

WELWYN HATFIELD BOROUGH COUNCIL  
CABINET HOUSING PANEL – 30 OCTOBER 2023  
REPORT OF THE SERVICE DIRECTOR (RESIDENT AND NEIGHBOURHOOD)

PROPOSAL TO END THE USE OF FLEXIBLE (5 YEAR FIXED TERM) TENANCIES

**1 Executive Summary**

- 1.1 The Localism Act 2011 introduced the ability for Councils and social housing providers to offer flexible fixed term tenancies. The aim was to allow social mobility and to ensure that housing stock was used as efficiently as possible against a backdrop of shortage in housing supply.
- 1.2 The Council introduced flexible 5 year fixed term tenancies from April 2013. There are currently 1,502 of these types of tenancy remaining.
- 1.3 Nationally it has been found that these types of tenancies have not realised the benefits to tenants and providers that were anticipated, and the Government have moved away from supporting this type of tenancy as have many councils and social housing providers.
- 1.4 A report was presented to Cabinet Housing Panel in 2022 recommending a review of our flexible 5 year fixed term tenancies and that we consult with our tenants on a proposal to end 5 year fixed term tenancies and offer secure tenancies instead.
- 1.5 A consultation was undertaken between 5 June and 3 July 2023 with our existing tenants and also prospective tenants on the housing needs register. The ending of the fixed term tenancies and move to secure tenancy was overwhelmingly supported by the vast majority of respondents (94%).

**2 Recommendation(s)**

- 2.1 To note the report's findings in terms of the effectiveness of fixed term tenancies, and the feedback from the public consultation undertaken which overwhelmingly supports the ending of fixed term tenancies and the transfer to secure tenancies.
- 2.2 To recommend to Cabinet that fixed term tenancies should end with immediate effect and that all new tenancies are granted as secure council tenancies.

**3 Explanation**

- 3.1 The Localism Act 2011 introduced discretionary flexible tenancies for housing providers to offer social housing tenancies for a fixed term instead of life-time tenancies. The overall objective was to make best use of housing stock against a backdrop of shortage in supply.
- 3.2 The key aims behind the Government's introduction of flexible tenancies were to:
  - Make the best use of council stock

- Increase mobility
  - Target social housing for those in genuine need
  - Support tenants to take up work
  - Support tenants into other housing options
  - Support vulnerable/young people to develop skills to maintain tenancies
  - Tackle ASB and other tenancy issues
- 3.3 The Council's Tenancy Strategy was drafted in 2012 and set a preference for using fixed term tenancies in our borough. The Council introduced the first Fixed Term Tenancies on a term of five years in 2013.
- 3.4 Significant research has been carried out at both a national level, as well as local, on the effectiveness the legislation has had on meeting the original aims of flexible fixed term tenancies, and what impact this has on tenants and social housing providers.
- 3.5 Despite the ambitious aims, there was a relatively low take up of the use of fixed term tenancies by social landlords generally. Of those social landlords who have adopted fixed term tenancies, many already have or are now looking to discontinue using them.
- 3.6 By 2018, following the publication of the Housing White Paper 2017 and Social Housing Green Paper, concern was mounting that flexible fixed term tenancies were not achieving their aims. Outcomes from the social housing review led to a growing recognition of the importance of housing stability (a significant challenge faced by those reliant on the private rented sector).
- 3.7 This was further endorsed by research commissioned from Heriot Watt University by the Government, who conducted a study on the effectiveness of flexible tenancies. The policy recommendations presented to the government by the researchers were that the 'Fixed Term Tenancy' policy framework for social housing should be abandoned.

#### Local Context

- 3.8 Findings from our own review of these flexible tenancies identified some significant challenges experienced in using these types of tenancy. Furthermore, the gains in social mobility and making better use of our housing stock have not been realised and have not had the success that was envisaged.
- 3.9 As explained above, the Council adopted the use of flexible tenancies for all new tenants from April 2013. A term of five years was agreed. The tenancy would be renewable at review for a further five years if the family's circumstances remained the same and/or they did not have in excess of £16,000 in savings or earned over £60,000.
- 3.10 The fixed term tenancy reviews commence some months before expiry of the 5-year term. If at review the property is deemed too large for the occupants, the tenancy will not be renewed, and the council will help tenants to downsize to a more suitably sized property before the end of their flexible tenancy.
- 3.11 If the tenant needs larger accommodation, then the flexible tenancy at their current property would be renewed for a further five years whilst they await a transfer via the housing needs register.
- 3.12 Those tenants that do not qualify for housing due to their savings or income level would not have their flexible tenancy renewed and they would need to find

alternative accommodation in the private sector by the end of their flexible tenancy.

- 3.13 Both the flexible tenancies and the reviews have been problematic. The reviews take up a significant amount of officer time and involve many teams.
- 3.14 In addition, the Housing Management IT system (Orchard) does not fully support us to manage flexible tenancies or the need for a flexible tenancy review in an effective way, so that a number of manual systems are required which is inefficient and resource intensive.
- 3.15 Of the 2375 flexible fixed term tenancies that have been offered, 485 came to a natural end for the usual variety of reasons a tenancy ends, and we were able to re-let them. This outcome would have been the same if they were secure tenancies. A total of 363 fixed term tenancies were reviewed and then renewed because there were no significant change in circumstances. Out of the 850 flexible tenancies that have ended only two properties became available to re-let as a direct result of the fixed term flexible tenancy review process.
- 3.16 At a local level, flexible tenancies have proven to be administratively complex to manage, time consuming and resource intensive with no real positive outcomes for the Council or tenants.

