

Name of decision maker:	Councillor Nick Tiley
Portfolio:	Finance & Resources
Date of Portfolio Holder Decision:	

Title of Decision:
DENS – PROPERTY PARTNERSHIP FOR COMMUNITY BENEFIT

Decision made and reasons:	
<u>Decision:</u>	
1	It was agreed that approval be given to form a partnership between the Council and DENS Ltd (Dacorum Emergency Night Shelter) to provide residential support to DENS clients in their journey from dependency to independence as set out in the body of the report.
2	It was agreed that a lease be executed between the Council and DENS Ltd in respect of a former service tenancy property at Central Nursery, Hemel Hempstead subject to: <ul style="list-style-type: none"> 2.1 The term being for two years with the first year for a peppercorn rent with the rental level for the second year being dependent upon an open book review of the financial viability of the partnership with such leases upon such covenants as are necessary to protect the Council's interests. 2.2 The agreement of DENS Ltd that the said lease be excluded from the protection of Part II of the Landlord & Tenant Act 1954 regarding security of tenure of business tenancies. 2.3 DENS Ltd being responsible for all rates, taxes, utilities and outgoings in respect of the two bungalows. 2.4 DENS Ltd being responsible for day to day maintenance and repairs and that, in the event of a major repair being necessary to the fabric of the building (eg. walls, roof etc), the Council reserve the right to choose whether the affected area of the site be closed and taken out of use in place of a major repair being necessary.
3	It was noted that any General Fund maisonettes that are let, either now or in the future, to DENS Ltd which form part of the Council's commercial estate shall be let on commercial terms.
4	It was noted that the properties involved are all part of the General Fund commercial estate portfolio.
5	It was noted that DENS Ltd shall only provided properties under this Decision providing that it has previously provided a copy of any tenancy or licence agreement that it proposes to use to the Valuation & Estates Manager and that the terms are sufficient to protect the Council's interests.
6	It was agreed that the Valuation & Estates Manager be authorised to approve all final terms and conditions in respect of any lease, transfer and any other legal document in pursuance of the Decisions set out above in paragraphs 1 to 5 inclusive.

Reasons:

DENS Ltd is a registered charity that operates within Dacorum and provides advice, support and temporary accommodation to homeless people or those at risk of homelessness. Their work is well established within the area and is currently based out of premises in Weymouth Street, Apsley and Bury Lodge, Hemel Hempstead.

As part of the Asset Management Plan consultation, DENS approached the Council with a proposal to utilise redundant or out of use premises to provide temporary accommodation to their clients who are registered on programmes that aim to migrate individuals from dependency to independence with the support of key workers. The proposal is based on establishing a property partnership whereby, initially, a general fund maisonette is let to DENS on commercial terms alongside a second property on peppercorn terms in order to “pump prime” the partnership. The Decision utilises a former service tenancy property that is: (a) currently vacant and (b) not practical for commercial lettings.

The approach that is being considered in this decision interfaces with the Council’s priorities to:

1. Ensuring a sustainable local economy and jobs by providing training and improving employability amongst disadvantaged groups.
2. Promoting civic pride and an active community by integrating groups into the community.
3. Contribute to the delivery of the Sustainable Community Strategy and the effective work of the Local Strategic Partnership.

The approach that is being considered in this decision interfaces with the Council’s priorities to:

- 1 Provide suitable accommodation to enable DENS to deliver the support service
- 2 Facilitates the letting of General Fund maisonette(s) on commercial terms thus enabling the Council to receive an income
- 3 Utilises a redundant buildings that are not practical for commercial letting
- 4 Delivers social and economic wellbeing to the local community whereby:
 - 4.1 A sustainable accommodation base for DENS can be established to support some of the most vulnerable people in the area
 - 4.2 It promotes civic pride and an active community by enabling groups of people to live as members of the community in an independent manner.

