



London Borough of Hammersmith & Fulham

CABINET

14 January 2013

TITLE OF REPORT

COUNCIL HOUSING TENANCY AGREEMENT

Report of the Cabinet Member for Housing

Open Report

Classification - For Decision

Key Decision: Yes

Wards Affected: All

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1. EXECUTIVE SUMMARY

- 1.1 The 2011 Localism Act and associated guidance that has followed, allows local authority landlords issue fixed term tenancies following adoption of their Tenancy Strategy. This requires a change in the Tenancy Agreement as only 'lifetime' tenancies can currently be issued. In addition to facilitating the introduction of fixed term tenancies, the Council is proposing stronger and clearer references to the consequences of anti-social and criminal behaviour; ownership of dogs and dangerous dogs; and tenancy fraud. There are also new sections on giving notice to the Council of periods of absence of 3 weeks for secure tenants and 1 week for sheltered tenants; overnight visitors to sheltered tenants restricted to 5 nights; and setting out new tenancy succession rules.

- 1.2 Where the Council seeks to make changes to the Tenancy Agreement, it should formally consult with its tenants over a timescale guided by legislation. This involved issuing a Draft Tenancy Agreement and Preliminary Notice of Variation for consultation during September-October 2012 to all tenants to seek their views on the detail of the changes the Council was proposing to make. Tenants' responses have now been received and this report summarises the response and describes what changes have been made following consideration of those responses.

2. RECOMMENDATIONS

- 2.1 That the consultation process undertaken to seek all tenants' views on the changes proposed to their current Tenancy Agreement be noted.
- 2.2 That approval be given to the Tenancy Agreement and to its implementation following service of a Notice of Variation in early February 2013.
- 2.3 That authority be delegated to the Cabinet Member for Housing, in conjunction with the Executive Director of Housing and Regeneration, to make such minor changes to the documents annexed to this report as they consider necessary.

3. REASONS FOR DECISION

- 3.1 Cabinet is required to approve changes to the Council Housing Tenancy Agreement following the consultation process with tenants.

4. INTRODUCTION AND BACKGROUND

- 4.1 The Council as a registered provider of social housing, in consultation with its tenants, periodically revises its Council housing Tenancy Agreement. The Tenancy Agreement is an important document as it represents the contract between the Council and the tenant, setting out the respective rights and responsibilities of each party. Reasons for changes can include adapting the document that address changes in lifestyles; incorporating references to new legislation; and introducing new, or revising existing, conditions that address management issues that have arisen since the adoption of the previous Tenancy Agreement.
- 4.2 Following the passing of the 2011 Localism Act and associated guidance that has followed, local authorities were given powers to issue fixed term tenancies following adoption of their Tenancy Strategy. This requires a change in the Tenancy Agreement as only 'lifetime' tenancies can currently be issued.
- 4.3 Where the Council seeks to make changes to the Tenancy Agreement it should formally consult with its tenants over a timescale guided by

legislation. This involved issuing a Draft Tenancy Agreement and Preliminary Notice of Variation for consultation during September-October 2012 to all tenants to seek their view on the detail of the changes the Council was proposing to make. Tenants' responses have now been received and this report summarises the response and describes what changes have been made following consideration of those responses.

5. PROPOSAL AND ISSUES

5.1 By approving this report, Cabinet will be agreeing the changes that have been made following consultation and agreeing the issue of the final Tenancy Agreement and the associated Notice of Variation, highlighting where the changes have been made.

Key Changes Proposed

5.2 Key changes proposed to the current Tenancy Agreement included:

- Adopting a single Tenancy Agreement document that can be amended to reflect its status as an Introductory Tenancy; Secure Tenancy; Secure Flexible Tenancy; or Sheltered Tenancy.
- Setting out the basis on which the Council may or may not permit a tenant to run a business from their home. The guiding principle is that any such activity must not detrimentally affect the quiet enjoyment by other residents of their own home.
- Setting out (through cross referencing to the Housing Allocation Scheme) the basis on which the Council will manage tenancy succession issues.
- Setting out eligibility criteria for respective tenants' right to buy.
- Highlighting the consequences of tenancy fraud and attempts at tenancy fraud.
- Encouraging tenants to use the direct debit facility to pay their rent and service charges.
- Strengthening obligations on tenants, household members and their visitors to refrain from anti-social behaviour and criminal acts in the borough with reference to the potential loss of the tenant's home.
- Strengthening obligations on tenants who own dogs, with specific references to dangerous dogs.
- Stronger references on tenants' obligations to pay both rent and service charges

