



CABINET

8th May 2019

Subject Heading:

Tenancy Policy

Cabinet Member:

Councillor Joshua Chapman

SLT Lead:

Gerri Scott, Interim Director of Housing

Report Author and contact details:

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Policy context:

The new Tenancy policy replaces the current Tenancy Management Policy. Its purpose is to inform home seekers and council officers about the type of tenancies that will be on offer from the London Borough of Havering. It sets out clearly how the Council lets out its properties.

The length of tenancy and the type of tenancy which we issue to tenants is subject to statute with little scope for discretion which the Council can apply.

This policy also sets out how the Council will monitor and review introductory and flexible tenancies. It also provides information on mutual exchanges.

The policy also explains the legal assignment and succession rights afforded to Introductory and Secure tenants, and to provide guidance on the principles when officers consider applications to assign or succeed to introductory or secure tenancies.

Financial summary:

The financial costs of implementing the new Tenancy Policy will be contained within the existing Housing Revenue Account budget

Is this a Key Decision?

(c) Significant effect on two or more Wards

When should this matter be reviewed?

A year after the consultation has been completed on the Tenancy Policy

Reviewing OSC:

Towns and Communities

The subject matter of this report deals with the following Council Objectives

Communities making Havering

Places making Havering

Opportunities making Havering

Connections making Havering

SUMMARY

This report seeks the consideration and approval of members, in principle, (prior to consultation), for the Council's draft Tenancy Policy. The final version of this policy will be presented to Cabinet once a six week consultation period has been completed. The findings from this consultation exercise will be analysed and assessed to establish if there are any negative impacts on the protected characteristics arising from the policy which the Council will seek to mitigate.

RECOMMENDATIONS

The Cabinet is asked to:

1. Approve the draft Tenancy Policy in principle prior to consultation with residents and other stakeholders.
2. Agree for the Council to consult with residents and other stakeholders on the proposed changes in the draft Tenancy Policy.
3. Note that the results and feedback that emerges from the consultation will assist the Council in the completion of a full Equalities Impact Assessment which will support the final version of the Tenancy Policy.

REPORT DETAIL

- 1.1 The Tenancy Policy sets out the Councils' position in terms of letting out its own properties.
- 1.2 Our intention is to provide a balance between ensuring stability for households who are in need, in particular, for vulnerable households, against flexibility in the way that the Council manages its housing stock. Our aim is to ensure that we make the best and most suitable use of the limited lettings which become available each year.
- 1.3 The Localism Act gave Local Authorities the discretion to offer new tenants fixed term tenancies of no more than 5 years in duration. Havering has been granting flexible tenancies to all new tenants since April 2012, with the following exceptions:

- where a secure lifetime tenant transfers to another home within our housing stock to downsize because they are under-occupying their home, **or**
- where a tenant moves to a property designated for tenants aged 60 or over. These are sheltered and extra care schemes and flats in general needs schemes designated for people aged 60 or over. (or where the resident is 55 or over and requires a medium or high level of support due to frailty, ill-health or restricted mobility), **or**
- where existing secure tenants (or assured tenants of a housing association) whose tenancy began before 1st April 2012 have their tenancy terms and conditions preserved by law. Therefore, if they transfer to a different home in either Council or housing association stock, they will automatically be offered another secure or assured tenancy.

1.4 The recent Secure Tenancies (Victims of Domestic Abuse) Act 2018 provides protection for social housing tenants across all the protected characteristics with a secure life-time tenancy that are fleeing domestic abuse or violence. The new Act contains measures to ensure that lifetime tenants of social homes who are victims of domestic abuse are granted a further lifetime tenancy where either:

- they need to leave or have left their home to escape domestic abuse and are being re-housed by a local authority, **or**
- where they are a joint tenant and wish to remain a tenant of their social home after the perpetrator has left or been removed and the local authority decides to grant them a further sole tenancy in their current home.

The new policy recognises this new legislative provision.

1.5 It also continues with the general rule that 5 year terms should be granted in most circumstances and explains the circumstances when shorter or longer terms should be considered -expanding on the previous tenancy policy.

1.6 Further guidance is provided on the monitoring and review of introductory tenancies and the circumstances in which the introductory trial period should be extended or the introductory tenancy terminated for breach of tenancy. Tenants will be required to wholly or substantially comply with all the tenancy terms during the introductory trial period.

1.7 The policy also introduces ongoing tenancy reviews with annual tenancy assessments. This ensures transparency and sets clear expectations throughout the tenancy term. Guidance is clearly set out within the policy on the five clear criteria for the grant of a renewed tenancy.