#### Consultation with tenants

- 3.17 A report was presented to Cabinet Housing Panel on 7<sup>th</sup> March 2022 which included the recommendation to consult with key stakeholders on our Tenancy Strategy, Tenancy Policy and to support the use of secure tenancies. It was also recommended to make changes to our secure tenancy terms and conditions.
- 3.18 In the process of reviewing the tenancy terms and conditions and use of flexible tenancies, internal and external legal advice was sought. It was recommended that the Council discontinue the use of flexible tenancies as soon as possible, and continue separately with the review of the tenancy strategy, policy and terms and conditions.
- 3.19 A public consultation was conducted between Monday 5<sup>th</sup> June 2023 and Monday 3<sup>rd</sup> July 2023 on proposal to end flexible (5 year fixed term) tenancies. A short survey was undertaken asking resident's views on whether the Council should end the use of flexible fixed-term tenancies and issue secure tenancies in their place. Information and frequently asked questions were provided to inform the residents about the proposed use of lifetime tenancies instead of flexible fixed term tenancies.
- 3.20 All 8,605 of our tenants received the survey information with a link to participate. Those who do not use email received the information by post, including some in large print. We offered tenants the option to request a paper copy of the survey, and 11 residents utilised this option.
- 3.21 Additionally, all 3,097 prospective tenants on our housing needs register were sent the consultation information by email or post if they did not have an email address, with the same option of requesting a paper copy.
- 3.22 The majority of the respondents to the survey were existing council tenants (over 90%). Of the 718 residents who responded to the survey question, 94% were in support of ending the use of flexible fixed-term tenancies.

- 3.23 Included within the 718 responses to the survey, we received written comments from 22 respondents. Ten of these were not in favour of ending the use of flexible fixed term tenancies citing concerns in relation to under occupation. Some were concerned about earning potential and the potential future ability of tenants to purchase their own homes.
- 3.24 If this recommendation is agreed, tenants currently on 5 year flexible fixed-term tenancy will be notified in writing of this change, informing them that their tenancy will automatically transition to a periodic secure tenancy once their 5-year term expires.

## **Implications**

### **4 Legal Implication(s)**

- 4.1 Ceasing the use of flexible fixed term tenancies and reverting to secure tenancies would not require a new tenancy agreement being issued to all tenants with a fixed term tenancy at this time. All tenants would remain on flexible fixed term tenancies until their 5-year period comes to an end. At that time, we would not renew them and therefore they would automatically become a periodic secure tenancy.

### **5 Financial Implication(s)**

- 5.1 There are no direct financial implications. The process of changing the Strategy and Policy will be managed within existing resources and the time freed up by ending the use of the flexible tenancies will improve efficiency in the team.
- 6.1 There is a risk with reverting to secure tenancies that some residents currently on a fixed term tenancy, or who acquire one of our tenancies moving forward, may in the future have the right to remain in properties that are larger than they require (known as under-occupation).
- 6.2 Evidence shows that the flexible fixed term tenancy process has not proven to be the solution to this problem. We will mitigate against this with work being carried out by the “rightsizing project”, the roll out of 5-year rolling tenancy audits for all tenants and an improved housing offer for older tenants.

### **6 Risk Management Implications**

- 6.1 The risks related to this proposal are:
- There is a risk with reverting to secure tenancies that some residents currently on a fixed term tenancy or who acquire one of our tenancies moving forward, may in the future have the right to remain in properties that are larger than they require (known as under-occupation).
  - Evidence shows that the flexible fixed term tenancy process has not proven to be the solution to this problem. We will mitigate against this with work being carried out by the “rightsizing project”, the roll out of 5-year rolling tenancy audits for all tenants and an improved housing offer for older tenants.

### **7 Security and Terrorism Implication(s)**

- 7.1 None

### **8 Procurement Implication(s)**

8.1 None

**9 Climate Change Implication(s)**

9.1 None

**10 Human Resources Implication(s)**

10.1 None

**11 Health and Wellbeing Implication(s)**

11.1 There is evidence that flexible tenancies have had a detrimental effect on the health and wellbeing of tenants with that type of tenancy, due to the additional anxiety caused by the insecure nature of fixed term tenancies. Ceasing the use of this type of tenancy should therefore have a positive impact on health and wellbeing.

**12 Communication and Engagement Implication(s)**

12.1 All tenants who currently have a 5-year flexible fixed-term tenancy will be advised in writing that this will not be renewed but they will instead transition to a lifetime secure tenancy.

**13 Link to Corporate Priorities**

13.1 This report aligns with the of Council's Strategic Aim of 'Quality Homes Through Managed Growth', and specifically contributes to the objective of 'providing high quality housing, thriving neighbourhoods and sustainable communities.'

**14 Equality and Diversity**

13.1 An Equality Impact Assessment (EqIA) was completed, and no negative impact was identified on any of the protected groups under Equalities legislation. The EqIA is in Appendix A.

Name of author	Lydia Bradbury
Title	Housing Portfolio Manager
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Appendices:

Appendix A – EqIA