

Report to the Cabinet

Report reference: C-009-2013/14

Date of meeting: 22 July 2013



**Epping Forest
District Council**

Portfolio: Housing

Report of: Housing Scrutiny Standing Panel (Chairman – Councillor S Murray)

Subject: Flexible and Secure Standard Tenancy Agreement

Responsible Officer: Roger Wilson (01992 564419).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) That the draft Conditions of Tenancy attached at Appendix 3 be applied to all new Flexible (fixed-term) Tenants allocated properties comprising three bedrooms or more from 1 September 2013 in accordance with the Council's Tenancy Policy;
- (2) That a consultation exercise be undertaken 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;
- (3) That the Director of Housing be authorised to serve a Preliminary Notice on all existing 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
- (4) That, as soon as possible after receiving comments from Tenants, a further 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.

Executive Summary:

The Cabinet has adopted the Council's new Tenancy Policy, and agreed that from 1 September 2013, 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 10 years including the Introductory Tenancy period. Our Panel noted that it is therefore necessary for the Council to have a new Flexible (fixed-term) Tenancy Agreement in place by 1 September 2013. Officers have undertaken a detailed review of the Conditions under the Council's current Standard Tenancy Agreement and our Panel considered the proposed main changes.

In order for generally the same Conditions of Tenancy to be applied to both Flexible (fixed-term) Tenants and Secure Tenants in the future, we are proposing that the Council formally

varies its Standard Tenancy Agreement for all existing and future Secure Tenants with the intention of the draft Conditions of Tenancy for Flexible (fixed term) Tenants also applying to all existing and future Secure Tenancies. Tenants allocated properties of less than 3 bedrooms from 1 September 2013, will sign up to the current Secure Tenancy Agreement until the variation process is completed.

Reasons for Proposed 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.

Other Options for Action:

- That the draft new Conditions of Tenancy not be agreed.
- That different Conditions of Tenancy be agreed.
- That the Council's current standard Tenancy Agreement for all existing and new Secure Tenants not be varied.

Report:

1. The Cabinet has adopted the Council's new Tenancy Policy, and 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 10 years including the Introductory Tenancy period.

2. Our 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; and

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

3. 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 (fixed-term) Tenancies in accordance with the Tenancy Policy.

4. Our Panel noted that is therefore necessary for the Council to have a new Flexible (fixed-term) Tenancy Agreement in place by 1 September 2013.

5. Officers have undertaken a detailed review of the Conditions under the Council's current Standard Tenancy Agreement and our Panel considered the proposed main changes.

6. In order for generally the same Conditions of Tenancy to be applied to both Flexible (fixed-term) Tenants and Secure Tenants in the future, we are proposing that the Council formally varies 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 intention

of the draft Conditions of Tenancy for Flexible (fixed term) Tenants also applying to all existing and future Secure Tenancies. Tenants allocated properties of less than 3 bedrooms from 1 September 2013, will sign up to the current Secure Tenancy Agreement until the variation process is completed.

7. A copy of the current Standard Tenancy Agreement has been circulated separately to all Cabinet Members. A copy of the Conditions of Tenancy proposed by our Panel which will apply to both Flexible (fixed-term) Tenants and Secure Tenants are attached at Appendix 3.

8. The pre-amble setting out general information for Flexible (fixed-term) Tenancies is at the front of the proposed Conditions of Tenancy. The pre-amble setting out general information which will be at the front of the Secure Tenancy Agreement is attached at Appendix 4 for information.

9. Our Panel were advised that 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 proposed 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.

10. The main changes suggested by our Panel showing the paragraph reference and our comments on the change to the draft Conditions of Tenancy compared to the current Standard Tenancy Agreement are set out at Appendix 1.

11. The Cabinet is asked to agree the proposed draft Tenancy Conditions which will apply to all new Flexible (fixed-term) Tenancies and both existing and future Secure Tenants.

12. Should the Cabinet 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.

13. 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.

Resource Implications:

Cost of £2,000 for external legal advice funded from existing resources.