1.8 The rules concerning mutual exchange applications are also consolidated within this policy.

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- 1.9 This policy recognises the current legislative provision in place which the Council will apply to the Succession of Council Tenancies through the Localism Act 2011.
- 1.10 The new Tenancy policy seeks to amend and reflect a change in the legislation concerning the granting of statutory rights for secure lifetime tenancies which should have been effective from 1st April 2012. Under the Localism Act 2011, the statutory right for family members to succeed a tenancy on the death of the tenant was removed in law, limiting the right of succession to the spouse/partner of the deceased. Any additional family rights of succession are non-statutory.
- 1.11 In practice, the Council has not updated the succession clause in its secure lifetime tenancy agreement since April 2012, so at present (and until the new tenancy terms and conditions are in place), post April 2012 secure lifetime tenancies continue to be subject to the same family succession rights as older secure lifetime tenancies. Any new secure lifetime tenancies granted from the effective date of the new Tenancy Terms and Conditions will no longer have the non-statutory right of succession for family members and will be restricted to the statutory minimum succession right which is limited to the spouse or partner of deceased tenant (one time only). **This will only affect those residents who are granted a secure lifetime tenancy from the date that the new tenancy terms and conditions takes effect, so does not impact on existing secure life time tenants. The new policy simply tidies up the Council's policy position and brings it in line with current legislation.**
- 1.12 The policy also, in the event that the new provisions within the Housing and Planning Act 2016 are enacted, details the Council's position around succession should the provisions of the Act ever come into force.
- 1.13 The aim of our Succession policy is to create greater headroom within our stock, allowing the Council to free up property and to make better use of our scarce resource, ensuring a fairer distribution of social housing.

Consultation

- 2.1 On agreement from Cabinet, consultation on the draft Tenancy Policy will commence with feedback sought from residents, Members, Senior Managers of the Council and voluntary agencies.
- 2.2 The length of the consultation exercise will be for **six weeks**. This is in line with the Council's 'Public Consultation Policy' (2016).
- 2.3 The consultation will adhere to the Council's principles that '*any consultation should be clear, have a purpose, be informative and last a proportionate amount of time*'. The length of time chosen to consult with stakeholders has been considered in terms of legal advice and takes into account any impacts of the policy, which are negligible to existing council tenants. Primarily, the

key change will only affect potential new secure tenants who, from the commencement date of this policy, will no longer be granted the familial right of succession to family members other than a their spouse or partner.

2.4 With this in mind, Officers will apply a targeted form of consultation to engage with current housing register applicants who have been accepted on to the Housing Register, as well as with the stakeholders described above.

2.5 The methods of engagement that Officers will use will include:

- A link on the Housing Advice Internet pages where Housing Register applicants can access an online consultation survey.
- An online survey available on the Intranet for all residents
- Email briefings to staff, members and other stakeholders
- Notification in 'At the Heart' and 'Living' magazines for all residents

2.6 The information and feedback received from this consultation exercise will be used to inform the Equality Impact Assessment which will be used to accompany the final version of the Tenancy Policy.

REASONS AND OPTIONS

Reasons for the decision:

The Tenancy Policy describes how the Council creates, changes and ends tenancy agreements. The Policy ensures the Council follows current legislation and enables tenants to exercise their rights, as set out in the tenancy agreement; it also provides a reference point for housing staff to make their decisions.

To not consult on with residents and stakeholders would be unethical and in breach of the Council's statutory duties.

Other options considered:

If the Council fails to revise its Tenancy Policy and therefore its guidance to officers, residents and stakeholders, the Council leaves itself open to legal challenge and bad practice on the part of its officers.

Failure to consult with residents and stakeholders would be entirely unethical and dereliction of the Council's statutory duty to consult.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no financial implications arising from decision to approve and consult with residents and stakeholders on the draft Tenancy Policy as these will be delivered through existing resources.

Legal implications and risks:

There are no legal implications arising from decision to seek the opinion of and consult with stakeholders on the draft Tenancy Policy.

As drafted, existing secure tenants (both lifetime and flexible) who maintain their security of tenure, will not be affected by the new Tenancy Policy. The changes proposed in this Report (specifically the removal of familial succession to a tenant's family members, (except the spouse or partner), for new secure lifetime tenants would apply to prospective council tenants on the Housing Register if they bid successfully and are granted a secure council tenancy from the date on which this policy commences.

Consequently, the proposed length of time for the consultation (currently six weeks) appears reasonable. This is because there is no specific statutory timeframe for this consultation and the length of time should be proportionate and realistic to allow respondents sufficient time to provide a considered response.

Human Resources implications and risks:

There are no Human Resource implications arising from the decision to consult with residents and all affected stakeholders on the draft Tenancy Policy as these will be delivered through existing resources.

Equalities implications and risks:

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- I. the need to eliminate discrimination, harassment, victimisation and any
- II. other conduct that is prohibited by or under the Equality Act 2010;
- III. the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- IV. foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

The consultation exercise on the draft Tenancy Policy will feed into the final published. The feedback will inform the Council where any decision making within its gift for the granting and management of tenancies has an adverse or negative impact on residents by virtue of any protected characteristic they may have. Housing Services will, where necessary set out an action plan to mitigate any adverse impacts identified following consultation on the draft Tenancy Policy.

BACKGROUND PAPERS

None

The following appendices have been submitted in support of this Cabinet report:

- Final Draft Housing Services' Tenancy Policy
- Draft EqHIA for Housing Services' Tenancy Policy