

WAVERLEY BOROUGH COUNCIL

LANDLORD SERVICES ADVISORY BOARD

24 FEBRUARY 2022

Title:

FLEXIBLE TENANCY REVIEW

Portfolio Holder: Co-Portfolio Holders for Housing Paul Rivers and Nick Palmer

Head of Service: Hugh Wagstaff, Head of Housing Operations

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 To seek the Board's view on the officers proposal to end the use of Flexible Secure Tenancies.

2. Recommendation

It is recommended that the Board:

- advises the Portfolio Holder to end the use of flexible tenancies and
- support the proposal to progress the officers' implementation plan.

3. Reason for the recommendation

To seek the Board's advice on the proposal to end the use of flexible tenancies and provide tenants with long term security in their home, reduce unwarranted administrative bureaucracy and improve the landlord and tenant relationship and communications.

4. Background

Introduction

- i Flexible tenancies¹ and Fixed Term tenancies² were introduced by the Government in 2012 under the Localism Act 2011, to enable better use of housing stock, to provide homes for those in housing need at the time they need it. There was a view that social housing could be "freed up" if landlords could end the tenancies of tenants who were under occupying or had sufficient income to rent or buy privately.

¹ Flexible tenancies are secure Local Authority tenancies for a fixed term

² Fixed Term tenancies are assured Housing Association tenancies for a set term

- ii In 2018 social housing research³ indicated that 21 Local Authorities (of 50 respondents) had adopted flexible tenancies, because it was understood as being expected by government and to promote the effective use of stock. However nationally there was a low take up in the social housing sector.
- iii Waverley introduced flexible tenancies in September 2014, following the national initiative and local consultation. At the time current tenants were supportive of the change as they were not personally negatively impacted and housing applicants on the register were solely focussed on securing a Council home. Any concerns regarding security of tenure, personal investment in homes and communities and the administrative and legal challenges were not widely recognised.
- iv Since their introduction there has been a change in government opinion and views that flexible tenancies have not worked nationally or locally as anticipated, with unintended consequences.
- v The Service Improvement Team completed a review to assess the implementation, administration and outcomes following the introduction of flexible tenancies.

Context

- vi The Housing and Planning Act 2016 intended to phase out the use of Secure tenancies by insisting Local Authorities issue Flexible tenancies in most circumstances. However, the view towards social housing has changed dramatically over this period and opinions reversed in the Social Housing Green Paper 2018. It recognised that security in tenure was paramount in achieving sustainable communities, and something that the private rented sector cannot currently offer.
- vii The ideology around flexible tenancies presumed rapid social mobility among those that needed social housing. However, since flexible tenancies have been introduced there is no evidence for this. The Council have been carrying out reviews on flexible tenancies for 18 months and no tenant's circumstances have changed significantly enough to impact their eligibility for social housing.
- viii The government no longer requires landlords to report on the number of flexible tenancies and many LAs (including Harrow, Dover, Dartford and Central Bedfordshire) and housing associations (including L&Q and A2Dominion) have withdrawn flexible and fixed term tenancies. David Montague, L&Q Chief Executive said

“We found FTTs to be a crude tool that have not fixed the problems they were created to address. What’s more, the renewal process causes unnecessary worry for residents.”

Number of tenancies

- ix Waverley has a total of 4,589 dwellings. Since flexible tenancies were introduced in the borough (September 2014) to present (November 2021) 1,129 flexible tenancies have been issued and 244 have ended.

³ Watts & Fitzpatrick 2018 Fixed Term tenancies: Revealing Divergent View

- x Of the 244 tenancies that ended, the majority, 60% moved within social housing via transfer to another council or housing association home through the register or mutual exchange. 25% moved away to other accommodation private rented, friends and family or home ownership (including 13 Right to Buys).
- xi The average tenancy length for former tenants using data that goes back 32 years is 11.8 years (with the longest former tenancy some 81 years). If we include current tenants this raises the average length of tenancy to 13.5 years. Demonstrating that tenants are maximising social housing and moving in and out of the sector irrespective of tenancy type.

