

For Decision

Agenda Item: 11.9
Date of Meeting: 27/08/25

To: The Management Committee
From: The Director
Subject: Supported Accommodation Unit - Update

1. Introduction and Purpose

- 1.1 Since the beginning of the year Committee has been reviewing the options available for the future of the one remaining supported accommodation unit.
- 1.2 Following Committee's decision at its June meeting, that the preferred option was to continue with the remaining supported accommodation unit and to allow the vacant room to be let again, I sought some further advice from our solicitor.
- 1.3 The purpose of this report is to provide Committee with progress on the re-letting of the vacant room.

2. Progress with letting vacant room

- 2.1 I sought advice from our solicitor about the basis of the agreement any new resident should be signed up to. Our solicitor's advice is attached at Appendix 1.
- 2.2 It would appear that there could be an argument for either option – signing up on a Scottish Secure Tenancy Agreement or an Occupancy Agreement. Committee will see from the attached that our solicitor is basically saying we could just proceed with an Occupancy Agreement if that is our preference and "...and in the unlikely event that a dispute arise, there is capacity for the tenant or tenant's representative to make an argument that the tenant occupies the tenancy as a SST."
- 2.3 It is my intention that we would proceed with an Occupancy Agreement, as the other residents are on these types of agreements.
- 2.4 As it is unlikely that the new resident will have the mental capacity to enter into the occupancy agreement, I sought legal advice on the legal basis for someone to act on the resident's behalf and whether we could request evidence of this. We are entitled to ask for proof of the legal authority in place. For example, if it's a family member they may have guardianship,

power of attorney or an intervention order. We can ask to see the necessary documentation. If there is no family or there is no family willing to act on behalf of the tenant, the Council may apply for guardianship or may have Welfare Guardianship – it may be that a Financial Guardianship or Financial Intervention order has or is to be applied for to ensure someone has authority to sign a tenancy or occupancy agreement – if that is the case it is likely a professional guardian (solicitor) may be appointed by the Court to do so. If such legal authority is to be applied for by the Council, this could be a lengthy process. This was our experience with the plan to have intervention orders put in place for the 2 residents at 100 Peat Road. The delays led Rosehill to decide to undertake the process (independent solicitor was organised by our solicitor) to obtain the intervention orders, in an effort to expedite matters.

- 2.5 I have now contacted the relevant staff within the Council and Quarriers and communicated Committee’s decision that the vacant room can now be let. I am in the process of arranging a meeting (via Teams) with the relevant personnel from both organisations. Any updates on this matter will be reported at the meeting.

3. Risk

- 3.1 The risks relating to the letting of the vacancy in the supported accommodation unit have been considered under the following risk categories.

Risk Category	Mitigating Measure
<p>Legal/Regulatory:</p> <p>Need to let vacant room on correct basis i.e an occupancy agreement or a Scottish Secure Tenancy;</p> <p>Resident’s mental capacity to sign an agreement (SST or Occupancy Agreement).</p>	<p>Legal advice sought. Appear to have option of Occupancy Agreement or SST</p> <p>Establish this with Council/Care Provider and ensure if occupant hasn’t got mental capacity, that the agreement is signed by someone who has legal authority to do so. We can ask for evidence of relevant documentation.</p>
<p>Governance:</p> <p>Allowing the vacant room to be let, means the operation of</p>	<p>Unit has been running for almost 25 years without any real challenges. The main</p>

<p>the supported accommodation unit indefinitely</p> <p>Financial:</p> <p>Length of time to find a new resident including if no legal authority in place for agreement to be signed on resident's behalf. Void loss continues.</p> <p>If subsequent vacancies arise we are liable for rent/service charge loss</p>	<p>issue and reason for winding down the units (having non-members occupying our properties and not being able to lease to third parties/entities) has been removed with the change in our constitution.</p> <p>Initial meeting being arranged with Council and Care Provider to cover such matters e.g. to establish likely timescale for new resident being identified and whether legal authority in place to sign agreement on resident's behalf.</p> <p>If no legal authority in place and the proposal is for the Council to apply for this, we could consider applying for intervention orders through an independent solicitor, arranged by our solicitor in an effort to expedite matters. (This is the process we undertook for the 2 former residents of the other unit)</p> <p>Explore potential for agreement with the Council that if the void period is longer than 3 months, they will become liable for rent/service charge loss. If this is not possible, then we would need to accept/tolerate this risk.</p>
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4. Delivery of our Strategic Objectives

Area	Related Strategic Objective(s)
Continuing with Supported Accommodation Unit and re-letting of vacant room in supported accommodation unit	3) Deliver value for money 6) Use resources efficiently and effectively 7) Achieve the highest standards in all that we do

5. Application of our Core Values

Area	Related Core Value(s)
Continuing with Supported Accommodation Unit and re-	<ul style="list-style-type: none"> • Accountable and Compliant • Efficient and Responsible

letting of vacant room in supported accommodation unit	
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6. Compliance and Assurance

6.1 Implementing the Committee’s decision to continue with the remaining supported accommodation unit, which involves the letting of the vacant room and, identifying and considering the associated risks, means we are compliant with Regulatory Requirements and in particular:

Compliance Source	Details
The Standards of Governance and Financial Management for RSLs	<p>Standard 4 - The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation’s purpose.</p> <p>Guidance 4.1 – The governing body ensures it receives good quality information and advice from staff and, where necessary, expert independent advisers, that is timely and appropriate to its strategic role and decisions. The governing body is able to evidence any of its decisions.</p> <p>Guidance 4.4 - The governing body identifies risks that might prevent it from achieving the RSL’s purpose and has effective strategies and systems for risk management and mitigation, internal control and audit.</p>

6.2 Evidence Bank

Evidence	Assurance Exercise Location
<ul style="list-style-type: none"> Report for 27/08/25 meeting; 	<ul style="list-style-type: none"> Regulatory Standard 4 – Guidance 4.1 and 4.4

6.2.1 Committee is reminded that our Assurance Exercises are available in the Committee Log-in Area of our website, which Committee can access at any time.