Legal and Governance Implications:

Housing Act 1985, Localism Act 2011, and the Homes and Communities Agency's Regulatory Framework for Social Housing in England.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

The Tenants and Leaseholders Federation were consulted at their meeting on 30 May 2013. Their comments are set out at Appendix 2.

If the recommendations are agreed, the Council will undertake 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. The outcome will be reported to the Cabinet prior to a Notice of Variation being served varying the Tenancy Agreement Conditions for all new and existing Tenants.

Background Papers:

Counsel's opinion on the draft Standard Tenancy Agreement. This document is subject to legal privilege and is therefore confidential.

Impact Assessments:

Risk Management

If the Cabinet does not agree the new Flexible Tenancy Agreement, then Flexible (fixed-term) Tenancies cannot be granted on properties of 3 bedrooms or more from 1 September 2013 in accordance with the previous Cabinet decision.

If the Cabinet do not agree that the current Standard Tenancy Agreement for all existing and future Council Tenants is varied, there is a risk that the Council's ability to take action against Tenants on breaches of Tenancy Conditions will not be strengthened.

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?
A Customer (Equality) Impact Assessment has been undertaken. No equality implications were identified.

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?
Not applicable.

Appendix 1

Housing Scrutiny Panel's Suggested Main Changes to the Tenancy Conditions

Paragraph Reference	Changes or Additions	Comments
Paragraph 4.5	Condition to return <u>all</u> keys and leave an evidenced forwarding address	None
Paragraph 4.6	Better clarification on how items left at the Premises will be dealt with	None
Section 6	Clearer information on Joint Tenancies	None
Paragraph 7.2	Tenant required to seek the Council's consent if they are going to be absent from the Premises for six weeks or more. Also, that contact details are provided of a representative and the reason for the absence.	Tenants currently seek consent if they are going to be absent for 2 months or more, considered that 6 weeks is reasonable.
Paragraph 7.3	<ul style="list-style-type: none"> • The Tenant may with the written consent of the Council operate a business from and contained within the Premises provided it does not cause any nuisance or inconvenience to neighbours • Selling of vehicles is not permitted from or at the Premises • Any consents given must not be construed as planning or any other consents 	<p>To allow Tenants to operate a business from home that would not have any affect on the local community e.g. office based work</p> <p>None</p> <p>None</p>

Paragraph Reference	Changes or Additions	Comments
Paragraph 7.4	Not to use any of the Council's Storage Cupboards etc	As this often happens and can cause a hazard it is considered important to include
Paragraph 8.2	Add Councillor on last line	None
Paragraph 8.2 (a)	Expanded to include all Protected Characteristics under the Equality Act 2010	None
Paragraph 8.2 (g)	Playing of loud music added	None
Paragraph 8.2 (i)	Expanded to include taking, cultivation, storing of drugs etc	None
Section 9	<p>Conditions regarding Pets are enhanced to include:</p> <ul style="list-style-type: none"> • Permission required to keep more than one dog where the Premises has direct access to its own enclosed garden • Permission required to keep a dog where the Premises does not have direct access to its own enclosed garden • Permission for any type of dog prescribed under the Dangerous Dogs Act 1991 will not be granted • Dogs must be kept on a lead and the tenant must clear any waste in a hygienic manner 	Our Panel agrees with the views of the Tenants and Leaseholders Federation set out at Appendix 2, and suggest that this clause be amended accordingly

Paragraph Reference	Changes or Additions	Comments
Paragraph 12.5	To seek the Council's permission before installing laminate flooring or similar if the Premises is within a block	Our Panel noted the views of the Tenants and Leaseholder's Federation set out at Appendix 2 but are of the view that Tenants should be required to obtain the Council's consent before installing laminate flooring. This will enable Officers to consider the merits of each case and take into account any health issues and possibly grant permission if the property is on the ground floor.
Paragraph 12.6	Not to install any recessed spot lighting	Recessed spot lighting is considered by the Housing Repairs Service to be difficult to remove when the property is void and are a safety hazard and difficult to repair.
Paragraph 14.4	Not to park vehicles in ambulance bays at sheltered housing schemes	Our Panel considered that this clause should be expanded to include disabled parking bays at sheltered housing schemes, unless the Tenant has a permit.