5.3 The full suite of documents was issued during the week commencing 10 September 2012 with a deadline for responses by 19 October 2012. The suite of documents comprised:

- Introductory letter from the Cabinet Member for Housing
- Draft Tenancy Agreement
- Preliminary notice of Variation
- Response Proforma
- Freepost Envelope

5.4 Included with the Tenancy Agreement documentation was the latest edition of *Your Home*; a notice regarding the closure of the housing management service from 145 King St; and, a notice regarding the relocation of income recovery and rent arrears teams to the 1st Floor of the Hammersmith Town Hall Extension.

Tenants' Responses

5.5 Circa 12,500 letters with enclosures were sent to tenants (i.e., excluding leaseholders) with the contents described in section 3.1. Over 700 responses were received through telephone calls; returned proformas; signed draft Tenancy Agreements; letters; email comments.

5.6 A letter was sent to Tenants and Residents Associations (TRAs) informing them of the consultation process, which included reference to a Council representative being available to speak at a meeting if requested. Consultation meetings were held with the Borough Forum (comprising TRA representatives) on 25 September 2012; a meeting with one of the Area Forums; and a meeting with Aspen Gardens TRA.

5.7 Tenants' responses have now been received and the second part of this report outlines the number of responses received from tenants and outlines what changes have been made to the Tenancy Agreement following consideration of those responses.

5.8 The consultation on changes to the Tenancy Agreement and the new Tenancy Agreements for new tenants attracted 771 responses in total, broken down as 40 email responses, 196 telephone, and 535 written responses.

5.9 This represents an overall response rate of 6.2% of the total 12,500 consultation packs that were sent out to tenants.

- Sixty nine responses related to changes to the draft tenancy terms and 6 related to the introduction of new forms of tenure.

- Two hundred and eighty seven tenants, or 37.2% of the 711 responses, signed and returned the draft Tenancy Agreement in error.
- Two requests were made for translation of the S105 Consultation document providing translations into two different languages (Arabic and Eritrean). These translated consultation packs were then sent to the residents concerned.
- Three tenants reported that they were dyslexic and a further 6 stated that they were unable to read or write, or understand the documents, and arrangements were made for officers to visit them and explain the consultation to them.

Consultation Feedback

- 5.10 The feedback that was received was generally supportive in relation to the changes to the existing Tenancy Agreement. 105 comments (13.6% of overall responses) were recorded which suggested broad support for the changes.
- 5.11 There were a number of critical comments about the clarity of the consultation pack and 287 of those responding assumed that it was necessary for them to sign and return the draft Tenancy Agreement that was provided for information. There were 9 responses which expressed non-specific opposition to the proposed changes. 115 respondents (14.9% of the total responses) contacted the consultation helpline for further clarification on the purpose of the documents and whether they needed to be completed and returned.
- 5.12 A number of tenants (35, or 4.5% of the total responses) also took the opportunity to enquire or comment about other issues unrelated to the tenancy consultation and these were passed to the appropriate officers for action.

Main response themes

- 5.13 Responses from tenants fell into 4 main themes:
- Questions about what they needed to do with the information that they had been sent
 - Concerns over security of tenure
 - Specific suggested amendments to the clauses in the tenancy agreement. Broad support for the new tenancy agreement
 - 55% of tenants (108) who contacted the council by telephone wanted to confirm what they were required to do with consultation documents.

