

Key Decision Required:	NO	In the Forward Plan:	NO
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CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)

25 NOVEMBER 2024

A) TO UNDERTAKE CONSULTATION ON THE PROPOSED INTRODUCTION OF FLEXIBLE TENANCIES FOR CERTAIN PROPERTIES

(Report prepared by Emma Norton)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To obtain approval from the Corporate Director (Operations and Delivery), in consultation with the Portfolio Holder with responsibility for Housing, to undertake consultation with relevant stakeholders regarding the proposed introduction of flexible tenancies for Council properties with three or more bedrooms and those that have been significantly adapted for tenants with disabilities.

EXECUTIVE SUMMARY

At the current time, the Council offers the following types of tenancy:

- Introductory tenancies
- Secure tenancies
- Temporary non secure tenancies

In 2011, the Localism Act introduced the power for local authorities to offer flexible tenancies to new tenants after 1 April 2012. Flexible tenancies are secure fixed term tenancies with a minimum of two years, although a five-year term is more commonly used.

Flexible tenants enjoy similar rights as secure tenants, including the Right to Buy. However, at the end of the fixed tenancy period, a tenants circumstances are reviewed and a decision made as to whether to offer either another fixed term tenancy, a secure tenancy or to not renew the tenancy

These changes were intended to give local authorities and housing associations greater freedom to manage their housing stock by ensuring that social housing is allocated to those who need it most and that lifetime tenancies are not given to tenants irrespective of how their circumstances might change in the future.

The Council has not previously taken up the option to introduce flexible tenancies. However, the current level of demand for Council accommodation coupled with the limited turnover of existing tenancies means that consideration is now being given to the use of this tenancy type for new tenancies that are in short supply and / or in high demand.

Homes identified as being in short supply or high demand are:

- Properties with three or more bedrooms
- Properties that have been significantly adapted for a tenant with disabilities. This will include properties that have undergone structural alterations or extension to accommodate the needs of a disabled person

The availability of these homes has become increasingly scarce due, in part, to the use of secure tenancies, which allow tenants to remain in the property for as long as they wish, providing they abide by their tenancy agreement, regardless of changes in their household or other circumstances. Using flexible tenancies for these homes would allow more people in housing need to benefit from larger or adapted properties when they need them

RECOMMENDATIONS

That the Corporate Director (Operations and Delivery) agrees to the undertaking of consultation with relevant stakeholders regarding the proposed introduction of flexible tenancies for Council properties with three or more bedrooms, as well as those that have been significantly adapted for people with disabilities. The outcome of this consultation will inform and be incorporated into the Council's Tenancy Policy, which will be subject to Cabinet approval in 2025.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Undertaking consultation regarding the proposed introduction of flexible tenancies and the subsequent production of a Tenancy Policy will contribute to the following priorities included in the Council's Corporate Plan 2024 – 2028:

- Pride in our area and services to residents
- Raising aspirations and creating opportunities
- Working with partners to improve quality of life

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There would be no direct financial implication associated with the adoption of flexible tenancies for certain types of properties. Tenants of flexible tenancies would be charged the same level of rent as secure tenants.

However, when a flexible tenancy is renewed and there are rent arrears in place at expiry of the tenancy, these arrears would be classed as former tenant arrears, which can be more difficult to collect. This is because a new flexible tenancy is granted at expiry of the initial tenancy and not a continuation of the flexible tenancy.

There is also an administrative burden associated with the management of flexible tenancies. This involves increased and continual monitoring and reviewing processes to ensure tenants still qualify to remain at their property.

Risk

The Council is required to explain its reasons if it decides not to renew the tenancy and give the tenant a chance to challenge the decision.

The Council would need detailed policies setting out whether fixed term tenants should be offered alternative accommodation or expected to make their own arrangements and there is a danger of indirect discrimination against certain groups, for example, older tenants are more likely to be under occupying when their families grow up and move out.

Where alternative Council accommodation is to be provided, sufficient alternatives would need to be available at the right time and this may not always be possible.

The regulatory framework for social housing contains a requirement set out in the Tenancy Standard that compels social landlords using flexible tenancies to have an agreed tenancy policy. The ending of the tenancy can also trigger a complaint and landlords need to be able to demonstrate that any action taken was in line with policy previously agreed (in order to deliver openness and transparency).

LEGAL

Council tenants became secure tenants following the 1980 Housing Act. After the 1996 Housing Act, introductory tenancies came into being and these were introduced in Tendring in 2011 as a means of combatting anti-social behaviour and other serious breaches of tenancy by new tenants.

The Localism Act 2011 introduced flexible tenancies enabling these to be offered to new social housing tenants. A decision to renew them at the end of the term is made following a detailed review of factors including income, employment status, under-occupancy and behaviour.

