

Committee:	Date:	Item
Barbican Residential Committee	26 March 2012	14
Subject: Residential Rent Review		Non-Public
Report of: Director of Community and Children's Services		For Decision DCS 10/12
<h1 style="text-align: center;">NOT FOR PUBLICATION</h1> <p style="text-align: center;">By virtue of paragraph 3 & 4 of Part I of Schedule 12A of the Local Government Act 1972.</p>		
<p><u>Summary</u></p> <ol style="list-style-type: none"> 1. This report, which is for decision reviews the rent for homes on the Barbican Estate let under City of London tenancies. 2. Counsel's opinion was received in May 2007 which concluded that any decision to charge materially less than the market rent on the Barbican Estate would be unlawful. Therefore, the starting point for the City is to ascertain what the market value for their properties is - taking into account their state of repair, security of tenure and any other relevant features. On this basis a local estate agent was engaged in 2007, 2008 2009, 2010 and 2011 to assess the appropriate rental levels for Barbican flats let by the City of London, unfurnished, unmodernised and on three years tenancy agreements. 3. I have therefore appointed two estate agents to assist me with this review who have concluded that the existing rental levels have increased from last year taking into account the current state of our rental stock. <p>Recommendation</p> <ol style="list-style-type: none"> 4. I recommend that the City implements an 8.2 % increase over 2011 rental levels effective for all tenants renewing their leases from 1 July 2012 until June 2013. 		

Main Report

Background

5. There are 101 City of London rented flats with a further seven flats currently void but being made available for sale. Eight are used by the Barbican Estate for residential staff or occupied by employees of the GSMD, Girls School, and Boys School. Four more flats are let commercially to the pub, dentist, physiotherapist and rectory. A further 15 flats are occupied by residents who do not hold fixed term tenancies but whose rents are reviewed on an annual basis as they are secure periodic tenants who have decided not to enter into a three year agreement. Therefore there are now 74 flats let under fixed term tenancy agreements.
6. Rent agreements on the Estate are unusual in that they are for three-year periods with an option to renew for a further three years (at a higher rent) with the tenant having a right, under the lease, to appeal to arbitration if he or she is unhappy with the proposed rent review. However tenants can serve notice to leave at any time during the three years, as three months written notice to surrender has always been accepted. The rent includes all service charges. During the three-year period, each rent is “frozen” with no increase until renewal of the agreement. This means that City of London tenants on the Barbican Estate who enter a fixed term tenancy agreement are protected from the annual rent rises which are a common feature elsewhere and of course under private sub-lettings on the Estate.
7. In addition a phasing scheme is invoked when a rent increase “rolled-up” after a three-year period exceeds 20% and is to protect tenants at renewal time from large, one-off, increases.
8. Since March 1986, representative samples of rent levels are provided to Committee rather than detailed schedules showing every flat. Appendix A (1-3) shows the rent progression for typical Barbican flats over the last six years.

9. The Barbican estate was built from 1965 to 1976 to provide rented accommodation for middle/upper income groups and is accordingly outside the Housing Revenue Account. It therefore follows that the Barbican rents should be market rentals without there being any level of subsidy from either central or local government or the ratepayer. In 2011/12 nine flats were let unfurnished on a three year tenancy with the option to renew for three years. The flats were offered for rental with an additional 10 % added to the existing Barbican rental for that flat type and a minimum six months deposit was required from the applicant to be held for the duration of the tenancy. The nine flats re-let during the year achieved a total combined annual rental of £190,050. The success of our re-letting of these flats illustrates the attractiveness of Barbican flats in the market. It should be noted that though that our rental policy has changed as a result of the imminent changes to Right to Buy legislation until we can assess what effect these changes will have and so there are currently seven flats under offer for sale.
10. The Barbican does not fall under decent homes legislation because it is outside the Housing Revenue Account and so the flats are unmodernised. Nevertheless City of London residents are entitled under the terms of their tenancy agreements to have internal repairs carried out to their flat by the City, (the cost of which is included within their rental) which suggests that although the flats are unmodernised they should always be in a good state of repair. Counsel advised that the first steps in the process of reviewing rents is to ascertain the appropriate market value of the flats let by the City taking into account their state of repair, security of tenure and other relevant features.
11. The main factor in assessing Barbican rents has been the rentals achieved in the private market for sold flats which are privately let by their owners. This information is obtained when residents register their sub letting and which they are obliged to do under their lease. This method was considered logical by Counsel because it involves comparing rentals in the same locale. It would be inappropriate to compare rental levels in for example Pimlico, rather than Barbican where there is a huge number of comparables available from which to assess rental trends. Appendix B lists 82 known private rentals on the Barbican Estate as at February 2012. Although there are extremes at either end of the spectrum, with differences for individual private lettings ranging from 17% less to 70% more, on average private rentals are 21 % higher than City of London rentals.

