

# WAVERLEY BOROUGH COUNCIL

## LANDLORD SERVICES ADVISORY BOARD

30 JUNE 2022

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**Title:**

**TENANCY REVIEW – CONSULTATION RESULTS AND PROPOSALS**

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

**Head of Service:** Hugh Wagstaff, Head of Housing Operations and  
Andrew Smith, Head of Housing Delivery and Communities

**Key decision:** No

**Access:** Public

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### **1. Purpose and summary**

To share the results of the Tenancy Review Consultation and for the Board to advise the Co-Portfolio Holders for Housing of their views regarding the arising proposals on the use of flexible tenancies, revised Conditions of Tenancy, Tenancy Policy and Tenancy Strategy.

### **2. Recommendation**

It is recommended that the Landlord Service Advisory Board:

- review the consultation feedback and makes any comments to the Heads of Housing and Co-Portfolio Holders for Housing,
- backs the proposal to end the use of flexible tenancies,
- endorses the updated conditions of tenancy,
- supports the adoption of the revised Tenancy Policy, and
- supports the adoption of the revised Tenancy Strategy.

### **3. Reason for the recommendation**

To seek the Board's advice on the proposal to end the use of flexible tenancies, in light of the consultation findings. Granting introductory to secure tenancies will provide tenants with long term security in their home, reduce unwarranted administrative bureaucracy and improve the landlord and tenant relationship and communications. To advise and make comments to the Co-Portfolio Holders for Housing on the officers' recommendations to update the conditions of tenancy, tenancy policy and tenancy strategy. Amendments to reflect proposals regarding flexible tenancies and recent statutory and tenancy management changes.

### **4. Background**

4.1 On 24 February 2022, the Board received a [Flexible Tenancy Review paper](#) on the officers proposal to end the use of Flexible Secure Tenancies. The Board supported the Portfolio Holder proposal to progress the officers' implementation

plan. It was noted that any change to the type of tenancies granted would need to be reflected in the Council's Tenancy Policy and Tenancy Strategy.

4.2 The statutory tenancy consultation period commenced on 4 April and closed on 29 May seeking council tenants views on the use of flexible tenancies and updated conditions of tenancy. Officers also used the timeframe to consult more widely on revisions to the Tenancy Policy and Tenancy Strategy, in the event that the Council ceased issuing Flexible tenancies.

4.3 The Board have received progress updates on:

- 31 March 2022 sharing the project plan, proposed amendments to tenancy conditions and consultation methodology
- 28 April 2022 sharing proposed amendments on the Tenancy Policy and Tenancy Strategy and update on initial consultation responses
- 26 May 2022 sharing self assessment against the Regulator of Social Housing's Tenancy Standard and an update on consultation responses.

### **Consultation Feedback**

4.4 A total of 125 responses were received during the consultation period. Of these 113 responses came from tenants. The other 12 responses came from Councillors, other housing providers or colleagues from other statutory agencies.

4.5 Most of the tenants responses came via the online form. The other ways in which tenants could respond was beneficial to deal with enquiries, providing the opportunity and space to ask questions and discuss any concerns.

4.6 Overall, most responses were positive across all response types and for both parts of the consultation.

4.7 The complete report of findings can be found at [Annexe One](#)

### **Flexible Tenancy Review**

4.8 Since September 2014 Waverley have granted introductory and flexible tenancies to all new general needs tenants. Introductory tenancies are for 12 months and flexible tenancies last for a five year fixed term. Tenancies granted before September 2014 are secure (lifetime) and those issued to senior living tenants have remained secure tenancies throughout. We found that flexible tenancies are not successful in maximising the use of council homes, can prevent tenants feeling secure and invested in their home and community and are intensive and complex to manage.

4.9 The feedback demonstrated overwhelming support, 97%, to stop using flexible tenancies. During the drop in events respondents confirmed that some flexible tenants felt insecure in their homes and were therefore reluctant to invest financially and/or emotionally in their home and community. Respondents also stated that these concerns impacted their children's welfare too. Some tenants were considering unsustainable financial options to buy their homes to be able to provide more security to their families than the flexible tenancy.

