

**DECENT & AFFORDABLE HOMES PDG
19 JULY 2016**

PROPOSED CHANGES TO THE TENANCY AGREEMENT

Cabinet Member Cllr Ray Stanley
Responsible Officer Claire Fry, Housing Services Manager

Reason for Report: To agree the proposed changes to the revised Tenancy Agreement following consultation with tenants.

RECOMMENDATION(S): To seek Cabinet approval for the Council to vary the terms of the tenancy agreement by serving a notice of variation to secure tenants in accordance with sections 102 and 103 of the Housing Act 1985.

Relationship to Corporate Plan: The provision of good quality housing in the public sector is a priority for the Council and the efficient management of Council homes will support this. A robust tenancy agreement which sets out the rights and responsibilities of tenants and the Council will enable efficient and effective management of our homes, and help to ensure that the homes remain in good condition.

Financial Implications: The additional expenditure associated with meeting our statutory obligations as they relate to the review of tenancy agreements will be contained within existing budgets in the Housing Revenue Account (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 Homes and Communities Agency (HCA). 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.

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.

The Consumer Rights Act 2015 now replaces the Unfair Terms in Consumer Contracts Regulations 1999. Landlords are required to avoid unfair terms in their tenancy agreements. .

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 and to ensure that housing management staff can rely on a robust tenancy agreement which can be used to manage the housing stock efficiently and effectively.

1.0 Introduction

1.1 This report seeks Cabinet approval for the Council to vary the terms of the tenancy agreement by serving a notice of variation to secure tenants in accordance with sections 102 and 103 of the Housing Act 1985. This report

sets out the reasons for undertaking the review and varying the existing tenancy conditions and gives feedback on the consultation carried out. **Appendix 1** contains a copy of the revised tenancy agreement.

- 1.2 The Council currently operates nine different tenancy agreements relating to introductory, secure and flexible tenancies. The revised tenancy agreement amalgamates these documents into one. The current version of the introductory and secure tenancy agreements were introduced in 2010. Since then, flexible tenancies (2 and 5 year terms) have been introduced. The review of all the tenancy agreements currently in use has meant that the conditions of tenancy in all the agreements can be amended, as appropriate, bringing them into line with new legislation, regulatory requirements, policy and good practice.
- 1.3 A tenancy agreement is a legally binding document, which sets out the responsibilities of the Council as landlord and the tenant as the occupier of a property. The Council can take enforcement action based on the agreement made by a tenant when they sign their tenancy in cases where there is anti-social behaviour (ASB) or neighbourhood nuisance caused by people living in our properties.
- 1.4 Prior to implementation of the revised tenancy agreement, as part of the statutory consultation process, all current secure tenants were consulted on the proposed changes to the draft tenancy agreement. Under Section 105 of the Housing Act 1985, the Council had a legal obligation to consult its secure tenants on “matters of housing management” which in the opinion of the Council represent a change in the practice or policy of the Authority.
- 1.5 The relationship between the Council and its tenants is based on the provisions contained within The Housing Act 1985. The procedure for varying existing secure tenancies is contained in sections 102 and 103 of the Act. Section 102 provides that a secure tenancy agreement may be varied by agreement or by way of the procedure set out in section 103.
- 1.6 The procedure in section 103 is that the terms of an existing secure tenancy may be varied by the Council by the service of a Notice of Variation on the tenant. However, before the Council can serve this Notice, the Council must firstly serve a Preliminary Notice which informs the tenant of the Council’s intention to serve a Notice of Variation. It must specify the proposed variation/s and its effect/s and invites the tenant to comment on the proposed variation/s within a period considered reasonable by the Council. The Council must consider any comments made by tenants within the consultation period before deciding to serve the Notice of Variation.

2.0 Consultation undertaken

- 2.1 During the period 16 March 2015 to 11 May 2015, tenants were consulted on the review of the tenancy agreement using Facebook and Twitter to seek their views and ideas on what should be included, amended or removed from the tenancy agreement. Only one reply was received; this was in connection with tenants being asked if they would like the new tenancy agreement to have pictures that made reference to the clauses. For example, if pictures were to

be used, the clause relating to Rent and Charges would be identified by a pound symbol (£), and that relating to ASB identified by a symbol showing a dog barking. The reply was in favour of introducing pictures.

