

	Cabinet 15 June 2020
	Report from Strategic Director, Community Well Being
Brent Tenancy Strategy and Tenancy Management Policy	

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Appendix 1 – Draft Tenancy Strategy Appendix 2 – Draft Tenancy Management Policy
Background Papers:	None
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1.0 Purpose of the Report

- 1.1 The Council is reviewing its Tenancy Strategy in order to fulfil duties under the Localism Act 2011. This strategy sets out how all landlords in the borough should let and manage homes. A Tenancy Management Policy is also presented and outlines how the council in its role as a landlord will manage Brent Council Homes in line with the Strategies vision and commitments. The Lead Member for Housing and Welfare Reform approved Officers to start the process of statutory consultation for both the strategy and policy and this consultation period has now been completed.
- 1.2 This report provides Cabinet with final drafts of the Tenancy Strategy and Tenancy Management Policy for approval.

- 1.3 This report shows the support received from partners to the approach proposed by the Council and how the feedback gained from all stakeholders throughout the development process has shaped the proposed strategy and policy.

2.0 Recommendations

- 2.1 That Cabinet note the duty placed on the Council by the Localism Act 2011 to produce and publish a Tenancy Strategy and Tenancy Policy.
- 2.2 That Cabinet note and approve the content of the draft Tenancy Strategy.
- 2.3 That Cabinet note and approve the content of the draft Tenancy Policy.

3.0 Background

- 3.1 Under section 150 of the Localism Act, the Council is required to develop and publish a Tenancy Strategy. This strategy must set out the Council's position on:
- The type of tenancies granted in the borough;
 - How a person's circumstances should be considered when deciding the type of tenancy to grant;
 - The length of time a tenancy will be granted for;
 - How tenancies will be managed towards the end, including the offer of a new tenancy.
- 3.2 The Act also requires social housing landlords to produce a Tenancy Management Policy that has regard to the Council's strategy and presents how each landlord will operationally grant and manage tenancies. In addition to The Act, the Regulator for Social Housing consumer standards includes a Tenancy Standard that outlines further expectations for social housing landlords to address within their tenancy management policy, specifically the management of mutual exchanges and successions.
- 3.3 As mentioned in previous reports, support for fixed term tenancies has changed dramatically since the Council's previous strategy that was published in 2012, shortly after the Localism Act 2011. 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, Peabody and more recently Network Homes, to change their tenancy policies. Councils such as Royal Borough of Kensington and Chelsea have also taken the decision to promote security of tenure and end the use of fixed term tenancies.

- 3.4 This shift in the sector combined with Brent Housing Partnership transferring back into the Council created an opportunity to introduce a new way of working. This includes widening the scope of the strategy to include the Private Rented Sector (PRS) and developing an accompanying policy so the Council sets an example for how all landlords can practically manage homes and create security for Brent residents.

4.0 Tenancy Strategy

- 4.1 It is important to note that although it is obligatory for the Council to prepare a Tenancy Strategy; social landlords are only required to have regard to its contents. Additionally, as the Council has chosen to widen the scope of the Localism Act to the PRS it is voluntary for PRS landlords.

- 4.2 The draft Tenancy Strategy sets out a vision that “*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.*” The Council has developed this vision and four outcome based commitments as a framework for best practice rather than an approach that can be enforced. The success of this strategy will instead be dependent on the relationships built between the Council, RP’s and PRS landlords, utilising tools where the Council can influence. For a copy of the draft strategy, see *Appendix 1 – Draft Tenancy Strategy*.

- 4.3 **Commitment one:** When moving into a new home, Brent residents are offered the longest tenancy possible. To achieve this, the Council will;

- End the use of fixed term tenancies for Brent Council tenants.
- Encourage RPs to offer secure tenancies to Brent residents.
- Work with RPs allocations, and lettings team to highlight any members of the household considered vulnerable so they are granted a longer tenancy
- Maximise the use of incentives for private landlords to encourage longer tenancies at Local Housing Allowance rent levels.

- 4.4 **Commitment two:** Brent residents understand their tenancy agreement and how long their tenancy is for. To achieve this, the Council will;

- Proactively promote this strategy so residents understand what the Council expects from landlords in Brent
- Encourage all landlords to use interpreters at the point of sign up and the publication of tenancy agreements in other languages.
- Signpost to services in Brent who can offer independent advice to renters on their tenancy agreements.
- Encourage all social housing landlords to publish template tenancy agreements online including easy read versions and alternative formats where required

- Challenge all social housing providers of supported housing to regularly audit themselves against the 'real tenancy test' to ensure Brent residents living in supported housing are receiving their full tenancy rights.

