

WELWYN HATFIELD BOROUGH COUNCIL
CABINET HOUSING PANEL – 7 MARCH 2022
REPORT OF THE HEAD OF COMMUNITY AND HOUSING STRATEGY

REVIEW OF THE TENANCY STRATEGY, SECURE TENANCIES AND THE USE OF FLEXIBLE TENANCIES

1 Executive Summary

- 1.1 The Localism Act 2011 made it mandatory for all Local Authorities to have a Tenancy Strategy. Their purpose is to set out matters, which all social housing providers in the area, must consider when framing their own tenancy policies.
- 1.2 In addition to the mandatory requirement to have a Tenancy Strategy, the Localism Act 2011 introduced new discretionary flexibilities for housing providers to offer social housing tenancies for a fixed term instead of life-time tenancies. The aim was to make best use of housing stock against a backdrop of shortage in supply.
- 1.3 The Council's Tenancy Strategy was drafted in 2012 and set a preference for using the flexibilities of fixed term tenancies in our area.
- 1.4 The council introduced the first Fixed Term Tenancies on a term of five years in 2013. Many of the earlier fixed term tenancies have now reached the end of their five-year term. The Strategy required a review to determine if the outcomes delivered still meets the council's requirements.
- 1.5 An extensive review has been carried out which studies sector literature on the topic, Chambers briefings, Government Reports, Case Law, and other council's reviews on the subject
- 1.6 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 and what impact this has on tenants and social housing providers.
- 1.7 The evidence gathered at a national level, suggests that Flexible Fixed Term tenancies have not met their intended aims. In acknowledgement of this and in recognition of the importance of housing stability for those who rent, the Government cancelled further plans to make fixed term tenancies mandatory. In fact, they have now moved away from supporting social tenancies on a fixed term altogether.
- 1.8 Findings from our own review on our progress with 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.
- 1.9 In addition, the Covid pandemic has highlighted the importance of safe and secure housing and clearly added additional pressures on the population that no one could have anticipated.

- 1.10 Additionally, a review of the current secure tenancy terms and conditions has been carried out, with a number of changes required to further clarify landlord and tenant obligations.
- 1.11 The Housing Act 1985 sets out the requirements to consult and notify tenants where changes to tenancy agreements are made, of which these requirements will be complied with through the tenancy agreement review process.
- 1.12 This report seeks approval to amend our tenancy strategy to promote the use of secure tenancies in our area, and above all within our own social housing stock, to replace the council's previous preference for fixed term tenancies.
- 1.13 Combining the review and consultation of the Tenancy Strategy, Policy and tenancy agreement will ensure a co-ordinated approach of any subsequent changes to all documents, removing duplication of work if done separately.

2 Recommendation(s)

- 2.1 To recommend to Cabinet that a consultation process with key stakeholders and tenants is followed to seek views on:
 - a) The proposal to amend the current Tenancy Strategy and Tenancy Policy to support the use of lifetime secure tenancies for social housing residents in this borough.
 - b) The identified and proposed changes to the existing secure tenancy terms and conditions.
- 2.2 Subject to approval of 2.1, to recommend to Cabinet that a further report is brought setting out the findings of the consultation on the Tenancy Strategy, Tenancy Policy and secure tenancy agreement and recommending any relevant updates to all three documents as a result. Tenancy Strategy and Tenancy Policy as a result.

3 Explanation

Flexible Tenancies National Context

- 3.1 The Localism Act 2011 introduced new discretionary flexibilities for housing providers to offer social housing tenancies for a fixed term. The motivation for the flexibilities was to improve best use of stock in the context of a shortage of supply. 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
- 3.2 The Government went on to further enhance the use of Flexible Tenancies, by introducing additional changes in the Housing and Planning Act 2016, to make it mandatory (*no-longer discretionary*) for all new local authority tenancies to be fixed term moving forward.

- 3.3 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.
- 3.4 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, lead to a growing recognition of the importance of housing stability (a significant challenge faced by those reliant on the private rented sector).
- 3.5 This was further enforced by research commissioned from Heriot Watt University by the Government in May 2018, 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. The decision to implement the changes set out in the Housing and Planning Act 2016 was abandoned by Government.
- 3.6 The Government's annual Social Housing Statistics show that the granting of fixed term tenancies is in decline. The data for 2019/20 shows that of the 306,000 new social housing lettings, only 15% had a fixed end date (46,000 tenancies) If you look at those issued by local authorities alone, this drops to only 4% of all new social housing tenancies.

