

Agenda Item 9.

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| TITLE | Proposal to re-introduce Lifetime Tenancies to the Housing Revenue Account |
| FOR CONSIDERATION BY | The Executive on Thursday, 18 July 2024 |
| WARD | None Specific; |
| LEAD OFFICER | Director, Place and Growth - Giorgio Framaliccio |
| LEAD MEMBER | Leader of the Council and Executive Member for Housing, Partnerships and the Local Plan - Stephen Conway |

PURPOSE OF REPORT (INC STRATEGIC OUTCOMES)

To consider the reintroduction of Lifetime Tenancies to the Housing Revenue Account (HRA). This will affect 336 residents currently on Fixed Term Tenancies as well as future residents who, if this decision is approved, will be issued Lifetime Tenancies. This will increase housing security for those residents affected whilst creating capacity and financial efficiencies for the Council.

RECOMMENDATION

That the Executive approves:

1. The cessation of Fixed Term Tenancies in the Council's HRA and, upon expiry of existing Fixed Term Tenancies, to convert these into Lifetime Tenancies subject to the completion of a consultation with residents.
2. The Director of Place and Growth to have delegated authority to approve this policy change following a review of consultation responses in consultation with the lead Executive Member for Housing.

EXECUTIVE SUMMARY

This report outlines a recommendation to re-introduce Lifetime Tenancies to the Council's HRA and the ending of issuing Fixed Term Tenancies (FTT), following a consultation with affected residents. New residents will also be offered Lifetime Tenancies moving forwards.

With no evidence that the implementation of Fixed Term Tenancies has led to an increase in the mobility of the Council's housing stock as intended, it is proposed that the Council follows the lead of other councils and registered providers and revert to the use of Lifetime Tenancies. This will release staff capacity, by reducing the administrative burden of renewing Fixed Term Tenancies. Additionally, this change will increase resident satisfaction and create stronger communities by increasing residents' housing security and helping to create more stable lives. Lifetime tenancies also help underpin the Council's commitment to Social Care Futures, aiming to give those in need a stable, affordable home and to be part of a community where everyone belongs. In turn, without a fixed time limit on their tenancy and uncertainty over whether it will be renewed, residents will have improved confidence investing in their home and contributing

positively to their local community. Rental arrears will also be easier to collect within the legal precedent of Lifetime Tenancies.

The Executive is asked to authorise a consultation on this decision with affected residents and for the Director of Place and Growth to have delegated authority to implement this policy change, in consultation with the Executive Member for Housing, following a review of the consultation responses. Following approval of this recommendation, residents will automatically sign up to a Lifetime Tenancy upon the expiry of their Fixed Term Tenancy as well as all new tenancies into the HRA.

BACKGROUND

The Localism Act of 2011 requires local authorities to develop a Tenancy Strategy. Within that, local authorities had the discretion to implement Fixed Term Tenancies. In 2016, the Housing and Planning Act intended to make it compulsory for local authorities to implement Fixed Term Tenancies. From 16th July 2018 the Council signed up its first Fixed Term Tenancies which applied to all new social housing tenants. These tenancies were either 4 year or 9 year tenancies following a 1 year introductory tenancy with the length based on both the resident's and the property's individual circumstances. In exceptional circumstances, 2 year Fixed Term Tenancies or Lifetime Tenancies were still issued. The Council currently has 336 Fixed Term Tenancies of which 218 are in rental arrears, 19 have zero balances and 99 are in credit. Of the 218 tenancies in arrears, 15 of these tenancies have rental arrears of over £1,000. To note, given two-thirds of residents are on Universal Credit, which is paid in arrears, the figure for the number of households in arrears is inflated compared to reality. If we convert to Lifetime Tenancies, our Rent Collection team are confident of collecting the rent currently in arrears because under Fixed Term Tenancies the arrears become 'former tenant arrears'. Former tenant arrears are harder to collect because there is no legal process to follow which leads to the arrears likely to be written off. The introduction of Lifetime Tenancies will increase the Council's ability to collect rent arrears.

Since the above legislation, there has been growing recognition of the importance of housing stability and strong and supportive communities. In 2018, the government published the Social Housing Green Paper which decided that, following consultation, the powers contained in the Housing and Planning Act 2016 to make it compulsory to enforce Fixed Term Tenancies would not be implemented. Social landlords can decide whether to implement Fixed Term Tenancies, cease using them and convert to Lifetime Tenancies, or review and amend existing criteria for Fixed Term Tenancies. Therefore, social landlords can consider how to make the best use of Fixed Term Tenancies to get the best use of their housing stock – including the abolishment of them and re-introduction of Lifetime Tenancies. The Social Housing Green Paper 2018 states that any decision should be taken at a local level following consultation with residents and other social landlords. It is also important to note that several Housing Associations and Local Authorities have already re-instated Lifetime Tenancies.

