

Report for: Homes Policy Development Group

Date of Meeting:	21 st November 2023
Subject:	TENURE REVIEW PROJECT PLAN
Cabinet Member:	Cllr Simon Clist
Responsible Officer:	Simon Newcombe – Corporate Manager for Public Health, Regulation and Housing
Exempt:	None which are Exempt from publication under paragraph 3, Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)
Wards Affected:	All
Enclosures:	Annex A: Draft Project Plan relating to Review of Tenure including the Mid Devon Housing Tenancy Agreement and Tenancy Policy

Section 1 – Summary and Recommendation(s)

This report relates to a draft project plan relating to a review of tenure used by Mid Devon Housing (MDH). This project, if agreed, would encompass an assessment of the outcomes achieved as a result of the use of flexible tenancies since they were first introduced. It would also include a consultation and decision-making process relating to the use of different tenure types. In addition, the project plan sets out how the standard conditions of tenancy will be reviewed. If tenure reform is agreed, the revisions to the standard tenancy agreement will reflect this and the tenancy management policy will be updated accordingly.

Recommendation:

That the project plan set out in Annex A is agreed so that work can commence on a review of the forms of tenure currently in use by Mid Devon Housing (MDH); and, following that, a review of the standard conditions of tenancy, and the tenancy management policy, can be commenced.

Section 2 – Report

1 Introduction

- 1.1 At the meeting of the Homes Policy Development Group (PDG) on 21 March 2023, Members agreed that Officers should work up a project plan setting out a proposal to consult tenants and other stakeholders on the continued use of flexible tenancies.
- 1.2 As a registered provider of social housing (RP), Mid Devon Housing (MDH) can only use flexible tenancies if the strategic housing authority, the Council, specifies that they can be used within the tenancy strategy. All local authorities are required to have a tenancy strategy. The Operations Manager for Public Health and Housing Options has responsibility for this and is planning to review it in due course.
- 1.3 As a landlord, the Council has used flexible tenancies since 8 April 2013. The need to make best use of the housing stock influenced the decision to introduce this form of tenure.
- 1.4 Nonetheless, the use of flexible tenancies can be problematic. Members were given the background to their use, more information about some of the issues impacting their use and the need to consult tenants and other stakeholders about any proposed changes, in the earlier report to the PDG which met on 21 March 2023, and this informed the decision relating to the formulation of a project plan. A link to this earlier briefing is included in the background papers section of this report.

2 Legislative and regulatory requirements associated with tenure reform

- 2.1 In line with section 105 of the Housing Act 1985 (the Act), social landlords such as MDH are required to consult secure tenants on matters associated with housing management. This requirement is reinforced by the provisions of the existing Tenant Involvement and Empowerment Standard, which is part of the regulatory framework for social housing, operated by the Regulator for Social Housing (RSH). This states that RPs shall ensure that tenants are given a wide range of opportunities to influence and be involved in the formulation of their landlord's housing-related policies and strategic priorities.

- 2.2 Sections 102 and 103 of the Act contain provisions relating to the variation of tenancy conditions and sets out the procedure to be followed where landlords are planning to do these. These provisions relate to secure tenancies.
- 2.3 It should be noted that the variation procedure set out in the Act must be adhered to. However, if it has, then existing tenants are not required to sign the new agreement. It should also be noted that details of the variation notices must be kept on each individual tenancy record to prove that the new tenancy agreement has replaced the previous one, and that this is likely to result in a significant administrative burden.
- 2.4 Flexible tenancies are issued for a fixed term and therefore it is more difficult to vary the terms and conditions of each one. However, good practice and the requirements relating to consultation dictate that these tenants should also be consulted on tenure reform and any proposed changes to the tenancy agreement so that their views can be taken into consideration.
- 2.5 For this reason, the project plan sets out a timetable which would result in the adoption of a new tenancy agreement in November 2024. MDH is committed to involving tenants in decision-making and the project plan provides Officers with the time required to properly consult tenants and other stakeholders such as Devon County Council, the Police alongside organisations which can support tenants including Churches Housing Action Team (CHAT) and Citizen's Advice. The aim is to consult tenants initially to ascertain their views relating to the use of flexible tenancies; and then to support the statutory requirements associated with consultations about variations in the terms and conditions of tenancy.

