

6 January 2016		ITEM: 8
Housing Overview and Scrutiny Committee		
Fixed (Flexible)Term Tenancies		
Wards and communities affected: All	Key Decision: None	
Report of: Dermot Moloney, Strategic Lead, Housing		
Accountable Head of Service: Richard Parkin, Head of Housing		
Accountable Director: David Bull, Director of Planning, Transportation & Housing		
This report is Public		

Executive Summary

The ability for a Council to issue Fixed-term (or Flexible) Tenancies was introduced in 2012 by the Localism Act 2011.

As a time-limited form of secure tenancy (typically 5 years) they still provide many of the same rights as a secure tenancy, including the right to buy and the right to succeed.

Thurrock Council considered introducing fixed term tenancies in 2012-13 as part of its Strategic Tenancy consultation but decided against this for the following reasons:

- They do not promote sustainable communities;
- The ending of fixed term tenancies could be complex and could discriminate against certain groups – issues such as age could be factors used for criteria;
- The process of review could be very complex and resource intensive - there was little benefit from adopting this style of tenancy compared to the high costs involved.

Subsequently, the Council's Tenancy policy adopted by Cabinet in March 2013 implemented the following tenancies in addition to the secure tenancies already in place:

- Introductory Tenancies
- Demoted Tenancies

On 8 December 2015 Brandon Lewis (Housing & Planning minister) announced an amendment to the Housing and Planning Bill which would result in the ending of secure tenancies and the introduction of fixed term tenancies for new Council tenants.

Officers have been asked to reconsider the implications of fixed term tenancies in order to enable a discussion on their introduction.

1. Recommendation(s)

1.1 That Housing Overview and Scrutiny note this report and make any comments necessary.

2. Introduction and Background

2.1 Fixed term tenancies were introduced following the Localism Act 2011, where councils had two obligations:

- 1) To produce a Strategic Tenancy Policy covering all social housing in the borough
- 2) Produce a Council housing Tenancy Policy outlining how the Council would manage its own tenancies.

The government envisaged that fixed term tenancies (typically 5 years) would allow housing providers to;

- Increase mobility by encouraging tenants to move between properties and sectors as their housing need changed;
- Ensure that social housing is used only for those in genuine need, by moving people earning a higher wage into other forms of tenure;
- Target social housing to meet the needs of the community, for example by addressing under-occupation of larger family accommodation;
- Promote localism through local decision making at a community level

Following the 2011 Act, Members wished to consider fixed term tenancies, along with Introductory and Demoted tenancies, to develop a more proactive and supportive way to manage tenancies.

However, one of the key considerations was the extra cost associated with the management of fixed term tenancies against their benefit.

Consultation around tenancy types took place with the Tenants Panel and other key stakeholders. In addition an online survey was shared with over 15,000 tenants and prospective tenants.

Of the 173 who responded, the following results were obtained:

- 45% felt that fixed term tenancies were a good idea, 38% felt they were not and 17% did not know;
- 90% favoured introductory tenancies and 86% felt that demoted tenancies were a good idea.

Members considered all the factors including the survey results and agreed to implement Introductory and Demoted Tenancies as part of the Council's tenancy policy.

A new tenancy agreement was drafted to reflect the Tenancy Policy terms and all new tenancies issued after 6 March 2014 were introductory tenancies unless they were in sheltered housing – an exception for sheltered housing was agreed in the Tenancy Policy.

All existing tenants prior to March 2014 remained full secure tenants but the terms of their tenancies varied following a tenancy variation process. This enabled the Council to lay out more clearly their Landlord responsibilities and the tenant's responsibilities.

During the implementation of the tenancy variation, there was full consultation with the Council's secure tenants including face to face meetings with the elderly and vulnerable.

As part of the implementation process new procedures and system changes were undertaken and an in-depth training programme for staff.

On 8th December 2015 Brandon Lewis (Housing & Planning minister) announced an amendment to the Housing and Planning Bill which would result in the ending of secure tenancies and the introduction of fixed term tenancies for new Council tenants.

This paper considers the implications of issuing fixed term tenancies.

3. Issues, Options and Analysis of Options

3.1 Background

When the Localism Act was introduced in 2012 there were high expectations that fixed term tenancies would enable a higher number of Council properties to be made available for those in genuine need and that those who no longer needed the accommodation would move on – either because they could afford to purchase their own accommodation or their household need had changed.

