

## **Item: 13**

**Education, Leisure and Housing Committee: 8 September 2021.**

**Gateway Housing – The Grind, Eday.**

**Report by Executive Director of Education, Leisure and Housing.**

### **1. Purpose of Report**

To consider future arrangements for use of The Grind, Eday, following changes in private sector housing legislation.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

That, in 2009, the Council developed a house in Eday, now known as The Grind, which was intended for use as gateway housing.

#### **2.2.**

That the Council entered into a management agreement with the Eday Partnership in respect of The Grind, including a lease arrangement at a peppercorn rent of £1 per annum for a period of 25 years.

#### **2.3.**

That the management agreement allowed for The Grind, Eday, to be let by the Eday Partnership to households trialling life in Eday on the basis of a Short Assured Tenancy.

#### **2.4.**

That, following the introduction of the Private Residential Tenancies (Scotland) Act 2016, a short assured tenancy can no longer be created.

#### **2.5.**

The options appraisal in respect of future arrangements for use of The Grind, Eday, as detailed in section 5 of this report, with the preferred option being Option 1, namely that the Eday Partnership develops a mid-market rent policy, in consultation with the Council, and thereafter let the property as mid-market rent accordingly.

**It is recommended:**

**2.6.**

That, the Eday Partnership should develop a mid-market rent policy, in consultation with the Executive Director of Education, Leisure and Housing, to enable The Grind, Eday, to be let as a mid-market rental property.

**2.7.**

That powers be delegated to the Executive Director of Education, Leisure and Housing, in consultation with the Solicitor to the Council, to amend the management agreement in respect of The Grind, Eday, to reflect the amended letting arrangement, referred to at paragraph 2.6 above.

### **3. Background**

**3.1.**

In February 2009, the Council developed a Gateway House on Eday, now called “The Grind”, funded by the Housing Revenue Account.

**3.2.**

The Gateway House was the first of its kind in Scotland and it was identified as supporting a threatened and fragile community by providing a home for a period of time to households giving them the opportunity to see whether island life was something they wanted to consider in the longer term.

**3.3.**

At its meeting held on 23 June 2009, when discussing the gateway housing project in Eday, the Policy and Resources Committee noted:

- That the Eday gateway housing project, known as “The Grind”, was now complete.
- That officers within the Council were currently working with the Eday Partnership to produce a mutually acceptable legal contract for future management of The Grind.
- That, to date, all expenditure currently associated with the Eday gateway housing project had been met from the Housing Revenue Account capital budget, as the project related to what was, effectively, a Council house.
- That the Social Services and Housing Committee had recommended that powers be delegated to the Director of Finance and Housing, in consultation with the Solicitor to the Council and the Chair and Vice Chair of the Committee, to implement appropriate arrangements and seek any Ministerial permission which might be necessary to charge a reduced rent to Eday Partnership for The Grind, Eday, on the basis that the Eday Partnership would be responsible for future maintenance, repair, improvement and insurance of the property.

- That, as the gateway housing project was seen to benefit Orkney as a whole, and as a potential model for other communities, responsibility should not be borne by those currently renting housing from the Council, but by all Council Tax payers.

### **3.3.**

The Committee recommended:

- That the property known as The Grind, Eday, be transferred from the Housing Revenue Account to the Other Housing Account within the General Fund.
- That the Housing Revenue Account be reimbursed of all costs incurred to date associated with land acquisition and development of The Grind, Eday.
- That the costs, referred to above be met from unapplied capital receipts.

## **4. Gateway Housing - The Grind, Eday.**

### **4.1.**

A management agreement between the Eday Partnership and the Council commenced on 19 February 2010 for a period of 25 years with a “peppercorn rent” of £1 per annum.

### **4.2.**

Historically Short Assured Tenancies were created by the Eday Partnership for those households taking up occupation and could be terminated by giving appropriate notice once the initial 6-month period had elapsed.

### **4.3.**

On 1 December 2017, the legislation in respect of private sector leases changed within Scotland meaning that the only lawful lease which could be used in the private sector, after that date, was a Private Residential Tenancy.

### **4.4.**

The Private Residential Tenancy affords tenants the right to remain within a property until they terminate their tenancy, or the landlord seeks to end their tenancy by serving a Notice to Leave citing a valid ground for eviction. Effectively this meant that any new tenant would have a secure tenancy.

### **4.5.**

The change in legislation has impacted on the Eday Partnership being able to rent the property when it became available for rent prior to lockdown and therefore further options need to be considered for the property.

## **4.6.**

In developing the Gateway House, the Council secured funding from the Scottish Government in line with normal funding arrangements of that time. Whilst permission is not required from the Scottish Government around the intended change of letting arrangements, discussions have been held with the Scottish Government who are supportive of Option 1.

