



Cabinet

20 January 2021

Report of: Councillor Alan Pearson - Portfolio Holder for Housing and Communities

Approval of a Revised Tenancy Agreement

Corporate Priority:	Providing high quality council homes and landlord services
Relevant Ward Member(s):	N/A
Date of consultation with Ward Member(s):	N/A
Exempt Information:	No

1 Summary

- 1.1 This report seeks approval to adopt a new Tenancy Agreement for the Council's residential landlord function with effect from April 2021. This will provide clarity on the Council's approach to tenancy management and confirm the rights and responsibilities of both the Council as a landlord and the tenants who live in the Council's properties.
- 1.2 It is important that a tenancy agreement is kept up to date in terms of legislative requirements and changes to policy and practice. The Council's current tenancy agreement has not had any significant update for a number of years and there are a number of clauses which could now benefit from change.
- 1.3 The Housing Act 1985 provides that secure tenancies can only be varied by either agreement with the tenant, or by using the statutory procedure pursuant to s.103 of the Housing Act 1985, which sets out the process and time limits to be followed. Having followed that statutory process, a draft of the revised tenancy agreement is provided for Cabinet's consideration.

2 Recommendations

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| That Cabinet: | |
| 2.1 | Notes the content of the Report and the responses received to the consultation on the revised Tenancy Agreement; |
| 2.2 | Approves the proposed Tenancy Agreement at appendix 1 to be effective from 05 |

April 2021; and

- 2.3 Delegates authority to the Director for Housing and Communities:**
- a) **to serve the Notice of Variation; and**
 - b) **to make any minor formatting and/or wording amendments to the proposed tenancy agreement if required.**

3 Reason for Recommendations

- 3.1** The Council’s Corporate Strategy 2020-24 commits to “providing high quality council homes and landlord services” as Priority Theme Two. An understanding of the rights and responsibilities of both landlord and tenant is a keystone of the delivery of this theme; a clear, unambiguous tenancy agreement is vital to this.
- 3.2** The current tenancy agreement has been reviewed to take into account changes in legislation and good practice; there are a number of new subsections that have been introduced to the revised tenancy agreement to make it easier to identify clauses.
- 3.3** The numbering, titles and layout of the revised Tenancy Agreement has been adapted to make the agreement easier to read and understand and to be more “user friendly”. A new introductory section which sets out the key rights of tenants has been included at the start of the agreement at the suggestion of the Tenants Forum Executive Committee. This allows tenants to see at a glance their key rights such as the right to be consulted or the right to make improvements.
- 3.4** The tenancy agreement is the single most important document defining the relationship between the Council and its tenants. The current tenancy agreement has been in place for a number of years and does not reflect current legislation, or give the Council as a residential landlord the ability to properly manage its properties – for example, to be able to gain access to carry out inspections. The revised tenancy agreement resolves these issues.

4 Background

- 4.1** As a local authority, the tenure types the Council can offer are limited by statute, most significantly the Housing Act 1985. The Council’s most common tenure type is Secure Tenancies and the Council has, for a number of years, used Introductory Tenancies for new tenants (after twelve months, Introductory Tenancies become Secure if the Council does not take action to end the tenancy due to tenancy breaches). The Council also uses Non Secure tenancies where it is providing temporary accommodation within its own housing stock in relation to homelessness.

In 2019, work commenced on the terms and conditions of a new draft tenancy agreement and this was consulted on in January 2020. Following that consultation it was clear further work on the agreement was needed, although inevitably at that point there was an impact on progress due to Covid-19. Nevertheless, work recommenced over the summer of 2020, which included a review of good practice example tenancy agreements from other local authorities, the creation of a working group involving tenancy management and legal colleagues, and support from external consultancy.

5 Main Considerations

Procedure to Vary a Secure Tenancy

5.1 There is a clear statutory process to vary a Secure Tenancy laid out in s.103 of the Housing Act 1985: 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 of Variation, the Council must firstly serve a Preliminary Notice which informs the tenant of the Council's intention to serve a Notice of Variation.

5.2 The Notice must specify the proposed variation/s and its effect/s and invite 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.

Summary of Changes to Existing Tenancy Agreement

5.3 The new tenancy seeks to address the following issues:

- The 2011 Localism Act changed who may be able to take over a tenancy when someone dies (this is known as 'succession'). The change affects the rights of tenants who started their tenancies after April 2012.
- The Anti-Social Behaviour, Crime and Policing Act 2014 gave the Council more powers to evict tenants for serious antisocial behaviour.
- The agreement needs to reflect up-to-date housing management policy and practice.
- The agreement needs to be clear for tenants to understand:
 - Their rights (including what repairs the Council is responsible for)
 - Their responsibilities
 - What causes a breach of tenancy conditions
 - The Council's approach to housing management issues such as animals, gardens and tree management.