4.10 Findings - The Housing Service Improvement Team found that there are more disadvantages to operating flexible tenancies than there are advantages. The Housing team have alternative ways to manage stock effectively. There are resource and legal challenges with flexible tenancies. The vast majority of tenant and stakeholder agreed with the proposal to end the use of flexible tenancies. Overall only two comments were received against the proposal.

4.11 Recommendation – The Co-Portfolio Holder for Housing and Head of Housing Operations agree to offer all new and existing tenants lifetime tenancies. To stop issuing Introductory to Flexible Tenancies from 1 September 2022 and work with current flexible tenants from September 2022 to convert to secure tenancy agreements.

#### Proposed Conditions of Tenancy

4.12 As part of the tenancy review, officers reassessed the conditions of tenancy to ensure they were up to date. The proposed changes reflect changes in law, regulation and general accepted good practice. This ensures that the Council's responsibilities as a landlord and the tenants' responsibilities are clear and fair. The conditions of tenancy were last updated in 2018 so all changes are relatively minor.

#### 4.13 Summary of proposed amendments to Conditions of Tenancy

Remove text	Include text	Update Language
<ul style="list-style-type: none"> <li>• flexible tenancy definition</li> <li>• references to housing related support charge</li> <li>• flexible tenancy succession details</li> </ul>	<ul style="list-style-type: none"> <li>• social housing fraud definition</li> <li>• further complaints info</li> <li>• further compensation info</li> <li>• holiday let info</li> <li>• clarify recharge details</li> <li>• septic tank maintenance</li> <li>• access for electric checks</li> <li>• ASB Closure orders and weapons</li> <li>• video doorbells</li> </ul>	<ul style="list-style-type: none"> <li>• sublet</li> <li>• repairs and maintenance</li> <li>• recharge at end of tenancy</li> </ul>

4.14 The full list of proposals can be found at [Annexe Two](#)

4.15 Respondents were generally in favour of the amendments (84%), only 5% did not agree and the remainder provided a neutral response. All responses have been carefully considered. In relation to concerns raised that are directly linked to proposed changes, in most cases it was felt that the proposed wording is the most appropriate to take forward and will continue to be used.

4.16 Officers responded to queries and provided explanation and clarity on:

- Secure tenancies – confirmed with pre 2014 tenants of their tenancy status and security of tenure
- good repair – proposal to remove word “good” as no legal standing and open to interpretation. The requirement for tenants to keep their home in good repair was removed in a previous tenancy agreement review. Repair standards are set in legislation and Waverley’s local policy documents, providing more details on specific works eg Void standard. There is no intention that this legal change to the tenancy will impact the quality of repairs provided.
- septic tanks – clause included to ensure access to complete any works required and for tenants use system appropriately. Following review it is felt that the proposed language is the most appropriate. Confirmed to tenant(s) that responsibility would remain with the landlord.
- lodger and sublet profit – confirmed that the expansion of this clause is to protect the Council against social housing fraud and limit the costs to lodgers/sub tenants. Making a profit specifically refers to receiving rent directly from a lodger or sub tenants that exceeds the rent. Payments to compensate for the work and costs involved in supporting a vulnerable person (eg fostering or Ukrainian sponsors) are not applicable to the clause
- permissions – provided information on how to request permission for pets, this is not a new clause, and reassured that we do not withhold permission as a general rule
- Ring doorbells or other cameras that view outside of the dwelling – made clear that CCTV was already a clause in the conditions of tenancy and this clause clarifies that we do consider these types of devices to be CCTV
- One party ending a joint tenancy due to separation – reassured that we follow the law in relation to this area and work sensitively with tenants on these matters as they arise.
- Accessibility online services – reassured that this was a Council wide position and reassured that the customer service centre is still available.

4.17 Following the consultation responses officers have updated the clause regarding gas appliance checks and included the circumstances of when the new definition of assignment could be used.

4.18 A formal response of the consultation will be published on the website to provide clarity to tenants on these issues. A review of the webpages related to the topics raised will also be completed to make any required improvements.

