

Report to the Cabinet

Report reference: C-064-2013/14



Date of meeting: 3 February 2014

**Epping Forest
District Council**

Portfolio: Housing

Subject: Review of the Standard Tenancy Agreement

Responsible Officer: Roger Wilson (01992 564419).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) That the Cabinet considers the responses received from the Council's Secure Tenants in respect of the consultation exercise on the proposed new Standard Tenancy Agreement, and agrees the suggested amendments to the Agreement set out at Appendix 1;

(2) That the Director of Housing be authorised to:

(a) Serve a Notice of Variation on all of the Council's Secure Tenants who were served with the Preliminary Notice to vary the Tenancy Agreement in accordance with the requirements of the Housing Act 1985, with the new Agreement taking effect for existing Secure Tenants from 1 April 2014;

(b) Serve a Preliminary Notice on all Secure Tenants whose tenancies commenced between 16 November 2013 and 17 February 2014 and deal with any minor changes which result from the consultation exercise and serve the Notice of Variation at the appropriate time;

(c) Should the outcome of the consultation exercise set out in Recommendation 2(b) result in any major changes, then submit a further report to the Cabinet and the Tenants and Leaseholders Federation for consideration; and

(d) Require all new Tenants to sign up to the new Tenancy Agreement from 18 February 2014, following the expiry of the Cabinet call-in period;

(3) That the Council's Standard Tenancy Agreement for new Flexible (fixed-term) Tenants be amended, in order that generally the same conditions of tenancy apply to all of the Council's tenants; and

(4) That the Cabinet note that no changes can be made to the Standard Tenancy Agreement for a small number of existing Flexible (fixed-term) Tenants.

Executive Summary:

At its meeting on 22 July 2013, the Cabinet agreed the Conditions of Tenancy which now apply to all new Flexible (fixed-term) Tenants. The Cabinet further agreed that in accordance with the Housing Act 1985, the Council serves a Preliminary Notice on all its Secure Tenants undertaking a consultation exercise on the proposal to vary its Standard Tenancy Agreement for all existing and future Secure Tenants. The intention is that the draft Conditions of Tenancy relating to Flexible (fixed term) Tenancies generally also apply to all existing and future Secure Tenancies. The Cabinet are asked to consider the responses received from Secure Tenants to

the consultation and agree the suggested amendments.

It is recommended that the Director of Housing be authorised to serve a Notice of Variation on all the Council's Secure Tenants who were served with the Preliminary Notice to vary the Tenancy Agreement, with the new Agreement taking effect from 1 April 2014.

It is further recommended that the Director of Housing be authorised to complete the Tenancy Variation process for tenants whose tenancies commenced between 16 November 2013 and 17 February 2014 and therefore were unable to be included in the process.

Reasons for Proposed Decision:

In order for generally the same Conditions of Tenancy to apply to all of the Council's secure and Flexible (fixed-term) Tenants. Furthermore, the revised Conditions of Tenancy will give the Council greater powers when proceeding to Court on breaches of tenancy conditions.

Other Options for Action:

Not to implement the proposed new Standard Tenancy Agreement for the Council's existing and future Secure Tenants and continue with the current documentation.

To implement the proposed new Standard Tenancy Agreement for Secure Tenants with different conditions. However, if further material amendments are agreed it will be necessary to carry out a further consultation exercise with all Secure Tenants and seek the comments of the external legal advisor prior to serving the Notice of Variation and submit a further report to the Cabinet.

Report:

1. At its meeting on 22 July 2013 (Minute 27 refers), following detailed consideration by the Housing Scrutiny Panel and the Tenants and Leaseholders Federation, the Cabinet agreed the Conditions of Tenancy which now apply 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. The Cabinet further agreed 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 intention that the draft Conditions of Tenancy relating to Flexible (fixed term) Tenancies generally also apply to all existing and future Secure Tenancies for consistency.

3. The new Conditions of Tenancy would give the Council greater powers when proceeding to Court on breaches of tenancy conditions examples of which are as follows:

- stronger conditions to assist with combatting anti-social behaviour;
- a requirement that tenants notify the Council when they are absent from the premises for more than 30 consecutive days;
- increasing the Council's control over the keeping of pets in Council properties; and
- clearer conditions on tenant's responsibility to maintain their own garden and keep all trees in good condition.

4. The proposed Conditions of Tenancy have been considered by Stephen Knafler QC specialising in Housing Law. In his Note of Advice, he stated in summary that the proposed Tenancy Agreement in his opinion is legally compliant in particular with the Unfair Terms in Consumer Contracts Regulations 1999 and the Guidance on Unfair Terms in Tenancy Agreements 2005. Although he was happy with the actual conditions themselves, a number of changes to legal terminology were advised, which have been incorporated. The draft proposed new Standard Tenancy Agreement, is attached at Appendix 3 to the report.

