
	Cabinet Member Decision 19 December 2019
	Report from Strategic Director, Community Well Being
Tenancy Management Policy consultation	

Wards Affected:	All
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	Appendix 1 – Draft Tenancy Management Policy Brent Council Tenancy Strategy 2012-2013
Background Papers:	 Brent Tenancy Strategy.pdf
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1. Purpose of the Report

- 1.1. This report presents a draft policy outlining how Brent Council tenancies will be managed in line with the Localism Act 2011 and the Regulator for Social Housing's Tenancy Standard and the Council's vision within the draft tenancy strategy. It aims to seek approval from the Cabinet Member for Housing and Welfare Reform to start the formal process for consultation on the draft tenancy management policy.
- 1.2. The Localism Act 2011 requires the Council to produce a tenancy strategy that sets out how social housing should be offered to best meet local housing need. The Council is required to regularly review and update the tenancy strategy and

is now in the process of developing a new strategy. The Act also requires social housing providers to produce a tenancy management policy that has regard to the contents of the Council's tenancy strategy. Previously, Brent Housing Partnership (BHP) produced the tenancy management policy. Following the decision to insource, the management of Brent Council homes, the Council reviewed the processes underpinning tenancy management e.g. successions, mutual exchanges. This policy will ensure there is one document, which captures how tenancies are managed holistically, improving transparency for tenants and consistency in how the Council operates.

1.3. This policy must include;

- The types of tenancy granted.
- How a person's circumstance will be considered when deciding the type of tenancy to grant.
- The length of time a tenancy will be granted for.
- And how tenancies will be managed towards the end including the offer of a new tenancy.

1.4. In addition to the Localism Act 2011, the Regulator for Social Housing consumer standards includes a Tenancy Standard, which outlines further expectations for social housing landlords to address within their tenancy policy, specifically the management of mutual exchanges and successions.

1.5. Alongside this policy, the Council is reviewing its tenancy strategy, which has taken a resident focused approach to ensuring the vision for all Brent residents who are renting; to have a clear understanding of their tenancy, their rights, *and a guaranteed level of security in their home* is delivered.

2. Recommendations

2.1. That the Lead Cabinet Member for Housing and Welfare Reform note the contents of the report and approve the Council enter into formal consultation.

3. Background

3.1. In 2012, the Council published a tenancy strategy, which supported the use of fixed term tenancies in Brent. Within this strategy, the Council included a summary of BHP's tenancy management policy. Under this policy all new BHP tenants would be granted an Introductory Tenancy followed by a five year fixed term tenancy in line with the minimum recommendation. The policy also included the option to offer shorter fixed term tenancies e.g. two years, to young people who would with support, use social housing as a stepping stone. It was however acknowledged that whilst the default position would be to offer a fixed term tenancy, the vast majority of tenancies would be renewed.

3.2. Following the decision to insource, the management of Brent Council homes the Council took the opportunity to review how tenancies were managed. The newly

drafted policy seeks to build on this, by creating clarity and structure so the Brent Council tenants and officers understand the types of tenancies being granted and how tenancies will be managed in one document.

- 3.3. In October 2019, the Council was expecting the launch of the Social Housing Green Paper action plan, which confirmed not only the reversal of making fixed term tenancies mandatory in the Housing and Planning Act 2016. Moreover, acknowledged that longer and more secure tenancies fostered more integrated and diverse communities.
- 3.4. As of October 2019, there are 7,717 Council tenants in Brent, 978 of these are on a fixed term tenancy or will transfer to a fixed term tenancy once they have completed their one-year introductory tenancy. For those whose tenancies have now expired the Council is continuing their tenancy on a rolling periodic basis whereby they maintain the same rights and responsibilities under their fixed term tenancy. The first cohort of fixed term tenancies were due for renewal in 2019. These tenancies will be prioritised following the adoption and approval of this policy to ensure these tenants are granted a secure tenancy in line with the proposed policy.

4. Draft policy

- 4.1. The Council will consult on the drafted policy, which includes three key changes. These are;

- Ending the use of fixed term tenancies and moving to secure tenancies
- Offering joint tenancies
- Introducing the use of demoted tenancies

- 4.2. In addition to the proposed changes, the policy includes the Council's position on tackling tenancy fraud, successions, mutual exchanges and how tenancies will be brought to an end.