12. The Counsel's opinion received in May 2007 concluded that any decision to charge materially less than the market rent on the Barbican Estate would be unlawful.
13. On this basis I employed Frank Harris & Co and Hamilton Brooks at a cost of £350 and £100 plus VAT respectively and asked that they consider appropriate rental levels for the various types of flats let by the City. The agents were given a copy of the appendix B which listed the 82 known private Barbican rentals and the rents achieved privately, compared to the City of London 2011 rental levels. The advantage of employing local agents is that they have extensive knowledge of the layout of Barbican flats and the facilities available.
14. The results of their survey are attached in appendix B. The agents undertook an in-depth analysis of the sample and assessed the appropriate current market rental level. They were asked to take into account the unmodernised and unfurnished state of Barbican flats which were to be let on a fixed term for three years, with the option to renew for a further 3 years. For confidentiality reasons the appendix does not list precisely where each flat is and both agents were required to make a general assessment. The conclusion reached by the consultants was that generally, the rental levels have increased since the last review. It is therefore recommended that an 8.2% increase is implemented over 2011 rental levels effective for all tenants renewing their leases from 1 July 2012 until June 2013. This figure has been arrived at by averaging the recommended increases of both agents.
15. As a corollary to the matter of registration of sub-lettings with the City and data protection raised by a member at the Committee in 2006 the Comptroller and City Solicitor has confirmed that no data protection concerns are raised by such an obligation. Processing of such data is required under the terms of the leases and is therefore 'fair' under the First Data Principle. It is also 'lawful' under that same principle since it is obtained in accordance with a lawful contract and satisfies a Schedule two condition in that the data assists the City in the management of the estate

Financial Implications

16. There are 19 tenants due to renew their agreements during July 2012 and June 2013. If an 8.2% rent rise is agreed for 2012/13 the total average increase for these tenants would be 18.56% (i.e. incorporating the 2.6 % increase for 2010/11 and 6.8% increase for 2011/12). This would result in an increase in income of some £57,318 per annum from the first full financial year (2014/15) after all tenancy agreements due for renewal between July 2012 and June 2013 are completed. In addition for the 15 periodic tenants whose rents are reviewed annually, an 8.2 % increase will result in an increase of income of £ 23,480 annually. The City must serve a notice of variation giving these tenants three months notice of the rental increase and so the first full financial year that this increase will be effective will be 2013/14.

Legal Implications

17. Counsel is clear in his opinion that the City must charge market rents for its properties, as a result of which the valuation of the City's stock becomes of prime importance. On such a valuation the City would be required to take into account the condition, security of tenure and other material circumstances (such as location) but not the ability or otherwise of the tenant to pay the increased rent, a matter which has been aired in your Committee in the past.
18. Counsel is not saying that the City's properties must be let at a rent equal to those in the private sector unless it can be shown that the City's properties are of equal value to the private flats, which is not the case according to the valuation carried out by the estate agent. It is for this reason that an increase of 8.2% is proposed this year.

Consultees

19. The Chamberlain and Comptroller & City Solicitor have been consulted in the preparation of this report.

Conclusion

20. The City has to have regard to the lawful assessment of rentals for its tenants on the Barbican Estate. The rents must be set at market levels and the City cannot artificially subsidise the market rental levels for its tenants because the rental income is paid into the general rate fund and so a subsidy would be at the expense of the City of London Council tax payers. A disparity between City rentals on the Barbican Estate and privately let flats can only be justified by the fact that flats owned and let by the City are worth less than those in the private sector. Accordingly I instructed estate agents to assess the current market value of the City owned flats taking into account their condition and security of tenure, their reports indicates that an increase of 8.2% is required to the City's rents to reflect their current market value.

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