

LONDON BOROUGH OF BRENT

**MEETING OF THE EXECUTIVE
22 September 2003**

FROM THE DIRECTOR OF HOUSING SERVICES

FORWARD PLAN REF: HSG/02-03/

**NAME OF WARD(S)
ALL**

REPORT TITLE: Variation of Tenancy Terms & Conditions

Above **Below**

For: Action & Approval

Confidential Line

1. Summary

- 1.1 This report informs Members of the outcome of consultation on the proposed variation of the tenancy terms and conditions. It seeks Members' approval of the final version of the terms and conditions and the format of the agreement, and for commencement of the formal variation process.

2. Recommendations

Members are asked to:

- 2.1 Note the results of the consultation process.
- 2.2 Note the findings of the Quality of Life Scrutiny Panel Task Group.
- 2.3 Agree to the proposed tenancy terms and conditions, subject to any minor amendments that may be approved by the Director of Housing on the advice of the Borough Solicitor or the Plain English Campaign.
- 2.4 Agree to the proposed format for the first 2 pages of the agreement, including the inclusion of digital photographs for new tenants.
- 2.5 Agree to the formal variation of the Council's standard tenancy terms and conditions.

3. Financial Implications

- 3.1 Consultation costs were initially estimated at £6000 but after the additional consultation undertaken they rose to approximately £32,000 including printing, postage and distribution fees and the fees payable to the independent consultants. The cost of serving the variation notice will be in the region of £7000. All costs will be met from existing budgets.

3.2 Set-up costs for the new hardware and software package including a new server are £30,000, which will be met from the IT budget. Ongoing maintenance of two additional networked computers and printers will be absorbed within the existing IT maintenance contract. Maintenance of the two cameras is estimated at a total cost of £250 per annum, apart from the first year which will be under guarantee.

4. Staffing Implications

4.1 There are no staffing implications save for training requirements which will be met from existing budgets.

5. Legal Implications

5.1 As Members will be aware, Brent Housing Partnership (“BHP”) is now performing the majority of the housing management functions of the Council. Under the management agreement with BHP the Council has retained responsibility for determining the terms and conditions of Council tenancies. If Members approve the proposals set out in this report, BHP will be asked to carry out the formal variation of the tenancy terms and conditions and to commence use of the new agreement.

5.1 There are currently three different versions of tenancy terms and conditions in force in Brent, for ease of reference these will be referred to as: the 1981 version; the 1992 version; the 2000 version. Which version a tenant has depends on when his or her tenancy commenced.

5.2 Variations to tenancy agreement terms and conditions (other than rent) must be undertaken in accordance with sections 102 and 103 of the Housing Act 1985 (“the Act”). The Act requires that all secure tenants are provided with preliminary notice of the proposals, have a reasonable time to respond to the proposals and that any responses are considered by the Council. Actual notices of variation must then be served on each secure tenant at least 4 weeks before the new terms and conditions take effect. As set out in the detail of this report, preliminary notices have been served and extensive consultation undertaken.

5.3 In respect of the Borough’s two Tenant Management Organisations additional consultation requirements apply. Under the terms of their agreements with the Council the TMOs must be given notice of the intended changes at least 56 days before the Council intends serving on secure tenants the preliminary notice mentioned above. If the TMOs wish to make comments on the proposals they must do so within 28 days of receiving notice. The Council has to reply to any TMO responses before tenants receive their preliminary notices. These requirements were complied with as part of the consultation process.

5.4 While it is proposed that all tenants have the same tenancy agreement and terms and conditions, it is not possible to reduce the Council’s repairing obligations from what was initially agreed with tenants who have the 1981 version of the agreement. This means that although the wording of the agreement in respect of repairs will be the same for all tenants, a tenant who initially had more generous terms under the 1981 version will still be able to rely on them and the Council will still be bound by those more stringent obligations in relation to that tenancy. Officers and tenants will need to be aware of this

important difference when dealing with tenancies to which the 1981 repairing obligations apply. This will be addressed in the notes to the agreement and in the covering letter that will be sent with the notices of formal variation.

5.5 Although the Data Protection Act 1998 does not expressly provide for the way in which electronic photographs are to be stored, the Information Commissioner has informed officers that so called “anonymisation” of data is encouraged, particularly for security reasons. Under the Data Protection Act it is necessary to have in place security mechanisms to guard against improper use of data, including photographic images. Provision will be made for potential tenants who object to having their photograph taken. For example, if for religious reasons it is not appropriate for a woman to show her face to a man, officers will try to make arrangements for a female member of staff to take the photograph. Each refusal to have a photograph taken will be considered on its merits, however tenants will be expected to allow their photo to be taken. The requirement will apply only to new tenants. Objections to this requirement, and officer’s responses to those can be found in appendix E.