BUSINESS CASE

Analysis of the reasoning and implications of this decision are below:

Wokingham Borough Council's commitment to Placemaking

As an area of particular high cost and high demand housing, providing people with affordable and secure accommodation is a priority for the Borough's housing provision. This issue is exacerbated by the current cost of living crisis. The Office of National Statistics calculates that the average median salary for the UK outside of London is £38k and this can vary based upon a working person's age and experience in the workplace. The Office for National Statistics also suggests that, nationally, a person can expect to spend 30% of their income on rent. In Wokingham, the average rent in the private sector is £1,900pcm. Based on the 30% rule, this would require a household income of £72,000pa. The average household income in Wokingham is nearly half that figure at £39,225pa. In comparison, the average rent amongst affordable rented housing is £874pcm. Based on the 30% rule, this would require a household income of

£32,400pa which is below the average household income in Wokingham. In terms of enabling home ownership, Generation Rent have stated that, nationally, it takes 9.6 years to save for a deposit which represents an increase of 38% from 2011. From the evidence above, it is not possible to save for a deposit for the average Wokingham resident looking to rent in the private sector given the disparity between income and cost. By re-introducing Lifetime Tenancies, we will provide housing security to those who would otherwise struggle to prosper in the private sector. This is because those on Fixed Term Tenancies are unlikely to be able to move out of the social housing sector within the length of their FTT due to the high cost of private rental and home ownership. Therefore, re-introducing lifetime tenancies will provide more housing security and stability.

Placemaking succeeds when a mix of household types, incomes and backgrounds mix effectively to make use of excellent public services in that locality. To achieve this, social, affordable, supported and private housing should be mixed appropriately and areas of concentration should be avoided where possible. By converting Fixed Term Tenancies to Lifetime Tenancies, this provides tenants with the opportunity of creating their own stable and secure circumstances and contributing positively to the wider community. By putting a time limit on secure housing, the incentive to succeed and become financially more stable is diminished.

Making the best use of our housing supply is unlikely to be positively impacted by continuing to use Fixed Term Tenancies for many of the reasons set out below. In addition, having tenants who are economically active contributes to the key area of the destigmatisation of social and affordable housing. Those residents who are vulnerable or on a very low income can be better served by the building, regeneration or acquisition of housing stock. To progress this, it is critical that we maintain a reliable income stream via rent collection and the reduction of rent arrears via our economically active customers and efficiently managing the wider housing function to ensure a healthy HRA is maintained.

Benefits of Converting to Secure Lifetime Tenancies:

- The Welfare Conditionality Report (2016) found that residents experience a greater sense of community and belonging without the apprehension of a fixed review of their tenancy.
- Responsive repairs are reduced as anecdotal evidence suggests residents invest more in their property if they feel secure in their tenancy.
- A joint Lifetime Tenancy can be terminated by either party on behalf of both. The usual scenario is a person experiencing Domestic Violence which would result in the tenancy being terminated in order to be rehoused. In a Fixed Term Tenancy both parties have to agree to terminate which takes power away from the survivors of Domestic Violence.
- Easier to collect rent arrears from residents as the tenancy is longer. In Fixed Term Tenancies the resident could move out of the property and the debt then becomes 'former tenant arrears' which is more difficult to recover.

- Retains the ability to terminate the tenancy in the event of significant rental arrears or anti-social behaviour.
- There are financial and efficiency benefits on staff time as there is far less administration on Lifetime Tenancies.
- Lifetime Tenancies retain the same provisions for eviction as a Fixed Term Tenancy (e.g. Anti-Social Behaviour) and have stronger legal precedent to enforce.

Challenges in Ending Fixed Term Tenancies -

- **Legal Precedent and Rewarding Anti-Social Behaviour** - The leading case on enforcement of fixed term tenancies is *Croydon v Kalonga*, 2020. This does not have any direct relevance to Wokingham Borough Council, as the tenancy agreements are drafted with a forfeiture clause. This is however not the end of the matter, as in order to enforce breaches of tenancy, including rent arrears, the application to the court involves first asking that the fixed term be ended, and then the resulting secure periodic tenancy can be subject to any order that would have been available if the tenancy were a Lifetime Tenancy at the outset. What this does mean is that effectively, fixed term tenants who do not keep to the terms of their tenancy are rewarded for this, as prior to any other order being made, they are effectively awarded a secure Lifetime Tenancy.
- **Staffing and Cost Inefficiencies** - A further difficulty is that the Rental Income Team deal with the entire court process in relation to secure Lifetime Tenancies, however, due to the need to terminate the fixed term in relation to Fixed Term Tenancies, it is a far more complex legal process, which cannot be done by applying online, and as such, requires the involvement of Legal Services which is significantly more expensive.
- **Limiting Staff Capacity** - There is a significant administrative burden in the review process. Each review takes an average of 2-4 hours and there is not the staffing capacity to complete this. If it was decided not to renew a tenancy, then the workload involved would be over 20 hours considering the legal issues and court action. This has significant financial and efficiency implications. Officer time is valued at £22ph so each renewal would cost up to £66. Assuming each of the 336 Fixed Term Tenancies are renewed this would cost £22k. Any tenancies not renewed would cost up to £2k per case in officer time. Therefore, if the Council continues to use FTTs, additional staffing resource will be required to ensure there is capacity to renew and implement FTTs.
- **Best Practice** - Only 7 out of 50 Local Authorities surveyed thought that Fixed Term Tenancies have been effective (Fitzpatrick and Watts, Heriot Watt University, 2018).

