

North East Derbyshire District Council

Cabinet

11 January 2017

Flexible Fixed Term Tenancy Agreement

Report of Councillor Mrs E A Hill, Portfolio Holder with Responsibility for Housing Strategy and Social Inclusion

This report is public

Purpose of the Report

- To gain approval to use the new Flexible Fixed Term Tenancy Agreement as attached in **Appendix 1**.
- The Localism Act 2011 made provision for local authorities to voluntarily offer flexible tenancies for a minimum of 2 years. At this time, NEDDC decided not to offer this as a tenancy option.
- The review of the Allocations Policy in 2015 considered all the tenancy options to deliver against existing housing and regeneration priorities. Within this review a pilot to offer flexible tenancies in particular circumstances was granted by NEDDC; owner occupiers who have equity/savings/assets of £30,000 or more which they cannot access to secure alternative accommodation, for example in cases of fleeing domestic violence, in regeneration projects until a time the property is developed/refurbished, properties with major adaptations or housing designed for a disabled person. The revised Allocations Policy was implemented from April 2016 together with a Flexible Tenancy Policy. For Rykneld Homes to facilitate this kind of tenancy, the correct tenancy agreement is required.
- The Housing and Planning Act 2016 changed the voluntary nature of flexible fixed term tenancies to mandatory for local authorities for terms of between 2 and 10 years. It includes the ability for local authorities to grant households with a child less than 9 years of age a longer tenancy, lasting until the child is 19. Only in 'some' circumstances will the Secretary of State allow local authorities to grant secure tenancies. This will see a change from secure tenancies being the rule to becoming the exception. However, once a tenancy is coming to the end of the fixed term, Rykneld Homes has the authority to grant another fixed term tenancy. Only in certain circumstances would another tenancy be refused. The act also states when a secure tenancy is succeeded to, a fixed term tenancy should be granted. Implementation of this element of the Act's requirements is expected by April 2017. Therefore the criteria set by NEDDC for the pilot use of Flexible Tenancies will be superseded come April 2017 by the legislative requirement to

offer this tenancy type using the criteria as stated in the Act. The use of fixed term tenancies remains voluntary for housing associations.

- In order to offer a flexible tenancy, the appropriate tenancy agreement is required to be in place as the terms of the agreement are different to the current secure tenancy agreement. Therefore the Flexible, Fixed Term Tenancy Agreement (appendix 1) is necessary in order to abide by the Housing and Planning Act and NEDDC's Allocations Policy.
- This report is to approve the content and use by Rykneld Homes of the Flexible Fixed Term Tenancy Agreement.

1 Report Details

- 1.1 With the passing of the Housing and Planning Act 2016 into law, the associated timescales for implementation apply. The Act specifies a requirement to implement by April 2017. If this deadline is not met, NEDDC and Rykneld Homes will be in contravention of this expectation.
- 1.2 The process for managing a flexible fixed term tenancy is different to the secure tenancies which are currently in use. It is important that once flexible fixed term tenancies are in use, the review timescales are strictly adhered to. Each tenancy will be monitored and the ICT arrangements will ensure all reviews and associated communications are completed in line with legislation. The risks attached to not reviewing a tenancy within the legal timescales may mean a secure tenancy is implied when it is not appropriate. The IT process should mitigate this risk by automatically prompting the review. The training and line management processes, including performance data will then ensure the reviews are being completed on time.

2 Conclusions and Reasons for Recommendation

- 2.1 The tenancy agreement follows the same requirements as the current secure tenancy agreement; the only differences are where there is a legal difference due to the tenure type to accommodate the flexible fixed term tenancy requirements.
- 2.2 The tenancy agreement is based on the current secure tenancy agreement so there is consistency with all tenancy expectations. This ensures the management of tenancies can continue to be of a high quality without the requirement to implement further practices for flexible fixed term tenancies only.

3 Consultation and Equality Impact

- 3.1 Consultation in the introduction of flexible fixed term tenancies was completed as part of the Allocations Policy review in 2015, as implemented in April 2016, based on the allowances made within the Localism Act 2011. We are unable to consult on the introduction of flexible, fixed term tenancies as it is contained within the Housing and Planning Act 2016, of which supersedes the Localism allowances and is now a legislative requirement.

- 3.2 A full equality impact assessment will be conducted for each tenancy review. The circumstances of all cases will be dealt with on a case by case basis, using the policy as guidance. The policy allows for flexibility in decision making so we are able to consider individual circumstances prior to granting another tenancy or refusing. All decisions will be made in line with current legislation and regulatory guidance.
- 3.3 As Rykneld Homes continue to identify support needs early in the application stage of a customer's journey with us, any support requirements to help sustain the tenancy can be identified and progressed. This does however rely on the engagement and cooperation of the customer.
- 3.4 The main changes contained within the Flexible Fixed Term Tenancy Agreement are contained within sections 1, 8 and 9 of the Tenancy Agreement (appendix 1).

Section 1: The key changes include the duration of the tenancy and the end date of the tenancy (1.5).

Section 8: When considering improvements and alterations, customers on a Flexible Fixed Term Tenancy do not have the right to put in their own improvements or alterations (such as a new kitchen, removing walls, putting up an extension, porch or canopy).