The number of fixed-term tenancies which have been introduced across the UK still remains low. The Department for Communities and Local government (DCLG) collects information on new tenancies but does not specifically break these down into fixed term or non-fixed term tenancy types for local authorities, so it is difficult to determine exactly how many organisations are using them.

Most recent figures indicate that 13% of all new general needs social housing tenancies were fixed term in 2014-15, compared with 9% in 2013-14

In 2014 the Chartered Institute of Housing carried out research into the use of fixed term tenancies, across Councils, Registered Providers and Arm's Length Organisations (ALMOs), speaking in depth with 23 organisations out of 84 that responded to their survey.

They discovered that organisations were using fixed term tenancies in different ways in order to meet their own strategic objectives – for example:

- Wandsworth Council was using them for all general needs lettings;
- North Lincolnshire Homes was using them only for properties that are in short supply or needed for specific household types (such as larger or adapted properties) to ensure they continue to be used by the households for which they were intended.
- Family Mosaic started to issue fixed term tenancies in 2012 as part of its target to get 1,000 residents back into employment over a three year period. All new tenants who are not elderly or vulnerable are given a 5 year fixed term tenancy with the requirement that tenants make efforts to seek employment and engage in opportunities for training during the five year period.

Overall, tenancies tended to be issued for a five year period with exceptions for those who have exhibited anti-social behaviour or non-payment of rent in the past.

Reassessment of the tenants' housing need towards the end of the fixed term period will require a detailed assessment of the tenant's financial circumstances as well as options for future housing to avoid homelessness.

Since the five year fixed term period has not yet been reached, there is no information regarding how the re-assessments will fare or how the courts will react to possession proceedings for tenants who are maintaining their tenancies with no breaches, but who have come to the end of their fixed term.

It is also too early to predict the effect that fixed term tenancies will have on void turnover since much will depend on how many fixed term tenancies are re-issued.

3.2 Implications of fixed term tenancies

- 3.2.1 The main objective of fixed term tenancies is to ensure that social housing is made available only to those who need and are entitled to it, and that when tenants are able to meet their own housing needs they will move on into other options such as affordable rented properties or home ownership.

This allows increased mobility when needed and helps to meet the needs of communities.

Areas of need include larger properties (4 and 5 bedrooms) where the waiting times can be extremely long, and those with major adaptations such as fully adapted wet rooms, lifts and ramped entrances.

Tenants with larger or adapted properties, who no longer require them because family members have moved on, could be expected to give up such properties for use by other needy households.

3.2.2 A detailed assessment of the tenant's circumstances and housing need would be required prior to the expiration of the fixed term. Options are:

- To offer a further fixed term tenancy;
- To offer alternative accommodation on a fixed term tenancy;
- To require the tenant to leave the property and take up alternative housing options such as private renting or purchasing

Alternative accommodation could be a considerable issue, in order to prevent an increase in homelessness and its associated costs – both financial and social. The Council would need detailed policies regarding 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, which must be carefully negotiated – 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 – this may not always be possible. There could also be an increase in voids and their associated costs.

3.2.3 The cost of administering a fixed term scheme could be high and would involve increased and continual monitoring and reviewing processes to ensure tenants still qualify to remain at their property; this could prove difficult where tenants were unwilling to cooperate and would lead to increased responsibility and workload for staff, with the likely need for additional staff.

To determine the financial implications of this a further piece of work will be required once there is clarification on how the new legislation will work – for example around exemptions.

However a comparison can be made with recent calculations made by officers as part of the government consultation on "Pay to Stay: Fairer Rents in Social Housing". Officers undertook an assessment of the cost of administering proposals to charge market rents to tenants who earn above £30,000 per year. The costs were based on the 16% of anticipated affected tenants and are shown below:

Set Up costs (including implementing changes to tenancy agreements, systems and process, training officers, allocation of resources)	£60,000
Extra resources (Team of four officers to administer the process, and another team of three specialist officers to perform corrections and reassessments, and a Team Manager)	£250,000
Fraudulent Investigation activities (Two officers)	£60,000
Total initial cost	£370,000
Future annual cost	£310,000

These costs represent assessments of the tenants' financial circumstances; an assessment for fixed term tenancies would also require an assessment of the family size and need for the accommodation.

A new tenancy agreement would be required since the terms would be different to current tenancy terms which were varied for all tenants in March 2014. This would mean two different tenancy types to be managed with different procedures and the potential for errors.

It should also be noted that even with a fixed term tenancy the Council would still need to obtain a Court Order to evict tenants should they not wish to move on to alternative accommodation. This could be particularly unpalatable where the tenants have been good tenants who have always paid their rent on time. There are likely to be an increase in evictions and subsequent legal costs.