Methodology to convert to Secure Lifetime Tenancies:

- If the Council does decide to no longer offer Fixed Term Tenancies and re-introduce Lifetime Tenancies, then following a consultation with affected residents all existing Fixed Term Tenancies will run their course and roll over into Lifetime Tenancies with all new tenancies in the HRA signed up as Lifetime Tenancies
- The Council can only change a flexible tenancy by agreement which effectively involves every resident agreeing to the change which left a significant arrears going into former tenancies as well as staff time. The legislation also allows for lapsed Fixed Term Tenancies to convert to Lifetime Tenancies on expiry which means the same tenancy is effectively still in place which results in no arrears being lost.

Recommendation

That the Executive approve the cessation of Fixed Terms Tenancies in the Council's HRA and, upon expiry of existing Fixed Term Tenancies, to convert these into Lifetime Tenancies subject to the completion of a consultation with residents.

The Director of Place and Growth to have delegated authority to approve this policy change following a review of consultation responses in consultation with the lead Executive Member for Housing.

Conclusion:

Overall, it can be concluded that Fixed Term Tenancies have not achieved their purpose to increase the mobility of the Council's housing stock while the administration, instability placed on residents and weak legal framework supports the re-introduction Secure Lifetime Tenancies.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces unprecedented financial pressures as a result of; the longer term impact of the COVID-19 crisis, Brexit, the war in Ukraine and the general economic climate of rising prices and the increasing cost of debt. It is therefore imperative that Council resources are optimised and are focused on the vulnerable and on its highest priorities.

| | How much will it Cost/ (Save) | Is there sufficient funding – if not quantify the Shortfall | Revenue or Capital? |
|-----------------------------------|-------------------------------|---|---------------------|
| Current Financial Year (Year 1) | Nil | N/A | Revenue |
| Next Financial Year (Year 2) | Nil | N/A | Revenue |
| Following Financial Year (Year 3) | Nil | N/A | Revenue |

Other Financial Information

- Arrears can be managed more effectively reducing the writing off of uncollectable debts. The Rent Collection team are confident to collect the rent arrears of the

current Fixed Term Tenancies in arrears should they be converted to Lifetime Tenancies.

- FTT renewals take around 3 hours of office time per renewal at £22ph and therefore £66 per renewal. If all 366 FTT's are renewed that is over a thousand hours in officer time at cost of around £22k. Any tenancies not renewed could cost up to £2k per case in officer time.
- Finding capacity within the existing staffing resources to undertake these works is likely to be difficult. Therefore, if the Council continues to use FTT's, additional staffing resource will be required to ensure there is capacity to renew and implement FTTs, which may involve the use of temporary staffing at even greater cost.
- Saving will also be realised on temporary accommodation costs if the Council decided to end a FTT on review and the Council must provide alternative accommodation in line with homelessness duties.
- Legal costs are reduced if a FTT was not to be renewed as solicitor, courtroom and staffing costs are avoided.
- Secure tenancies can be submitted to court for rent arrears by Housing Income Services as opposed to legal submitted fixed term tenancies. This means Shared Legal Solutions can focus their time on other housing issues and allows the Rents team to take lead on secure tenancies.

Legal Implications arising from the Recommendation(s)

From a legal perspective, this recommendation would be beneficial, both in terms of ease of dealing with rent arrears, and other breaches, and the resultant cost savings.

Stakeholder Considerations and Consultation

The Executive is asked to approve officers to consult on this decision and for the Director of Place and Growth to have delegated authority to approve this decision, in consultation with the Executive Member for Housing following the consultation. Following approval of this recommendation, officers will sign residents up to a Lifetime Tenancies upon the expiry of their Fixed Term Tenancy.

Public Sector Equality Duty

Due regard has been undertaken to the Public Sector Equality Duty and a Stage 1 Equalities and Impacts Assessment is attached to this report in Enclosure I.

Climate Emergency – This Council has declared a climate emergency and is committed to playing as full a role as possible – leading by example as well as by exhortation – in achieving a carbon neutral Wokingham Borough by 2030

This decision would have negligible impact either positive or negative on the Council's ambition to become net-zero by 2030.

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| Reasons for considering the report in Closed Session |
| N/A |

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| List of Background Papers |
| Enclosure I – Stage 1 Initial Equalities and Impacts Assessment |

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