Challenges with Flexible tenancies

- xii The review found that flexible tenancies have not delivered the outcomes as expected and the housing team now face challenges with flexible tenancies as they are:
 - now at odds with Government's current position,
 - inconsistent with tenancy sustainability and community,
 - administrative intensive (if relevant review dates and paperwork are missed, tenant becomes a secure (Lifetime) tenant by default)
 - open to legal challenge if not followed process accurately,
 - creating a two tier management system,
 - an administrative and resources burden, (exacerbated by the pandemic) and
 - have not improved how the service could maximise the use of stock (no current evidence of releasing homes from flexible tenancy reviews)

Awareness and communications

- xiii There has been a misunderstanding and lack of awareness between the differences of flexible and secure tenancies since 2014. It is recognised that tenants may feel anxious about the review and renewal process and do not feel settled and secure in their home and community. Lesson learnt from a recent complaint identified that an officer's focus was on the flexible tenancy review process rather than the tenants needs.
- xiv Officer time taken in completing five years reviews could be spent on developing a Customer Review programme. With Housing Officers scheduled to meet all tenants every three years to build trust and respect and an understanding of needs and expectations to inform future service delivery.

Alternatives to flexible tenancies / ways to manage housing stock

- xv The housing service has a range of means to effectively manage tenancies, without the need for a flexible tenancy. As seen from data above there is movement within the council housing as tenants' circumstances change and they seek and secure alternative accommodation.
- xvi The teams have several services at their disposal to manage its housing stock. Tenants with a change in circumstances and needs can register for a transfer on the Housing Needs Register. The Easy Move schemes offers financial and practical support to incentivise those looking to downsize. And Home Swapper is a mutual exchange service all tenants can sign up to see a home swap to a different area or type of property.

xviii It is proposed that customer reviews are implemented to build relationships with tenants, act as a means of ensuring up to date information is held and to ensure that these types of services are known and available to all. Not just those who have had a tenancy since 2014. It is a more inclusive approach to support all tenants to move when the time is right for them to do so, not at an arbitrary five year period.

xviii The Council's use of Introductory tenancies has been successful and will continue to be used prior to a secure tenancy being issued. These act as a probationary period for all new social housing tenants and flag any tenancy issues that arise with paying rent, antisocial behaviour, or other problems.

Project Plan to end use of flexible tenancies

xix Further work must be scoped and completed to end the use of flexible tenancies for new and existing tenants. Legal and consultation timescales will be sought following Portfolio Holder's agreement to progress project.

Action	Detail	Proposed Timescale
Stop issuing Flexible tenancies	Issue introductory to secure tenancies to all new applicants Issue secure tenancies to all transferring applications Grant new secure tenancy to all mutual exchange applications	Legal advice Feb/March 2022 Depending on level of consultation required April 2022 or September 2022
Convert current flexible tenancies	Legal advice to assess mechanism and resources required to convert current flexible to secure by one date or wait until end of each term	Aim complete September 2022
Opportunity to include Tenancy conditions review in consultation.	To include good practice and arising issues eg access for electric checks, septic tank responsibilities, not use home for airBnB or other holiday lets etc	Legal advice Feb/March 2022 Consultation April/May 2022
Tenancy policy update	To update Policy to remove use of flexible tenancies for Council homes	Consultation April/May 2022
Tenancy strategy update	To update strategy as not preferable to use fixed term tenancies and introduce Waverley Rent (subject to Affordable Homes Delivery Strategy)	Consultation April/May 2022

Conclusion

- xx After careful review the Housing Service Improvement Team found that there are more disadvantages to operating flexible tenancies than there are advantages. (Please refer to Annexe One for summary.)
- xxi The Council have been proactive in tackling stigma associated with social housing tenants, recognising the charter for social housing residents commitments, and supporting tenants and communities to thrive. Offering all new and existing tenants lifetime tenancies will assist the Council in achieving these aims and make the best use of existing council resources.

5. Relationship to the Corporate Strategy and Service Plan

The report supports the Council's Corporate commitment to promote "*Good quality housing for all income levels and age groups*" and aim to "*be the best council landlord in the South East and to be acknowledged so by our tenants.*"

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

There are no direct financial implications of moving from flexible tenancies as residents of Waverley stock are charged the same level of rent in flexible tenancies as secure tenancies.

