

Report for: Homes Policy Development Group

Date of Meeting: 11 June 2024

Subject: **MID DEVON HOUSING (MDH) TENURE REVIEW
AND ASSOCIATED REVIEW OF TENANCY
CONDITIONS: PROJECT PLAN**

Cabinet Member: Cllr Simon Clist Cabinet Member for Housing and Property

Responsible Officer: Simon Newcombe – Head of Housing and Health

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 Amended Project Plan relating to Review of Tenure, and the Mid Devon Housing Tenancy Agreement and Tenancy Policy

Annex B: Project Plan relating to Review of Tenure, and the Mid Devon Housing Tenancy Agreement and Tenancy Policy agreed by HPDG on 21 November 2023

Section 1 – Summary and Recommendation(s)

This report is seeking approval to update the project plan relating to a review of the standard MDH tenancy agreement. The project plan also relates to the various forms of tenure currently in use at MDH. In addition, the project encompasses a review of the tenancy management policy which requires updating, and which will have to be amended accordingly should tenure reform be agreed. This report contains a recommendation that the project plan is extended to facilitate detailed consultation

with tenants, and other stakeholders, in line with legislative and regulatory requirements, and good practice.

The project plan and its timeline has been dependent on the work of the PDG Tenure Reform working group including the production of its final report as set out at this meeting. Due to the Member Working Group meeting once more than originally planned, the report from the Working Group to the PDG on this project was delayed from the March meeting to June. More time is therefore now needed to enable appropriate consultation with other stakeholders, including tenants, to take place and the project plan has been amended accordingly.

Recommendation(s):

- 1. That the PDG agrees to the amended tenure review project plan as set out in Annex A**

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 The use of these 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. 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.
- 1.5 At the meeting of the PDG on 21 November 2023, a project plan was approved and this is set out in Annex B in this report. A link to the report which was published in support of this project plan 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 mandatory Transparency, Influence and Accountability consumer standard, which is part of the regulatory framework for social housing, operated by the Regulator for Social Housing (RSH). This states that RPs must take tenants' views into account in their decision-making about how landlord services are delivered and communicate how tenants' views have been considered. The Standard contains a specific expectation which states that: "RPs must give tenants a wide range of meaningful opportunities to influence and scrutinise their landlord's strategies, policies and services."
- 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 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 be consulted on tenure reform and any proposed changes to the tenancy agreement so that their views can be taken into consideration.
- 2.5 The original project plan set 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 is set out to provide officers with the time required to properly consult tenants and other stakeholders such as the Police, organisations which can support tenants including Churches Housing Action Team (CHAT) and Citizen's Advice, and Devon County Council.
- 2.6 If the changes to the project plan are agreed, this will provide a new form of tenancy agreement with effect from 7 April 2025, as the first day of the new financial year, 2025/26.

3 Tenancy agreement review

- 3.1 Officers had already recognised the need for some changes to the existing standard form of tenancy agreement. These changes are required as a result of legislative, regulatory or policy changes and also in support of good practice.
- 3.2 The regulation of social housing has been subject to significant change following the implementation of the Social Housing Regulation Act in 2023. These changes brought about by this legislation were conceived in the aftermath of the fire at Grenfell Tower. The aim of the changes was to put tenants at the heart of the work of all RPs, including MDH.
- 3.3 Other factors have also impacted the environment in which MDH operates and these include the cost of living crisis, the pandemic and welfare reform. The tenancy agreement was last updated in November 2016 and therefore requires updating to take account of these various changes.

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 Operations Manager for Public Health and Housing Options is planning to refresh the existing tenancy strategy. Taking this into account and, 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 Consultation

- 5.1 To date, there has been a tenant consultation on tenure reform; and also the PDG Member Working Group which has discussed this, and which has made recommendations to this Policy Development Group (PDG). The report of the Working Group is on the agenda for this meeting with a recommendation relating to the discontinuance of the use of flexible tenancies.
- 5.2 Due to the Member Working Group meeting once more than originally planned, this report from the Working Group to the PDG on this project was delayed; there was insufficient time in which to agree a report for the meeting of the PDG on 19 March 2024. This report is being brought before the PDG at this meeting. As a result of this delay, more time is needed after the meeting to enable appropriate consultation with other stakeholders, including tenants, to take place as set out above.

5.3 This consultation will enable an updated standard tenancy agreement to be finalised. This agreement is a key cornerstone in our formal relationship with tenants and our wider tenant engagement and management. Once a full consultation has been completed then a draft updated agreement will be finalised. The amendments will take account of all recommendations on tenure reform made by this PDG and also other minor changes required in line with recent legislation, regulatory changes and good practice

6 Proposed changes to the Project Plan

6.1 The revised draft project plan, for approval, is set out in Annex A with a copy of the existing one set out in Annex B for ease of comparison.

6.2 Members will note that the main change relates to the proposal that the life of the project plan is extended, with the end date being 7 April 2025. The advantage of moving the end of the project until then relates to the fact that there will be enough time in which to undertake a meaningful consultation with tenants and other agencies. It also means that the new tenancy agreement, if adopted, will be in use with effect from the start of the new financial year, 2025/26, which is easier to manage for administrative reasons.

6.3 It should be noted that, sadly, no tenants expressed an interest with regard to participation in a dedicated focus group. Plans to review the tenancy agreement and to review the form of tenure in use at MDH were promoted in the tenant newsletter, at a Community Cuppa event, on social media and on Let's Talk Mid Devon, but there was very little feedback from tenants in relation to this. The poll used on Let's Talk Mid Devon generated limited interest (as set out in the report from the Member Working Group) but, sadly, this did not lead to any tenants volunteering to get more involved in the tenure reform project.

6.4 The Member Working Group met on four occasions: 18 December 2023, 31 January 2024, 5 March 2024 and 25 March 2024.

7 Recommendation

7.1 In accordance with the above; that the PDG agrees to the amended tenure review project plan as set out in Annex A.

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 specifically 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: Paul Deal

Agreed by or on behalf of the Section 151

Date: 31 May 2024

Statutory Officer: Maria de Leburne

Agreed on behalf of the Monitoring Officer

Date: 31 May 2024

Chief Officer: Simon Newcombe

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

Date: 22 May 2024

Performance and risk: Steve Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

Date: 24 May 2024

Cabinet member notified: Yes

Section 4 - Contact Details and Background Papers

Contact: Simon Newcombe, Head of Housing and Health

Email: snewcombe@middevon.gov.uk

Telephone: 01884 255255

Background papers:

MDH tenancy agreements: [Tenancy Agreements - MIDDEVON.GOV.UK](https://www.middevon.gov.uk/tenancy-agreements)

Item 6: the Use of Flexible Tenancies, 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: [Agenda for Homes Policy Development Group on Tuesday, 21st March, 2023, 2.15 pm - MIDDEVON.GOV.UK](#)

Item 10: Tenure Review Project Plan, paper setting out a draft project plan relating to a review of tenure used by Mid Devon Housing (MDH) with a recommendation that this was agreed and, also, a review of the standard conditions of tenancy, and the tenancy management policy. This paper was presented to the Homes PDG at the meeting on 21 November 2023: [\(Public Pack\)Agenda Document for Homes Policy Development Group, 21/11/2023 14:15 \(middevon.gov.uk\)](#)

The Regulator of Social Housing, consumer standards: [Regulatory standards for landlords - GOV.UK \(www.gov.uk\)](#) Published 2 April 2024

[The charter for social housing residents: social housing white paper - GOV.UK \(www.gov.uk\)](#)