4.3. Ending fixed term tenancies

- 4.3.1. Since the Localism Act 2011, support for fixed term tenancies has changed dramatically. In 2016, the Housing and Planning Act ("the 2016 Act") set out to make fixed term tenancies mandatory. This proposal in the 2016 Act was not enacted and the Government's reversal of this policy was confirmed in the government's green paper 'A new deal for social housing' 2018. This reversal was a catalyst for some large RPs including L&Q and Peabody and Councils such as Royal Borough of Kensington and Chelsea to end the use of fixed term tenancies entirely.
- 4.3.2. Additionally, in the Secure Tenancies (Victims of Domestic Abuse) Act 2018, there is a requirement for Councils to grant secure 'life time' tenancies to "*a person who is or was a tenant of some other dwelling-house under a qualifying tenancy (whether as the sole tenant or as a joint tenant), and the Council is satisfied that (i) the person or a member of the person's household is or has been a victim of domestic abuse*

carried out by another person, and (ii) the new tenancy is granted for reasons connected with that abuse". That 2018 Act also provides a requirement for Councils that are local housing authorities to grant a life time secure tenancy of a dwelling where the tenant had been previously a joint tenant of that dwelling under a life time secure tenancy and the Council is satisfied that (i) the person or a member of the person's household is or has been a victim of domestic abuse carried out by another person, and (ii) the new tenancy is granted for reasons connected with that abuse. However, section 1 of that 2018 Act, which contains these provisions, is not yet in force. Further details are set out below in paragraph 7.6 of this report.

- 4.3.3. Like many Councils who adopted fixed term tenancies, it is now at a point where they must be reviewed. Across the sector, Registered Providers have evaluated the performance of fixed term tenancies in creating social mobility and freeing up social housing to find that nearly all tenancies are renewed. The main finding being that the cost in officer time to review tenancies outweighs the benefit to the organisation. As such, organisations such as L&Q, Peabody and the London Borough of Kensington and Chelsea, have all ended the use of fixed term tenancies.
- 4.3.4. Whilst developing this policy, officers engaged with households living in temporary accommodation and Council homes. These households particularly families with young children highlighted the importance of security. Most felt knowing a Council home could be a home for life would help families settle, particularly if they had previously been living in temporary accommodation for long periods of time.
- 4.3.5. In 2018, the Council commissioned the University of Cambridge to analyse affordability and housing within Brent. Using the example of a household with a 3-bedroom need (couple with two children), the findings were;
- 44% cannot afford the average 3 bed Council home at social rent without housing benefit
 - 53% cannot afford the average 3 bed home at London Affordable Rent without housing benefit
 - 71% cannot afford the average 3 bed home in North West London at Local Housing Allowance levels without housing benefit
- 4.3.6. This research not only shows that affordability plays a big part in Brent residents' ability to sustain a tenancy, but the lack of security in tenure could discourage households from improving their earning potential as they may be moved into an alternative tenure and increased income would go towards higher rents.
- 4.3.7. There is also the expectation that nearly all tenants would have their tenancies renewed, meaning the cost of administering this process would outweigh any benefit gained by the Council.

4.4. Offering joint tenancies

- 4.4.1. Currently, the Council only offers sole tenancies. A sole tenancy is where one member of the household signs the tenancy and is responsible for ensuring the household fulfils the responsibilities set out within the tenancy agreement. This includes paying the rent and ensuring no one in the household is responsible for causing anti-social behaviour. Where there is a breach of tenancy, the sole tenant will be held to account, even if it was a member of their household who was responsible.
- 4.4.2. The draft policy proposes to offer households a choice to enter into either a sole or joint tenancy. A Joint Tenancy is where more than one person has the responsibility for meeting the requirements of the tenancy agreement. Both tenants are entitled to stay in the home until the end of the tenancy.
- 4.4.3. Previously, the Council did offer joint tenancies. This however has not been a consistent offer and current practice for new Brent Council tenants is to offer a sole tenancy only. Whilst members of the household are given choice, for households with children the parent who is the primary carer usually signs the tenancy.
- 4.4.4. There are several benefits to offering joint tenancies, the first is the ability to support victims of domestic abuse. Under the Matrimonial Homes Act 1983, a married victim who is a sole tenant is unlikely to be able to end the tenancy unilaterally if the perpetrator (spouse) continues to occupy the home as it gives right to occupation to both spouses.
- 4.4.5. Joint tenants however are able to end a tenancy without the knowledge or agreement of the other tenant and applies to both married and co-habiting couples. This is further supported by the recent introduction of the Secure Tenancies (Victims of Domestic Abuse) Act 2018 which ratified the requirement for Councils to grant secure 'life time' tenancies to *"a person who is or was a tenant of some other dwelling-house under a qualifying tenancy (whether as the sole tenant or as a joint tenant), and the Council is satisfied that (i) the person or a member of the person's household is or has been a victim of domestic abuse carried out by another person, and (ii) the new tenancy is granted for reasons connected with that abuse"*. That 2018 Act also provides a requirement for Councils that are local housing authorities to grant a life time secure tenancy of a dwelling where the tenant had been previously a joint tenant of that dwelling under a life time secure tenancy and the Council is satisfied that (i) the person or a member of the person's household is or has been a victim of domestic abuse carried out by another person, and (ii) the new tenancy is granted for reasons connected with that abuse. However, section 1 of that 2018 Act, which contains these provisions, is not yet in force.