5.6 Every tenant is entitled to quiet enjoyment of his or her home and to exclusive possession of it. Although in emergencies it may be necessary to force entry to a tenant’s home, doing so in any circumstances risks incurring liability for breach of the tenant’s human rights, unlawful eviction, and breach of the tenancy agreement. Where a tenant fails or refuses to give access, an application should be made to court for an order requiring the tenant to give access, or for possession of the premises for breach of the requirement to give access.

5.7 Provided the Council acts reasonably, complies with the statutory timetable requirements and takes into consideration feedback from consultation, it is entitled to vary the agreement even if tenants are still opposed to the proposals.

6. Detail

6.1 Following approval by the Executive on 16 December 2002 the Director of Housing Services instructed BHP to commence consultation with secure tenants in respect of the proposed variation of the tenancy terms and conditions, and the proposed new format for the agreement, including the requirement to provide a digital photograph.

6.2 The 2 Tenant Management Organisations were sent the advance notice to which they are entitled under the terms of their management agreements on 3 February 2003 and feedback was received from Kilburn Square. The issues raised by Kilburn Square TMO were, in summary:

- Request for 6-month introductory tenancies before any secure tenancy is granted
- Request that false claims for Housing Benefit be a breach of the tenancy agreement
- Potential difficulties of verifying photographs and the need to be sensitive to religious or other concerns about clothing etc. Need to keep photos up-to-date and requirement not to wear dark glasses etc as for passports
- Request for a specific rule about DIY; request for set times when DIY allowed

- Request for reference to succession; need to seek permission before taking in lodgers and deletion of mention of subletting
- Include TMO role in managing tenancies in notes
- Rent – deposit suggestion
- Queried how often is “regularly”
- Asked that references to cleaning be made more specific
- Comment in support of recharging for lost keys
- Comment on requirement for tenant not to block drains etc
- Request that the agreement state that the Council will find alternative accommodation and pay for any difference in rent if tenants decanted for repairs
- Request that tenants be obliged to redecorate internally every 5 years
- Request for definition of overcrowding
- Request for notes on nuisance to include reference to DIY
- Request to clarify whether permission required from Area Office or TMO
- Include TMOs in Information, Consultation and Participation section

The response attached at appendix A was sent to both TMOs on 3 April 2003.

- 6.3 The preliminary notice of variation was sent to all tenants in the week of 7 April 2003 along with an explanation of the proposed changes and a copy of the proposed agreement and timetable for implementation. The preliminary notice and information sent with it are attached at appendix B.
- 6.4 Initially the deadline for the consultation period was 27 May 2003. At the request of some tenants and Brent Community Law Centre (“BCLC”) the consultation period was extended to 19 July 2003 and further information sent to tenants. Included in that further information were comments by BCLC which had appeared on a website for an organisation called “Tenants Rights Org” (who were highly critical of the proposals and the process), and had also been sent to the Council by BCLC. In addition comments from an independent tenant advisor, DOME, were incorporated into 2 documents that gave each of the existing clauses cross-referenced with the corresponding proposed new clause. A statement about the process and the new deadline for consultation was included in the further information in 7 languages: Tamil, Hindi, Urdu, Gujarati, Arabic, Somali and Albanian. The documents were also available in other languages and in larger print on request. The extension of the consultation period was widely advertised. The further information that was provided to tenants in June is attached at appendix C.
- 6.5 During the initial consultation period BHP held 11 public meetings, 10 on weeknights and 1 on a Saturday. Attendance at the meetings varied from poor to good and at each meeting BHP officers answered questions as well as making a formal presentation. A further 2 meetings were held at the request of tenant representative groups at which officers attended and discussed the proposals and objections to them. Approximately 70 BHP-officer hours were dedicated to consultation meetings and responding to consultation feedback.
- 6.6 Although formal consultation closed on 19 July 2003 officers have given a commitment to make the final proposed version of the agreement available at various Council/BHP premises as well as on the BHP website, in advance of the Executive decision on 22 September.