3 Tenancy agreement review

- 3.1 Regardless of any decision regarding the future use of flexible tenancies, it is good practice to periodically review tenancy conditions. In the case of the existing tenancy agreement currently in use, Officers have already noted some changes needed as a result of legislative, regulatory or policy changes.
- 3.2 It should be further noted that there has been significant change since November 2016 when the tenancy agreement was last reviewed and the amended version came into use. Since then, the fire at Grenfell Tower, subsequent legislative and regulatory changes, the pandemic and the cost of living crisis have all impacted the work of MDH as a landlord. It is important that the tenancy agreement in use reflects the external operating and compliance environment. In particular, the Social Housing White Paper issued in November 2021 and the subsequent implementation of the Social Housing Regulation Act 2023 have brought about significant changes, with the aim of putting tenants at the heart of the work of RPs. Recent policy reviews have taken account of some of the required changes and the tenancy agreement

also needs to be updated to ensure that conditions of tenancy are aligned with policy commitments.

4 Tenancy policy review

- 4.1 In line with the provisions of the Localism Act 2011, every local authority is required to publish a tenancy strategy and RPs are expected to have due regard to this.
- 4.2 The RP's own policy, procedures and information to tenants relating to the use of flexible and other tenancies should align with the tenancy strategy of the local authority in which they have housing stock. The Tenancy Standard, published by the RSH, states that RPs should offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock. RPs are also required to meet all applicable statutory and legal requirements in relation to the form and use of any tenancy agreements or terms of occupation.
- 4.3 Within the Tenancy Standard, there are some specific expectations and RPs are required to publish clear and accessible policies which outline their approach to tenancy management. The standard contains provisions as to what these policies should include. Relevant to this discussion, is the requirement to set out the following:
- the type of tenancies which will be granted;
 - the length of any fixed terms to be used if fixed term tenancies are to be used;
 - the circumstances in which the RP would grant another tenancy on the expiry of the fixed term;
 - the information about the advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
- 4.4 The standard also provides a provision relating to how RPs should manage the end of a fixed term tenancy and contains a requirement relating to the need to provide advice and assistance to those tenants whose tenancies are ending.
- 4.5 Therefore, if tenure reform is agreed, the MDH tenancy policy will have to be updated to reflect the new arrangements. Tenants and other stakeholders should also be consulted on any revisions to existing policy.

5 The Options Relating to Tenure Reform

- 5.1 With regard to the future use of flexible tenancies, as noted in the report to the meeting of the Homes PDG on 21 March 2023, there are a number of options.
- Stopping the use of flexible tenancies
 - Maintaining the status quo – but with increasing stock numbers this has implications in terms of the resource needed to manage flexible tenancies going forward

- Adopting a blended approach – based on people and/ or property type. For example, retain the use of flexible tenancies for larger homes including three bedroom and larger units. Another option would be to use tenancies of differing lengths or retaining the use of 2-year flexible tenancies for cases where there are exceptional circumstances.

6 Consultation

- 6.1 A key proposal within the project plan is to set up a Member Working Group (the group) to review the outcomes arising from the use of flexible tenancies. The aim is to provide this group with relevant data and other evidence to inform the discussion. The group would meet three times and would be required to review feedback from tenants. Furthermore, it would be required to make recommendations relating to tenure reform to the Homes PDG.
- 6.2 Simultaneously, discussions with tenants and other stakeholders will commence with the aim of trying to understand the impact of having a flexible tenancy on specific households. Therefore, tenants and other agencies will be invited to give MDH their views. Tenants will be asked how they wish to contribute to the project. In order to encourage more feedback, tenants will be offered a variety of ways in which to comment. A focus group is planned and/ or a reading panel for those that do not wish to attend a meeting either in person or virtually. MDH will also make use of the: “Let’s Talk Mid Devon” tool to consult with tenants and others as appropriate.
- 6.3 In particular, the discussion relating to the continued use of flexible tenancies will focus on the impact their use may be having on the sustainability of the MDH estates due to the fact that some residents will be aware that their tenancy is only for a limited term. The outcome of these discussions will be fed back to the group.
- 6.4 The project plan also makes provision for the appropriate decision-making to be considered as part of the democratic process.

7 Recommendation

- 7.1 In accordance with the above:
1. That the project plan set out in Annex A is agreed so that work can commence on a review of the forms of tenure currently in use by Mid Devon Housing (MDH); and, following that, a review of the standard conditions of tenancy, and the tenancy management policy, can be commenced.

