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## Shadow Executive

6 May 2009

Joint Report of the Housing Strategy Manager and  
Head of Property and Asset Management

## PROPERTY GUARDIANS

### Summary

1. A representative from Ad-Hoc will be present at this meeting and will be better placed to give an overview of the Property Guardian concept and scheme. Rather than duplicate that overview, this briefing note focuses primarily on two aspects of the scheme. Firstly, the suitability of the scheme for council owned buildings that become vacant and secondly its potential to help address housing needs in the city.

### Background

2. Alongside public sector buildings that may be suitable for property guardians (for example empty schools, hospitals, nursing homes) a lot of the properties cited in the Property Guardian publicity are in the private sector including offices, factories and hotels. Although the opportunities in York may be fewer than in larger cities there are clearly a number of buildings that, with their owners consent, would be suitable for this model of property protection. The former White Swan Hotel, the Fossway pub on Huntington Road, St. Barnabas School site, the Bull Nose building, Nestle and Terry's are a few that come readily to mind.
3. There are fewer examples of residential houses/flats/bungalows given in the literature of the Property Guardian companies including Ad-Hoc. The reasons for this are perhaps two-fold.
4. Firstly, the primary focus of the Property Guardian organisations is on securing buildings at risk from disrepair, vandalism, theft and squatters. The schemes do not tend to utilise empty space per se; there needs to be the "building at risk" element too. In essence, Property Guardians are a direct alternative to security grills and security guards.
5. Secondly, the model relies on the owners of the buildings paying a fee to the Property Guardian company (around £50 per week for a house and £250 per week for 100,000 sq ft of office/hospital). While this makes financial sense for larger commercial buildings (£1,000 per month for a property guardian or £7,500 for a 24 hr security guard), it is

less apparent that it stacks up as an attractive option for individual home owners with an empty property. This is explored in more detail later in this briefing.

## **Occupation of Vacant Council Owned Commercial Property**

6. Council owned buildings are usually vacant either because
  1. They are surplus to requirements and are being sold
  2. They are being considered for other council service use
  3. (for the commercial portfolio) the previous tenant's lease has ended and the Council is looking to re-let.

In the second and third cases these are usually only short-term vacancies of a few weeks/months and even then there may well be work being carried out on the premises to make suitable for re-occupation. Therefore occupation by a third party would not be feasible either because, in the case of re-letting the period of vacancy is unknown and can be terminated at short notice as the new tenant will want occupation to fit-out or for re-use by another service then contractors will be in occupation.

## **Vacant Surplus Properties**

7. When, as part of service rationalisation or asset management outcomes an operational property becomes surplus to requirements then this is reported to the Corporate Asset Management Group who consider:
  - any other service requirements (as highlighted in Service Asset Management Plans)
  - any community need or opportunity to co-locate/rationalise services (as highlighted in Area AMPs)
  - the need for a capital receipt (which involves considering planning uses and market conditions)

This work commences long before the building becomes vacant so that the vacant period is minimised. However in today's difficult market conditions it is becoming more common for a delay before the property is put on the market in order to maximise the receipt.

There is therefore opportunity to consider occupation by Property Guardians as one of the options for this vacant period along with looking at temporary occupation by community groups (such as at Manor) or demolition (being considered at Lowfields as property in too poor a state of repair for occupation).

8. Occupation by Property Guardians would have the following benefits:

- Occupation would be on an ad hoc basis – no tenancy rights are assumed to be created so maximum flexibility in regaining vacant possession. However, there are some concerns that tenancies could be created – see boxed text below.
- Occupiers are young working professionals with no families who have an income and also should 'look after' the property – i.e. not allow unauthorised access.
- Property Guardians inspect the site once a month to check that occupation is within guidelines – if not 2 weeks notice can be served
- Occupation will deter any unauthorised access to the site and vandalism/burglary

### **Licence to Occupy or a tenancy?**

Although the Property Guardian companies stress that no tenancy is created by these schemes, it is worth noting this is not an opinion universally shared. Writing in Property Week in August 2008, Anne Waltham, head of real estate litigation at Wragge and Co, London queried the legal power in the UK to end the occupancy of a site by property guardians. She said that if the courts can be convinced that occupants have exclusive possession of a site then they would be seen as tenants. A site owner may not therefore be able to remove them when finished with the service. *'The bottom line is, whatever it says in the agreements, in law it will eventually be considered by what happens in practice. If in practice the occupier has exclusive possession, then, whatever the documents says it will be viewed as a tenancy'*.