- 6.7 As a result of consultation numerous responses were received by the Council and by BHP. During the entire 15-week consultation period officers responded to dozens of telephone enquiries and letters from tenants and their families or friends as well as from a few leaseholders. Many of those who responded simply wanted the process explained to them or were confused or even alarmed at having received formal documents from the Council. Some tenants complained that there was too much information, others that there was not enough. A handful said that they had not received the papers – in respect of which BHP are satisfied that the distribution company tasked with posting the documents did so, and that the list of tenants used as the basis for distribution is as accurate as it can be. The majority of those who responded substantively were opposed to some of the proposals, but there were many who favoured them and some who felt that they did not go far enough in some respects. Tenant engagement was such that the proposals even received press attention on a national level, with arguments both for and against the proposals appearing.
- 6.8 Although strictly speaking only secure tenants are entitled to take part in the consultation process the comments of leaseholders and others have also been taken into account. Following the close of formal consultation and taking into account the responses to it, officers made amendments to the proposed terms and conditions, but some issues remained contentious. Those issues that remained contentious were the subject of a task group of Members from the Quality of Life Scrutiny Panel during July, as explained in section 7 below.
- 6.9 Those issues about which most opposition was expressed by those responding to the consultation, and which are perceived by officers as likely to be still contentious following amendments reflected in the final version of the terms and conditions, are:
- a) Requirement for all new tenants to allow a digital photograph to be taken, retained electronically by BHP and potentially disclosed to other landlords.
 - b) Inclusion of former tenant arrears in new rent accounts.
 - c) Perceived reduction in the repairing obligations of the Council in respect of some tenants.
 - d) Changes to the Council's responsibilities to repair common parts.
 - e) Increased powers of access & imposition of penalties for failure to give access.
 - f) Failure to excuse those less able to personally undertake maintenance (internal and external) from the requirement to do so.
 - g) Prohibition on keeping and using inflammable materials.
 - h) Increased responsibility for nuisance and anti-social behaviour.
 - i) Levying of a charge for failure to return keys following the end of a tenancy.
- 6.10 The summary attached at appendix E shows the most contentious issues in respect of which few or no amendments had been made at the time of the Task Group's investigation, it also records the up-to-date position. Officers responses to the issues set out at paragraph 6.9 are contained in appendix E.
- 6.11 The attached final version of the terms and conditions is that recommended by officers although Members are asked to note that, time permitting, the document will be submitted to the Plain English Campaign with the intention that any minor amendments recommended by that organisation will be incorporated, with the approval of the Director of Housing Services without further reverting to Members. It

may also be necessary to make minor amendments on the advice of the Borough Solicitor.

- 6.12 The final version of the tenancy terms and conditions at appendix D takes into account all feedback received from tenants, tenant's advisors (BCLC and DOME), leaseholders and the Task Group. The first 2 pages of appendix D are an example of how the new agreement will look, including the digitally produced photographs of tenants that will appear on the front of the agreement. The appendix shows previous text as well as amendments made since the document was last before the Executive, only the final version will be served on tenants. The proposals have been developed over a period of approximately 2 years taking into account best practice from other local authority landlords, and extensive consultation that goes beyond that strictly required by law in terms of the time allowed, the level of detailed information provided and the parties from whom feedback has been received and taken into account.
- 6.13 If Members decide not to approve the proposed variation of the terms and conditions there will continue to be significant differences in the rights and obligations of some tenants due simply to the date on which their tenancy commenced. If no variation occurs enforcement, including detection of housing fraud, will be more difficult than it need be. If Members decide to approve the variation the proposed terms and conditions will clarify the rights and obligations of both parties; will bring the agreement into line with recent developments in practice and law, for example in respect of nuisance and anti-social behaviour; will enable the Council to better meet its commitment to reducing nuisance, harassment, domestic violence, and the fear of crime in the Borough. It will also mean that, with the exception of the 1981-version repairing clauses, all 10,500 tenancies will be subject to the same terms and conditions for the first time in over 10 years, which will facilitate enforcement and also be fairer for all tenants.
- 6.14 If the variation is approved, given the amount of time needed to prepare the documents for service on the 10,500 Council tenants, it is anticipated that the formal notices of variation would be posted in mid- to late October 2003, with the actual variation date being at least 4 weeks after that.

7. Quality of Life Scrutiny Panel Task Group

- 7.1 At the first meeting of the Quality of Life Scrutiny Panel on 25 June 2003 Members resolved to establish several task groups to undertake time-limited investigations into various topics including the proposed variation of the tenancy terms and conditions. Tenancy Variation Task Group Members were Councillors Harrod and Van Colle.
- 7.2 Officers attended the two meetings of the Task Group on 22 and 29 July 2003, providing the Task Group Members with copies of all relevant documents as well as explanations for the various proposals. The Task Group decided that it was not necessary to call for external evidence and the minutes of the last meeting record their findings. The Task Group agreed on all but one item and made numerous recommendations for amendment to the proposed terms, all of which have been incorporated into the final version of the proposals.

7.3 The item on which agreement was not reached is the requirement for the Council to undertake external redecoration of premises every 7 years. When the Task Group reported to a special meeting of the Quality of Life Scrutiny Panel on 1 September 2003 Members of the Panel resolved to support the tenants' request to retain the 7-year requirement. Officers have therefore amended the proposal to reflect this, although as with all other proposed variations, it is for the Executive to make the final decision.

7.4 In the normal course of events a report by the Task Group would go to the Panel then, if the Panel thought necessary, on to Scrutiny Committee. If Scrutiny Committee decided it needed to be referred to the Executive it would have been added to the agenda at that time. In light of the current schedule of Council meetings that has not been possible. For the purposes of this report the minutes of the Task Group showing the findings and recommendations of the Task Group are attached at appendix F.

8. Background Information

(some of which has been provided on a limited basis as appendices with this report)

- Report to the Executive dated 16 December 2002 and appendices
- Response to TMOs in April 2003
- Preliminary notice to tenants and information sent with it in April 2003
- Further information sent to tenants in June 2003
- Summary of responses to consultation from tenants and other respondents (please note that individual responses will have to be anonymised prior to disclosure)

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