- 4.4.6. Secondly, by having two individuals responsible for the tenancy, both can be contacted and held accountable for issues such as rent arrears or tenancy breaches.

4.5. Demoted tenancies

- 4.5.1. Whilst the majority of tenants supported the move to secure tenancies, the concern was that issues such as anti-social behaviour would be more difficult to tackle. It is important to note that fixed-term tenancies should not be used to address other tenancy breaches and this should be dealt with in line with housing management processes.
- 4.5.2. If a tenant has been involved in antisocial behaviour and they are a secure tenant, the Council can demote the tenancy for 12 months by applying for a court order. A demoted tenancy reduces a tenant's rights and facilitates the eviction process if required. At the end of the 12-month period, if the tenant has complied with the court order their tenancy will automatically revert to a secure tenancy. If they have not complied with the order, the Council will serve a four-week notice stating that it has made a decision to seek possession of the property and obtain a possession order to evict the demoted tenant. The demoted tenant will have the opportunity to request a review of the decision to seek to evict him/her and the Council will carry out a review of such a decision if a review is requested. If the review confirms the decision to seek possession of the property, the Council can apply to the Court for a possession order and end the demoted tenancy.
- 4.5.3. In cases where a tenant's anti-social behaviour is a result of a mental illness or there are known support needs, the Council will ensure a multi-agency approach is adopted before making applications to demote a tenancy. Applications to demote a tenancy will need to be signed off by the tenancy sustainment panel prior to the application going to court. The housing service will be required to demonstrate this action is proportionate.

5. ***Other Proposed Changes***

- 5.1. Alongside the three key changes outlined above, the draft policy integrates the new Customer Relationship Management (CRM) system into the Housing services approach to tenancy management. Examples such as promoting the use of the customer portal to receive updates on members of the households including flagging any vulnerabilities or using data captured by the CRM to tackle tenancy fraud feature within the draft policy.
- 5.2. The policy reinforces the council's commitment to undertaking a programme of tenancy audits, ensuring each council home is audited at least once every four years. Tenancy audits are an integral part of the Housing Management service however there is not currently an agreed rolling programme and the duration of that programme. Introducing a minimum, a four-year rolling period the Council

means the Housing service can better utilise its CRM system to plan audits. Historically, the purpose of tenancy audits has been to verify who is living in the home against the council's records. This policy extends the purpose of the audits to ensure the council is being proactive in identifying issues such as hoarding or contributing to the council's corporate objectives such as raising the attainment of Black Caribbean Boys by identify households that may benefit from targeted interventions.

- 5.3. To introduce these changes, it is anticipated that tenancy reviews will be undertaken in a phase approach. Of the 978 households on a fixed term tenancy, 365 fixed term tenancies have expired and have converted to periodic tenancies. This accounts for 4.7% of all Brent Council tenancies. These tenancies will be prioritised for review and tenants will be converted to a secure tenancy. The service will analyse the expiry dates of the remaining 613 and where possible ensure tenants are notified 6 months ahead of their tenancy ending and the process for converting the tenancy will start. If any tenants are in breach of their tenancy, a secure tenancy will be offered but the Council will apply to demote the tenancy via the Courts. When compared to a RP with a similar sized stock, the review of 1,000 tenancies took approximately one year of officer time and cost £36,000. This has been built into the existing function of the housing service. Additionally, to maximise value, the Council can combine any verification and the renewal process with a tenancy audit.

