

WANDSWORTH BOROUGH COUNCILHOUSING AND REGENERATION OVERVIEW AND SCRUTINY COMMITTEE –
17TH JANUARY 2019EXECUTIVE – 21ST JANUARY 2019Report by the Director of Housing and Regeneration on the Review of the Council's Tenancy Strategy
and PolicySUMMARY

The Council is required by the Regulatory Framework for Social Housing in England to publish clear and accessible policies including a Tenancy and Rent Strategy and Tenancy Policy. The Council and private registered providers, with rented stock in the Borough, need to take account of this Strategy when developing their tenancy policies. Tenancy policies set out the terms under which a registered provider will let their social housing.

As required by the Localism Act 2011, the Wandsworth Tenancy and Rent Strategy and Tenancy Policy were approved by The Executive in July and October 2012 respectively and applied from March 2013 (Paper No. 12-350 and Paper No 12-581). This paper seeks approval for the reviewed Tenancy and Rent Strategy and Tenancy Policy, set out in Appendix 1 and 2.

Approval of the draft Strategy and Policy will allow for a six-week consultation to be undertaken on both documents. An Equality Impact and Needs Assessment (EINA) has also been completed as set out in Appendix 3. If there are no significant amendments required as a result of the consultation, approval of this committee is also sought to allow the Director of Housing and Regeneration to use delegated authority to adopt the Tenancy and Rent Strategy and Tenancy Policy to apply from 1st April 2019.

The most significant change proposed in both documents is to extend the length of the initial flexible fixed term (FFT) tenancies offered by the Council from five to ten years. This kind of tenancy would continue to be preceded by a 12 month introductory tenancy. Subsequent FFT tenancies would continue to be offered for five year periods.

GLOSSARY

AHM	-	Area Housing Management
ASB	-	Anti Social Behaviour
CSHO	-	Customer Service and Housing Options

Review of the Council's Tenancy Strategy and Policy

EINA	-	Equality Impact Needs Assessment
FFT	-	Flexible Fixed Term
RCS	-	Rent Collection Service
SHGP	-	Social Housing Green Paper

RECOMMENDATIONS

1. The Housing and Regeneration Overview and Scrutiny Committee are recommended to support the recommendations in paragraph 2. If they approve any views, comments or recommendations on this report, these will be submitted to the Executive or the appropriate regulatory and other committees for their consideration.
2. The Executive is recommended to:
 - (a) approve the reviewed draft Tenancy and Rent Strategy and Tenancy Policy for a six-week consultation period; and
 - (b) provide the Director of Housing and Regeneration with delegated authority to adopt the reviewed Tenancy and Rent Strategy and Tenancy Policy to apply from 1st April 2019 if no significant amendments are necessary as a result of the six-week consultation period.

INTRODUCTION

3. The Localism Act 2011 introduced a power for local authorities to offer 'flexible tenancies'¹ to new social tenants. The Act also requires all local housing authorities in England to prepare and publish a strategy setting out the matters to which registered providers, including the Council and housing associations, of social housing for its district are to have regard to:
 - (a) the kinds of tenancies they grant;
 - (b) the circumstances in which they will grant a tenancy of a particular kind;
 - (c) where they grant tenancies for a term certain, the lengths of the terms, and
 - (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.
4. As a registered provider of social housing, the Council is required by the Regulatory Framework for Social Housing in England to publish clear and accessible policies which have due regard to the Council's Tenancy Strategy (approved in July 2012) which sets out: the Council's approach to tenancy management; the type and length of tenancies which can be offered and in what circumstances.

¹ These are secure fixed-term tenancies with a statutory minimum term of two years.