4.5 Commitment three: Brent residents are supported to stay in their home and or tenancy for as long as it remains suitable for them. To achieve this, the Council will;

- Support people at risk of homelessness to sustain their tenancy through the Councils Homelessness Prevention service.
- Challenge RPs to keep Brent residents in their tenancy if they are forced to leave their home (e.g. fear of violence) by enabling a transfer or reciprocal arrangement.
- Improve resources on our website so Brent residents or landlords know who to contact if they are worried about their tenancy and can access this information 24/7.
- Support and implement the expected end to no fault evictions' in the Private Rented Sector
- Facilitate downsizing initiatives with RP's through nominations agreements and support RP's to use new smaller homes built in the borough

4.6 Commitment four: Brent residents are supported if, or when their tenancy ends to avoid homelessness. To achieve this, the Council will;

- Ensure RPs fulfil their responsibilities under the Homelessness Reduction Act 2017 and work with the Council at the earliest possible point if a tenancy is likely to end.
- Offer training and publish information for RPs on what advice to provide if someone is at risk of a tenancy ending.
- Use Personalised Housing Plans to support Brent residents at risk of homelessness by clearly setting out alternative and accessible housing options
- Influence RPs reviewing fixed term tenancies and discourage ending tenancies unless a household's circumstances have significantly improved financially
- Promote the offer of a deposit guarantee scheme to help people in the PRS start a tenancy whilst a deposit is being held by another landlord.

5.0 Tenancy Management Policy

5.1 The draft policy applies to Brent Council tenants only, but through consultation (see section 6) RP's in the borough have stated they would adopt similar initiatives to the Council when reviewing their own policies. The draft policy centres on introducing three key changes, which are;

- Ending the use of Fixed Term Tenancies
- Offering joint tenancies
- Introducing the use of demoted tenancies

5.2 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. For a copy of the draft policy see *Appendix 2 – Draft Tenancy Management Policy*

5.3 Fixed term tenancies

5.3.1 As of March 2020, there are 7,697 Council tenants in Brent, 1,108 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. This policy will see the Council convert the 1,108 tenancies to a lifetime secure tenancy.

5.3.2 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.

5.3.3 To introduce these changes, it is anticipated that tenancy reviews will be undertaken in a phased 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 an 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 management service. Additionally, to maximise value, the Council will combine any verification and the renewal process with a tenancy audit.

5.4 Joint tenancies

5.4.1 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.

5.4.2 The policy proposes for the Council to offer a joint tenancy to a maximum of two people and recognises applications for joint tenancies where two people are married or in a civil partnership. Joint tenancies will not be offered to anyone else who may be living in the home. The Council will offer joint tenancies to couples who can prove they have been cohabiting for at least 24 months.

- 5.4.3 Joint tenants will have equal rights to the tenancy and an opportunity to have their say in consultation undertaken by the Council. In cases where the Council requires a ballot to support regeneration or the development of new Council homes, both tenants will have the opportunity to participate in the ballot.

5.5 Demoted Tenancies

- 5.5.1 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. Although the concern is acknowledged, 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 and appropriate legislation.
- 5.5.2 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 them and the Council will carry out a review of such a decision if 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.
- 5.5.3 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 Housing Panel prior to the application going to court. The housing service will be required to demonstrate this action is proportionate.

6.0 **Engagement and Consultation process**

- 6.1 To ensure the strategy fulfilled its purpose under the Localism Act 2011 and ensure the social housing offer met the housing needs for Brent resident, the Council utilised best practice guidance published by Shelter to develop the draft strategy. Shelter advocate the use of a strong evidence base drawing on both data and the views of stakeholders as a foundation for any tenancy strategy.
- 6.2 To inform the content of this strategy a range of sources were used, these were:
- The London Housing Strategy
 - The London Borough of Brent 2016 Strategic Housing Market Assessment

- Findings from a study of affordable housing in Brent by Cambridge University
 - Analysis of rents against Local Housing Allowance rates
 - Homelessness and housing waiting list statistics for Brent
- 6.3 As a combined evidence base, these sources highlighted how the chronic shortage of genuinely affordable homes not only in Brent but also across London is affecting Brent residents.
- 6.4 A small group of five residents living in Temporary Accommodation were interviewed about the proposed changes. 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. Their feedback also shaped the offer of joint tenancies and they felt it was a positive change but joint tenancies should also be offered to include cohabiting couples as well as couples who are married otherwise it could be considered discriminatory.
- 6.5 Existing Council tenants on both lifetime tenancies granted before the Localism Act 2012 and those currently on Fixed Term Tenancies were invited to take part in a focus group via Talkback. A group of 30 attended the session to give their feedback. Overall, this group supported the proposed changes but raised concerns about how effective implementation would be. Points for consideration included concern that 'bad neighbours' if not managed properly could end up with lifetime tenancies impacting the wider neighbourhood. As already mentioned, fixed term, tenancy is not a tool for tackling issues such as anti-social behaviour. However, through the accompanying Tenancy Management Policy, the Council is now proposing to introduce demoted tenancies (see point 5.5).
- 6.6 The Brent Housing Management Customer Experience Panel (which at the time of the meeting included five members) reviewed the draft strategy and policy against the findings of the consultation carried out with residents and approved both to progress through the Council's governance process.
- 6.7 In addition to residents, partners such as Registered Providers (RP's) and Advice4Renters played a significant role in the development of the strategy and policy. All organisations expressed full support for content the proposed strategy and seven organisation provided more in-depth feedback.
- 6.8 Advice4Renters applauded the Council for its forward thinking approach and the inclusion of PRS within the scope of the strategy. Recommendations from their feedback include:
- Develop a local model tenancy agreement and champion the use of longer tenancies within the PRS.
 - Champion initiatives such as community led housing so the PRS can be a long term and affordable housing option

- Supporting landlords to develop an understanding of the benefits system and develop contingencies when payments are delayed to avoid evictions.