In addition, the following issues were raised

- Of tenants who expressed an opinion either verbally, or in writing on the response form, the majority wished to confirm that they were pleased with the additions to the terms and conditions, with a number commenting that they felt that the document was clear and easy to understand.
- Seventy tenants, or 9.1% expressed concern about their future security of tenure. Officers were able to reassure them that their security of tenure would not be affected.
- One resident of the West Kensington Estate raised the issue of their security of Tenure in the context of the regeneration project scheduled for the estate. Officers were again able to reassure this tenant that their security of tenure will not change as a result of the new Tenancy Agreement, details of which can be found in the relevant cabinet report.
- Twenty tenants (2.6% of total respondents) responded that they were concerned that it was unreasonable to expect them to inform their housing officer if they were going to be away from their property for more than 3 weeks. It was felt by some tenants, especially those with relatives living abroad, that three weeks was not long enough.
- Thirty three tenants (4.3% of total respondents) in sheltered accommodation felt that they should be allowed to have guests to stay for more than two nights in a week without asking for permission from the Sheltered Housing service.

Specific tenancy issues

- 5.14 A small number of tenants raised queries or made comment about very specific clauses in the Tenancy Agreement. These are detailed below

Dogs

- 5.15 Fourteen tenants commented about dogs, with 50% in agreement that clauses relating to dogs should be strengthened and 50% concerned about what this might mean for their own circumstances.

Satellite Dishes

- 5.16 One tenant asked about satellite dishes in the context of whether or not they would be allowed to keep a satellite dish that they had already had installed.

Laminate flooring

- 5.17 Five tenants required clarification on the issue of whether it will be possible to lay laminate flooring under the terms of the new Tenancy Agreement

Joint Tenancy

- 5.18 One consultee remarked that there is no reference to the process of becoming a joint tenant.

Data Protection

- 5.19 Five tenants stated concerns over use of information. These concerns were primarily in relation to the inclusion of photo ID with newly signed Tenancy Agreements.

Tenant Responsibility

- 5.20 Sixteen tenants either expressed concern, or enquired about various areas of tenant responsibility as stated in the proposed Tenancy Agreement. These comments ranged from concerns over the decoration of properties, to the newly included section on tenant behaviour in the borough.

Right To Buy

- 5.21 Four tenants asked whether their right to buy their Council property would be affected by the proposed changes.

Enforcement of Proposed Tenancy Agreement

- 5.22 Thirteen tenants enquired how the proposed changes would be enforced.

Comments on new form of tenancy

- Concern that tenants will no longer invest in properties if they only think they will remain there for 5 year
- Good idea to maintain life time tenancies for existing tenants and fixed term for new tenants. Two years is too short an amount of time. Agrees with five years. Should also be a clause about spot check visits and visits should not be pre-arranged
- Agrees with logical changes. Agrees that existing secure tenants should remain secure

- Seems fair and sensible. Will enable the Council to take faster action in the future against those who break the agreement.
 - Agree with draft proposals but needs to be clarification on how it affect tenants on housing benefit.
 - Opposed to the fixed term tenancy
- 5.23 Officers developed a simple matrix identifying what issues had elicited a response and identified whether the Council intended to make changes. A further summary of responses is appended to this report as Appendix B.

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1 Sections of the Tenancy Agreement that are proposed for change following consultation
- 6.2 The key change officers are seeking approval for involves:
- extending the number of nights that a sheltered tenant can have an overnight visitor from the proposed 2 nights to 5 nights (See Page 6 of Appendix A). Respondents made the case that visitors often stay overnight to assist with tenants' health and care needs and the recommended 2 nights limit was too short.
- 6.3 Other changes officers are seeking approval for involves:
- Making reference to the Government's 'Right to Repair' regulations (See Page 9)
 - Additional descriptions of general nuisance and behaviour to include cooking food using a barbecue on a balcony and burning rubbish on balconies, private gardens or any shared areas (See Page 15)
 - Revising references to how the Council keeps and uses information about tenants (See Pages 18)
- 6.4 Other minor changes and improvements have been made to the document, not referred to above. It should be noted that many of the comments made related to the practical implementation of the proposed changes, e.g., dog ownership where tenants already owned dogs; enforcement of anti-social behaviour elements. These comments will be helpful with the drafting of the Tenancy Support Pack which will set out in more detail how the Tenancy Agreement will work in practice.

