

Report to the Cabinet

Report reference: C-069a-2012/13

Date of meeting: 15 April 2013



**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, following consultation with the Tenants and Leaseholders Federation, partner agencies, Parish and Town Councils and Registered Social Landlord Partners, the Tenancy Policy attached as an Appendix to the report be adopted;**
- (2) That the Housing Scrutiny Panel be asked to review the success of the Pilot Scheme to grant Flexible (fixed-term) Tenancies on all properties of 3 bedrooms or more, after 12 months of commencement and to submit a report to the Cabinet on its review including, in particular;**
 - (a) whether to discontinue, continue or extend the scheme to include 2 bedroom properties; and**
 - (b) whether in future to means test tenants as part of the Assessment Criteria at the end of the Flexible Tenancy period; and**
- (3) That any resultant changes on review come into effect from 1 April 2015.**

Executive Summary:

At our meeting on 17 December 2012, we considered a report on the Council's proposed new draft Tenancy Policy. 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 is enabling providers of social housing with the option to use Flexible Tenancies (also known as fixed-term tenancies).

The Localism Act 2011 requires local authorities to publish a Tenancy Strategy which, within 12 months of commencement of the Act (being January 2013), must set out the matters to which Registered Providers of Housing (including the Council) are to have regard in formulating their policies. The West Essex Housing Forum, which comprises three local authorities in West Essex being Epping Forest, Harlow and Uttlesford District Councils, have developed and adopted one Tenancy Strategy that covers the three local authorities' areas in West Essex. The Tenancy Strategy was adopted by the Cabinet on 22 October 2012.

In addition, all Registered Providers are required to publish and be responsible for their own individual Tenancy Policy. A draft Tenancy Policy for the Council (which complies with the Tenancy Strategy), is attached. We have given detailed consideration of the draft Tenancy Policy and we 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 attached 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 17 December 2012, we considered a report on the Council's proposed new draft 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 is enabling 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, within 12 months of commencement of the Act (being January 2013), 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 developed and 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; and
- 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 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 Tenancy Policy, the Housing Portfolio Holder advised us that he had held informal discussions with Cabinet colleagues about the way forward on tenure reform. Following these discussions, the Housing Portfolio Holder made a formal decision that officers draft the Policy on the basis of the Cabinet's proposed principles which were as follows:

- That the Council introduces a Pilot Scheme for Flexible Tenancies as soon as possible, with Flexible Tenancies being granted to all new tenants who sign-up to a tenancy of a property of three bedrooms or more for a fixed term of 9 years.
- As the Council's current Introductory Tenancy Scheme for all new secure tenants has proved successful in combating both rent arrears and anti-social behaviour, Flexible Tenancies will include in their term an introductory period of 12 months (or 18 months where the term is extended due to minor breaches of Tenancy conditions).
- As the Localism Act removes the "Right to Improve" for Flexible Tenants, but gives councils powers to continue to grant this right if it wishes, it is considered that this right should be granted, through the Tenancy Agreement, but that the other right removed by the Act - the "Right to Compensation for Improvements" - not be granted under the Pilot Scheme, but that this be considered again after the 12 month review referred to later.
- That the financial incentives under the Housing Allocations Scheme for Council tenants to transfer to smaller accommodation applies to Flexible Tenants during the term, but only within the first 5 years (including the Introductory Tenancy period).
- That, at this stage of consideration, the draft Assessment Criteria used at the

end of the Flexible Tenancy term to assess eligibility for a further flexible or secure tenancy of the same or another property, includes that a further tenancy will not be granted if the tenant has committed serious acts of Anti-Social Behaviour, or other serious breaches of tenancy conditions including significant rent arrears. Furthermore, if the tenant is under-occupying or statutorily overcrowded at the accommodation, then a further Flexible or Secure Tenancy as appropriate will be offered on alternative suitable accommodation, provided all of the other requirements of the agreed Assessment Criteria are met.

- If the property has been extensively adapted and there is no one in occupation who is in need of these adaptations, and there is an applicant on the Housing Register who is in need of the adapted accommodation, then a further Flexible or Secure Tenancy (as appropriate) of an alternative suitable property be offered provided all of the other requirements of the agreed Assessment Criteria are met.

- That at the end of the Flexible Tenancy term, where there are special circumstances including, active Foster Carers or where a tenant or member of their household has a terminal illness or a disability, a further Flexible Tenancy term of between 2 years and (in certain circumstances) 10-years be granted, in order for the special circumstances to be monitored and re-assessed.

8. Although we agreed with the majority of the Housing Portfolio Holder's initial views, we felt that the following changes should be made:

(a) that the discretionary "Right to Compensation for Improvements" should be granted under the Pilot Scheme. The draft Tenancy Policy (Paragraph 7.3 of the Tenancy Policy refers) has been amended to reflect our views; and

(b) under the Draft Tenancy Policy submitted to our Panel, it was proposed under Paragraph 7.3 that the incentive payments paid to tenants of the Council who move to any smaller property with less bedrooms than their current property, where both are owned by the Council, should also apply to flexible tenants - but only within the first 5 years of the tenancy (including the Introductory Period). However, our view was that this period should be increased to 7 years and we have amended the draft Policy accordingly. The Housing Portfolio Holder attended our meeting and commented that he would have no objections to the changes.

9. Having considered the draft Tenancy Policy, we are recommending its adoption by the Cabinet. Our proposed draft new Tenancy Policy is attached.

10. We are recommending to the Cabinet that we be asked to review the success of the Pilot Scheme after 12 months of commencement and to submit a report to the Cabinet on our review to consider, in particular:

(a) whether to discontinue, continue or extend the scheme to include 2 bedroom properties; and

(b) whether in future to means test tenants as part of the Assessment Criteria at the end of the Flexible Tenancy period.

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 are set out in the officer covering report.

Background Papers:

None.

Impact Assessments:

Risk Management

No risks have been identified. Should any be identified in the future, these will be taken into account as part of the review after 12 months of operation of the Policy. 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.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? Yes

What equality implications were identified through the Equality Impact Assessment process?

The Housing Scrutiny Panel undertakes an annual review of the ethnicity of homeseekers on the Housing Register, compared with the ethnicity of those allocated accommodation. In addition, the ethnicity of homeseekers on the Housing Register awaiting sheltered accommodation compared with the ethnicity of those allocated sheltered accommodation is monitored separately.

The reason for the review is to identify whether or not there are any indications to suggest the Council may be discriminating against any one ethnic group and is undertaken by the Panel, in consultation with the Tenants and Leaseholder's Federation.

If the Cabinet adopt the new draft Tenancy Policy, the Housing Scrutiny Panel in consultation with the Tenants and Leaseholders Federation, will be asked to monitor the ethnicity of homeseekers on the Housing Register compared to the ethnicity of those who are granted Flexible (fixed-term) Tenancies, again to identify whether or not there are any indications to suggest the Council may be discriminating against any one ethnic group.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
Paragraphs 1,2 & 3 above refer.