy and serving the Council's best interests.

## **4. Background**

- 4.1. With the expiry of the lease at Walden House coming into effect in June 2021, the Council is committed to rehousing its 38 council tenants (and two temporary accommodation households) who currently occupy this block. The Freeholder, Grosvenor, has agreed to a two year lease extension (to June 2023) at nil consideration, provided that the Council uses its reasonable endeavours to achieve Vacant Possession.
- 4.2. Counsel's advice to the Council has advised that the Council should make reasonable endeavours to provide Vacant Possession at lease expiry. As residents will be required to be rehoused, this exercise will need to be handled sensitively in order to best support residents throughout the process, encourage resident collaboration and protect the Council's reputation.
- 4.3. This is an uncommon task for the Council, as there is no written direction in any existing council policy on handling lease expiry buildings occupied by council secure tenants, where the Council is not the freeholder of that building. Currently Westminster has two separate decant groups; Renewal and Non-renewal, which are each dictated under two separate council policies – namely the Council's Housing Allocation Scheme and the Policy for Tenants in Housing Renewal Areas.

- 4.4. When formulating the rehousing offer, due consideration has to be made to the number of secure tenants involved, the size of their households and the available supply of council properties. This is particularly important given Walden House's location, which is directly opposite the Council's renewal estate, Ebury Bride, where the Council is actively rehousing over 100 renewal decants.
- 4.5. Based on the above, and the fact Walden House is not a council regeneration scheme, it is not suitable or in the Council's best interest to offer a package based solely on the Council's Policy for Tenants in Housing Renewal Areas. Likewise, given these tenants will be forced to move, through no fault of their own, it can be argued that it would not be fair to treat these tenants simply as non-renewal decants, as outlined in the Council's Housing Allocation Scheme, where they would then not be entitled to any financial compensation.

## **5. Allocations Priority Points**

- 5.1. The Council operates a Choice Based Lettings system to let its properties, where priority housing applicants are given points according to their housing need. Renewal decants and non-renewal decant tenants fall under the '*Pressing Housing Need*' priority group and are each awarded 450 points. However, renewal decants also receive additional points for their medium or high local connection to the area, which makes them the second highest priority group and non-renewal decant tenants the third.
- 5.2. Renewal decants are prioritised as their move enables the council to fulfil its regeneration plans, which will ultimately enable Westminster to increase its housing stock. When deciding which priority group to place the Walden House tenants, the Council should not ignore the fact that this block is not a council renewal site. On this basis alone it is difficult to argue how to justify awarding Walden House tenants the same priority points as renewal decants.
- 5.3. Further, as the neighbouring regeneration estate, Ebury Bridge, has just acquired full decant status, the Council needs to be cognisant of the need to achieve vacant possession of a key renewal scheme that will deliver an increase in council owned social and affordable homes. In the worst-case scenario, while the Council is entirely sympathetic to the situation that Walden House residents are faced with, having comparable priority rehousing status for Walden House could impede the progress of the Ebury Bridge renewal programme given the limitations on housing supply. The Council aims to achieve voluntarily rehousing moves with Ebury Bridge residents where possible. In order to achieve this, Ebury Bridge renewal decants will need to be able to bid for properties without the risk of being outbid by a non-renewal tenant.
- 5.4. In order to demonstrate that the Council has provided reasonable steps to enable the Walden residents to be offered alternative accommodation before the lease end date, the Council will make one direct offer to those households who have not successfully moved via Choice Based Lettings remaining in occupation prior to the lease end date. This direct offer will be made in sufficient time before the lease end date to ensure that households have had the opportunity to consider an offer of alternative suitable accommodation. Households are not obliged to accept this offer, however if they do not accept the onus will be on the household to find their own alternative accommodation.

## **Recommendation**

- 5.5. This report recommends Walden House tenants are awarded the same number of points set to non-renewal decant applicants (450). This would mean they would still be one of the council's highest priority groups, with good opportunities to successfully bid for a new home before the lease expiry period. Households remaining in occupation in the period prior to the lease end date will be made one direct offer of alternative accommodation.