2.2 Staff were consulted via a discussion thread on the proposed clauses to the tenancy agreement during the period 10 March 2015 to 10 April 2015. One reply was received this. The following suggestions were made:-

- To encourage tenants to have a spare key somewhere safe so that it can be used to gain entry if the keys are lost;
- To highlight that it is a tenant's responsibility to reduce damp, mould and condensation through ventilation and by controlling moisture;
- To advise tenants that they must request permission, including any relevant asbestos information, before carrying out any refurbishment work;
- To prevent tenants from using the loft space for storage space;
- To add a clause allowing the Housing Service to charge any tenant who, when making a repairs request, intentionally gives incorrect information to the call centre to increase the priority of the work, for any costs incurred, which may include an administration fee;
- To advise tenants that if the Housing Service carries out any work for them such as securing their home, or re-glazing, any costs incurred will be recharged.

2.3 The April 2015 edition of Housing News 4 U newsletter invited tenants to share their ideas on what they would like to be included in their tenancy agreement. They were given the opportunity to get involved in reviewing the tenancy agreement through focus groups, email, and telephone or questionnaire consultation. No replies were received.

2.4 During the year, staff have, on an ad hoc basis, made recommendations. These have been incorporated into the draft tenancy agreement, where appropriate.

2.5 Tenants Together approved the draft tenancy agreement at their meeting on 12 November 2015.

2.6 Section 105 of the Housing Act 1985 compels the Council to undertake consultation with tenants in relation to the review of the tenancy agreement. This advises the tenant that the Council is considering making changes to the terms and conditions of the tenancy agreement. This consultation commenced in February 2016. 31 responses were received.

2.7 The Council served a Preliminary Notice on tenants in accordance with sections 102 and 103 of the Housing Act 1985. This took place week commencing 23 May 2016 and consultation ended on 26 June 2016.

2.8 Tenants were offered various ways to feedback comments on the proposed changes to the tenancy agreement. They could respond using social media such as Twitter or Facebook, or attend one of six drop-in sessions, request a home visit, or feedback by telephone, post or email.

2.9 During the Preliminary Notice consultation, 72 tenants or stakeholders made

comment on the proposed changes. Of these 72 tenants or stakeholders, 56 telephone calls were received which resulted in 5 home visits carried out, 1 Facebook response, 3 emails responses, 7 attended the drop in sessions and 5 letters received.

2.10 Of the 72 tenants or stakeholders who made contact:

- The majority of the telephone calls received were for information purposes, for example, to find out more about the consultation process and the reasons for it
- 9 tenants were concerned that they were being evicted. Each caller was re-assured that this was not the case
- 9 tenants did not understand the paperwork. Officers explained the purpose of the consultation and offered home visits if further information was required by the tenant
- 5 tenants requested further information relating to the Government's Pay to Stay scheme
- 3 tenants raised questions about the Council considering a move from a 48 to a 52/53 rent payment period
- 3 other tenants asked about succession rights
- 2 tenants did not want to have their tenancy agreement terms and conditions changed
- 2 tenants raised queries relating to fencing and/or seeking permission for such works to be carried out
- 2 tenants raised concerns about not being able to use the loft space for storage
- 2 tenants raised concerns about unannounced visits
- 1 tenant raised a query about the type of trees they could plant
- 1 tenant requested further information on recharges
- 1 tenant raised a query relating to succession rights arising from changes introduced through the Housing & Planning Act 2016. The tenant had previously raised a query about succession rights during the previous Section 105 consultation
- 1 tenant asked if they were responsible for treating ants
- 1 tenant raised concerns about tenants parking vehicles on gardens without a drop kerb or hard standing
- 1 tenant requested further information about being away from the property for more than a month
- 1 tenant asked how a proposed change to move from a 48 to a 52/53 week rent period would affect their direct debit payment
- 1 tenant queried how the Council dealt with noise nuisance
- 1 tenant raised concerns about grass cutting
- 1 tenant felt the tenancy agreement consultation was a waste of money
- 1 tenant felt offended that the tenancy agreement was asking tenants to be responsible pet owners
- 1 tenant queried about having a pet at a flat
- 1 tenant queried about looking after a pet in emergency cases
- 1 tenant asked if he needed retrospective consent for a dog
- 1 tenant queried whether a tenant could have laminated flooring at his property
- 1 tenant queried about seeking retrospective consent for storage of their mobility scooter