Legal Context

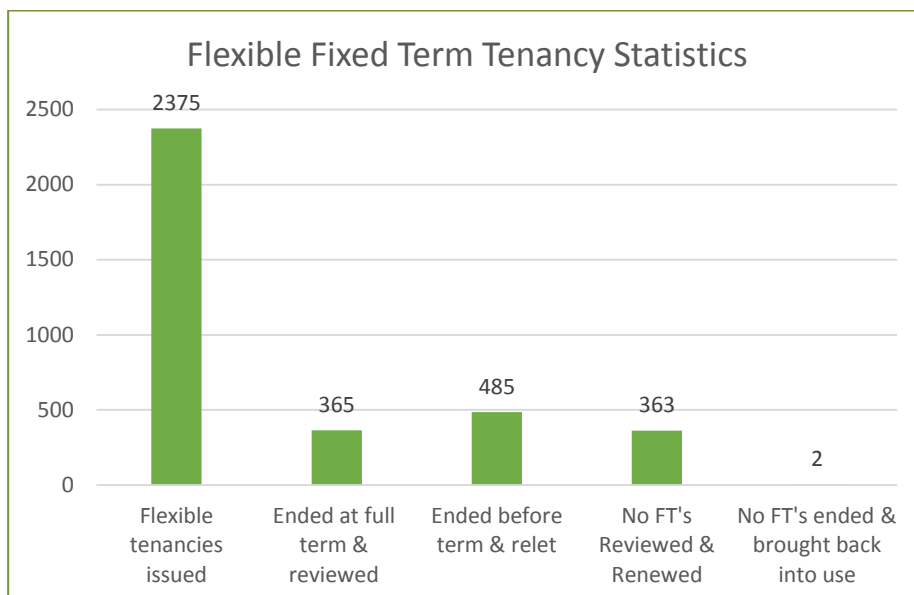
- 3.7 Legal complications have been created for many housing providers, around ending flexible tenancies before their term, some which were expected and others that were not so clear to many providers at the time they were adopted
 - 3.7.1 An example of this is, any action or litigation commenced during the tenancy, ends at the end of the fixed term, effectively providing the tenant with a clean slate; where we really don't want this to happen, we can 'hold the flexible tenancy over' to avoid obsoleting any current orders and creating former tenant arrears, however this automatically creates a secure periodic tenancy, which defeats the objective of a flexible fixed term.
 - 3.7.2 Some flexible tenancies have also had unintended legal consequences for the tenant. For example, in a joint flexible fixed term tenancy, one joint tenant is unable to end the tenancy; so, if one party leaves without a joint relinquishment the other party has limited choices until the fixed term ends. This has happened in our borough and resulted in affordability issues and debt accruing for the tenant through no fault of their own.

Local Context

- 3.8 Welwyn Hatfield adopted the use of flexible tenancies for all new tenants offered a general needs tenancy 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.
- 3.9 The council has issued 2375 flexible fixed term tenancies since they were introduced and there are currently 1502 tenants with a flexible tenancy in the council's stock.
- 3.10 The fixed term tenancy reviews have been underway for some time. The process begins at least 9 months before expiry. This is to allow time for any notices to be

correctly served by the statutory minimum timescale of six months before the flexible tenancy ends.

- 3.11 If at review the property is deemed too large for the occupants, the tenancy will not be renewed, and the council will help them downsize to a more suitably sized property before the end of their flexible tenancy.
- 3.12 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.
- 3.13 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.
- 3.14 Both the flexible tenancies and the reviews have been problematic. The reviews take up a significant amount of officer time
 - a) On average, each review takes around an hour and a half to collate the paperwork and complete the visit.
 - b) The decision whether to extend the tenancy or not often requires input by officers from the income team, neighbourhoods' team, and housing needs team to ensure full consideration has been given.
 - c) If the tenant/s appeal the outcome, the time increases further due to the need to prepare the relevant paperwork, a more senior officer's time to review, including arranging and carrying out the necessary hearing if required.
- 3.15 The time taken up with flexible tenancy reviews has meant that less time is available to conduct general tenancy audits, which would be more useful to carry out on all general needs' properties. This means those tenants with a secure tenancy cannot be visited as often as we would like.
- 3.16 The Housing Management IT system Orchard, a commonly used system for Housing Providers, despite attempts to upgrade, does not have the capacity to support flexible tenancy management or help monitor the need for a flexible tenancy review in an effective way, so that a number of manual systems are required. The resulting manual inputting, keeping alternative databases, automatic defaults to secure tenancies and un-reliable reporting, is resource intensive, open to human error and inefficient.
- 3.17 The council did not expect any major impact in the relative short-term of introducing flexible tenancies. A longer-term approach was anticipated because we knew this would require a change in culture around the use and expectation of council homes. The table below sets out the figures for flexible tenancy use and the outcomes at the time of the flexible tenancy review.