4.19 Findings - The Housing Service Improvement Team found a number of areas in the tenancy agreement that need to be updated to reflect good practice and protect tenants, homes and communities. The vast majority of tenant and stakeholder agreed with the proposed amendments to the tenancy agreement. Two of the proposed clauses will be expanded upon following feedback.

4.20 Recommendation – The Co-Portfolio Holder for Housing and Head of Housing Operations agree the revised conditions of tenancy. Waverley to serve statutory notice on all tenants in August with a full copy of the new agreement. The revised tenancy conditions to come into effect on Monday 5 September 2022.

### Proposed Tenancy Policy

4.21 The Tenancy Policy states the type of tenancies that are issued by the Council as a landlord.

### 4.22 Summary of proposed amendments to Tenancy Policy

Remove text	Include reference to:	Update Language
<ul style="list-style-type: none"><li>flexible tenancy references</li><li>table of types of tenancy</li><li>table of exceptions</li></ul>	<ul style="list-style-type: none"><li>joint tenancies</li><li>social housing stigma</li><li>succession rights</li></ul>	<ul style="list-style-type: none"><li>change ethos from maximising use of homes to cohesive communities</li></ul>

4.23 The full revised proposed policy can be found at [Annexe Three](#)

4.24 Findings - The proposed policy has been updated to reflect the decision to stop issuing flexible tenancies, as the vast majority of consultation responses were positive to the proposal. Officers took the opportunity to update the language and include additional information on joint tenant tenancies and succession.

4.25 Recommendation - The Co-Portfolio Holder for Housing and Head of Housing Operations agree the revised Tenancy Policy. Revised Policy to come into effect on Monday 4 September 2022

### Proposed Tenancy Strategy

4.26 The Tenancy Strategy states the type of tenancies the Council recommends are issued by registered landlords in the borough providing affordable housing.

### 4.27 Summary of proposed amendments to Tenancy Strategy

Remove text	Include reference to:	Update
<ul style="list-style-type: none"><li>flexible tenancy references</li><li>length of tenancy table</li><li>local letting plans</li></ul>	<ul style="list-style-type: none"><li>Housing Affordability study</li><li>Waverley affordable rent caps</li></ul>	<ul style="list-style-type: none"><li>change ethos from maximising use of homes to cohesive communities</li><li>stock profile and registered applicants data</li></ul>

4.28 The proposed Tenancy Strategy can be found at [Annexe Four](#)

4.29 Findings - The proposed strategy has been updated to reflect the decision to stop promoting flexible tenancies. Officers took the opportunity to update the strategy to reflect the current stock and applicant profiles, the [Housing Affordability Study](#), change the language and include amendments to affordable rent caps and affordable rent conversions. Four housing providers responded to the consultation, and all agreed with the proposals. Two commented that they had also stopped issuing flexible tenancies and one had never implemented them.

4.30 Recommendation - The Co-Portfolio Holder for Housing and Head of Housing Operations recommend the Executive and full Council agree the revised Tenancy Strategy in July. Revised Strategy to come into effect on Monday 4 September 2022.

## **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.

7.2 Statutory consultation from 4 April to 29 May with:

- tenant legal notices,

- tenant face to face events,
- website consultation page,
- online, email and phone feedback facilities,
- direct contact with statutory and voluntary stakeholders,
- use of members bulletin and housing staff email,
- monthly reports to Landlord Services Advisory Board from February
- social media promotion,
- press release and
- Affordable Housing Provider Forum.

**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.

**6. Governance journey**

- Changes to tenancy agreement term (length)– Portfolio Holder decision following statutory tenant consultation [Committees to agree July date]
- Changes to tenancy agreement terms (conditions)– Portfolio Holder decision following statutory tenant consultation [Committees to agree July date ]
- Tenancy Policy – Portfolio Holder decision following public consultation [Committees to agree July date]
- Tenancy Strategy – Council decision following public consultation [19 July 2022]

**Annexes:**

- Annexe One Consultation Results
- Annexe Two Proposed Conditions of Tenancy
- Annexe Three Proposed Tenancy Policy
- Annexe Four Proposed Tenancy Strategy

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**Background Papers**

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

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