Paragraph Reference	Changes or Additions	Comments
Paragraphs 16.1 to 16.4	<p>Following conditions added in respect of communal Areas:</p> <ul style="list-style-type: none"> • To keep communal areas in sheltered housing in good condition and clear of obstructions • Not to wedge open fire or security doors • Details the types of personal belongings that can only be kept in communal areas • Clarifies clearly how refuse and rubbish should be disposed of 	Clarifies what types of personal belongings can be stored in communal areas following the decision of the Cabinet on this issue
Paragraph 16.5	Carpets in communal areas are not permitted	<p>Our Panel considers that this clause should be expanded as follows in order for the Council to decide on each specific case:</p> <p>“...not permitted except in certain circumstances as determined by the Council”</p>
Paragraph 16.6	Clause on Tenant responsibility to maintain their gardens amended for better clarification	<p>Our Panel considers that it is not reasonable for a Tenant to seek consent before planting any tree. We suggest that the requirement for consent be removed, but, Tenants be required to keep any trees planted maintained. It is further suggested that advice on the types of trees to be planted be set out in the Tenants Handbook</p>

Paragraph Reference	Comments	Officer response
Paragraph 16.7	Not to install any shed or similar structure in any communal garden	Communal gardens are shared by a number of tenants living in blocks of flats. It is considered that such permission can not be granted as it could result in vast numbers of sheds in these areas. The Legal Advice is that if sheds were allowed a license would be required between the resident and the Council which would be costly to the resident. Furthermore, our Panel agrees with the views of the Tenants and Leaseholders Federation set out at Appendix 2 and suggests that this clause be extended along with their proposals.
Paragraph 16.8	This clause sets out the responsibility of the Tenant to dispose of refuse and rubbish securely	Our Panel suggest that responsibilities for re-cycling should be included.
Paragraph 17.2	Not to fix items to externally over-clad areas without the Council's consent	To ensure that over-cladding installed by the Council is not damaged
Paragraph 18.2	Advice to install and test smoke and carbon monoxide alarms	None
Section 19	The Council's Obligations	Our Panel suggests that the Council's Obligations should be set out as a series of sub-headings under Section 19

Paragraph Reference	Comments	Officer response
Section 34	Consultation on matters of housing management are clarified in accordance with the requirements of the Act.	None

Views of the Tenants and Leaseholders Federation

Paragraph Reference	Comments	Officer response
Section 9	<p>Considered that reference to “pet animal such as dog, cat or similar” and “not to keep any pet animal without the written consent of the Council” is not clear. Concerned that this infers a tenant would need to seek consent to keep a goldfish for example.</p>	<p>Amend Condition 9.1 to:</p> <p>The consent of the Council will be required before more than one dog is kept at the Premises. The Tenant will keep the dog under proper control at all times and be responsible for keeping dogs on a lead in the communal areas and clearing any waste in a hygienic manner, including at the Premises. No type of dog prescribed under the Dangerous Dogs Act 1991 or any other legislation may be kept at the Premises. The Council’s written consent will be required to keep any other animal that may cause a nuisance.”</p> <p>Amend Condition 9.2 Delete first sentence and replace with:</p> <p>“The Council’s written consent will be required to keep any animal that may cause a nuisance.”</p>

Paragraph Reference	Comments	Officer response
Paragraph 12.5	The Federations view is that laminate flooring should not be allowed in any circumstances	Officers suggest that Condition 12.5 is not amended and that Tenants are required to seek the Council's consent. If laminate flooring was not allowed in any circumstances, when the Standard Secure Tenancy Agreement is varied, the Council would have to enforce the removal of laminate flooring in all properties. If tenants seek permission, then the Council can take into account health issues, whether it is a ground floor or sheltered property etc.
Paragraph 16.7	The Federations view is that in addition to sheds, tenants should not be allowed to install any structure in communal gardens including play equipment. Furthermore, it should be stated that no areas should be fenced off.	Amend Condition 16.7 to: "Not to fence off any part of nor install any structure, including sheds and play equipment in any Council owned communal garden"