- 3.18 The table demonstrates 485 flexible tenancies 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. This means that 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.
- 3.19 In general, locally, although a number of our partner housing providers adopted fixed term/flexible tenancies when the law was changed, they are now moving back to secure/assured tenancies. Examples include Hightown Housing Association, Guinness Trust and Clarion; other councils in Hertfordshire such as St Albans and Dacorum have also reviewed their use of flexible tenancies and made the decision to re-instate secure tenancies.
- 3.20 Outcomes have shown that flexible tenancies have not met their intended aims. In recognition of this and of the importance of housing stability for those who rent in the social housing sector, the Government has moved away from supporting tenancies on a fixed term.
- 3.21 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.
- 3.22 An extension of the fixed term to 10 years to make more gains was considered but rejected because
- No other authorities that might have considered this, have chosen this route, and part of the reason for this could be the following point
 - The parliamentary debate on the mandatory use of flexible tenancies (Housing and Planning Act 2016) after several readings the Government made concessions to agree to 10-year terms in more circumstances than not, but even with the 10 year fixed term the Government still didn't proceed with implementing it.
- 3.23 Another issue to consider was the fact that one of our key drivers in implementing flexible tenancies was to tackle under-occupation. At the launch of this year's National Housing Report, all the expert contributors were unanimous in their opinion that a major impact from the pandemic on housing, will be a more

disproportionally negative impact on younger people. Housing affordability is an increasing challenge in many parts of the country, but particularly in the East of England, as the housing markets continue to thrive.

- 3.24 It is anticipated that more and more young people will struggle to access housing over the next decade. The most likely consequence of this will be even more young people remaining with parents and family for longer. This could possibly reduce under occupation in the longer term and reduce further the need for shorter fixed terms.
- 3.25 The Council proposes to commence with a rolling programme of tenancy audits to ensure we have updated information on occupancy, support requirements and to continue to encourage discussion around downsizing and support for tenants. With the appropriate capacity to deliver this programme of work, this could deliver increased outcomes of tackling property condition, tenancy fraud and supporting mobility to appropriately sized homes, thus in turn making best use of stock.
- 3.26 Taking all the above into account it is recommended that the council ceases further use of flexible tenancies, for either new tenants or tenants whose current fixed term tenancy is coming to an end. In addition, the council should amend its Tenancy Strategy and policy to reflect its revised preference for use of secure tenancies over flexible / fixed term tenancies in our area.

Secure Tenancy Agreements

- 3.27 The council's secure tenancy agreement we last reviewed in 2013, with terms and conditions attached to the agreement changed through a deed of variation sent to tenants in December 2013.
- 3.28 Since this change, and following the Housing Operations Transformation Programme in 2017/18, a number of key housing and tenancy management policies have been developed, setting out the statutory requirements and ensuring processes for these functions are aligned to the service structures across all Housing Services.
- 3.29 The terms and conditions of the council's secure tenancy agreements need to accurately reflect these changes and align to the new policy documents associated with managing the council's housing stock.
- 3.30 Aside from reformatting the tenancy agreement, there are a number of changes required to the terms and conditions to provide clarity on the obligations of both tenants and the council, particularly in the management of trees in council housing gardens, use of balconies and future proofing the document for inclusion of service charges at a later date.
- 3.31 To make changes to the tenancy agreements, a consultation is required with existing tenants, with clear requirements set out in legislation on how such changes are managed. All legislative requirements to change the tenancy agreement terms and conditions will be followed.

Implications

4 Legal Implication(s)

- 4.1 Ceasing the use of flexible fixed term tenancies and reverting to secure tenancies would require a new tenancy agreement being issued to all tenants with a fixed term tenancy.

- 4.2 The Council is currently undertaking a review and refresh of its current tenancy agreement terms and conditions, which once consulted and agreed, will involve a new tenancy agreement or deed of variation being issued. This makes it a timely opportunity to implement a change of this nature and combine the request to consult on changes to existing terms and conditions at the same time
- 4.3 Section 103 of the Housing Act 1985 requires the council to notify all secure tenants of its intention to vary the current tenancy agreement, we are also required to give four weeks-notice and tell the tenants when the variations will take effect. This will all be built into the consultation, review and notification process as necessary.

5 Financial Implication(s)

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, should this proposal be agreed, will be directed towards a programme of tenancy audits.

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) impact medium and likelihood medium; Medium.
- 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 This report recommends that a consultation takes place on the proposals set out in this report with key stakeholders, including tenants and Registered Providers.

13 Link to Corporate Priorities

13.1 The subject of this report is linked to the Council's Strategic Aim 'Quality Homes Through Managed Growth', and specifically to the achievement of 'providing high quality housing, thriving neighbourhoods and sustainable communities.

14 Equality and Diversity

14.1 An Equality Impact Assessment (EqIA) was completed on 17 January 2022 and no negative impact was identified on any of the protected groups under Equalities legislation.

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Background papers to be listed (if applicable)

1. Gov.uk BRIEFING PAPER Number 7173, 2 September 2018: Social housing: flexible and fixed-term tenancies (England)
2. National Housing Statistical Release 28 January 2020 (MHCLG)
3. Fixed Term Tenancies: Revealing Divergent Views on the Purpose of Social Housing – heriot Watt University

Appendices to be listed