There will be resource savings in time spent ensuring flexible tenancy requirements are met.

6.2 Risk management

Current legal risk regarding type of tenancy following five year review and financial risk to respond to legal investigations and any compensation payments. Reputational risk of intrusive reviews and/or on ending flexible tenancy due to under occupation or increase in income with no alternative accommodation available.

6.3 Legal

Legal advice has been sought from the Legal Services team and from Counsel regarding both the processes the Council wishes to follow in relation to the proposed tenancy changes, and the amendments to the Council's tenancy agreement conditions that would update the agreement in line with recent statutory and tenancy management changes.

6.4 Equality, diversity and inclusion

Currently younger tenants received a different type of tenancy to older tenants in senior living schemes and those whose tenancies started pre September 2014. A full Equality Impact Assessment will be completed for any future change in tenancy agreement, tenancy policy and tenancy strategy.

6.5 Climate emergency declaration

Proposal to cease flexible tenancies will contribute to reduced paperwork and officer travel.

7. Consultation and engagement

7.1 Early consultation with Housing Team leaders, Fraud officer and Tenants Panel have been supportive of proposal.

8. Other options considered

8.1 To do nothing would result in the continuation of tenants feeling uncertain about their future, due to lack of security in their homes, and ongoing administrative process resources with no outcome for the housing service or residents.

9. Governance journey

9.1 Subject to Portfolio Holder's approval to progress the project to end the use of flexible tenancies, an updated report will return to LSAB following further legal clarifications and confirmation of consultation requirements. Future decisions regarding tenancy amendments will be made according to the scheme of delegation (tbc);

- Changes to tenancy agreement term (length)– Portfolio Holder following statutory tenant consultation
- Changes to tenancy agreement terms (conditions)– Portfolio Holder following statutory tenant consultation
- Tenancy Policy – Portfolio Holder following public consultation
- Tenancy Strategy – Council following public consultation

Annexes:

Annexe 1 – Summary of Advantages and Disadvantages of Flexible Tenancies

Background Papers

There are / ~~are no~~ background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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Agreed and signed off by:

Legal Services: DB 10 February 2022

Head of Finance: RP 7 February 2022

Strategic Director: AR 11 February 2022

Portfolio Holder: 14 February 2022

Advantages and Disadvantages of Flexible Tenancies

	Current position	Future considerations
Advantages		
Implement government policy: Localism Act 2011	Government no longer supports fixed term tenancies	The Charter for Social Housing Residents is at odds with fixed term tenancies
Effective management of stock by five year review of tenants' circumstances	Tenants moved through current schemes to more appropriate homes - up/down sizing without impacting tenancy	Would council end tenancy and evict tenants due to under occupation or change in income? – additional burden on housing advice and reputational risk
Build communities as those contributing could gain further flexible tenancy	Not been included in review process as EDI concerns with potential criteria and assessment	Longer term tenancies give people security to invest in community
Mandatory right to end tenancy at end of fixed term tenancy	Breach in tenancy terms to be addressed during tenancy not wait until the end. No review resulted in recommendation to end tenancy	Would council end tenancy and evict tenants due to under occupation or change in income? – additional burden on housing advice and reputational risk
Disadvantages		
Security in home and community	No long term security – lack of investment in home and community and anxiety of review process	Longer term tenancies give people security to invest in homes and community
Review Process resources and outcomes	Time intensive process, challenge to hit legal timescales and focuses resources on post 2014 tenants	Review and relationship with all tenants on three year cycle
Legal challenges	If review process not followed accurately change in type of tenancy	To amend flexible tenancies may need individual consent
Landlord and tenant relationship	Short term intrusive relationship continuous checks on circumstances	Longer term relationship and partnership commitment to homes and communities
Increased demand on housing advice where uncertainty of future of tenancy at review	Flexible tenants under review may seek advice from Housing Options and Citizens Advice when no change in circumstances or risk of homelessness	Focus on residents threatened with real risk of homelessness