5. Section 102 of the Housing Act 1985 provides that the terms of a secure tenancy may be varied by agreement between the landlord and the tenant. Any such variation (addition or deletion) would take place under Section 103 of the Act. The terms of a secure tenancy may be varied by the landlord through a Notice of Variation served on the tenant, stating the variations and their effect and the date which it takes effect. Prior to serving the Notice, a Preliminary Notice must be served:

- (a) informing the tenant of the landlord's intention to serve a Notice of Variation;
- (b) specifying the proposed variation and its effect; and
- (c) inviting the tenant to comment on the proposed variation within such time specified in the Notice, as the landlord considers reasonable, with the landlord considering any comments made within the time specified.

6. The Director of Housing was authorised by the Cabinet 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. It was also agreed that 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.

7. The Preliminary Notice was served on all Secure Tenants (including all joint tenants) by post on 15 November 2013, with a closing date for relevant comments of 16 December 2013. In addition, a telephone "Hotline" was set up to encourage tenants to phone in with their comments.

8. A total of 7,981 consultation forms were sent out with 497 (6.2%) being returned, the responses were as follows:

- (a) 139 were blank;
- (b) 151 contained comments, which were not considered relevant to the consultation, mainly requests for repairs, which were dealt with;
- (c) 161 indicated no comments;
- (d) 38 were considered to contain "relevant" comments; and
- (e) 8 complimented the Council on its services.

9. By the end of the consultation period, 61 calls have been received on the telephone "Hotline". Those leaving a contact number were called back; none of the "Hotline" calls were a relevant response.

10. The Cabinet is asked to consider the summary of the 38 responses considered to provide "relevant comments" from tenants. Suggested amendments to the Agreement as a result of the consultation are set out at Appendix 1. Relevant comments and the reasons for not amending the Agreement are set out at Appendix 2.

11. It is recommended that the Director of Housing be authorised to serve a Notice of Variation on all the Council's secure tenants who were served with the Preliminary Notice to vary the Tenancy Agreement in accordance with the requirements of the Housing Act 1985, with the new Agreement taking effect from 1 April 2014.

12. From the start of the consultation period being 16 November 2013 and 17 February 2014, being the expiry of the Cabinet call-in period, it is anticipated that around 80 new tenancies would have commenced. All of these Tenants would have signed the current Tenancy Agreement and have not been served with the Preliminary Notice. In order to include

these tenants in the Variation process, the Cabinet is further asked to authorise the Director of Housing to serve a Preliminary Notice on all Secure Tenants whose tenancies commenced between these dates and deal with any minor changes which result from the consultation exercise and serve the Notice of Variation at the appropriate time. Should the outcome of the consultation process result in any major changes, then a report will be submitted to the Cabinet and the Tenants and Leaseholders Federation for consideration.

13. It is further recommended that, from 18 February 2014 following the expiry of the Cabinet call-in period, all new Tenants be required to sign up to the new Tenancy Agreement.

14. The Council has granted 10 Flexible (fixed-term) Tenancies on properties comprising 3 bedrooms or more since they were introduced on 1 September 2013. The Cabinet is asked to note that no changes can be made to any of these Flexible (fixed-term) Tenancies. It is suggested that if the amendments are agreed, the Flexible Tenancy Agreement for all new Flexible (fixed-term) Tenancies also be amended in the same way as proposed for the Standard Secure Tenancy Agreement.

Resource Implications:

None.

Legal and Governance Implications:

Housing Act 1985.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Consultation with all secure tenants as set out in the report. The views of the Tenants and Leaseholders Federation on the draft proposed Tenancy Conditions were reported to the Cabinet on 22 July 2013, and the majority of their comments were incorporated into the Tenancy Agreement.

The Cabinet report was considered at the Tenants and Leaseholders Federation meeting on 16 January 2014 and they supported the proposals.

Background Papers:

None.

Impact Assessments:

Risk Management

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. It will also result in substantially different Conditions being in place for the Council's Flexible (fixed-term) Tenants.

