

Report to the Cabinet

Report reference: C-068a-2014/15

Date of meeting: 9 March 2015



**Epping Forest
District Council**

Portfolio: Housing

Report of Housing Scrutiny Standing Panel
(Chairman – Councillor S Murray)

Subject: Tenancy Policy

Responsible Officer: Roger Wilson (01992 564419).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) That, subject to the outcome of the consultation exercise with the Tenants and Leaseholders Federation, partner agencies, Parish and Town Councils and Registered Social Landlord Partners, Flexible (fixed term) Tenancies continue and remain at a fixed term of 10 years including the Introductory Tenancy period, and the following amendments be made to the Council's Tenancy Policy:

(a) That Flexible (fixed-term) Tenancies be extended to include all Council properties excluding sheltered accommodation and grouped dwelling schemes;

(b) That all existing Post-Act Secure (Lifetime) Tenants are granted Secure Tenancies when downsizing Council accommodation (for one move only) and are therefore afforded the same protection as all Pre-Localism Act Tenants; and

(c) That the following further requirement be added under the Assessment Criteria which will apply to all new Flexible (fixed-term) Tenancies granted from the date the revised Tenancy Policy comes into force:

(i) that a further tenancy (Flexible or Secure) will generally not be granted where, in accordance with the Council's Housing Allocations Scheme (in force on the date the 6 months' Notice is served), the Flexible (fixed-term) Tenant, in the opinion of the Council, has sufficient income and/or assets to enable them to meet their housing need themselves.

Executive Summary:

Under the Localism Act 2011 and the Homes and Communities Agency's Regulatory Framework for Social Housing in England, Registered Providers (predominantly, but not exclusively, housing associations and local authorities) must publish a Tenancy Policy setting out clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies, preventing unnecessary evictions and tackling tenancy fraud.

The Council's current Tenancy Policy came into force on 1 September 2013. Under the Policy, the Council used its powers to introduce a pilot scheme to grant Flexible (fixed term) Tenancies on properties comprising 3 or more bedrooms. At the request of the Cabinet, our Panel were asked to review the success of the Pilot Scheme, after 12 months of commencement and to submit a report to the Cabinet on its review including; whether to discontinue, continue or extend the scheme to include 2 bedroom properties, and whether in future to means test tenants as part of the Assessment Criteria at the end of the Flexible Tenancy period.

The Housing Portfolio Holder advised us that he had held informal discussions with Cabinet colleagues to seek their initial views on the review. Following these discussions, the Housing Portfolio Holder made a formal decision that officers draft the revised Policy based on the Cabinet's initial views

At our meeting on 21 October 2014, we considered a report on the proposed revised Tenancy Policy and suggest the amendments set out in the Recommendations.

The draft revised Tenancy Policy is attached as an appendix to the report. We have given detailed consideration of the revised Policy and recommend its adoption to the Cabinet.

Reasons for Proposed Decision:

Under the Localism Act 2011 and the Homes and Communities Agency's Regulatory Framework for Social Housing in England, Registered Providers (predominantly, but not exclusively, housing associations and local authorities) must publish a Tenancy Policy setting out clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies, preventing unnecessary evictions and tackling tenancy fraud. The Cabinet are being asked to consider and adopt the revised Tenancy Policy in order for the Council to meet with this requirement.

Other Options for Action:

That the draft Tenancy Policy is not agreed.

That a different approach on the drafting of the Tenancy Policy be put forward.

Report:

1. At our meeting on 21 October 2014, we considered a report on the Council's revised Tenancy Policy. We were advised that under the Localism Act 2011, housing providers have been granted additional powers which enable decisions to be taken locally about the management of social housing. The Government enables providers of social housing with the option to use Flexible Tenancies (also known as fixed term tenancies), which in most cases must be for a minimum period of 5 years or between 2 & 5 years in exceptional circumstances. Flexible tenants generally enjoy the same rights as secure tenants, including the Right to Buy (subject to the current qualifying criteria).

2. On expiry of the fixed-term, the tenant will be assessed against an agreed Assessment Criteria to determine whether a further tenancy (Flexible or Secure) will be granted, either of the same or another Council property. If another tenancy is not offered, there is a requirement to provide the tenant with advice and assistance. We were advised that sheltered housing tenants must continue to be granted secure tenancies in accordance with the Act.