Financial Implications

The landlord service is funded through the Housing Revenue Account (HRA) which is a ring-fenced account. The main income into this account is derived from the rent paid by tenants, and the HRA must balance. The work involved in a tenure review and also a review of the standard conditions of tenancy will be contained within existing budgets in the HRA.

Legal Implications

As a registered provider (RP) of social housing, the Council is obliged to take account of the standards contained within the revised regulatory framework which is administered by the Regulator of Social Housing (RSH). This states that RPs should meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation.

The Social Housing (Regulation) Act 2023 has received Royal Assent in July 2023. The provisions of the Act are designed to strengthen the regulatory framework for social housing and to introduce a new proactive, consumer-led regulation regime focussed on meeting the needs of tenants. The RSH issued a consultation on the new regulatory standards for social housing which RPs will be expected to achieve from April 2024. This consultation was also available on the GOV.UK website and closed on 17 October 2023.

Section 102 and 103 of the Housing Act 1985 provides that in England and Wales the terms of a secure tenancy (other than those implied by statute) may be varied, therefore correct compliance with legislation is a requirement to prevent any legal challenges.

Section 105 of the Housing Act 1985 sets out the Council's duties relating to consultation with tenants on matters of housing management. Following any consultation, the MDH will be obliged to give a minimum notice period of 4-weeks in advance of any change.

Risk Assessment

It is good practice to review tenancy agreements on a regular basis to take account of changes to legislation, regulatory requirements, policy and good practice. RPs also need to ensure that those responsible for housing management can rely on a robust tenancy agreement which can be used in support of efficient and effective management of tenancies and the housing stock.

Impact on Climate Change

The Housing Act 1985 requires local authority landlords to undertake consultation and also to print out various documents and to send these through the post when reviewing conditions of tenancy. This will, of course, have an impact upon emissions but cannot be avoided, in line with legislative requirements.

Equalities Impact Assessment

The regulatory framework currently includes the Tenant Involvement and Empowerment Standard and, in line with the provisions of this, RPs are required to treat all tenants with fairness and respect; and also to demonstrate that they understand the different needs of their tenants, including in relation to the equality strands and tenants with additional support needs.

Officers working in MDH have training in support of this and are mindful that the Public Sector Equality Duty applies in the discharge of their duties. Work has started to refresh the information held on tenants in MDH records and, to this end, diversity information will be sought at most contacts starting once teams have been briefed.

Those tenants who may have difficulty using standard means of written communication, including those who with literacy issues or whose first language is not English can request alternative forms of communication, including telephone calls, face to face contact and alternative formats including information in large print.

Formal policy updates arising from the completion of the tenure review will be accompanied by a full Equalities Impact Assessment and the compliance with the Equality Duty will be intrinsic within the review and policy drafting process.

Relationship to Corporate Plan

A stated aim of the Council is to deliver sustainable communities.

Section 3 – Statutory Officer sign-off/mandatory checks

Statutory Officer: Andrew Jarrett

Agreed by or on behalf of the Section 151

Date: 07 Nov 2023

Statutory Officer: Maria de Leburne

Agreed on behalf of the Monitoring Officer

Date: 07 Nov 2023

Chief Officer: Simon Newcombe

Agreed by or on behalf of the Chief Executive/Corporate Director

Date: 30 October 2023

Performance and risk: Steve Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

Date: 08/11/2023

Cabinet member notified: Yes

Section 4 - Contact Details and Background Papers

Contact: Claire Fry, Operations Manager for Housing Management Services or Simon Newcombe, Corporate Manager for Public Health, Regulation & Hosing

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Telephone: 01884 255255

Background papers:

Current MDH tenancy agreements:

<https://www.middevon.gov.uk/residents/mid-devon-housing/help-and-support/strategies-and-policies/tenancy-agreements/>

The use of Flexible Tenancies - a paper setting out how the use of flexible tenancies can be challenging and containing information on some of the issues impacting their use. This paper was presented to the Homes PDG at the meeting on 21 March 2023.

<https://democracy.middevon.gov.uk/documents/s27077/HPDG%20210323%20Flexible%20Tenancies.pdf>

The Regulator of Social Housing, consumer standards and charter:

<https://www.gov.uk/guidance/regulatory-standards#consumer-standards>

<https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>