DENS Ltd are the Council’s tenant at Bury Lodge in Hemel Hempstead which is used as a day centre. This was initially occupied under peppercorn terms, but, as DENS has grown in strength and operations, they are now paying a useful rent for use of the site and are effectively utilising the site for community purposes.

Reports considered:

Cabinet – 30 March 2010 – Asset Management Plan

Officers/Councillors/Ward Councillors/Stakeholders Consulted:

External

DENS Ltd

Internal

Corporate Assets Group

David Martin, Head of Resources

Peter Hamilton, Valuation & Estates Manager

Linda Dargue, Insurance & Risk Manager
Noele Pope, Senior Manager – Legal Services
Louise Freeth, Senior Manager – Revenues & Benefits
Joanne Drew, Interim Director of Housing
Julie Still, Senior Manager - Neighbourhood Action
David Gill, Senior Manager – Corporate Policy and Innovation

Monitoring Officer/Chief Financial Officer Comments:

Section 151 Officer:

I have no further comments to add to this report.

Monitoring Officer:

This proposal provides a means of deriving a modest income for the Council, while helping to alleviate the problem of homelessness. There are very few alternative uses for the identified property and this approach will be at minimal risk to the Council.

Implications:

Financial:

In utilising its wellbeing powers, the potential letting of a former service tenancy property utilises a redundant building for a valuable community use. It does not currently generate any income: indeed, it is a cost to the Council in the form of empty Council Tax charges, utilities and repairs costs.

The Council's policy of letting neighbourhood centre properties on commercial terms is maintained and, to that end, any General Fund maisonettes that are let will be for a market rent.

The partnership will not involve the Council incurring any additional expenditure to manage the properties. By way of example, buildings insurance premiums along with any inspection costs are already contained within existing budgets. Any special items in respect of legislative compliance would be dealt with in the same way as any other property within the Council's portfolio.

The partnership has the potential to save money from abortive costs as DENS will be maintaining them and, also, given that they will be occupied, there is a reduced risk of break in and accompanying rectification costs.

Legal:

The decision to enter into the partnership is utilising the Council's wellbeing powers pursuant to Section 2 Local Government Act 2000 whereby local authorities have the power to do such acts that promote the social, economic and environmental wellbeing of their area. The types of activities that DENS Ltd are undertaking have strong link to the wellbeing power and, accordingly, the granting of a peppercorn lease in respect of the former service property is, prima facie, permissible.

The leasing of the former service tenancy property will result in a disposal at less than best consideration. A "disposal" includes the grant of a leasehold interest. Normally, a local authority must first obtain the consent of the Secretary of State if they wish to dispose of land at an undervalue. However, the Council can rely on the General Disposal Consent issued by the Secretary of State where the Council considers the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of

its area (i.e. the “well-being powers”) provided that the ‘undervalue’ does not exceed £2m.

All leases would be pursuant to the Landlord and Tenant Act 1954 (subject to security of tenure exclusions where appropriate) and, by their nature, be commercial business leases. The Landlord would be the Council and the Tenant would be DENS Ltd. When DENS enable occupation of the sites, they would sub-let / licence to their clients and, for the sake of clarity, there would be no direct legal relationship between the Council and a DENS client. This is particularly important as the Council cannot let residential properties directly to occupiers on assured shorthold or residential tenancies other than through the Housing Revenue Account. This would not be a suitable solution as it would require appropriations and, moreover, could result in right to buy rights being released. The use of commercial leases protects the Council’s General Fund assets.

Local Housing Allowance:

Subject to submitting a valid application, DENS clients that occupy the premises under agreements directly with DENS Ltd would be eligible to claim Local Housing Allowance in respect of their housing costs. As with all applications, each claim is treated on its merits in accordance with Housing Benefit law and would need to be submitted to Revenues & Benefits for their adjudication.

Property:

The Asset Management Plan provides for land owned by the Council to be used for both commercial and community purposes. The Decision to enter into a partnership with DENS Ltd enables the Council to realise a commercial return on maisonette site(s) as well as fulfil community benefits through utilising the wellbeing powers in respect of a, presently, non-yielding property.