Clearly this is a complex legal argument and the purpose of highlighting it here is not to dissuade support for the property guardian concept but simply to suggest that it will be prudent to seek independent legal advice prior to the council supporting a scheme.

#### 9. There are some costs to the Council:

- Need to ensure there are adequate kitchen and bathroom facilities
- Responsible for all utility bills etc.
- Empty rates are also still payable (which would not be the case if the building is demolished or declared unsuitable for occupation)

The net cost to the authority is less than employing security guards and therefore is a realistic option to look at for future commercial/operational

buildings if they are to become vacant for a period of time say in excess of 6 months.

## **Conclusion**

10. It is recommended that Ad Hoc (the name of the organisation that manages the Property Guardians) are considered as one of the options when looking at management of vacant buildings which will remain so for a period of time.

Current vacant buildings which could fall into the category include:

- Manor School – currently occupied by Global
- Lowfields School – in too poor a condition for occupation
- 56 Nursery Drive (former Holgate Family Centre) – possible occupation by Property Guardians as currently delay in sale due to market conditions and property generally in reasonable condition in residential area.

Therefore we will look at 56 Nursery Drive with Ad Hoc to see if it is suitable

## **Meeting Housing Need and Property Guardians.**

11. In York there a very few long-term empty homes and those that are empty for a short period of time do not tend to attract vandalism or damage. Overall, It is difficult to see the attractiveness of this scheme to most owners of a short term empty property. As well as continuing to have an obligation to pay any mortgage on the property (and there are likely to be issues about mortgage lenders supporting this), council tax (in most circumstances) and utility bills, they would also be paying the Property Guardian company too. The money that the Property Guardian pays (a “fee”not a “rent”) also goes to the company and not the buildings’ owner.
12. Perhaps a more attractive scenario for home owners might be where they are leaving their home for, say, a year to go abroad/study etc and would like a house-sitter rather than simply rent their home for a period of time or leave it empty. However, it is doubtful if this would be considered suitable because it would be outside of the ‘building at risk’ criteria which is central to the property guardian concept and model. For the same reason, empty spaces above shops that are trading do not figure in the examples of properties on property guardian websites.
13. As stated earlier, property guardians would appear to have very limited legal rights to live in properties. They are not tenants but are granted a Licence to Occupy. The schemes are not designed to take households from the housing waiting list and the council could not discharge any homelessness duties by placing households into these

schemes. What the property guardians can and cannot do is quite restrictive including any or all of the following for example:

- No children or pets are likely to be allowed.
  - Smoking is not likely to be allowed.
  - Bathroom and kitchen facilities will probably be shared.
  - Parties won't be allowed, and guardians may not be allowed to have overnight guests.
  - The property will be inspected regularly, and additional copies of room keys may be held by the company.
  - Guardian's may need to give a commitment to being in the property frequently (not, for example, staying elsewhere at the weekends).
  - Guardians may be asked for extra initial payments - like a deposit and an administration fee.
14. The foregoing is not to suggest these schemes are without merit. As the feedback from property guardians themselves illustrates, for some people short-term and cheap accommodation is exactly what they need to fit in with their lifestyle and priorities and with weekly "fees" (not rents) being around £60-80 it's clearly a much cheaper option than renting in the private sector. But this is the basis on which they must be viewed; as another "housing" option for people who are self-selecting and fully aware of any restrictions that form part of the deal.

If the council has a role it is perhaps in assisting in bringing to the Property Guardian Companies attention possible suitable properties either in its ownership or owned privately.

15. A property guardian scheme in York would be a welcome and useful tool in providing short term housing for people who's lifestyle and circumstances suit this type of accommodation choice. It is not a scheme designed to address long term housing need or affordability but it clearly is a very good means of reducing vandalism, squatting and disrepair of buildings that are 'at risk'.

## **Recommendations**

16. Shadow Executive Members are asked to note the contents of this briefing report.

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**Background Papers:** None

**Annexes:** None