

## **Report to the Cabinet**

**Report reference: C-011-2020-21**

**Date of meeting: 20 July 2020**



**Epping Forest  
District Council**

**Portfolio:** Housing and Communities – Cllr H Whitbread

**Subject:** Tenancy Policy

**Responsible Officer:** Jennifer Gould (01992 564073)

**Democratic Services:** Adrian Hendry (01992 564246)

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### **Recommendations/Decisions Required:**

- 1. That the Cabinet agrees to extend the life of the current Tenancy Policy (which expires in July 2020) by a further 2 years to July 2022**
- 2. Having agreed the extension to the life of the Policy, Cabinet agrees to the recommended amendments set out below**

### **Executive Summary:**

Under the Localism Act 2011 and the Regulatory Framework for Social Housing in England, Registered Providers must publish clear and accessible policies which outline their approach to tenancy management.

EFDC's Tenancy Policy 2015 (v3) expires and requires renewal in July 2020. Full amendments and renewal of the policy require statutory consultation which has not been possible at the current time. Agreement is, therefore, being sought to extend the life of the current policy by a further 2 years to allow for meaningful consideration and consultation of the policy and in order to bring issue dates in line with the Allocations Policy. This will enable the renewal of both policies, which are intrinsically linked, to be considered, consulted on and renewed together in July 2022.

Agreement is also being sought for several proposed changes to the policy, the main ones of which are as follows:

- Discontinuation of two year fixed-term tenancies
- Introduction of an obligation for tenants to declare any properties/land purchased during their tenancy

Other recommended amendments to the wording of the policy are detailed in the main body of the report.

### **Reasons for Proposed Decision:**

There is a statutory requirement to have a Tenancy Policy. The purpose of the policy ensures compliance with the Regulatory Framework and provides clarity on the circumstances in

which EFDC will grant each type of tenancy. Having the policy ensures we offer tenancies which make the best use of our housing stock, while meeting customers' requirements.

### **Report:**

1. Under the Localism Act 2011 and the Regulatory Framework for Social Housing in England, Registered Providers must publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies preventing unnecessary evictions and tackling tenancy fraud. A Tenancy Policy should also set out:
  - Types of tenancies granted
  - When different types of tenancies will be granted and the length of the term
  - How applicants/tenants can appeal against the length or type of tenancy or the decision not to grant a further tenancy
  - How the needs of vulnerable people will be considered
  - Provision of housing advice and assistance
  - Any discretionary succession rights
2. EFDC's Tenancy Policy is underpinned by the West Essex Tenancy Strategy adopted at Cabinet on 22<sup>nd</sup> October 2012. The West Essex Tenancy Strategy was produced in partnership with Harlow and Uttlesford District Councils and requires all Registered Providers with housing stock in West Essex to have regard to the West Essex Tenancy Strategy which provides guidance as to the three councils' expectations of how their tenancy policies should be framed.
3. Full consultation was undertaken in 2015 ahead of the adoption of the current Tenancy Policy 2015 (v3) with the following stakeholders being given reasonable opportunity to comment:
  - All registered providers operation in the EFDC area
  - Neighbouring local Councils
  - Tenants and Leaseholders' Federation (tenant representative body)
  - Partner agencies with an interest in the management of the Council's housing stock
4. Given the minor nature of the current proposed changes to the Tenancy Policy and the current circumstances in relation to the public health crisis, it has not been considered necessary to go out to full consultation on these changes at this time.
5. The two main changes being proposed are:
  - Discontinuation of two year fixed-term tenancies
  - Introduction of an obligation for tenants to declare any properties/land purchased during their tenancy

### **Discontinuation of two year fixed-term tenancies**

6. A two-year fixed term tenancy is granted to homeless applicants to whom we have accepted a full rehousing duty under Part VII of the Housing Act 1996 (as amended).
7. The original intention of the two-year fixed term tenancy was to provide some temporary stability in order to enable homeless applicants time to make their own arrangements thereafter.