3. The Localism Act 2011 requires local authorities to publish a Tenancy Strategy which, must set out the matters to which Registered Providers of Housing (including the Council) are to have regard in formulating their policies relating to:

- The kinds of tenancies they grant;
- The circumstances in which they will grant a tenancy of a particular kind;
- Where they grant tenancies for a term certain, the lengths of those terms; and
- The circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

4. We noted that the West Essex Housing Forum, which comprises three local authorities in West Essex being Epping Forest, Harlow and Uttlesford District Councils have adopted one Tenancy Strategy that covers the three local authorities' areas in West Essex. The Strategy was adopted by the Cabinet on 22 October 2012.

5. In addition, all Registered Providers are required to publish and be responsible for their own individual Tenancy Policy which sets out:

- The kinds of tenancies granted
- Circumstances where a tenancy of a particular type will be granted and the length of the term
- Circumstances where a term of less than 5 years will be granted
- Circumstances where another tenancy will be granted on expiry on the same or another property
- How applicants/tenants can appeal against the length of the Flexible Tenancy or the decision not to grant a further tenancy
- Taking account of the needs of vulnerable people
- Provision of Advice and Assistance if another tenancy is not granted at the end of the term
- Discretionary succession rights

6. Under the Localism Act 2011, (as with the two other West Essex authorities, both of whom have retained their housing stock) the Council as a Registered Provider is expected to have regard to the West Essex Tenancy Strategy in formulating and implementing its own Tenancy Policy. The Council's draft revised Tenancy Policy fully complies with the requirements of the West Essex Tenancy Strategy.

7. In an effort to prevent any unnecessary work, and to give officers direction for the purposes of drafting the attached revised Tenancy Policy, the Housing Portfolio Holder advised us that he had held informal discussions with Cabinet colleagues to seek their initial views on the review. Following these discussions, the Housing Portfolio Holder made a formal decision that officers draft the revised Policy making the following amendments based on the Cabinet's initial views which were as follows:

- That Flexible (fixed-term) Tenancies continue and be for a fixed-term of ten years, including the Introductory Tenancy period
- That Flexible (fixed-term) Tenancies be extended to include all Council properties, except sheltered accommodation and grouped dwelling schemes (it should be noted that sheltered housing tenants may only be granted secure tenancies in accordance with the Act).

8. Furthermore, officers reported to our Panel that if Flexible (fixed-term) Tenancies are extended to include all properties (excluding sheltered accommodation and group dwelling

schemes), this may discourage some tenants from transferring or downsizing accommodation. This is because in order to transfer, they would have to enter into a new Flexible (fixed-term) Tenancy and therefore no longer have a Secure (Lifetime) Tenancy. Our Panel is therefore recommending that, in addition to the protection already granted under legislation to all Pre-Localism Act tenants whereby they are granted Secure (Lifetime) Tenancies (for one move only) when transferring, all existing Post-Act Secure (Lifetime) Tenants who downsize Council accommodation are protected in the same way.

Means Testing Tenants as part of the Assessment Criteria

9. Under the Review of the Housing Allocations Scheme which is being considered elsewhere on the Agenda, officers are recommending that where any lead applicant/s whose gross annual household income including; residential property equity, savings, shares or other assets, exceeds £76,000 they will not qualify to join the Council's Housing Register regardless of the size of accommodation required.

10. Our Panel are recommending that for consistency, there be an additional requirement under the Assessment Criteria which determines whether at the end of the fixed-term if a further tenancy be granted. The additional requirement would be that a further tenancy (Flexible or Secure) will generally not be granted where, in accordance with the Council's Housing Allocations Scheme (in force on the date the 6 months' Notice is served), the Flexible (fixed-term) Tenant, in the opinion of the Council, has sufficient income and/or assets to enable them to meet their housing need themselves

11. Having considered the draft Tenancy Policy, we are recommending its adoption by the Cabinet. Our proposed draft new Tenancy Policy is attached as an appendix to the report.

Resource Implications:

Within existing resources.

Legal and Governance Implications:

Housing Act 1985

Localism Act 2011

The Homes and Communities Agency's Regulatory Framework for Social Housing in England

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Following the meeting of the Panel, the Tenants and Leaseholders Federation, all Registered Providers operating within the District, all Local Councils and partner agencies with an interest in the Policy have been consulted. The comments received will be reported to the Cabinet by the Housing Portfolio Holder under the next Item on the Agenda.

Background Papers:

None.

Risk Management:

Having a Tenancy Policy removes the risk of not complying with both the Localism Act 2011 and the Homes and Communities Agency's Regulatory Framework for Social Housing in England.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

The Cabinet are referred to the report of the Housing Portfolio Holder. This report sets out the Due Regard Record in respect of the draft revised Tenancy Policy, having taken account of the outcome of the consultation exercise.