## **6. Compensation**

- 6.1. As this is an involuntary move, a decision is required on whether to include a discretionary compensation payment in the rehousing offer, and if so, whether this payment should mirror the compensation payment offered to renewal decants. Technically, as the Walden House secure tenants do not reside on a council owned estate, which the Council is seeking to redevelop, they are not legally entitled to the statutory Home Loss payment, outlined in the Land and Compensation Act (1973).
- 6.2. That said, there are still arguments that despite the cost implications involved, offering a discretionary compensation payment should be considered. By agreeing to include a payment, mirroring the current Home Loss payment (£6,300) the council would be required to spend £239,400, to cover all 38 secure tenants. While the financial costs are significant and cannot be ignored, there are also strong grounds for the payment, given these residents will be required to move through no fault of their own.

### **Recommendation**

- 6.3. This report recommends that the Council awards each secure tenant/ joint tenant a single payment of £6,300, as a gesture of goodwill for their disturbance when moving. To avoid any parity or confusion with the statutory compensation payment offered to renewal decants, this payment will be referred to as a Discretionary Displacement payment.

## **7. Downsizing – Cash Incentive and Points**

- 7.1. Typically, when a family is identified as under occupying a property when moving, they will be placed in the Cash Incentive priority group and awarded the maximum number of allocation points to move home (550). The purpose of the Council's Cash Incentive scheme and awarding the additional priority points is to free up under-occupied family sized accommodation, which in turn reduces cases of overcrowding in the borough. Generally these elements would not be offered to decant tenants who return to their property or when the property is demolished, as the Council would not be gaining any bedrooms from the move.
- 7.2. Of the 38 tenants at Walden House, we have identified from the desk space data, there are 13 households who are currently under occupying, of which 5 are over the pension age. Under the Cash Incentive Scheme, once accepted those over pensionable age would be entitled to £3,000 per bedroom released. In addition the scheme gives tenants downsizing from properties containing three or more bedrooms an additional £3,000 if they release one bedroom or £5,000 if they give up two. Based on the desk space data, should the Council apply the Cash Incentive payments this would cost £49,000.

### **Recommendation**

- 7.3. The report recommends that that the Cash Incentive scheme is not included in the rehousing offer, as it does not fulfil the requirements; namely, not releasing any bedrooms for other larger households in the borough. The report recommends, that the council adopts the same approach used in the Policy for Tenants in Housing Renewal Areas and does not assign households any additional priority for downsizing when bidding.

## **8. Bedroom Need Assessment**

- 8.1. The size and type of the replacement home offered to each tenant on Walden House will depend on the household make up. All tenants will have their needs assessed at the start of the decant exercise. Offers of accommodation are based on the assessed bedroom size need of the household, in accordance with the council's bedroom standard, not the size of accommodation the households currently occupy.
- 8.2. In accordance with the Council's under occupation policy (for both renewal and decants), where a tenant resides in a property too large for their needs, when moving they will only be offered a property according to their assessed bedroom need. In Walden House we have identified from the desk space data 13 families, who are currently under occupy their property, of which 5 are over the pension age.
- 8.3. In a number of these cases it is the adult children of the tenant who currently have their own room, so they will be most affected by the move. Under the Council's policies they would not be entitled to their own room as siblings of the same gender are expected to share a room with one another indefinitely, unless the age gap is over 10 years. The Council appreciates that in such cases, these residents may feel disadvantaged by the fact this is also an involuntary move.
- 8.4. Renewal Decants are equally required to move, and are not given the option to retain any additional bedrooms. If the Council agreed to treat applicants of Walden House outside its policy, there are significant risks, including later challenge from other priority groups.

### **Recommendation**

- 8.5. The report recommends that Walden House secure tenants are offered accommodation meeting their assessed bedroom need.

## **9. Overcrowded Households**

- 9.1. Under the Council's Housing Allocation policy, only households deemed statutorily overcrowded (by 2 or more bedrooms) will be offered an additional bedroom when moving. Households who are accepted for a management transfer and are overcrowded by one bedroom will be entitled to the same accommodation as their current have .i.e. like for like. Based on the desk based assessment, at Walden House there are two families who are overcrowded by one bedroom. Both families are currently in a 2 bedroom unit and would not be considered statutorily overcrowded. However, by applying the council's renewal decant policy, it would allow these two households to move to larger properties when they move and enable the Council to address the overcrowding situation for these households.

