

**North East Derbyshire District Council**

**Cabinet**

**11 June 2014**

**Flexible Tenancies**

**Report No: EAH/09/14/RS of Councillor Mrs E A Hill, Portfolio Holder with  
Responsibility for Housing Strategy and Social Inclusion (supported by Councillor  
M Gordon)**

This report is public

**Purpose of the Report**

- To provide Cabinet with details relating to a proposed pilot flexible fixed term tenancy scheme as part of the Council's Choice Based Lettings and Allocations Policy. The report seeks a decision as to whether or not to adopt the proposed flexible fixed term tenancy scheme for applicants with £30,000 or more equity, but who are unable to access that equity at the current time.

**1 Report Details**

- 1.1 The Localism Act 2011 allows Local Authorities to offer fixed term tenancies, known as Flexible Tenancies as an alternative to the secure lifetime tenancies social housing providers have historically given to their tenants.
- 1.2 The Localism Act 2011 also made it a requirement for Local Authorities to produce a Tenancy Strategy outlining their intentions relating to initiatives such as the new affordable housing regime and flexible tenancies for social housing.
- 1.3 The Council adopted its Tenancy Strategy in January 2013 stating that  
*"The Council will not be using fixed term tenancies for their own housing stock due to concerns that the sustainability of communities will be adversely affected, and that tenants will not have the opportunity of a settled and secure home. We reserve the right to keep this decision under review and consider any specific instances where it may be beneficial to introduce fixed term tenancies in the future"*
- 1.4 In March 2014 Cabinet agreed to recommendations to explore options for a pilot flexible tenancy scheme for those applicants with £30,000 equity or above, who would be excluded from Choice Move, but who couldn't access that equity at the current time. The rationale for exploring a fixed term tenancy for this group was that it would benefit those applicants excluded from the waiting list due to equity at a time when they were unable to access that equity and give them time to pursue other housing options once that equity was released.

- 1.5 Under the Council's current Choice Based Lettings and Allocations Policy applicants who have £30,000 or more equity, for example as a result of owning a property, will not be eligible to access Rykneld Homes Choice Based Lettings system, Choice Move.
- 1.6 The proposed flexible tenancy scheme will allow the applicant to have a two year flexible fixed term tenancy to allow them time to release the equity in their property to enable them to access alternative accommodation either in the private rented sector or through home ownership.
- 1.7 The Council's 2013 Tenancy Strategy, however, states that flexible tenancies will only be considered for a minimum of 5 years and would not be issued to applicants over the age of 60.
- 1.8 The proposed scheme will differ in that they would only seek to allow a 2 year flexible fixed term tenancy due to the risk of a longer tenancy potentially making the tenant eligible for Right to Buy if it was for 5 years. The Government is also proposing to reduce that threshold to 3 years.
- 1.10 The proposed scheme will also include people who are over 60 as we would not want to further penalise them from taking advantage of a flexible tenancy if they can not access their equity.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The proposal to adopt a flexible tenancy scheme for this client group will benefit some applicants in temporary housing need caused by their inability to access to equity which may be tied up in a matrimonial home.
- 2.2 The proposals should, however, be considered in light of the risks outlined in section 6 below relating to right to buy.

## **3 Consultation and Equality Impact**

- 3.1 Rykneld Homes and The Council's Legal department have been consulted regarding the proposals.
- 3.2 The proposed flexible fixed term tenancy scheme has been explored due to the potential negative impact on those owner occupiers with £30,000 equity or above who are unable to access that equity immediately, therefore leaving them in temporary housing need and unable to access Choice Move.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 All options are outlined within this paper. Cabinet is requested to make a decision as to whether or not to adopt the proposed Fixed Term Flexible Tenancies scheme taking into regard the risks outlined in section 6 below.

## **5 Implications**

- 5.1 See risk implications in section 6 below.

## **6. Finance and Risk Implications**

- 6.1 Following consultation with Rykneld Homes and the Council's Legal Department there are some risks associated with adopting two year flexible fixed term tenancies in these circumstances which should be taken into account when considering adopting the proposals.
- 6.2 A flexible fixed term tenancy would be issued for a finite two year period with no option to renew at the end of this period. This would avoid any risk to the tenant being eligible for right to buy.
- 6.3 Legislation, however, relating to flexible tenancies stipulates that a flexible tenancy can be renewed if a tenant's circumstances remain the same and they are still deemed to be in housing need.
- 6.4 The Council's Legal team have stated that if a tenant's circumstances haven't changed and the tenant is able to show that they have genuinely done all they can to release the equity then the Council may not be able to resist a challenge. Although the onus will be on the tenants to prove that they have taken reasonable steps to release this equity.
- 6.5 If the tenancy were to be extended beyond the two year period the tenant could be eligible to take advantage of right to buy on that property if they have lived in the property for 5 years. In addition to this Government are proposing to reduce this threshold down to 3 years, which would further increase the right to buy for those tenants if they were to renew after 2 years for a further 2 years.
- 6.6 There could be a risk that the tenant may delay the release of their equity to take advantage of the RTB scheme. In order to extend their tenancy they may challenge the council on the grounds that they are still unable to release their equity.

## **7. Legal Implications including Data Protection**

- 7.1 The proposed Flexible Fixed Term Tenancy scheme must adhere to the legislation relating to flexible tenancies as stated in the Localism Act 2011.
- 7.2 If the Council agrees to adopt the Flexible Fixed Term Tenancy Scheme it will be required to review its Tenancy Strategy (**Appendix 1**) to reflect the Council's intention regarding flexible tenancies.

## **8. Human Resources Implications**

None

## **9 Recommendations**

- 9.1 To consider whether or not to accept the proposed Flexible Fixed Term Tenancy Scheme, despite the risks to the tenant being eligible for right to buy if that tenancy were to be renewed.

- 9.2 To agree to a further cabinet report in July regarding revisions to the Council's Tenancy Strategy if the proposed Flexible Fixed Term Tenancy scheme is adopted.

## 10 **Decision Information**

<b>Is the decision a Key Decision?</b> (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	Yes
<b>District Wards Affected</b>	All
<b>Links to Corporate Plan priorities or Policy Framework</b>	Increase Housing Need

## 9 **Document Information**

Appendix No	Title
Appendix 1 Appendix 2	Council's Tenancy Strategy ( 2013) Equality Impact Assessment
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
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