Review of the Council's Tenancy Strategy and Policy

5. As a result of the Localism Act, in October 2012, Paper No 12-581 was approved by the Executive setting out the Council's Tenancy and Rent Strategy and Tenancy Policy, and the circumstances in which flexible fixed term (FFT) tenancies would be offered. From March 2013, the Council began to offer the majority of new tenants a 12 month introductory tenancy followed by a five year FFT tenancy. As of November 2018, the Council has offered 2,239² FFT tenancies, the majority of these tenants (2,225) were offered a five year FFT tenancy, with 12 offered a two year FFT tenancy and two offered a three year FFT³.
6. As part of the Housing and Planning Act 2016, the Government included provisions to make the offer of FFT tenancies mandatory for all social housing providers. However, in the Social Housing Green Paper (SHGP), published in August 2018, 'a new deal for social housing', the Government announced that it will not implement these provisions.
7. The Government's decision, to allow landlords to set the type and length of tenancies they give, means that it is likely that social landlords will review their FFT arrangements and the impact they have had on more effectively managing stock.
8. In respect to Wandsworth Council's position, the Council still considers that 'flexible' tenancies can achieve a balance between providing a reasonable degree of stability (particularly for those who are vulnerable by reason of age, disability or illness, and households with children), ensure the best use is made of the Council's housing stock to meet residents' housing needs and requirements (e.g. finding alternative accommodation where household circumstances have changed), including homeownership. However, the analysis of tenancy reviews carried out to date indicates that a longer initial tenancy term, of up to ten years, may still achieve these aims. The Council proposes that all subsequent tenancies will continue to be offered as a five year FFT tenancy.
9. The Council proposes to maintain the use of shorter tenancies in exceptional circumstances as an additional tool to deter people from breaching their tenancy conditions and would still expect private registered providers of social housing to use this discretion. For those applying for sheltered housing, the Council will continue to offer secure periodic tenancies, other than in exceptional circumstances.
10. If the proposed changes to the Tenancy and Rent Strategy and Tenancy Policy are approved by this committee, these will be subject to a six-week consultation period. Organisations such as private registered providers in Wandsworth, the Mayor of London, the Council's resident management organisations, residents' associations and organisations on the Department's consultation database will be asked to take part in the online consultation. Specifically, private registered providers will be asked to comment on the Tenancy and Rent Strategy.

² This excludes mutual exchanges and management transfers

³ These were offered due to exceptional circumstances including the Council's Housing Into Work Pilot and for instances of ASB

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11. If no significant amendments are required following the consultation, this report seeks delegated authority for the Director of Housing and Regeneration to adopt the Tenancy and Rent Strategy and Policy from 1st April 2019.

ANALYSIS OF FLEXIBLE TENANCY REVIEWS

12. The Council introduced 'flexible' tenancies on 1st March 2013 and currently 2,252 tenants have this type of tenancy. Except in exceptional circumstances, such as a tenant having a history of anti-social behaviour (ASB) or being part of the housing into work scheme, these tenancies were five years in length preceded by a 12 month introductory tenancy.
13. The review process is complex as it involves a coordinated cross-Departmental approach over a 12 month period and requires home visits, regular monitoring and multiple notices to be served on the tenant, which vary depending on the outcome of the review. The Council must carry out a review 12 months before a FFT tenancy comes to an end and the tenant must be notified of the Council's decision six months before the tenancy end date. In line with the Tenancy Policy, the reviewing officer has four options at the review stage: the tenancy can be renewed for five years at the same property, renewed for five years at a different property, renewed for a period of less than five years or not renewed at all.
14. Since March 2013, 138 tenancy reviews have been carried out. As the majority of tenancies offered were five years preceded by a 12 month introductory tenancy, the frequency of FFT reviews will drastically increase in 2019. Whilst only 138 reviews have been conducted in the last five years, there are a further 193 reviews due to be carried out by April 2019 and an additional 373 in 2019/2020.
15. The Council has been monitoring the outcomes of these reviews and the table below shows a breakdown of the actions taken following these reviews.

FFT Review Status/ Decision Correct as of 23rd November 2018	Number of decisions
No Offer / Eviction	2
Renew < 5 Years	4
Different Property Offered	1
Renew 5 Years	131
Grand Total	138

16. Of the 138 FFT tenancy reviews led by the Customer Service and Housing Options (CSHO) Team, the overwhelming majority of reviews resulted in a renewal of a FFT tenancy. In 95 per cent of cases this was for five years, in four per cent this was for less than five years or at a different property and in less than two per cent of cases, the tenancy was not renewed.