- 6.9 Partners such as Network, L&Q and Octavia welcomed commitment 3 in the Strategy (see point 4.5) and the link to supporting downsizing through partnership working using nomination agreements as a tool for this. All partners who responded expressed an interest in the policy, as the launch of the strategy will mean RP's are required to review their policy and consider how this aligns with the Council's ambitions. The challenge however is to what extent the Council can influence the approach adopted by RP's as, as the Localism Act 2011 only requires an RP has to have regard to the Councils strategy and many have portfolios that cross numerous boroughs.
- 6.10 Both the strategy and policy were published on the Council's consultation hub and shared via social media. The Council received no direct feedback from residents or the Tenant Management Organisations. Officers believe that the lack of feedback is a result of residents being involved throughout the process of developing a strategy and policy. Resident associations provided further feedback in scheduled Neighbourhood Action Plan meetings. This gave officers an opportunity to explain how proposed changes could support the service to tackle issues such as ASB on estates. The proposal to introduce demoted tenancies was well supported by residents, specifically leaseholders.

7.0 Financial Implications

- 7.1 The strategy will be delivered within existing budgetary framework within the Housing General Fund. The Council is planning to deliver a significant number of new properties in the coming financial years. In many cases, this will allow the council to offer permanent residences to those currently in Temporary Accommodation.
- 7.2 Minimum tenancies will not affect emergency temporary accommodation. The very nature of such accommodation is that it is designed to be short term, whilst a customer's claim for homelessness is assessed. Providing minimum tenancies for customer's would not be desirable for either the customer or the council.
- 7.3 The 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.
- 7.4 The purpose of ending fixed term tenancies is to provide tenants with a guaranteed security but this will also enable the council to focus officer time on tenancy management issues, such as preventing tenancy fraud and undertaking tenancy audits.

8.0 Legal Implications

8.1 Under section 150(1) of the Localism Act 2011, a local housing authority (which includes Brent Council) must prepare and publish a tenancy strategy setting out matters to which the registered providers of social housing are to have regard in formulating policies relating to the following:

- (i) the kinds of tenancies they grant;
- (ii) The circumstances in which they will grant a tenancy of a particular kind;
- (iii) Where they grant tenancies for a term certain and the lengths of the terms;

And

- (iv) The circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

8.2 A housing authority must have regard to its tenancy strategy in housing management functions (section 150(3) of the Localism Act 2011). A local housing authority must keep its tenancy strategy under review and may modify or replace it from time to time (section 150(5) of the Localism Act 2011).

8.3 Under section 151 of the Localism Act 2011, before adopting a tenancy strategy (and before making a modification to it reflecting a major change of policy), the local housing authority must do the following:

- i) send a copy of the draft tenancy strategy (or proposed modification) to every private registered provider of social housing for its district and give the private registered provider a reasonable opportunity to comment on those proposals;
- ii) consult other such persons as the Secretary of State may proscribe by regulations (to date, no such regulations have been made);
- iii) For a London borough Council, consult the Mayor of London.

8.4 When preparing or modifying its tenancy strategy, a local housing authority must have regard to the following: (i) its current allocation scheme under section 166A of the Housing Act 1996; (ii) its current homelessness strategy under section 1 of the Homelessness Act 2002; and (iii) in the case of a London borough Council, the London housing strategy which is prepared by the Mayor of London.

8.5 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, 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

8.6 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.

8.7 A demoted tenancy lacks security of tenure but (s143E of the 1996 Act) 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.

- 8.8 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.

9.0 Diversity Implications

- 9.1 An equalities analysis has been undertaken to ensure the proposed changes introduced through the tenancy strategy and tenancy management policy to have due regard to the requirements outlined in the Equality Act 2010.
- 9.2 The primary aim of the tenancy strategy is to create stability and security for people renting so that they can experience similar benefits to home ownership. Evidence suggests that within our tenant population, younger tenants have experienced less security than older tenants due to the changes brought in by the Localism Act 2011 and the introduction of fixed term tenancies.
- 9.3 Introducing joint tenancies will have a positive impact in meeting the council's commitment to equalities. Joint tenancies will be available to all couples, married, in civic partnerships and cohabiting. This when offered was previously only available to those who were married.

Related Documents:

Appendix 3 – Brent Council Tenancy Strategy 2012-2013

Report sign off:

Phil Porter

Strategic Director of Community Wellbeing