- 1 tenant raised concerns about vehicles blocking access for the emergency services
- 1 anonymous letter was received which raised concerns about fencing, gangs, anti-social behaviour and other services such as road sweeping and cutting of verges.

2.11 Each enquiry received was either acknowledged by letter, Email or through Facebook, or verbally during drop-in sessions, home visits or telephone calls.

2.12 Before making a decision on whether to take some or all of these changes forward and to vary the tenancy agreement, all representations made in response to the consultation exercises were considered.

3.0 Notice of variation

3.1 When the revised tenancy agreement is approved by Cabinet, a formal Notice of Variation will be sent to all secure tenants giving them notice of the date that the new terms and conditions of the tenancy agreement will come into effect. It is proposed that this will be sent in August 2016.

3.2 A copy of the new tenancy agreement will be issued with the Notice of Variation and it will come into effect twenty-eight days later. It is proposed that the new tenancy agreement will be implemented with effect from 3 October 2016. This will mean that all existing secure tenants will take on the new terms and conditions of the tenancy. Current introductory to secure tenants will take on the new terms of tenancy once their probationary period has ended. The Council will be able to offer all new flexible tenants the new version of the tenancy agreement. Existing flexible tenants will not be affected because they would have had to be consulted individually and such a large project would have had too great an impact upon resources.

4.0 Revised Tenancy Agreement

4.1 The current tenancy agreements have been reviewed to take into account changes in legislation, regulatory requirement, policy and good practice. There are new sections and sub-sections that do not feature in the current tenancy agreements. Some clauses have been re-worded and the numbering, titles and layout of the agreement has been adapted to make the agreement more user friendly.

4.2 The revision of the tenancy agreement has also taken into account the following:

- New legislation such as:
 - The Anti-social Behaviour (ASB), Crime and Policing Act 2014. The law has introduced simpler, more effective powers to tackle ASB and provides better protection for victims and communities;
 - New measures implemented through the Housing & Planning Act 2016 such as the Pay to Stay scheme which requires higher earning households to pay either nearly market rent or full market rent for the property they live in.

- Changes to the way some people receive benefits. Universal Credit started to be rolled out in Devon in November 2015. Tenants on low incomes in receipt of this benefit who are eligible to receive benefit for housing costs, will have this benefit paid directly to them or to a member of their household. The new agreement reinforces the message that it is still the tenant's responsibility to make payments to cover the rent charge.
- The Council considering a move away from charging rent over 48 weeks each year to charging rent over 52/53 weeks with effect from April 2017.
- The need to improve the layout of the agreement so that tenants should find it easier to read and understand.

- 4.3 There are a number of new sub-sections that have been introduced to the draft tenancy agreement to make it easier to identify clauses and also to introduce new clauses and to strengthen existing clauses. Examples include: the Introduction and welcome to Mid Devon District Council, gas safety, information relating to the Government's Pay to Stay scheme and changes in the law.
- 4.4 A table has been included at the end of the revised tenancy agreement which sets out the rights of tenants. This allows tenants to see at a glance some of their rights such as who has the right to mutual exchange or the right to be consulted on housing matters.
- 4.5 The definitions have been included at the end of the draft tenancy agreement. These have been updated to reflect the amalgamation of the tenancy agreements into one and reflect all types of tenancies offered by the Council.
- 4.6 Members are asked to agree to the revised tenancy agreement. They are also asked to give approval for the Council serve a notice of variation which will inform the tenant of their new terms and conditions of tenancy agreement and the date on which the changes take effect.

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Circulation of the Report: Councillor Ray Stanley, Management Team

List of Background Papers: A copy of such papers to be made available for public inspection and included on Website