Right to buy discounts are available to tenants after 3 years of tenancy, and therefore some tenants who may have improved their financial circumstances so that they could buy a property on the open market, could instead be incentivised to buy their Council property rather than move to alternative accommodation.

3.2.4 There are a number of circumstances where the use of fixed terms would be advantageous, for example:

- Where the tenant is eligible at the point of applying for accommodation, but their immigration status changes – for example applicants who are given limited leave to remain. A shorter fixed term might be useful in such circumstances e.g. 2 or 3 years;

- The Council is experiencing difficulty in recruiting staff to certain key roles, for example social workers.
A key worker scheme could be introduced allowing accommodation to be provided to encourage such workers to move into the borough to take up vacant posts. However, we would not wish to offer a full secure tenancy with all its associated rights only to discover that the worker moves to alternative employment within a very short period. In such circumstances it would be preferable to offer a fixed term tenancy – for example a period of 2 years.

3.2.5 The Housing department needs more private rented properties to house homeless households. They have been facing difficulties in recruiting private landlords, particularly because of increased competition and greater incentives from London Authorities.

A new scheme is being considered as part of the Housing Allocations scheme review whereby elderly owner occupiers could be offered a sheltered tenancy in return for a lease of their property to the Council to house homeless households.

If such a scheme were adopted it would require the issuing of flexible tenancies to the owner occupiers to ensure that the sheltered tenancy only lasts as long as the lease of their property back to the council – a recommended period of 5 years.

3.2.6 The council wants to promote and build sustainable communities; this could be difficult where residents are unsure of their ability to stay in one particular place and could result in communities that feel they have less of a stake in the place where they live.

In turn, this could lead to a lower level of concern for the housing stock and environment creating areas in which crime, vandalism and anti-social behaviour are more likely to prosper. All of these factors could have a serious, detrimental impact on any social landlord and its tenants.

4. Reasons for Recommendation

This paper makes no recommendations but lays out the implications of fixed term tenancies in order to inform member's discussion.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 If fixed term tenancies are introduced by law the Council would have no discretion on their implementation.

A local policy outlining how tenancies are to be reassessed and the decision making process on options would be discretionary and therefore should be consulted upon.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1. The introduction of fixed term tenancies could potentially lead to reduced community sustainability with a detrimental impact on health and wellbeing and a reduction in pride, responsibility & respect within communities.

7. Implications

7.1 Financial

Implications verified by: **Jonathan Wilson**
Chief Accountant, Corporate Finance

There will be extra costs associated with implementing and managing the administration of fixed term tenancies, including:

- Increased staffing resource costs
- Increased legal costs
- Further consultation costs
- Increased voids and their associated costs

Further work is required to determine more accurate estimations but the comparison with recent work on the pay to stay consultation indicates the sum could be considerable.

- Possible increases in homelessness

If more households are evicted this could lead to increased homelessness and its associated costs. A paper published by the homeless charity Crisis in July 2015, confirms that on average assisting a homeless household can cost a local authority between £1,426 - £4,726 per calendar month, depending on the support and type of housing which is required.

7.2 Legal

Implications verified by: **Martin Hall**
Housing Solicitor and Team leader

The Localism Act 2011 allows local authorities greater control over the types of tenancies it issues, in particular, the use of flexible tenancy agreements, limiting the secure tenancy to a fixed period.

The Housing and Planning Bill has been amended so that all new Council tenancies would be of a fixed term of between 2 and 5 years with no automatic right to continuation.

This report deals with the implications of fixed term tenancies. In addition to the points set out above, it should be noted that these tenancies have more complicated notice requirements to recover possession, which would require officer training.

7.3 Diversity and Equality

Implications verified by: **Natalie Warren**
Community Development & Equalities
Manager

The introduction of flexible tenancies would require a full equality impact assessment to determine any adverse implications for certain groups – for example older tenants are more likely to be impacted when their families move on. Actions to mitigate any adverse impacts would need to be identified.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

An increase in staff would be required in order to manage the fixed term tenancies.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- New approaches to fixed term tenancies – Chartered Institute of Housing, 2014
<http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/New%20approaches%20to%20using%20fixed%20term%20tenancies.pdf>
- Thurrock Council's Tenancy Policy <https://www.thurrock.gov.uk/council-tenants/policy-and-strategy>
- Thurrock Strategic Tenancy policy <https://www.thurrock.gov.uk/council-tenants/policy-and-strategy>

9. Appendices to the report

None

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