## **5. Options Appraisal**

### **5.1.**

There are 2 options which have been considered in determining the next step which are detailed below.

#### **5.1.1.**

##### Option 1 – Mid-Market Rent

- The Eday Partnership retain the lease and continue to let the property but not on a short-term basis as had previously been the case.
- The property could be let as mid-market rent. Mid-market rent is a form of affordable housing whereby tenants generally pay a lower rent than their area's private market rent level, but more than Council or housing association rents.
- The eligibility criteria for mid-market rent are generally for working people or households who do not qualify or are not a priority for social rented accommodation but cannot afford to buy their own property or rent on the open market.
- The Council would support the Eday Partnership to develop suitable eligibility criteria for mid-market rent to ensure fairness in allocations.
- The Eday Partnership have confirmed their expectation that demand would exist for this use – currently, one household outwith Orkney but would advertise should this option be approved.
- This option would allow the property to be used for those moving into the area to work. However, there would no longer be an ability to offer a short term let and any tenancy created may exist for an extended period of time, thereby preventing further support for families moving into the area on a similar basis.

#### **5.1.2.**

##### Option 2 – Social Rented Housing

- The property would be returned to the Housing Service to be allocated by the Service using the Council's current Lettings Policy.
- This option would require the Housing Revenue Account to purchase the property from the Council's General Fund.

- The waiting list shows that there are currently 13 households seeking accommodation on Eday. Of those six cite Eday as their first choice. One household is currently resident on Eday whilst the other five households live outwith Orkney.
- The property has three bedrooms and five of those households on the waiting list do not have a need for a property of this size, three require a one bedroom and two require a two bedroom. The remaining household requires a larger property to meet their family's needs and currently live outwith Orkney.
- This option would allow the property to become part of the Council's general stock for allocation to a household in housing need who needed or wished to live within the Eday community.

## **5.2.**

The preferred option is Option 1, namely that the Eday Partnership develop a mid-market rent policy, in consultation with the Council, and let the property as mid-market rent accordingly. This option enables the Eday Partnership to continue to encourage households seeking employment the opportunity of living within an island setting.

## **6. Corporate Governance**

This report relates to the Council complying with governance and procedural issues and therefore does not, directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

## **7. Financial Implications**

There are no direct financial implications arising from this report.

## **8. Legal Aspects**

### **8.1.**

The property is let on a full insuring and repairing lease to Eday Partnership which is the most common commercial lease in Scots law. The lease commenced on 10 February 2010 for a peppercorn rent of £1 and the letting arrangements are governed by a Management Agreement which does envisage a let to a prospective tenant by way of a Short Assured Tenancy at an open market rent. Further the lease and the Management Agreement allow termination by either party giving three months' notice before 19 February in 2015, 2020, 2025 and 2030.

### **8.2.**

Short assured tenancies always last a fixed length of time (at least six months). Only tenants that moved in before 1 December 2017 may now still be on a short assured tenancy; the relevant legislation is contained in section 32 of the Housing (Scotland) Act 1988 and section 2 of the Private Housing (Tenancies) (Scotland) Act 2016. Therefore the short assured tenancy is no longer competent.

### **8.3.**

The private residential tenancy was introduced by the 2016 Act and is defined by Section 1. The property is let as a separate dwelling and by its nature is not for a fixed term. The tenant lives in it as their only or main home. It is not excluded under Schedule 1 which has a list of 21 exclusions such as low rent under £6, student accommodation or holiday lets.

### **8.4.**

Particularly a tenancy cannot be a private residential tenancy if the landlord is a local authority or sublet from a local authority and the tenancy is a Scottish Secure Tenancy or a Short Scottish Secure Tenancy (within the meaning of the Housing (Scotland) Act 2001) being assigned, sublet or otherwise given up. The statutory term “otherwise given up” includes a private residential tenancy. However, given that the nature of the leasing arrangement between the Eday Partnership and the Council is by way of a commercial lease none of these exclusions apply.

### **8.5.**

However, given that the Management Agreement envisaged a let to a prospective tenant by way of a Short Assured Tenancy and an open market rent and the preferred route is now a private tenancy and a mid market rent, the Lease and Management Agreement will require to be revisited, should the Committee be minded to agree with the recommendation of Option 1.

### **8.6.**

Further, if the Committee is minded to agree Option 2, given the earliest termination available is 19 February 2025, this would have to be done by agreement. There might be a possibility to argue frustration given the documents envisaged a let by a Short Assured Tenancy and that is no longer competent or otherwise if the property is not let for a period greater than six months which was a term of the Management Agreement which allowed the Council to terminate.

## **9. Contact Officers**

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