

Southend-on-Sea Borough Council

Agenda
Item
No.

Report of Corporate Director for People

to

Cabinet

on

18th March 2014

Report prepared by: Jacqui Lansley, Head of Procurement,
Commissioning and Housing

**Southend-on-Sea Borough Council's
Tenancy Policy 2014-19
Executive Councillor: Councillor Lesley Salter
A Part 1 Public Agenda Item**

1. Purpose of Report

- 1.1 To present the draft Southend-on-Sea Borough Council Tenancy Policy, outlining the Council's proposed approach to flexible tenancies, for consideration.

2. Recommendation

- 2.1 To endorse the revised Draft Tenancy Policy 2014-19 for implementation.
- 2.2 That the Director for People, in consultation with the Portfolio Holder of Housing and Adult Social Care, be authorised to make minor amendments necessary to the new Tenancy policy during implementation and operation.

3. Background

- 3.1 The Localism Act 2011 allowed social housing landlords- Registered Providers (Housing Associations) and Councils to offer a wider range of tenancies to new tenants including flexible or fixed term tenancies.
- 3.2 Additionally, the Localism Act 2011 required local housing authorities to publish a Tenancy Strategy setting out local guidance which Registered Providers should have regard to when deciding how to award tenancies. As such, the Southend-on-Sea Borough Council, Strategic Tenancy Strategy 2013 -18 (STS) was adopted in January 2013.
- 3.3 The STS outlines broad principles which were developed through consultation with local social housing landlords and mindful of the legal requirements of the Localism Act 2011;

- Flexible tenancies can be a useful tool to better manage stock which is under-occupied or no longer meets a resident's needs.
- Generally flexible tenancies should consist of a 1-year introductory tenancy followed by a flexible tenancy of a minimum term of 5 years.
- Where a flexible tenancy is coming to an end the tenant should be given suitable notice of the next steps (whether the tenancy will be renewed or ended), given advice on alternative housing options and be made aware of their right to review decisions.
- Whilst flexible tenancies could be offered in the majority of cases there will be certain groups who require lifetime tenancies eg older applicants seeking sheltered accommodation.
- Existing tenants should be moved to tenancies with at least the same level of security e.g. existing assured/secure tenants would move to assured/secure tenancy. Unless they voluntarily bid for a alternative accommodation through Choice-based lettings.
- Social landlords should set new Affordable Rents at genuinely affordable levels taking into account local circumstances.

3.4 The Council recognised the potential benefits of utilising flexible tenancies to make better use of the limited social housing stock through endorsement of the STS.

3.5 Under section s150 of the Localism Act, as a stock holding authority the Council is required to produce its own Tenancy Policy outlining how the Council will grant tenancies (list of tenancies at **Table 1**, below) and in particular its approach to administering and managing flexible tenancies.

Type of Tenancy	By Law before April 2013	Options after April 2013	Comments
Local Authority secure tenancy	✓		A 'lifetime' tenancy for existing tenants
Local Authority new secure 'Lifetime' tenancy		✓	A 'lifetime' tenancy for new tenants with exceptional circumstances e.g. rehoused in sheltered housing
Secure Flexible tenancy		✓	A rolling 5 year fixed term tenancy subject to review
Introductory tenancy		✓	An introductory tenancy is a one-year trial council tenancy

Table 1 Showing range of local authority tenancy options post Localism Act 2011

3.6 A draft Southend-on-Sea Borough Council Tenancy Policy **Appendix 1** has been produced according to the principles agreed in the STS.

3.7 Once implemented the policy will govern all new tenancies granted by the Council. It should be noted that existing tenants receive certain

- protected rights in maintaining the same level of tenancy security when transferring to alternative social housing.
- 3.8 In line with best practice, the draft Southend-on-Sea Borough Council Tenancy Policy proposes that all new tenants will continue to be granted Introductory Tenancies for a period of 1 year.
- 3.9 If an Introductory Tenancy is completed satisfactorily the Council will grant flexible tenancies in the majority of cases. The exceptions to this will be those tenants who are entering sheltered accommodation and existing secure transfer tenants who will continue to be granted secure 'lifetime' tenancies.
- 3.10 In most cases a flexible tenancy will be for a term of at least 5 years. However, in certain cases a flexible tenancy length of between 2 and 5 years will be considered.
- 3.11 At the end of the flexible tenancy period a review will take place using the criteria outlined in the policy which will determine whether a new tenancy is granted and the length and type of tenancy offered.
- 3.12 As part of this process a tenancy review will commence at least 12 months prior to the end of the flexible tenancy term. A meeting between the tenant and the Council (in practice South Essex Homes will undertake the review process on behalf of the Council) will provide an opportunity to discuss the tenant's current situation and what will happen when the tenancy comes to an end.
- 3.13 It is proposed that the review criteria will focus on the following factors:
- **The needs and aspirations of the household**
The review offers the opportunity for the Council to have productive dialogue with tenants on a range of housing related issues. The Council will be able to offer advice to tenants regarding their current and future housing options. Depending on the situation this may include consideration of mutual exchange, home ownership, shared ownership, sheltered housing and private rented housing.
 - **Whether a household still requires the same size property**
If at the time of review the household is under-occupying they will be prioritised and assisted to secure alternative accommodation appropriate to their needs.
- Where a household is assessed as over-occupying accommodation the Council will offer advice to make a transfer application, discuss the possibility of mutual exchange and other housing options.