6. Links to wider strategy

- 6.1. The report to CMT on the Council's draft Tenancy Strategy will be presented at the same meeting on 14 November 2019 as this report seeking approval for the Tenancy to be presented to PCG and the Lead Member for approval before going out to consultation.

7. Consultation

- 7.1. The Regulator for Social Housing Tenant Involvement and Empowerment Standard requires social housing landlords including the Council to ensure that tenants are given the opportunity to be involved in formulating their landlords housing-related policies and strategic priorities.
- 7.2. The Council will align consultation for the tenancy strategy and tenancy management policy but ensure the policy is specifically targeted to Brent Council tenants and households living in temporary accommodation.

Action	Start date	End date
Publish policy and supporting questions on the Consultation Hub for residents	16 December 2019	07 February 2020
Send Consultation Hub link to Resident Associations and Tenant Management Organisations		

Hold talk back session with tenants and households in temporary accommodation		
Amend Strategy & develop equality impact assessment		
Return to CMT	February 2020	
Return to PCG	February 2020	
Leaders Briefing	March 2020	
Cabinet	March 2020	
Policy roll out	May 2020	

8. Financial Implications

- 8.1. The Tenancy Policy will be delivered within existing resources in the Housing Revenue Account (HRA). The 2019/20 staffing budgets for Housing Officers who undertake tenancy management function is £0.68m.
- 8.2. The purpose of ending fixed term tenancies is to take focus away from less value added work of undertaking frequent tenancy reviews, and to re-direct existing resources towards other tenancy management issues, such as preventing tenancy fraud and undertaking tenancy audits.

9. Legal Implications

- 9.1. Section 150(3) of the Localism Act 2011 states that the Council, as a local housing authority, must have regard to its tenancy strategy in exercising its housing management functions. The Council's tenancy strategy is being revised and an updated draft version of the tenancy strategy will be subject to a consultation process before consideration and approval by the Cabinet.
- 9.2. Under section 105 of the Housing Act 1985, a landlord housing authority shall maintain such arrangements as it considers appropriate to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to which this section applies - (a) to be informed of the authority's proposals in respect of the matter, and (b) to make their views known to the authority within a specified period; and the authority shall, before making any decision on the matter, consider any representations made to it in accordance with those arrangements. For the purposes of section 105 of the Housing Act 1985, a matter is one of housing management if amongst other things, in the opinion of the landlord authority, it relates to the management of dwelling-houses let by the authority under secure tenancies, including demoted tenancies.
- 9.3. Under the Tenancy Standard provided by the Social Housing Regulator, it states that registered providers of social housing 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 of less than five years in general needs housing following 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 on taking into account the needs of those households who are vulnerable 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.

9.4. Under section 82A of the Housing Act 1985, local housing authorities may apply to a county court for a demoted tenancy order. The court can only grant a demoted tenancy order if :-

- a) a notice seeking a demotion order has been served or it is just and equitable to dispense with that requirement (Housing Act 1985 s83 as amended);
- b) it is satisfied that the tenant or a person residing in or visiting the dwelling-house has engaged or has threatened to engage in conduct to which section 153A or 153B of the Housing Act 1996 (anti-social behaviour or use of premises for unlawful purposes) applies, and
- c) it is reasonable to make the order.

9.5. A demoted tenancy lacks security of tenure but (s143E) before bringing a possession claim, a landlord of a demoted tenant must serve on the tenant a notice of proceedings which (i) states that the court will be asked to make a possession order; (ii) sets out the reasons for the landlord's decision to apply for the order; and (iii) specifies the date after which proceedings for the possession of the dwelling-house may be begun. Section 143F of the Housing Act 1996 provides a procedure for an internal review of the decision to seek possession. In the absence of a possession claim, if the tenant remains in occupation, s143B of the Housing Act 1996 provides that (in most circumstances), a demoted tenancy becomes a secure tenancy at the end of the period of one year (the demotion period) starting with the day the demotion order takes effect.

9.6. In July 2012, the Council's Executive (Cabinet) elected and agreed for the Council to grant introductory tenancies and flexible tenancies to new Council tenants.

10. Diversity

implications

- 10.1. To facilitate the councils understanding of how the proposed policy might impact individuals with protected characteristics, consultation will include an opportunity for residents to submit feedback specifically relating to equality. This feedback will be used to inform the equality impact assessment.

Report sign off:

PHIL PORTER

Strategic Director Community Wellbeing