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17. Of the decisions where the tenancy was not renewed for a further five years, there were two decisions not to renew the tenancy, four to renew for a period less than five years and one was offered a different property due to under occupation.
18. Of the two review decisions which resulted in non-renewal of the tenancy, both were for repeated rent arrears and non-compliance with suspended possession agreements. These cases were already being dealt with by the Rent Collection Service (RCS) when the FFT review was undertaken, it is therefore reasonable to anticipate that both evictions would have taken place with or without a FFT being in place.
19. Of the four review decisions which resulted in a FFT of less than five years, all were offered two year FFT tenancies. In two cases, this was as a result of repeated rent arrears issues and in the other two cases this was due to planned demolition for block regeneration purposes. In cases of regeneration, although FFT reviews allow for housing options to be explored closer to the time of decant, tenants can be moved, regardless, under their tenancy conditions.
20. The Tenancy Policy requires officers to consider a tenant's income at the FFT review stage. This allows officers to discuss alternative tenure options, such as shared ownership, with tenants whose income is higher than the threshold set by the GLA (£90,000). Of the reviews conducted so far, however, 85 tenants are in receipt of housing benefit, therefore their income would not exceed the threshold. Of the remaining 53 tenants, officers requested proof of income to establish whether the income threshold has been met so that other housing options can be considered. However, none of the tenants assessed so far have reached the income threshold set.
21. Following the FFT reviews so far, the Council will acquire two properties due to non-renewal of the FFT tenancy and one additional bedroom following an under-occupier move. In 98 per cent of FFT review cases a further FFT tenancy has been offered by the Council.

REVISION OF THE DRAFT TENANCY STRATEGY AND POLICY 2019**Offer of initial ten year FFT tenancies followed by subsequent five year FFT tenancies**

22. Given the resources involved in carrying out reviews and high numbers of five year FFT tenancies being offered of the same property following the initial fixed term period, the Director of Housing and Regeneration is proposing to move to offering an initial FFT tenancy for ten years, followed by subsequent FFT tenancies of five years as standard. This will not affect the circumstances in which the Council can offer shorter tenancies of a minimum of two years as set out in the current Tenancy Policy. It is proposed that this will come into effect from 1st April 2019 after the consultation period has ended. For all current residents on a five year FFT tenancy, the tenancy will be reviewed at the end of their five year period and as appropriate they will be offered a further five year FFT tenancy.

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23. The proposed change would reduce the administrative burden on the Department as initial reviews would be less frequent but would still allow for an assessment of household circumstances to establish whether other housing options should be explored. For under occupation moves, it is envisaged that it is more likely within a ten-year period that the household composition changes as, for instance, children leave home. Notwithstanding this, these changes would not prevent the Council from facilitating downsizing moves through applications made to its housing register. During 2017/18, a total of 50 under occupying tenants were assisted in moving to smaller 'right sized' housing. Encouraging mobility within social housing stock in the Borough remains a principle objective for the Council and the number of under occupier moves is forecast to increase to 65 in 2018/19.
24. The decision of the Government not to pursue the provisions set out in the Housing and Planning Act 2016 to make FFT tenancies mandatory and the SHGP recognising the importance of security of tenure, whilst maintaining that there is still a role for FFT tenancies, supports the Council's proposal to move to initial ten year FFT tenancies. By moving to initial ten year FFT tenancies, the Council will strike the right balance between providing individuals with security and making the best use of social housing stock and Council resources.

Eligibility to be considered at FFT Review stage

25. The current Tenancy and Rent Strategy and Tenancy Policy make no provision for assessing a tenant's eligibility at the FFT review stage. In line with legislation, the Council has a legal duty to exercise its general management powers under the Housing Act 1985 and provisions under Part 6 of the Housing Act 1996 to ensure that Wandsworth Council tenants satisfy an immigration test of being 'eligible'.
26. To comply with this legal requirement, the draft Tenancy and Rent Strategy and Tenancy Policy have been amended to include 'eligibility' as a requirement for offering a further tenancy on the coming to an end of a FFT tenancy.