➤ **The conduct of the tenant**

Where the tenant has breached the terms of their tenancy or breached an agreement set-up to remedy this breach (e.g. rent arrears repayment plan) it is proposed that the Council can either offer a shorter-term flexible tenancy (minimum 2 years) or not grant an additional tenancy. This decision will be based upon the severity of the breach of tenancy and an assessment of whether, and how successfully, the tenant has acted to remedy these breaches.

➤ **The income and assets of the tenant and their spouse/partner**

The income and assets of the tenant and their spouse/partner will be assessed as part of the tenancy review to determine whether they would still qualify for social housing using the thresholds included in the Council's Allocations Policy.

- 3.14 The policy provides details of how the Council, and South Essex Homes, will communicate the new processes involved in managing flexible tenancies, setting timescales which guarantee tenants receive information regarding their tenancies and the availability of appropriate advice in a timely manner.
- 3.15 The policy also outlines a tenant's right to appeal decisions made under the policy and the appeals process.
- 3.16 Minor elements of the policy may require refinement in line with legal advice and practical considerations as and when any issues emerge as part of the implementation project.
- 3.17 The Localism Act 2011 has removed the statutory right of succession of a tenancy to family members (e.g. Parent, Brother, Sister, Uncle) of a tenant who has died. The Localism Act 2011 still includes a statutory right of succession of a tenancy to a spouse or civil partner in the event of a tenant's death and this change in legislation is highlighted in the Tenancy Policy.

4. Other Options

- 4.1 In order to take advantage of flexible tenancies the Council is required to publish a Tenancy Policy.

The Council can decide not to introduce Flexible tenancies at this time. However, it is believed that flexible tenancies will assist the Council in meeting strategic housing aims: to reduce under-occupation and ensure those in greatest need have access to social housing. As such it is recommended that the Council introduce Flexible Tenancies in line with principles of the previously approved Strategic Tenancy Strategy.

5. Reasons for Recommendation

- 5.1 In order that the Council can introduce flexible tenancies and to fulfil the Council's statutory commitments as outlined in the Localism Act 2011.

6. Corporate Implications

6.1 Contribution to Council's Vision and Corporate Priorities

The policies discussed in this paper help to contribute to achievement of the corporate aim-

- *Enabling well planned quality housing and developments that meet the needs of Southend's residents and businesses*

6.2 Financial Implications

The implementation of flexible tenancies will incur costs for the Council in terms of staff resource, any legal advice required and production of literature accompanying the new tenancy type.

6.3 Legal Implications

S154 of The Localism Act 2011 sets out the rules on flexible tenancies e.g. lengths of terms, reviews etc. and changes to the way that tenancy succession is governed.

There is a regulatory requirement to produce a Tenancy Policy as laid out in The Regulatory Framework for Social Housing in England from April 2012 (specifically- the Tenancy Standard). The Tenancy Policy should outline the approach to tenancy management including flexible tenancies, specifically:

'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'

The policy will be subjected to review by housing law experts prior to publication to ensure that legislative requirements have been met.

6.4 People Implications

This policy will provide a consistent framework for the Council and its partners to consider when granting tenancies to people moving into Council owned social housing.

Flexible tenancies will require a revision to traditional management of secure 'lifetime' tenancies. The Council, or partner's acting on the Council's behalf, South Essex Homes, will need to undertake checks

on all tenants' situations whenever a flexible tenancy is coming to an end in line with the policy timescales. This assessment will inform the decision of whether to grant a further tenancy or to explore other options.

6.5 Property Implications

The implementation of the draft Tenancy Policy will promote efficient use of the Council's housing stock, ensuring that those in greatest need are accommodated.

6.6 Consultation

A consultation exercise with local social housing landlords was undertaken in Summer 2012 seeking views and reactions to the new tenancy reforms. A questionnaire was sent to social housing landlords and the responses have helped to inform the production of the Strategic Tenancy Strategy.

The report was considered and discussed at the Policy and Resources Scrutiny Committee on the 11th July 2013. There was general consensus in support for the policy and the content of the report. The report and policy have been updated to reflect the questions and comments raised by Members at the meeting.

Applicants on the Homeseekers Register will be informed of the changes as part of the implementation project and via the Council's Choice Based Lettings system.

6.7 Equalities and Diversities Implications

An Equality Analysis of the Tenancy Policy is being undertaken and will be published with the final document.

6.8 Risk Assessment

As a new tenancy, the mandatory right to possession at the end of a flexible tenancy is yet to be tested in the courts. It is likely that emerging case law will influence and change the way that flexible tenancies are managed. It is proposed that the final policy is reviewed by housing law experts prior to publication and that the Council remains alert to changes occurring due to case law concerning flexible tenancies.

6.9 Value for Money

The Council can better manage the resources of the housing stock through use of flexible tenancies. Ensuring that tenants are in properties that match their needs, in terms of size and appropriate to their financial situation will secure the best use of the stock and help to

reduce homelessness costs and potentially reduce rent arrears (under-occupancy).

6.10 Community Safety Implications

Effective tenancy management is an essential part of achieving community safety.

6.11 Environmental Impact

Effective tenancy management can help to contribute towards achieving a high quality local environment.

6.12 Background Papers

The Southend-on-Sea Housing Strategy 2011-21, (2011)
The Southend-on-Sea Borough Council Strategic Tenancy Strategy
2013-18 (2013)
Allocations Policy for Southend-on-Sea Borough Council (April 2013)

7. Appendices

Appendix 1 Southend-on-Sea Borough Council Draft Tenancy Policy
2014-19

