

Report to Housing Scrutiny Panel

Date of meeting: 17 June 2013

Portfolio: Housing – Councillor D. Stallan

Subject: Conditions of Tenancy

**Officer contact for further information:
Roger Wilson extension 4419**

Committee Secretary: Mark Jenkins extension 4607



Recommendations/Decisions Required:

(1) That the Housing Scrutiny Panel gives detailed consideration to the attached draft Conditions of Tenancy which are proposed to apply to Flexible (fixed-term) Tenants allocated properties comprising three bedrooms or more from 1 September 2013 in accordance with the Council's Tenancy Policy; and

(2) That the Housing Scrutiny Panel submits a report to the July 2013 meeting of the Cabinet recommending:

(a) That the draft Conditions of Tenancy apply to all new Flexible (fixed-term) Tenancies from 1 September 2013;

(b) That the Council undertakes a consultation exercise with all existing Secure Tenants on a proposal to vary its Standard Tenancy Agreement for all existing and future Secure Tenants in accordance with the requirements of Section 102 of the Housing Act 1985 with the draft Conditions of Tenancy relating to Flexible (fixed term) Tenancies generally also applying to all existing and future Secure Tenancies;

(c) That the Director of Housing be authorised to serve a Preliminary Notice on all Secure Tenants on the proposed Standard Tenancy Agreement Conditions explaining their effect, stating the Council's intention to serve a Notice of Variation and inviting comments within 28 days; and

(d) That as soon as possible after receiving comments from Tenants, a report be submitted to the Cabinet on the responses received to the Preliminary Notice prior to the adoption of the new Standard Tenancy Agreement by the Cabinet and the Notice of Variation being served.

Report

1. At its meeting on 15 April 2013, the Cabinet adopted the Council's new Tenancy Policy. Under the Localism Act 2011, providers of social housing have 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 (fixed-term) 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 is assessed against an agreed Assessment Criteria to determine whether or not 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. Sheltered housing tenants must continue to be granted Secure Tenancies in accordance with the Act.

3. The Cabinet agreed that the Council introduces a Pilot Scheme for Flexible (fixed-term) Tenancies, to be granted to all new tenants who sign-up to the 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, it was further agreed that Flexible (fixed-term) Tenancies will include in their overall term an additional introductory period of 12 months (or 18 months where the term is extended due to minor breaches of Tenancy Conditions) resulting in a 10-year fixed-term.

4. The Housing Scrutiny Panel has been asked by the Cabinet to review the success of the Pilot Scheme after 12 months of commencement and to submit a report to the Cabinet on its review to consider, in particular:

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

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

5. The Cabinet also agreed the reviewed Housing Allocations Scheme at the same meeting and agreed that the new Scheme will be implemented from 1 September 2013. From this date the Council will be granting Flexible Tenancies in accordance with the Tenancy Policy.

6. It is therefore necessary for the Council to have a new Flexible (fixed-term) Tenancy Agreement in place by 1 September 2013.

7. Officers have undertaken a detailed review of the Conditions under the Council's current Standard Tenancy Agreement. As the new Agreement will have a bearing on the work of officers across the Housing Directorate, the opportunity was taken to use the exercise as a Staff Development Project. The Project included three workshops where all Housing Managers and other relevant officers discussed their proposed changes and fed them back to the rest of the group. As part of their personal development, following consultation with the Chairman of the Panel, two officers involved have been selected to present the proposed changes to the Agreement to the Panel. The process generally has resulted in a draft Standard Tenancy Agreement which is current and appropriate and includes a number of changes from the current version.

8. In order for generally the same Conditions of Tenancies to be applied to both Flexible (fixed-term) Tenants and Secure Tenants in the future, it is proposed that the Council formally varies the Standard Tenancy Agreement for all existing and future Secure Tenants in accordance with the requirements of Section 102 of the Housing Act 1985 with the intention of the draft Conditions of Tenancy for Flexible (fixed term) Tenants also applying to all existing and future Secure Tenancies.

9. A copy of the current Standard Tenancy Agreement has been circulated separately to all Members of the Panel. A copy of the proposed Conditions of Tenancy which will apply to both Flexible (fixed-term) Tenants and Secure Tenants are attached at Appendix One.

10. The pre-amble which will be at the front of the Flexible (fixed-term) Tenancy Agreement is attached at Appendix Two. The pre-amble which will be at the front of the Secure Tenancy Agreement is attached at Appendix Three.

11. The proposed Conditions of Tenancy have been considered by an external Legal Advisor being a QC in Housing Law. In his Note of Advice, the Legal Advisor stated in summary that the Tenancy Agreement in his opinion is legal and complies with the Unfair Terms in Consumer Contracts Regulations 1999 and the Guidance on unfair terms in Tenancy Agreements 2005. Although no advice was given on the actual conditions themselves, a number of changes to legal terminology was advised which have been incorporated. Some further advice was given on procedural matters around the serving of Notices which will be taken into account by officers when dealing with such matters.

12. The suggested main changes showing the paragraph reference and any officer comments on the change to the draft Conditions of Tenancy compared to the current Standard Tenancy Agreement are set out at Appendix Four.

13. The Housing Scrutiny Panel is asked to give detailed consideration to the proposed draft Tenancy Conditions which will apply to all new Flexible (fixed-term) Tenancies and both existing and future Secure Tenants.

14. Should Members agree that the Standard Tenancy Agreement be varied, in accordance with the Act, all existing Secure Tenants will be served a Preliminary Notice on the proposed Standard Tenancy Agreement Conditions explaining their effect, stating the Council's intention to serve a Notice of Variation and inviting comments within 28 days.

15. As soon as possible after receiving comments from tenants, a report will be submitted to the Cabinet on the responses received to the Preliminary Notice prior to agreeing the final version and the Notice of Variation being served.

Reason for decision:

Following the adoption of the Tenancy Policy by the Cabinet, the Council must have a new Flexible (fixed-term) Tenancy Agreement in place to be able to grant Flexible (fixed-term) Tenancies on Council properties of three bedrooms or more from 1 September 2013. Furthermore, in order that both Flexible (fixed-term) Tenants and Secure Tenants Conditions of Tenancy are the same, it will be necessary to vary the Council's Standard Tenancy Agreement for all existing and new Secure Tenants.

Options considered and rejected:

1. Not to consider the new Flexible (fixed-term) Tenancy Agreement
2. Not to recommend to Cabinet that the Council's current Standard Tenancy Agreement for Secure Tenancies be Varied.

Consultation undertaken:

The Tenants and Leaseholders Federation were consulted at their meeting on 30 May 2013. Their comments are set out at Appendix Five.

Resource implications:

Budget provision: Cost of around £2,000 for external legal advice funded from existing resources

Personnel: None

Land: None

Community Plan/BVPP reference: N/A

Relevant statutory powers: Housing Act 1985, Localism Act 2011, and the Homes and Communities Agency's Regulatory Framework for Social Housing in England
Background papers: Current Standard Tenancy Agreement Circulated separately
Environmental/Human Rights Act/Crime and Disorder Act Implications: N/A
Key Decision reference: (if required) N/A