Section 9: There are some differences when it comes to ending a tenancy which is on a Flexible Fixed Term Agreement. The notices required are slightly different (see section 9.3, 9.24 and 9.25).

4 Alternative Options and Reasons for Rejection

- 4.1 An alternative option to the recommended flexible fixed term tenancy agreement was to conduct a full revision of the existing tenancy agreement (secure) to include the option for a flexible tenancy to be identified within the same agreement. This however would lead to an increased risk of error. Consultation would also take us past the April 2017 deadline.
- 4.2 Any review of the full tenancy agreements, in terms of their basic content regarding roles and responsibility would need to include extensive customer consultation spanning a number of months. This would take implementation far past the April 2017 deadline. It was also considered best practice that if the agreement content was to be reviewed it would need to include all agreements in use by NEDDC and Rykneld Homes. For the purpose of legislation adherence this is not required.

5 Implications

The process of tenancy management will change for this tenancy type. Once implemented the implications of monitoring and review are as such that training and process change will be required. The implications of this against our three corporate objectives are as follows:

Making People our Priority: Flexible fixed term tenancies contribute to the ability for customers to ensure their housing need is met throughout their time in an NEDDC property. As needs change, the flexibility this tenure type offers means it

will be easier for customers to ensure their living arrangements are suitable. When approaching the end of a tenancy term, the Allocations procedure will be required to allow for the appropriate priority in order to allow a timely move if a different property is required.

Reduce Tenancy Turnaround: This business priority needs to be balanced with the above priority where someone may need to move due to their housing needs changing. Rykneld Homes will ensure tenancy turnover is monitored; the introduction of flexible fixed term tenancies should not contribute to any significant rise in tenancy turnover. The Allocations policy is designed to ensure we take into account an applicant's long term housing needs, therefore any turnover would be comparable to current transfer numbers.

Increase Efficiencies through new Technology: The process for managing flexible fixed term tenancies will be integrated into our existing housing management systems. This will allow mobile working and therefore greater efficiencies when managing each tenancy. The main saving will be in terms of staff time and administration as information can be accessed and logged whilst out on site.

The use of flexible fixed term tenancies will be monitored by collecting the following information from the housing management system:

- Number of flexible fixed term tenancies in place – 2yr/5yr/10yr;
- Number of tenancies visited in target time/outstanding;
- Number of tenancies in the final year;
- Number of 8 and 6 month reviews due/completed;
- Number of Minded Notices served on time;
- Number of renewals (2yr/5yr/10yr) / refusals;
- Number of review appeals received/completed/upheld/refused;
- Number of Minded Notices served for nonrenewal by reason;
- Number of 2 Month Notices served on time;
- Number of renewed tenancies started.

5.1 Finance and Risk Implications

5.1.2 The financial implications of introducing the flexible, fixed term tenancy agreement are as follows:

- **Training:** It is important members of staff who will be allocating and managing the tenancies are fully aware of the requirements associated with flexible, fixed term tenancies. A certain amount of training can be delivered in-house in partnership with the NEDDC/Bolsover Legal Team. However it may also require external training at an approximate cost of £1,000, if required, this will be met within the existing budgets.
- **IT development:** there is a requirement to ensure the new process is added into our existing housing management system. The flexible, fixed term tenancy follows a different process to the existing secure tenancies, as they require review at intervals of which are legally defined. CAPITA are developing this

within the Open Housing software as it affects all of their Housing clients. The changes to Open Housing will be in place no later than March 2017.

- Ongoing administration: It is currently difficult to predict the extent of any additional administration created by facilitating flexible, fixed term tenancies. This will very much depend on tenancy turnover. Rykneld Homes will be required to offer this tenancy type as standard; we envisage approximately 800 new tenancies annually. In the final year of a tenancy, reviews are required at 8 months, 6 months and 2 months before the end with all relevant information and notices being given. Year on year additional administration requirements will increase, this will be closely monitored.
- Printing: There will be an initial requirement for the new agreements to be printed in addition to the current printing arrangements. Approximate cost of £900. Once implemented, this will be contained within the existing printing budget

5.2 Legal Implications including Data Protection

5.2.1 The implementation of flexible fixed term tenancies is a legal requirement as contained in the Housing and Planning Act 2016.

5.2.2 The content of the Flexible Fixed Term Tenancy Agreement has been reviewed by the Bolsover Legal Team and contains everything required to manage this tenancy type in accordance with government and legal expectations. All data protection requirements will be adhered to as we do currently for all other tenancy types.

5.3 Human Resources Implications

5.3.1 Please see section 5 regarding financial implications and potential additional administration requirements.

6 Recommendations

6.1 To approve the Flexible, Fixed Term Tenancy Agreement for North East Derbyshire District Council (NEDDC) Properties.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is an executive decision 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
Is this decision subject to Call-In? (Only Key Decisions are subject to Call-In)	
District Wards Affected	
Links to Corporate Plan priorities or Policy Framework	

8 Document Information

Appendix No	Title
1	Flexible Fixed Term Tenancy Agreement
<p>Background Papers (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)</p>	
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AGIN 8(CAB 0111) 2017/Fixed Term Tenancy Agreement/AJD