### **Recommendation**

- 9.2. This report recommends to adopt the approach used in it the Policy for Tenants in Housing Renewal Areas, which rehuses applicants based on their household need.

## **10. Right to Return**

- 10.1. The offer of a Right of Return is being made to all existing renewal decant tenants. Where the Council has 100% nomination rights of the newly provided social units, it could decide to make a commitment to allow Walden House residents the opportunity to return to the site. In doing so the Council could demonstrate that it is doing all it reasonably can to enable residents to come back to the area.

- 10.2. This would create a precedent for other schemes across Westminster that involve decants of social units. The Council has no control over the timing of the Grosvenor scheme or who the nominated Registered Provider will be on the completed scheme. This will be the same for other non-Council lead regeneration schemes. Walden House residents may have been provided with adequate accommodation, and enjoyed it for a number of years, before the new social homes are ready for let. In the intervening time their circumstances may have changed .e.g. larger, smaller families, medical needs, so the Council cannot provide any certainty that a suitable property would be available to bid on.
- 10.3. The lease expiry of Walden House is taking place against the background of the regeneration of the Ebury Bridge Estate, potentially within a similar timeline. The Council has committed to providing the residents of the estate with the first priority on the new homes due to be built. As the Ebury Bridge regeneration programme is being delivered in phases, there will unlikely be sufficient available social units to enable the residents of Walden House to be guaranteed a commitment to be rehoused on Ebury in the time required. Walden House residents will be provided with a decant status, and equivalent priority points, and therefore will be in a strong position to place successful bids on any surplus Ebury Bridge social homes, that become available to bid on prior to 2023. However the Council cannot provide certainty that a rehousing move to Ebury is guaranteed.

### **Recommendation**

- 10.4. The report recommends that the tenants of Walden House will not be granted any rights or special provisions to return to a Council estate, area or neighbourhood that is being or has been redeveloped. The Council may at its absolute discretion offer this as a priority option in its local lettings scheme at a later date if it deems it practicable, but there are no guarantees it will do so.

## **11. Financial Implications**

- 11.1. Secure tenants in Walden House are not entitled to statutory compensation as the block is neither being compulsorily acquired nor is it to be the subject of public works or redevelopment. However, the Council is recommending making a discretionary payment to each secure tenant equivalent to a home loss payment plus disturbance costs, as tenants are being displaced through no fault of their own. This payment is £6,300 per property so for the 38 properties in total is £240k.
- 11.2. In addition to the proposed disturbance payment, there are costs associated with decanting a Household in Westminster. This is approximately £3,200 per household. Moving 38 secure tenanted households therefore will cost approximately £360k in total. Additional funding may be required depending on the type of work necessary at the newly allocated property and for any individual medical needs to be accommodated.
- 11.3. Budgets are in place for the decant of properties within the Council's regeneration schemes. However the costs outlined above will be in addition to normal business as usual and are thus not specifically budgeted for. In total there is an estimated £360k of costs to be incurred within the HRA, over the time period 2019/20 – 2022/23 when vacant possession should be offered.
- 11.4. At present there is no information available about the profiling of this potential expenditure. If it were to be evenly spread over the four years it translates to £90k per year. The current homeloss, removal and disturbance budget is £220k per year but in 18/19 is forecast to be fully spent.
- 11.5. These payments may set a precedent for other similar situations as and when they occur. Therefore these need to be considered where secure tenancies are offered or in place within buildings the council is not the freeholder for.