A court can only refuse an application for possession relating to a flexible tenancy if the correct procedure has not been followed by the landlord or if the court is satisfied that the decision not to grant another tenancy was otherwise “wrong in law”.

To end a fixed term tenancy, the landlord must first serve a notice of non-renewal and then a notice of seeking possession before possession proceedings can be commenced in court.

The court must make an outright possession order if:

- the fixed term has expired
- no further tenancy has been granted
- the local authority served the correct notices

The Council can also recover possession during the fixed term of a flexible tenancy by serving a notice of seeking termination of the tenancy and the recovery of possession. The same statutory grounds of possession can be relied upon as apply to periodic secure tenancies.

The Housing Act 1985 (as amended) applies with regard to the management of Council housing. In accordance with Section 105 of this Act, there is a legal obligation to consult with tenants with regard to any changes, which the Council wishes to make to its housing management arrangements.

The 2016 Housing and Planning Act set out proposals to ensure that all new lettings offered by councils in relation to general needs housing were made using flexible tenancies. However, the plans were abandoned in August 2018 with the launch of the Social Housing Green Paper following the disaster at Grenfell Tower.

The Social Housing (Regulation) Act 2023 introduced revised Consumer Standards alongside a new Statutory Code of Practice from April 2024. The Consumer Standards contain specific expectations registered providers of social housing must comply with and detail the outcomes that providers are expected to achieve. These standards came into force on 1 April 2024 and one of these standards, the Tenancy Standard outlines fair allocation of letting of properties as well as requirements for managing tenancies.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of Crime and Disorder, Equality and Diversity, Health Inequalities, Consultation/Public Engagement and Wards; and any significant issues are set out below.

Full consultation will be carried out with relevant stakeholders.

Ward

All

PART 3 – SUPPORTING INFORMATION

BACKGROUND

At the current time, the Council offers the following types of tenancy:

➤ **Introductory tenancy**

All new potentially secure (periodic) tenants start with an introductory 'trial' period of 12 months. During this time, the tenant has to show that they can sustain a tenancy and meet the conditions set out in the Council's standard tenancy agreement.

An introductory tenancy gives similar rights to that of a secure tenant, however the tenant can be evicted more easily. There are also certain restrictions such as:

- not being able to make improvements to the property;
- not being able to swap their property with another council tenant; and
- not being able to apply to buy the property through the Right to Buy scheme

A tenant will automatically become a secure tenant after 12 months, unless the Council has either:

- started action to evict the tenant; or
- extended their introductory tenancy for a further six months. This may happen where there have been minor breaches of the tenancy conditions but where these breaches are not serious enough for the Council to apply to the County Court for possession of the property.

➤ **Secure periodic tenancy**

As a secure tenant, a tenant can normally live in the property for the rest of their life, provided they do not break any of the conditions of the tenancy. A secure (periodic) tenancy can only be ended by way of a Possession Order granted by the County Court.

Secure tenants have the right to:

- buy their property through the Right to Buy scheme;
- exchange their home with another council or housing association tenant – with their landlord's permission;
- make improvements to the property – with their landlord's permission for some types of work; and
- rent out rooms – but not sub-let the whole property

If a tenant has a secure tenancy, under the Anti-Social Behaviour Act 2003, the Council has the right to apply to the county court for a demotion order if the tenant or someone they live with or who visits the property has been acting or threatening to act anti-socially. This would end their secure tenancy and replace it with a less secure type that can be ended more easily. If a tenancy is demoted, the tenant loses a number of the rights they enjoyed as a secure tenant including the right to buy the property and the right to exchange.

➤ **Temporary non-secure tenancy**

A non-secure tenancy is a legal agreement between a tenant and the Council to occupy a

property. Non-secure tenants enjoy less security of tenure than both introductory or secure tenants

Non Secure tenants cannot:

- buy their property through the Right to Buy scheme;
- exchange their home with another council or housing association tenant;
- take in lodgers or rent out rooms;
- pass their tenancy to someone else when they die (also known as succession)

It is also much easier to end a non-secure tenancy since there is no requirement to prove a statutory ground for possession. Such tenancies can be ended after four weeks, following the issue of a valid Notice to Quit.

Non-secure tenancies are normally granted where short-term temporary accommodation is provided. For example, if a person has applied for council housing because they are homeless or threatened with homelessness, they may be given a non-secure tenancy whilst their homelessness application is determined, or whilst waiting for suitable accommodation to become available.

Flexible tenancies

The Localism Act 2011 introduced flexible tenancies, which offer a tenancy for a fixed period. The minimum term for a flexible tenancy is two years although most housing providers appear to offer flexible tenancies for between five and ten years.