The house at Central Nursery is within the freehold ownership of the Council and was formerly utilised as service accommodation. Given the location of the house, the Council is constrained in their use as it would not be suitable for a commercial letting. Moreover, a private residential letting would not be appropriate.

The decision builds in a number of protections so that the Council can reclaim the bungalows for other purposes and, to that end, the rights of security of tenure under the Landlord and Tenant Act will be limited.

The leasing of General Fund maisonettes will be on normal commercial terms utilising standard business leases.

The former service tenancy property already has an established residential use.

Risk:

The Partnership Assessment Form sets out the risk register and other governance related matters.

Options Considered and reasons for rejection:

The DENS proposal is one that came forward as part of the Asset Management Plan consultation exercise. Accordingly, it is within the Council’s discretion to determine whether or not it wishes to work with DENS.

The alternative option is not to proceed. This is not considered to be in the best interests of the local community, DENS or the Council given that there is currently a redundant residential building that is not being used. Moreover, the prospect of securing further lettings of maisonettes on commercial terms is in accordance with the Asset Management Plan.

Portfolio Holders Signature:

Date:

Details of any interests declared and any dispensations given by the Standards Committee:

For Member Support Officer use only

Date Decision Record Sheet received from portfolio holder: 11 October 2010

Date Decision Published: 11 October 2010 Decision No: PH/052/10

Date of Expiry of Call-In Period: 18 October 2010

Date any Call-In received or decision implemented:

Introduction

DENS are a Hemel Hempstead based charity that provide support and advice to homeless people and operate a night shelter and day centre within the town. They have achieved considerable success over the years in supporting people through the journey from homelessness to self sufficiency.

As part of the Asset Management Plan consultation, DENS approached the Council, through the Portfolio Holder for Finance & Resources, with a property based proposal regarding empty flats and whether the DENS Property Services social enterprise could work with the Council to make best use of any vacant properties that may exist. They have already operated a pilot with Hightown Praetorian & Churches Housing Association whereby an empty property has been taken on, some minor works undertaken and DENS clients housed on a short term basis with a support and care package.

Initial discussions and review

The proposal was tabled at the February Corporate Assets Group meeting and the Head of Resources was tasked with reviewing the concept and establishing whether a project could move forward in respect of any vacant General Fund maisonettes that may arise that are attached to neighbourhood shopping centres. To that end, two fruitful meetings have taken place between the Head of Resources and the Chief Executive of DENS to formulate a concept and prepare a financial model. The summary proposals were considered by the Corporate Assets Group in March which was supportive of the principle. The subsequent Cabinet report that recommended the Asset Management Plan to Council included a reference to consultation feedback and noted the DENS proposal specifically whereby, if it were to proceed, then it would be considered by way of a Portfolio Holder decision.

The summary proposal

The basis of the proposal is:

Agreements

- Enter into a service level agreement (Appendix Two) with DENS whereby any property that is provided to DENS is utilised to house suitable DENS clients to help them along the journey from dependency to self sufficiency. The agreement would set out the support and key worker arrangements to ensure that clients are suitably assisted and that the scheme is properly managed.
- In respect of any General Fund property that is put into the scheme, a separate commercial lease would be used to create a landlord and tenant arrangement whereby DENS would become the Council's commercial tenant. It is essential to have a formal landlord and tenant relationship for the reasons set out below.

Who is the "landlord" of DENS clients?

- Any subletting, licensing or occupation to DENS clients would be as a sub-tenant / licensee of DENS Ltd.
- The Council is unable to grant assured shorthold tenancies in respect of its properties and utilising Housing Act provisions could create secure tenancies.
- Using a commercial lease enables DENS to effectively manage the site and ensure the preservation of the Council's asset position

Could DENS clients claim housing benefit?

- DENS position as the “effective” landlord means that their clients would, if eligible, be able to claim Local Housing Allowance and a meeting has taken place between DENS and the Revenues & Benefits Manager to confirm, subject to applications in the standard manner, the mechanics of the scheme.