## 12. Legal Implications

- 12.1. Section 111 of the Local Government Act 1972 provides that an authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions.
- 12.2. Grosvenor Estates intend to redevelop Walden House and therefore do not wish to extend the Council's lease. The Council does not have any right to possession of the flats from the secure tenants under The Housing Act 1985. In the circumstances therefore, the secure tenants of Walden House are faced with either leaving the property on a voluntary basis or remain in occupation until the expiry of the Council's lease and face eviction by Grosvenor Estates.
- 12.3. If the latter, should the secure tenant not be rehoused, they will become homeless. If so, upon eviction by Grosvenor Estate, the residents will turn to the Council to re-house them if required under the homelessness provisions and therefore will place a further pressure on the Council in this respect.
- 12.4. The Council acting as a responsible public sector Landlord wishes to mitigate the distress and inconvenience that the secure tenants will face. In order to do so, the Council may consider making discretionary payment, should it require.
- 12.5. Section section 29 of the Land & Compensation Act 1973 provides that "*(1) Where a person is displaced from a dwelling on any land in consequence of - (c) where the land ... is for the time being held by the authority for ... the carrying out of any improvement to the dwelling or of redevelopment on the land.*" Case law has indicated where a person is willing to move in circumstances where he or she regards it as inevitable, then it can be argued that a home loss payment can be justified.
- 12.6. Currently the amount payable for secure tenants that are displaced is £6,300.00 (The Home Loss Payments (Prescribed Amounts) (England) Regulations 2018)
- 12.7. In addition to the above, the Council will also need to consider whether they wish to also reimburse individuals for disturbances payments incurred in any replacement properties, as is done with CPO matters i.e. removal fees and the like.
- 12.8. The issue of a discretionary payment and disturbances will need to be considered on the basis that it may set a precedent for future scenarios.
- 12.9. The two current policies available to the Council do not fit within the current circumstances of Walden House. However, this is a 'bespoke' offer for this matter. It may be prudent for the Council to offer the discretionary payment ('displacement compensation') as a gesture of 'goodwill' to protect any reputational damage caused by the displacement. However, it would be in the Council's best interest if there were to be a cap on the amount of compensation we would offer. Any discretionary payment would need to be reviewed and considered carefully.
- 12.10. Duties under the Equality Act 2010
  - a. The Council is required to act in accordance with the public sector equality duty under the Equality Act 2010 and have due regard to this duty when carrying out its functions, which includes making new decisions. The Council will have regard to its duties under

the Equality Act 2010 when implementing the recommended option. In particular they will need to have regard to the need to;

- Eliminate discrimination, harassment, victimization and any other conduct that is lawful under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- And foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

b. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The City Council is required to act in accordance with the equality duty and have a due regard to the duty when carrying out its functions.

12.11. The Council have carried out an EQIA and continue to do so and this is attached to the report.

#### 12.12. Human Rights Considerations

a. The Human Rights Act 1998 incorporated into domestic law the European Convention of Human Rights (“the Convention”).

b. Specific rights protected by the Convention include:

- The right of everyone to the peaceful enjoyment of their possessions, which can only be impinged upon in the public interest and subject to relevant laws, and
- The right to a private and family life, home and correspondence, which can only be impinged upon in accordance with the law and where such encroachment is necessary in the interest of public safety or the economic wellbeing of the country.

c. The above Convention rights should be considered by the Council when taking the above approach. Regard must be had to the fair balance that has to be struck between competing interests of the individual and of the community as a whole. Any interference with a Convention right must therefore be necessary and proportionate.

### 13. **Staffing Implications**

13.1. The Council will provide support for Walden House residents from within The Relocations Team, within Growth, Planning and Housing.

### 14. **Consultation**

14.1. On formal agreement of the lease extension period with Grosvenor, the Council will implement a Communications plan with Walden House residents detailing the circumstances that are necessitating rehousing moves and the package of support that will be made available to residents.

**If you have any queries about this Report or wish to inspect any of the Background**

**Papers please contact:**

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**BACKGROUND PAPERS:**

Communications and Engagement Plan.

Equalities Impact Assessment

For completion by the **Cabinet Member for Housing Services**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: **Councillor Andrew Smith, Cabinet Member for Housing Services**

State nature of interest if any .....

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*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendations in the report entitled **Walden House Rehousing Offer** and reject any alternative options which are referred to but not recommended.

Signed .....

Councillor Andrew Smith, Cabinet Member for Housing Services

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the Executive Director of Finance Resources, and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

## Other Implications

1. **Resources Implications - None**
2. **Business Plan Implications – None**
3. **Risk Management Implications - None**
4. **Health and Wellbeing Impact Assessment including Health and Safety Implications - None**
5. **Crime and Disorder Implications - None**
6. **Impact on the Environment - None**
7. **Equalities Implications – Attached as an appendix to this report**
8. **Staffing Implications – Detailed in the report**
9. **Human Rights Implications - None**
10. **Energy Measure Implications - None**
11. **Communications Implications – Attached as an appendix to this report**

Note to report authors: If there are particularly significant implications in any of the above categories these should be moved to the main body of the report.