

Report for: Cabinet

Date of Meeting: 9 July 2024

Subject: **FINAL REPORT OF THE TENURE REFORM WORKING GROUP**

Cabinet Member: Cllr Simon Clist Cabinet Member for Housing, Assets 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 – Final Report of the Tenure Reform Working Group

Section 1 – Summary and Recommendation(s)

The Homes PDG tasked the Tenure Reform Working Group to investigate the continued use of Flexible tenancies for all properties and whether this type of tenure is beneficial for Mid Devon Housing (MDH) and tenants. The Working Group were asked to consider whether a change to the current tenure offerings required updating and if so what types of tenure should be offered to tenants in the future.

Recommendation(s):

Cabinet are asked from the Homes PDG:

- 1. The use of flexible tenancies be halted**
- 2. All current flexible tenancies are moved to secure tenancies**

Section 2 – Report

1 Introduction

- 1.1 The Council has been using 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. However, there was also support for the view that social housing should be available to those who need it the most at the time when they need it the most; meaning that it is there as a safety net for those in housing need, offering a “helping hand” to enable them to get into a position whereby they can resolve their housing needs in a different way at the end of the fixed term.
- 1.2 Currently, the majority of those tenants who have never previously held a social housing tenancy are issued with introductory tenancies lasting a year which can be extended in certain circumstances as set out in our introductory tenancy policy. They are then usually issued with a flexible tenancy lasting 5 years so in effect will have a right to reside in their new home for a period of 6 years after first moving in. However, in some circumstances, tenants will be issued with a tenancy for a shorter fixed term of 2 years. In line with our Tenancy policy, this may be where the tenancy is offered as part of a specific scheme or programme where a shorter tenancy term might be appropriate; or in circumstances that are determined by a Service Manager of the Council as being exceptional. These may include a history of anti-social behaviour, non-payment of rent or if there is a change in household profile, income or circumstances expected.
- 1.3 The rationale used in Mid Devon in support of the use of flexible tenancies was related to a desire to make best use of the housing stock. In our District, there is an aging population and this was reflected in the diversity of the tenants in our homes. There were levels of under-occupation and the aim of the new strategy was to increase turnover in order to ensure that the supply of homes was increased. Later on, welfare reform became a significant driver in relation to this aim and the Devon Home Choice policy now gives priority to those wishing to downsize, thereby supporting the aim of making best use of the housing stock.

2 Management of Flexible Tenancies

- 2.1 There is an administrative burden associated with the use of flexible tenancies. These tenancies need to be monitored carefully at the beginning and then they need to be reviewed in line with the provisions of the legislation before a decision can be made not to renew one.
- 2.2 A court can only refuse possession if the correct procedure has not been followed by the landlord or if the court is satisfied that the decision not to grant another tenancy was otherwise “wrong in law”.

- 2.3 If the tenant refused to vacate the property, the landlord must commence possession proceedings. Therefore, the review procedure must be lawful and Officers need to ensure that they do everything in the timescales expected and in line with published policy.
- 2.4 Tenants have a right to a review of the decision to end the flexible tenancy.
- 2.5 Very few flexible tenancies are not renewed on the basis that frequently it is difficult to prove that the circumstances of the tenants have changed to such an extent that they should not remain in social housing. Experience has shown that any decision not to renew tends to result in requests for appeals and challenges from Ward Members and support agencies which are resource intensive to manage.
- 2.6 A Neighbourhood Officer explained to the Working Group that a majority of the reviews saw no change in the tenant's circumstances and the tenants were renewed onto another 5 year fixed term (flexible) tenancy. There had been issues with tenants not wanting to engage with the review process and this meant that in some circumstances the deadline to serve notice were missed and the tenant was put onto a periodic (secure) tenancy anyway by default.
- 2.7 Members were informed that a flexible tenancy did not guarantee that larger properties would be handed back into circulation any quicker than a secure tenancy if the property was found to be under occupied at review stage. It also had to be acknowledged that the Devon Home Choice Policy gave priority for people to be able to downsize if this was required.
- 2.8 Members were also informed that some tenants who had been found to be over the income threshold at review stage had then exercised their right to buy and the properties had subsequently reverted to private ownership.

3 Statistical Information

- 3.1 Members noted a number of statistics relating to flexible tenancies and the review process. It was noted that at 31 December 2023, there were 473 fixed term tenancies, of which 19 were of two year duration. MDH has approximately 3,000 units. In the period between April 2013 and 31 December 2023, 1049 flexible tenancies had been issued, with 45 of these being of two year duration.
- 3.2 187 flexible tenancies had expired and had converted automatically to periodic ones as a result of resourcing issues during and after the pandemic.
- 3.3 It was noted that in April 2019, the time needed to review each flexible tenancy was calculated as being between 5 and 6 hours for each case, as an average. The impact on the workloads of individual team members was reviewed and it was noted that there were 112 flexible tenancy reviews to be completed up until the end of December 2024. It was noted that for one particular Officer, this would result in him having to spend 76 hours reviewing 19 cases on his patch, meaning that it would take a minimum of two weeks

during the rest of the year for him to review the flexible tenancies where this was required on his patch until the end of this calendar year.