7. Summary

- 7.1 Following Committee's decision in June about the future of the remaining supported accommodation unit, which involved allowing the vacant room to be let again, I sought some further legal advice and then contacted the relevant staff in the Council and the Care Provide to notify of Committee's decision.
- 7.2 Risk has been considered at Section 3.
- 7.3 Section 4 shows how continuing with the remaining supported accommodation unit, links to the delivery of our strategic objectives.
- 7.4 Section 5 shows how continuing with the remaining supported accommodation unit, links to the application of our Core Values.
- 7.5 Section 6 sets out how we comply with Regulatory requirements.
- 7.6 Committee is asked to note the progress with the letting of the vacant room at the remaining supported accommodation unit including that further legal advice was sought, the relevant staff in the Council and the Care Provider being notified of Committee's decision and that an initial meeting has been arranged. Any further updates on this matter will be reported at the meeting.

Supported Accommodation Enquiry – email from Solicitor, TC Young received on 30th July 2025

Thank you for sending over the style occupancy agreement in respect on 70 Househillwood Road. I note this is a bungalow with 5 bedrooms and shared access to a kitchen, bathroom and living room. Three bedrooms are occupied by occupants under occupancy agreements which have been in place since 2001. The fourth bedroom is occupied by a care provider as an office space and the fifth bedroom is vacant. There is no agreement between Rosehill and the care provider. On what basis does the care provider occupy the bedroom/office space, does the care provider pay rent?

Rosehill intends to let the fifth bedroom and seeks advice regarding the status of the occupancy arrangements in place and to be offered to the new proposed occupier. Essentially, you ask if exclusive possession of a single bedroom with access to shared living rooms (kitchen, bathroom and living room) would constitute a SST or an occupancy agreement.

The starting point is s11 of the Housing (Scotland) Act 2001 which defines a Scottish secure tenancy (SST). In order to constitute a SST, the house requires to be let as a separate dwelling. What constitutes a separate dwelling, however, is not defined in the Act. In the leading case of *Uratemp Ventures Ltd v Collins*, the House of Lords held that the let of a room only in a hotel, with no kitchen facilities, amounted to the let of a separate dwelling on the basis the room was the occupier's home, the place where he lived and slept. The occupier in *Uratemp* did not enjoy any spaces or facilities in common with other occupants, he either had meals out, brought takeaway in or prepared meals on a "heating device" in his room.

The case makes it clear that each case will turn on its own facts and circumstances. For instance, if the occupiers of the property at 70 Househillwood Road utilise their bedroom to sleep but all other activities of their residential life are carried out in the communal spaces (such as cooking/eating in the kitchen or living room, spending time in the living room) then arguable these activities of life are carried out in a part of the property in which the occupier only has a right to share with others (i.e. does not have exclusive possession of those parts). In such circumstances, it is less likely that the courts will consider the tenant's bedroom to be a separate dwelling. I assume given the nature of the let, that you have no information of how the occupiers' live their lives at the property and what use they make of the communal spaces.

The Legal Commentary from the Model SST created in 2002 states “ It is a requirement for the creation of both the Scottish secure tenancy and the short SST that the house is “let as a separate dwelling” (s11(1)(a). This phrase, which is found in various English and Scottish housing Acts was the subject of a decision in the House of Lords at the end of 2001: *Uratemp Ventures Ltd v Collins* [2001] UKHL 43. The court held that even the bare let of a room, without any cooking facilities or other shared facilities, was capable of being a let of a separate dwelling. Whether a dwelling is a separate dwelling will always be a matter of fact. The decision did not deal specifically with the factual situation where a tenant shares living space and facilities with other tenants. The Act, unlike the Housing (Scotland) Act 1988 (see s14) does not make specific provision for the situation where a tenant shares some of the living accommodation with other tenants. Nevertheless, it is thought that in the light of the reasoning in the *Uratemp* decision, **where the parties agree that the purpose of the letting is as a separate dwelling, there should be no bar on the landlords granting either a short SST or a Scottish secure tenancy.** Thus, where the tenant previously held the accommodation (defined in this Agreement as a “house”) under a secure or assured or short assured tenancy (all of which require that the house is let as a separate dwelling), there would be no reason in principle why that tenancy should not be converted to a Scottish secure tenancy or a short SST (providing that the statutory conditions for the creation of such tenancies are satisfied

Essentially, this guidance states there is no reason you cannot provide a Scottish Secure Tenancy to the occupier and you can proceed to do so if you wish going forward.

However, I assume your preference would be to create occupancy agreements given the ease with which they can be terminated if so required. In the circumstances and given cases will be fact specific, my view is you can continue to create occupancy agreements and in the unlikely event that a dispute arise, there is capacity for the tenant or tenant’s representative to make an argument that the tenant occupies the tenancy as a SST.