7. CONCLUDING SUMMARY

7.1 On agreement of the recommendations of the Cabinet Report, officers will arrange for the mailing out of the Tenancy Agreement and a Notice of Variation to all tenants which will trigger the implementation of the new Tenancy Agreement document four weeks after it is delivered. This new document will not need to be signed by existing tenants but will nonetheless be the document that sets out the conditions on which tenants occupy their Council homes, highlighting both their and the Council's rights and responsibilities.

7.2 Appended to this report is the:

- Final Tenancy Agreement (Appendix A)
- Summary of Tenants Responses (Appendix B)

7.3 The Equalities Impact Assessment is available on the Council's website.

8. CONSULTATION

8.1 The consultation process is detailed in Sections 4 and 5 of this report.

9. EQUALITY IMPLICATIONS

9.1 Key positive and negative impacts that have been identified are as follows:

Positive Impact on Victims of Domestic Violence & Abuse

9.2 The proposed Tenancy Agreement includes a section on domestic violence and abuse which states that a tenant must not use or threaten to use violence or abuse (including physical or emotional abuse, or restricting financial control), or intimidate any person (including children) living in the property. If it is proven that actual or threatened domestic violence has taken place then the tenant could face legal action by the Council which could result in potential eviction. This could be an additional positive safeguard for all nine protected characteristic groups (Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy & Maternity, Race, Religion, Sex, and Sexual Orientation) . Alleged victims will not always feel able or comfortable to freely disclose information. Clear and specific procedures will be developed so that staff understand what domestic violence is and can be more confident in identifying potential cases.

Positive Impact on people with Disabilities

- 9.3 The Disability characteristic is one of the principal areas of review contained within the accompanying EIA to ensure that vulnerable groups will not be adversely disadvantaged by the proposed changes. When considering the disability protected characteristic, considerations take into account both mental and physical disabilities. Applicants with disabilities and/or special housing or health needs will continue to be granted secure tenancies. This provides a level of stability and support to vulnerable members of the borough, ensuring that they are not adversely disadvantaged by the introduction of fixed term tenancies for new tenants.
- 9.4 The Council will have due regard to the multiple needs of applicants and will liaise with other departments of the Council, principally Children's and Adults' Services. The onus will be on the applicant, or the applicant's support agency, to inform Housing Options of any needs and existing contact they have with other Council officers to ensure the respective needs can be taken into account. The Council understands the scale and scope of some vulnerable households needs. The Council will seek to ensure that necessary advice and support is made available.
- 9.5 The Council is committed to retaining where possible housing that has been built and/or adapted for use by disabled tenants. The Tenancy Agreement seeks to ensure continued provision of properties with disabled adaptations remaining in the lettings pool. The Council will therefore reserve the right to offer alternative accommodation to a remaining general needs tenant who may ordinarily be able to succeed to the tenancy. In this scenario, any new tenancy will be granted on similar terms to the original and reflect their current housing need. For example, where the original household need was three bedrooms and the changed housing need is two bedrooms, then the household will be offered a two bedroom property. Any such decision can, however, be the subject of appeal to a panel of senior housing managers.
- 9.6 The Council will seek to ensure that the implementation of the agreed revised Tenancy Agreement will meet the 2010 Equality Act requirements and will continually review and update its procedures and working practices where necessary.

Positive Impacts on Disabled People

- 9.7 The proposed Tenancy Agreement states that tenants can run a business from home as long as they have obtained written permission from the Housing Department. Permission will only be refused if it is likely to cause a nuisance or annoy other people, or damage property. This tenancy condition could potentially benefit disabled tenants who may be able to explore options to work from home. This tenancy condition promotes the creation of small businesses that can operate

from home and is an inclusive tenancy condition that could positively increase opportunities for disabled tenants. It is envisaged that these businesses would typically be a one-person, desk-based business often using information technology to operate.

Negative Impacts on Race Protected Groups

- 9.8 18-25 year olds will be granted 2 year fixed term tenancies in the first instance, which may lead to the granting of a longer 5 year tenancy at a later stage. 52% of Council lettings in 2011/12 were to ethnic minority groups and therefore the granting of fixed term tenancies to future tenants is likely to have a relatively modest greater negative impact on people from race protected groups. Given that a proportion of lettings are made to young people in housing need, it can be assumed that a significant proportion of 2 year tenancies will be granted to applicants from ethnic minority backgrounds.