8. We currently have 118 two-year tenancies of which 6 are due to be renewed within the next 6 months (and 11 in the next 8 months) with more to follow over the coming months/years.
9. Upon review, the following questions are considered before deciding on what should be done at the end of the 2-year period:
  - Has the tenant been able to seek alternative accommodation?
  - Has the tenant's financial situation changed dramatically?
  - Has the rent account been conducted within the guidelines set out in their tenancy?
  - Has the tenant been a perpetrator in any anti-social behaviour during their tenancy so far?
  - Has anyone left or joined the household since the tenancy began?
  - Has the property been kept in a reasonable condition?
10. Reviews of these 2-year fixed term tenancies have found:
  - Nearly 60% are in receipt of full housing benefit or the housing element of Universal Credit indicating a low household income overall
  - Of the remaining 40% just 1 tenant is not receiving any help paying their rent equally indicating low household incomes in all but 1 tenancy
  - One tenant has accrued arrears to the extent that enforcement action is necessary
  - Around 15% have been involved in some level of anti-social behaviour though none to the level that requires enforcement action
  - Just 1 tenant has had an addition to their household, no tenants have had anyone leave their household
  - Out of the 17 tenancies so far reviewed, 1 has looked at alternative accommodation in the private sector but concluded they would be unable to afford the rental charges. The other 16 tenants have not considered alternative accommodation believing their tenancies with the Council would be renewed
  - No tenant has had significant change in circumstances that would enable them to rent privately or move out of social housing accommodation
  - All the tenants reviewed confirmed they would be compelled to apply again as homeless if their current tenancies came to an end
  - Nearly 90% of tenants reviewed were keeping their homes in a reasonable condition with just 2 being asked to bring the property condition up
11. The preparation and review of the 17 tenancies that have so far come up for review have taken up a significant and disproportionate amount of officer time across several teams (Neighbourhoods, Income, Assets).
12. 95% of tenancies reviewed will be granted a 10-year fixed term tenancy with just 1 tenant having further intervention prior to the award of a further tenancy.
13. The 10-year fixed term tenancies that are granted have themselves a 12-month probationary period. This means that homeless applicants are, effectively, subject to a 3-year probationary period before being granted a level of security. This contrasts with all other cohorts of clients who are only subject to a 1-year probationary period.
14. In summary:
  - None of the tenants reviewed have had a significant change in circumstances that

would enable them to successfully pursue and secure alternative accommodation in the private market.

- The process of review is both administratively burdensome and resource intensive for arguably little/no gain.
- Homeless applicants, who are arguably more vulnerable than other cohorts of clients, are subject to a prolonged period of uncertainty which may impact the general health and wellbeing of the household overall.

### **Introduction of an obligation for tenants to declare any properties/land purchased during their tenancy**

15. All tenant applications for the Right to Buy (RTB) are subject to EFDC's counter fraud vetting. As a result, the Corporate Fraud Team have become aware of an increasing number of tenants who own another property which has come into their possession during their EFDC tenancy.
16. Currently, tenants are under no obligation to declare the purchase or inheritance of any other property to the Council unless they apply for RTB. Therefore, the Council has no way of knowing whether other tenants own property that is reasonable for them to reside in and which could, therefore, free up valuable resource to meet other housing need.
17. There are examples of other local authorities who include an obligation to declare purchase or inheritance of property within their tenancy conditions and treat non-disclosure as a tenancy breach which can, therefore, be legally enforceable.

### **Other amendments**

18. There are a number of smaller amendments to the wording of several sections that also proposed as follows:
19. Section 3.26 – *advice and assistance if a further tenancy is not granted*  
Amend 6 months to 56 days to align with the Homelessness Reduction Act 2017
20. Section 3.3 – *transfers*  
Amend to clarify that this does not apply where tenants choose to move to accommodation let on Affordable Rent terms. This is to comply with section 2.2.8 of the Tenancy Standard:  
  
*Registered providers shall grant those who were social housing tenants on the day on which section 154 of the Localism Act 2011 comes into force, and have remained social housing tenants since that date, a tenancy with no less security where they choose to move to another social rented home, whether with the same or another landlord. (This requirement does not apply where tenants choose to move to accommodation let on Affordable Rent terms).*
21. Section 3.8/7.4 - *introductory tenancies*  
Amend to clarify that our tenants can request a review when we extend the probationary tenancy. This is to comply with section 2.2.4 of the Tenancy Standard:  
  
*Where registered providers use probationary tenancies, these shall be for a maximum of 12 months, or a maximum of 18 months where reasons for extending the probationary period have been given and where the tenant has the opportunity to request a review.*

22. Re-word section 8.1 – *non-secure tenancies*

This is to comply with section 2.2.9 of the Tenancy Standard:

*Registered providers shall grant tenants who have been moved into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation.*

23. Expansion of section 11 of the policy to inform tenants that their applications for succession to a tenancy and joint tenancy applications are subject to anti-fraud vetting

**Resource Implications:**

None.

**Legal and Governance Implications:**

The Policy has been written in order to comply with:

- Housing Acts 1980, 1985, 1988, 1996 and 2015;
- The Localism Act 2011; and
- Regulator of Social Housing – Consumer Standards, Tenancy Standard 2012.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

Initial consultation has been undertaken with the Portfolio Holder.

**Background Papers:**

N/A

**Risk Management:**

The Tenancy Policy ensures that a consistent approach to granting tenancies is adopted by the Council to all tenants. It does this by following best practice and defining the different elements that need to be taken into consideration.

Updating the Tenancy Policy with the required changes will enable the Council to be proactive in managing risk in relation to tenancies by ensuring:

- The correct tenancies are issued for each circumstance;
- There is an efficient use of housing stock;
- Accommodation is used according to its purpose;
- The needs of individual households are considered;
- The Council is proactive in tackling tenancy fraud; and
- The Council continues to meet its legal duties.

**Equality Analysis:**

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to this report.