Where flexible tenancies are in use, the decision has been influenced by the need to make best use of the housing stock available as well as a view that social housing should be available to those who need it the most at the time when they need it the most.

Tenants with a flexible tenancy can:

- buy their property through the Right to Buy scheme;
- exchange their home with another council or housing association tenant – with permission;
- make improvements to their home with the landlords written permission and
- rent out rooms – but not sub-let the whole property.

A detailed assessment of the tenant's circumstances and housing need would be required prior to the expiration of the fixed term and then the Council may:

- offer another fixed-term tenancy;
- offer a secure tenancy; or
- not renew the tenancy.

The Council is required to explain its reasons if it decides not to renew the tenancy and give the tenant a chance to challenge the decision.

There are advantages and disadvantages in connection with the use of flexible tenancies and a summary of these are set out below:

Advantages of flexible tenancies

- Social housing landlords can make better use of their affordable housing by moving families on when or if their circumstances change and they no longer need that size properties or can afford to move into another form of housing.
- Reduces under occupation of family homes

- Supports the desire to give those in need a helping hand for a short time whilst this is really needed
- Opportunity to review with the tenant their Tenancy Agreement and to consider whether their current property meets their needs including location
- The conduct of some tenants may be improved if they believe their tenancy will not be renewed

Disadvantages of flexible tenancies

- The review process is intended to create an opportunity to consider the individual circumstances of each flexible tenant and move them to smaller accommodation or encourage them to move into home ownership or the private sector if they can afford this. The proportion of tenants whose circumstances improve enough to purchase a property or move into the private rented sector could be low.
- Alternative accommodation of any size may not be readily available and there could be a shortage of smaller accommodation. Our Allocations Policy results in those in most in need being offered properties first and as most flexible tenants are adequately housed their applications attract low priority.
- The Council already has an incentive scheme in place to assist those wishing to transfer to a smaller property and the benefit cap also encourages people to transfer to suitable sized accommodation.
- Forcing tenants to downsize into a smaller property or move out into the private sector increases stress and anxiety for the household who inevitably fear that they could be made homeless.
- Tenants who feel less settled and believe they will be moved on are less likely to take responsibility for their home and invest their time and money into it. This could result in higher repair costs
- Moving families about is disruptive for those with children who might be asked to move away from friends, family support networks and schools.
- Increasing the turnover of tenancies on our estates is not supportive of the desire to see strong, healthy, resilient communities
- Administrative burden associated with monitoring and reviewing of fixed term tenancies.

The Council has not previously taken up the option to introduce flexible tenancies. However, the current level of demand for Council accommodation coupled with the limited turnover of existing tenancies means that consideration is now being given to the use of this tenancy type for allocations of certain property types, subject to consultation with relevant stakeholders.

During the period 1 April 2022 to 31 March 2024, the Council allocated 67 tenancies of 3 or 4 bedroom properties.

The proposed consultation will be carried out with existing Council housing tenants, as well as those on the Housing Register and other housing providers operating in the Tendring district.

The Social Housing (Regulation) Act 2023 introduced revised Consumer Standards alongside a new Statutory Code of Practice from April 2024. The Consumer Standards contain specific expectations registered providers of social housing must comply with and detail the outcomes that

providers are expected to achieve. These standards came into force on 1 April 2024 and the Tenancy Standard outlines the requirements for letting and managing tenancies.

The specific expectations in relation to flexible tenancies are as follows:

Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud, and set out:

- a) The type of tenancies they will grant.
- b) Where they grant tenancies for a fixed term, the length of those terms.
- c) The circumstances in which they will grant tenancies of a particular type.
- d) Any exceptional circumstances in which they will grant fixed term tenancies for a term less than five years in general needs housing follows any probationary period.
- e) The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
- f) The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered, and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
- g) Their policy taking into account the needs of those households who are venerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
- h) The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy
- i) Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.

Registered providers must grant general needs tenants a periodic secure or assured (excluding periodic assured shorthold) tenancy, or a tenancy for a minimum fixed term of five years, or exceptionally, a tenancy for a minimum fixed term of no less than two years, in addition to any probationary tenancy period.

Before a fixed term tenancy ends, registered providers shall provide notice in writing to the tenant stating either that they propose to grant another tenancy on the expiry of the existing fixed term or that they propose to end the tenancy.

If a decision is taken to implement flexible tenancies, following consultation, this will need to be in accordance with the specific requirements and outcomes of the Tenancy Standard and these would be incorporated into the Council's Tenancy Policy and accompanying procedures.

FURTHER HEADINGS RELEVANT TO THE REPORT

None

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Proposed consultation document