10. LEGAL IMPLICATIONS

- 10.1 Under Section 105 of the Housing Act 1985, the Council has a statutory duty to consult with tenants on matter of housing management . This includes the variation of the Tenancy Agreement
- 10.2 Section 103 of the Act sets out the procedure that must be followed to vary the Tenancy Agreement. The first step is serve a Preliminary Notice on all tenants and as set out in the report this was served on tenants on or about 10 September and tenants were invited to comment on the proposed variation by 19 October.
- 10.3 Members must properly consider any comments made by the tenants. Failure to take into account any relevant considerations would void the variation.
- 10.4 Finally a Notice of Variation must be served on all tenants which must specify, the nature and details of the variation and the date it will take effect. As set out in the report there must be at least 4 weeks between the date the Notice of Variation is served and the date on which the Tenancy Agreement will be varied.
- 10.5 After the Notice of Variation has taken effect all Council tenants will be bound by the terms of the new Tenancy Agreement.
- 10.6 Implications verified/completed by: Janette Mullins, Head of Litigation, 0208 753 2744

11. FINANCIAL AND RESOURCES IMPLICATIONS

- 11.1. The cost of serving Preliminary Notice of Variation and serving of the Notice of Variation were projected to cost approximately £75,000. As this work was not anticipated when preparing the HRA budgets for 2012/13, a draw down from HRA working balances (HRA reserves) was approved. Current forecasts reported through the Council's Corporate Revenue Monitoring regime indicate that a break-even position is likely to be achieved against the new £75,000 budget.
- 11.2 In terms of future years, it should also be noted that the implementation of aspects of the new tenancy regime, such as flexible tenancies, will result in potentially both additional management costs and in additional rent loss due to voids and bad debts from 2013/14 onwards. The current draft HRA business plan assumes that the costs of managing the new regime are contained within existing planned cost envelopes and makes some allowance for increases in rent loss arising from voids and bad debts. It should be noted that these figures are at this stage difficult to estimate as this is a new regime and exact comparisons are difficult to find.
- 11.3 Our building insurers have confirmed that they have no issues with a business being conducted from a tenanted home as long as suitable risk assessments are undertaken. Our insurance premium is calculated on a blanket basis and our insurance team have advised that they do not anticipate any additional charges for business use.
- 11.4 Implications verified/completed by: Kathleen Corbett, Director of Finance & Resources (HRD), 0208 753 3031.

12. RISK MANAGEMENT

- 12.1 The report content sets out the risks associated with the proposed key changes to the Tenancy Agreement and contributes positively to the management of risk number two of the Enterprise Wide Risk Register, Managing the Business Objectives (publics needs and expectations). There remains a possibility of individual or group legal challenge regarding the reasonableness of some of the changes being proposed. Specifically where the Council is requiring tenants to give the Council notice of absence for more than three weeks has been identified as an area of potential challenge. The Council understands the scale and scope of some vulnerable households needs, these have been expressed in the 8.4 of the Equalities section of the report. The Council will seek to ensure that necessary advice and support is made available in mitigation.

- 12.2 Regarding the implementation of the new Tenancy Agreement, there will need to be sufficient time and resources made available for staff training and associated changes to information and communications technology applications to reflect the implementation of fixed term tenancies as one example. This will also require the production of a new Tenancy Support Pack to complement the Tenancy Agreement and the adoption of new policies and procedures to ensure that new approaches being adopted are resourced, robust and deliverable. Finally, there will need to be full and on-going communication to tenants of the new approach being adopted.
- 12.3 A risk register will need to be prepared, to be managed within the project, to record additional risks identified in the report. This can also accommodate and escalate any emerging risks and issues as they arise.
- 12.4 Implications verified/completed by: Michael Sloniowski, Head of Risk Management, 0208 753 2587

13. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 13.1 Not applicable

LOCAL GOVERNMENT ACT 2000 **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	None		

LIST OF APPENDICES:

- Final Tenancy Agreement (Appendix A)
Summary of Tenants Responses (Appendix B)