Which properties?

- The ideal properties are neighbourhood shopping centre maisonettes and there is currently one available. However, the limitation on this property type is the general policy of “no peppercorn terms” on neighbourhood shopping centre estates.
- A solution is available whereby a “non-yielding” property could be added to the proposal whereby the “non-yielding” one being used as a vehicle for providing a time limited peppercorn rent to ensure that start up costs are met and that the proposal moves off on a sustainable footing.

Statutory authority

The Council’s wellbeing power, as set out in Section 2 Local Government Act 2000, provides that councils may undertake work or acts to advance the social, economic or environmental wellbeing of their area. It is considered that the DENS proposal would fall within the realm of wellbeing given:

- It has the ability to create a sustainable social enterprise with a leading charity
- It promotes a culture whereby DENS clients can move through their journey to independence
- It provides an opportunity to help some of the most vulnerable people in the community with housing
- It should generate an income stream for both DENS and the Council

The Council’s Sustainable Community Strategy sets out a number of policy objectives for the Council and the Local Strategic Partnership. The proposal would meet a number of those objectives and add additional support facilities to vulnerable people within the Dacorum community.

The proposal would also align with the recent “Making a Difference” report and commissioning concepts.

The financial model

DENS have prepared a financial model which is set out in Appendix Four (Exempt) to this report. The main observations are:

- Estimated start up costs can be covered
- Subject to client eligibility, an income stream from local housing allowance can be obtained
- The rent in respect of the neighbourhood shopping centre maisonette can be paid
- Cautious estimates have been made regarding void rates
- It will enable DENS to lever in further grant or other financial support
- It breaks even over a two year period using the “non-yielding” property

Social enterprises and sustainability

It is key that social enterprises are sustainable and DENS have set out a clear plan for their enterprise that aims to deliver sustainable operations that are financially viable. Their plan is to build up as follows:

1	Establish one house or three beds and resolve problems	Complete
2	Establish a further 15 beds, employ staff and establish systems	Part of current proposal
3	Expand profitability	Future
4	Spin off other social enterprise trades, DIY, house clearance, gardening, construction	Future

It is pleasing to note that the DENS objectives are aiming at incremental growth and financial sustainability as opposed to rapid expansion with high risk.

The benefits

The likely benefits are that:

- It could prevent squatting and vandalism of unoccupied properties
- It would keep the property in an appropriate condition
- It would enable DENS Property Services to manage the site leaving little for the Council to undertake
- It would provide housing to needy people in a managed and controlled way
- It would meet community needs of housing, training and employment
- A social enterprise could provide meaningful daytime work for homeless people

A general benefit to the Council from a commercial property perspective is that maisonettes sometimes take longer to let than is desirable. The DENS scheme would provide an additional option to the Council when dealing with void maisonettes to maximise use and minimise lost rental yield.

Who would be the residents?

DENS would place individuals into accommodation for a short term period until they can be found independent places to live. The conditions of occupation would be:

- people would need to have completed a trial period and have been filtered through the DENS system and other trusted sources with whom there is an agreed protocol
- residents would be subject to a short term licence or assured shorthold tenancy with additional features regarding pre-tenancy training courses
- that all residents are supported by DENS key workers on a weekly basis to ensure that they remain on course to move into independent living

Conclusion

This Portfolio Holder Decision endeavours to create a new partnership for the Council using property as its vehicle. In the event that it is successful, it would bring significant benefits to the local area and help some of the most vulnerable people within the community.

APPENDICES

Appendix One	Partnership Assessment Form
Appendix Two	Service Level Agreement
Appendix Three	Equalities Impact Assessment

EXEMPT APPENDIX

Appendix Four	Financial model
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Appendix Four is exempt because it includes information relating to the financial or business affairs of any particular person (including the authority holding that information) (Local Government Finance Act 1972, Part VA, Schedule 12A. paragraph 3)