- 3.4 The Working Group considered statistics which demonstrated that the average debt accrued by someone with a flexible tenancy is much higher than that accrued by someone with a secure tenancy. For both secure and flexible tenancies, most evictions are actioned on the grounds of rent arrears.
- 3.5 The Working Group were given the breakdown of the current housing stock:

Stock as at 11-03/2024

Bedsit	4
1 Bedroom	803
2 Bedroom	1236
3 Bedroom	873
4 Bedroom	38
5 Bedroom	1
6 Bedroom	1

Total 2956

4 Rationale for Recommendations

- 4.1 The use of flexible tenancies had not brought benefits for either tenants or MDH. Since the introduction of flexible tenancies in 2013 the social and economic factors had changed. In reality, tenants were not able to move onto home ownership or into private rented accommodation due to the costs involved and therefore tenants who qualified for social housing would usually need to receive this for life.
- 4.2 Flexible tenancies can be difficult to manage due to issues relating to the drafting of the regulations relating to them which were not always very clear. There were some particular difficulties associated with the management of such tenancies as a result. For example, seeking possession of a property on the grounds of anti-social behaviour can be challenging in a case where a tenant has a flexible tenancy because the Registered Provider (RP) cannot accept rent once the appropriate notice of impending possession action has been served.
- 4.3 Members acknowledged that there were currently limited numbers of smaller properties that people were able to downsize to but that the Council's committed development program was due to deliver 500 additional social housing units with majority of these being 1 or 2 bedroomed homes. Members were keen to explore introducing incentives to encourage tenants who were

under occupying to downsize and so enable larger homes to be released for needy families.

5 Tenant Consultation

- 5.1 Over the last 4 months we have been engaging with tenants to gain insight into their thoughts on flexible tenancies and whether or not we should continue using them.
- 5.2 At the end of November 2023, we published a page on our engagement hub, Let's Talk Mid Devon. This page included all the information a tenant would need to help inform them of the project. Tenants could take part in a poll or include a forum response. This was regularly shared on social media over the last 4 months and was visited by 269 people.
- 5.3 The project was also shared in our Winter Newsletter inviting tenants to take part and have their say. They were directed to Let's Talk Mid Devon and encouraged to meet with Officers in person.
- 5.4 In early January 2024, our weekly Community Cuppa in Tiverton hosted an informal focus group with attendees. They were asked a series of questions and expressed their views on flexible tenancies.
- 5.5 Towards the end of January and throughout February we also hosted a series of Housing Matters events in Tiverton, Crediton, Cullompton, Hemyock and Lapford. These were offered as drop in sessions for tenants who could pop by and have their say. Those that attended these events also took part in the same poll that was published online and so all responses to this poll have been combined.

6 Safeguarding and Vulnerable Tenants

- 6.1 MDH records details of all vulnerable tenants in able to support their needs. This includes making reasonable adjustments in dealing with vulnerable tenants so that they are comfortable when we interact with them.
- 6.2 Responses from tenants responding to the consultation showed that tenants with vulnerabilities felt fear, anxiety and stress going through the flexible review process which usually ended up with them having their flexible tenancy renewed anyway.

Financial Implications

There is an anticipated saving that will materialise in the MTFP relating to the ending of fixed-term tenancies for some properties. This is because there is a significant administrative process to follow to manage Fixed Term tenancies, and therefore has meant scarce staffing resource has been diverted away from more pressing management tasks within the Council's own Housing service. The redirecting of scarce staffing resource to more a positive/interventionist utilisation of that resource is anticipated to better support proactive demand management and reduce administrative burdens for the council and their partners.

Legal Implications

The Housing Act 1985 applies with regard to the management of Council housing. The relationship with tenants is set out in our Tenancy Agreement. This details the rights and responsibilities of both parties including those obligations relating to repairs. The tenancy agreement also takes account of other relevant legislation including that which amended the original Housing Act, the Localism Act 2011 and the Anti-Social Behaviour, Crime and Policing Act 2014. There is a legal obligation to consult tenants with regard to any changes which MDH wishes to make to the Tenancy Agreement.

The Tenant Involvement and Empowerment Standard within the Regulatory Framework for Social Housing, as operated by the Regulator for Social Housing (RSH), requires registered providers of social housing (RPs) such as MDH, to 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; agreeing local offers for service delivery.

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

This approach will enable households to remain in their communities and enjoy security of tenure, subject to their tenancy rights and responsibilities, and thus build a stronger foundation and remain closer to their support networks.

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

Supporting and growing active tenant engagement is a priority for the Council.

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: 17 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:

Current MDH tenancy agreements:

<https://www.middevon.gov.uk/residents/mid-devon-housing/help-and-support/strategiesand-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%20 Tenancies.pdf](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>