Inter-generational tenancies 'generally not considered'

27. A further amendment to the Tenancy and Rent Strategy and Policy is the inclusion of a statement prohibiting the creation of inter-generational sole to joint tenancies unless in exceptional circumstances.
28. Paragraphs 18 and 29 of the draft Tenancy Policy state that: 'Joint tenancies can be created between an existing tenant and a spouse, civil partner or partner. However, the Council will generally not grant inter-generational joint tenancies (for instance between a parent and a child) other than in exceptional circumstances.'
29. This is common practice nationwide for social landlords, however, the inclusion of such a statement is necessary to enforce this policy.

Regeneration included as a reason for the shortening of a FFT tenancy

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30. The current Tenancy and Rent Strategy and Tenancy Policy do not consistently identify regeneration as a reason for offering a shorter FFT tenancy. By rectifying this in the revised Tenancy Policy, the Council can more effectively manage its stock, specifically in relation to regeneration projects where properties may need to be decanted in the future.
31. By allowing for a reduced length of tenancy, and consequently, the tenancy end date, to coincide with the proposed decant, this allows the Council and the tenant to consider housing options closer to the demolition date of the block, ensuring better management of stock. For example, if a block is due to be decanted in January 2021, the Council could offer the tenant a further two year FFT tenancy beginning in January 2019 as part of the FFT review.

COMMENTS OF THE SOUTH LONDON LEGAL PARTNERSHIP

32. The statutory framework for consultation for the proposed amendments to the Tenancy and Rent Strategy and Tenancy Policy are clearly set out in the report being a requirement for the lawful implementation of the same. The Council has the authority under the current legislation to consider offering an initial ten year FFT rather than the current five year period.

COMMENTS OF THE DIRECTOR OF RESOURCES

33. The Director of Resources comments that any costs relating to the revision and implementation of the Council's Tenancy Strategy and Policy will be met from within existing approved budgets.

EQUALITY IMPACT NEEDS ASSESSMENT

34. The Equality Act 2010 requires that the Council when exercising its functions must have "due regard" to the need to eliminate discrimination, to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. As such an Equality Impact Needs Assessment (EINA) has been undertaken on 26/11/2018. This EINA is attached as Appendix 3 to this report.
35. The EINA highlights the overall positive impact the proposed changes will have for Wandsworth Council tenants, specifically more security of tenure as a result of the initial FFT tenancy length being extended from five to ten years.
36. The EINA also highlights a potential negative impact the new policy will have on FFT tenants whose immigration status has changed, meaning they are no longer eligible for social housing. The new policy has introduced an assessment of eligibility at the FFT tenancy review stage.

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CONCLUSION

37. The revised draft Tenancy and Rent Strategy and Tenancy Policy proposes to extend the length of initial FFT tenancies from five to ten years to strike a better balance between security for residents and making the best use of Council stock to meet housing need. Analysis of the FFT reviews conducted thus far strongly indicates that the proposed change from an initial five to ten years will not have a negative impact on the Council being able to efficiently manage its stock to the benefit of its residents but is likely to allow for more meaningful reviews which take account of household changes over this longer period. Subsequent FFT tenancies will continue to be offered for a five year period as standard.
38. Following the six week consultation period it is proposed that if no significant changes need to be made to the Tenancy and Rent Strategy or Council Tenancy Policy that the Director of Housing and Regeneration be given delegated authority to adopt these. If significant changes are made the revised documents will be presented to a future committee. It is proposed that the changes take effect from 1st April 2019.

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Director of Housing and Regeneration

17th December 2018

Background papers

There are no background papers to this report.

All reports to Overview and Scrutiny Committees, regulatory and other committees, the Executive and the full Council can be viewed on the Council's website (www.wandsworth.gov.uk/moderngov) unless the report was published before May 2001, in which case the democratic services officer can supply it if required.