5.4 The opportunity has been taken to update the Data Protection & Information Sharing statement so that it is aligned with the Council's Privacy Notice.

5.5 It should be noted the Council has a small number of Flexible Secure tenancies (that is, they are fixed-term rather than periodic). A number of local authorities, given the administrative burden of fixed term tenancies and the tension with building sustainable communities, have moved away from their use. It is proposed that, pending a revision of the Council's Tenancy Policy, the opportunity is taken to vary the terms of the Flexible Secure tenancies to be the same as all other tenants, i.e. with no end date.

5.6 A summary of the changes is provided in the table below, together with an explanation of the reason for the proposed change, and if it applies to all or just new tenants from the adoption of the new agreement:

Section	How changed	Why	New tenants only?
Important Information about your tenancy agreement	New section – a quick summary of the tenancy	Transparency	N/A
	New clause on repayment of former tenancy arrears	The Council is able to seek money lawfully due	Yes

Section	How changed	Why	New tenants only?
Section 1 – Your tenancy	More detail on the property and tenant details	Transparency	N/A
	Changed tenant declaration	To cover social housing fraud and make clear some of the key responsibilities e.g. rent, nuisance, access for repairs	Applies to all
Section 3 - Introductory / Secure Tenancy Key Information	More information on introductory and secure tenancies	Increased information	Applies to all
	Make clear the tenant's responsibility for content insurance	Improved wording and clarity	Applies to all
	Covers right to succession, assignment, qualifying repairs. Consultation, right to manage, and exchange	Improved wording and clarity	Applies to all
	Joint tenants	Clarifies one joint tenant can end the tenancy for both to increase awareness	Already applies to all
	Court Orders	When the Council can take legal action – increased clarity and detail	Already applies to all
	Notices	How notices can be served by and on the Council – increased clarity and detail	Already applies to all
	Changes in law and rights of other people	Confirms legal position – increased clarity and detail	Already applies to all
Section 4 - Your rent, other charges and outgoings	Rent to be paid by Direct Debit unless the Council has agreed otherwise	Most cost-effective payment method	New tenants only
	Confirmation of four weeks notice period for rent increase	Increased clarity and detail	Already applies to all
	Confirmation of Service and Support Charges	Increased clarity and detail	Already applies to all
	Recovery of Legal Costs	Increased clarity and detail	Already applies to all
Section 5 - Nuisance and anti-social behaviour	Confirmation of tenant responsibilities, including for members of their household and visitors, and that the Council has no automatic duty to rehouse perpetrators of ASB	Increased clarity and detail	Already applies to all
	Confirmation domestic abuse will not be tolerated	Increased clarity and detail	Already applies to all but is made clearer and consistent with the proposed Domestic Abuse Policy
Section 6 - Access to your home	Expanded to make clearer the Council's right to carry out inspections, both routine and emergency	Increased clarity and detail, especially in relation to essential landlord health and safety checks	Applies to all
Section 7 - Repairs and maintenance	Expanded to make clear the Council's obligations as a landlord, both in tenant homes and shared areas	Increased clarity and detail	Applies to all

Section	How changed	Why	New tenants only?
	Expands and makes clear some minor repairs that are a tenant's responsibility, including blocked pipes, dividing fences, and treating mould where caused by neglect	Increased clarity and detail, making sure tenants understand their responsibilities	Applies to all
Section 8 - Using your home	Expanded to confirm the tenant responsibilities in relation to occupying the property as their only or principal home	Increased clarity and detail, making sure tenants understand their responsibilities	Applies to all
	Expanded information and clauses on use of the property in a safe manner, including not storing dangerous materials	Increased clarity and details	Applies to all
	Providing an additional clause on the use of and access to lofts	Lofts are not part of the living space and not suitable for storage of items as it impedes access	Applies to all
Section 9 - Looking after your garden	Expanded to make clear tenant responsibility	Increased clarity and detail	Applies to all
	Additional information on the requirement for written permission for some garden improvements	To make sure works are done safely and do not increase landlord maintenance costs	Applies to all for new works, all works completed prior to the new tenancy will be treated as though consent had been given in advance, as long as to a reasonable standard
Section 10 - Keeping animals and pets	Additional information on the requirement for written permission for some pets and that some animals are not allowed	This will allow the Council to ensure pets do not cause a nuisance and that animal welfare is protected	Applies to all new tenants and any new pets obtained after the new tenancy takes affect. Existing pets will be treated as though consent had been given in advance, subject to them not causing nuisance or being neglected
Section 11 - Vehicles and parking	Confirmation of the use and storage of vehicles both at the property and in shared estate areas	Provides clarity and detail for tenants and their visitors	Applies to all
Section 12 - Structural changes, alterations, improvements or additions	Confirmation of the statutory right to undertake improvements, where written permission has been sought and granted	Greater clarity and detail	Applies to all tenants
Section 13 - When you need our written permission	Brings together in one section the most common instances where landlord permission is needed, including changes to the tenancy and property	Greater clarity and detail	Applies to all
Section 14 - Succession	Confirmation of succession rights	Clarity and detail	Applies to all tenancies starting after April 2012 (succession rights can be complicated – tenants are encouraged to check with their Housing Officer if unsure)