APPENDIX 1

Summary of “Relevant Comments” received from Secure Tenants and Suggested Amendments

Agreement Paragraph Reference	Relevant Comments	No. of Tenants Commenting	Suggested Amendment
7.2	Unreasonable for any tenant to notify the Council if they are going to be absent from the Premises for a period of six weeks or more.	6	The Council’s Insurance Officer has advised that where any property is unoccupied for more than 30 consecutive days insurance cover may be withdrawn, it is therefore suggested that this Condition is amended and tenants are required to notify the Council when they are going to be absent for 30 consecutive days or more. This will also assist the Council to detect any non-occupation and ensure the property does not fall into disrepair.
7.3	This Condition would prohibit tenants from carrying out minor repairs to their own vehicles, or having a mobile repairer assisting them.	1	Amend Condition to: “The selling or repairing of a vehicle or vehicles is not permitted. The Tenant is allowed to undertake minor repairs to their own private vehicle at the Premises”

Agreement Paragraph Reference	Relevant Comments	No. of Tenants Commenting	Suggested Amendment
14.2	Should include: “not to obstruct pathways or pedestrian access”	2	Amend Condition to: “...nor on the Council’s estates or any of the Council’s garage forecourts. Not to park any vehicles where it would cause an obstruction to the emergency services or obstruct pathways or pedestrian access.”
16.6	The Council should not permit certain species of trees and they should not be planted too near to the property boundary	3	Amend Condition to: ”To keep all existing hedges to a maximum height of two metres. Not to plant Leyandi or Weeping Willow trees and to keep any tree in good condition.” It should be noted that further advice on trees are included within the Tenants Handbook.

APPENDIX 2

Summary of “Relevant Comments” received from Secure Tenants and Reasons for not Amending the Tenancy Agreement Conditions

Agreement Paragraph Reference	Relevant Comments	No. of Tenants Commenting	Reason for not Amending
4.5	At the end of the tenancy the Council should collect the keys from the outgoing tenant	1	It is the tenant's responsibility to return all keys at the end of the tenancy. The Council does not have staff resources to offer this service.
4.6	The Council should only store any possessions left at the premises by the outgoing tenant for a period of 14 days.	2	The Council will only be storing possessions which are of good standard or high value. A period of 28 days is considered reasonable and should not leave the Council open to challenge.
7.3	This Condition would prohibit a tenant from selling their own vehicle	1	As many properties own more than one vehicle, and may often change vehicles, this could result in a number being advertised for sale at the Premises.
7.3	Tenants should not be allowed to operate a business from the Premises	2	This would only be permitted where the business does not cause any nuisance or inconvenience to neighbours

Agreement Paragraph Reference	Relevant Comments	No. of Tenants Commenting	Reason for not Amending
8.2 (g)	When dealing with noise nuisance, the Council should consult with neighbours. The Council should do more on anti-social behaviour.	2	It is standard procedure to carefully consult with neighbours when dealing with noise nuisance. The Council has a number of policies and procedures for dealing with anti-social behaviour.
Section 9	Pets should be allowed in sheltered accommodation	1	Not considered appropriate due to potential nuisance in communal areas and all flats not having any access to garden areas.
Section 9	No pets should be allowed in any Council property.	1	Such a Condition would not be enforceable
10.1	Smokers living in sheltered housing schemes when smoking in their own flats should be required to keep their flat doors shut so smoke does not spread into the communal areas.	1	Such a Condition within a Tenancy Agreement would be difficult to enforce. When such a problem occurs it should be dealt with by the Scheme Manager locally. There is also a general condition not to cause a nuisance which could also cover this

Agreement Paragraph Reference	Relevant Comments	No. of Tenants Commenting	Reason for not Amending
12.3	The Council should repair dividing fences	1	Tenants are responsible for maintaining their own dividing fences. When the property is allocated where necessary, the Council installs post and wire boundary dividers and one "gossip" panel. The cost to the Council of maintaining all dividing fences would be significant.
12.5	Tenants should be able to fit any type of flooring	1	This Condition combats the problem of noise transmission due to laminate type flooring in flatted accommodation
12.5	In favour of the strengthened condition on controlling the type of flooring installed in flatted accommodation	2	Both tenants in favour of the proposal
12.6	Tenants should be able to install any lighting	1	Only surface mounted light fittings will be considered, as sunken spot lights cause damage to the ceiling
14.4	Any person parking a vehicle in a disabled parking bay at a sheltered housing scheme should be fined	1	The Council does not have such parking enforcement powers

Agreement Paragraph Reference	Relevant Comments	No. of Tenants Commenting	Reason for not Amending
16.5	Should be able to install own carpets in communal areas.	1	The Cabinet has agreed the circumstances when the Council will be granting permission in accordance with the advice of the Essex Chief Fire Officer
18.2	Any smoke or carbon monoxide alarms should be tested by the Council	8	The Council has a programme of installing such alarms in all of its properties. To date, around 50% of all Council properties have been provided with the alarms. The programme will be completed by 2015/2016. Those installed by the Council are tested annually as part of the gas safety check. This Condition is to cover those properties which have yet to have them installed.