Section	How changed	Why	New tenants only?
Section 15 - Assignment (transferring your tenancy to someone else)	Confirmation of when a tenancy can be assigned	Greater clarity and detail	Applies to all
Section 16 - Additional rights	Confirmation of the greater statutory rights of Secure tenants	Greater clarity and detail	Applies to all secure tenants
Section 17 - Ending your tenancy	Confirmation of notice periods	Greater clarity and detail	Applies to all
Section 18 - Moving out of your home	Expanded to give more details on the process at tenancy end, including return of keys and payment of outstanding housing-related debt, and the Council's requirement to inspect in the notice period	Greater clarity and details	Applies to all
Section 19 - Altering your agreement	Confirmation of the legal position	Clarity	Applies to all
Section 20 - How the Council can end your tenancy	Confirmation of circumstances when the Council can take legal action to end the tenancy	Greater clarity and detail	Applies to all
Section 22 - Data protection	Provides details on the Council's approach to holding tenant data, when it can be shared and how you can see the data	Greater clarity and detail	Applies to all
Section 23 - Consultation	Confirmation of the statutory right to consultation	Detail and transparency	Applies to all
Section 24 - Complaints	Confirmation of the Council's complaints process	Detail and transparency	Applies to all

Response to Consultation and Subsequent Amendments

- 5.7** Preliminary Notice of Variation letters were posted to all existing council tenants week commencing 05 October 2020 and the four week consultation period ended on 08 November 2020.
- 5.8** The consultation on changes to the Tenancy Agreement attracted 6 individual responses in total. The comments are abridged below; concerns were expressed over:

Concern	Comment
Use of Direct Debit as the default method of payment	This is common practice and alternative payment methods are allowed by agreement. Alternative payment dates for DDs are being implemented.
Level of Service Charges/Support charges x2	Not directly related
Format of the agreement	Changed for final draft
Tenant responsibility for fencing x 2	The Council retains some responsibility for fencing

Concern	Comment
Tenants not allowed to access loft space	This is increasingly common practice for landlords, reflecting that loft spaces are not “living space”
Tenant responsibility for unblocking sinks and toilets	The Council is responsible if there is a fault with the plumbing/pipework
Section 10 – ‘Keeping animals and pets’ ... many tenants already have pets	Existing pets will be treated as though consent had been given in advance, subject to them not causing nuisance or being neglected.
Joint tenant ending tenancy without the other tenant’s knowledge – remaining tenant should be allowed to stay	An options appraisal is undertaken in these circumstances as in effect the Council is making an allocation of a new tenancy
Melton Borough Council should pay for any moving fees or for a temporary move...tenant can move back into the property after re-development ...should they so wish.	This is covered by housing management policies
Melton Borough Council should add to the Tenancy Agreement that tenants can refuse permission to allow potential new tenants to enter the property before the tenant moves out	Landlords have a right of access where reasonable notice is given
MBC should make a statement at the start of the document saying that they will provide a property that is to a certain standard	This is covered by the Council’s proposed Void Policy
Within Section 7 The tenant has a lot of responsibilities placed upon ...my concern that some tenants may not be able to fund a lot of these items. If this was the case the placing of the onus on tenants would be counterproductive and the property would deteriorate quite quickly.	The Council will support tenants in meeting the terms of their tenancy
With regards to item 5.2.1 and 8.1.2, I believe that legally you cannot be held responsible for other people’s actions.	Tenants can be held responsible for the actions of members of their household and their visitors
As the present tenancy agreement does not provide a clause for MBC to alter the present agreement, I believe that any changes would have to be agreed on an individual tenant by tenant...It cannot just be adopted as stated in your covering letter	The statutory process to vary a tenancy is covered elsewhere in the report

- 5.9** Other comments were received about issues unrelated to the tenancy consultation and these were passed to the appropriate officers for action.
- 5.10** Cabinet will wish to note the addition of a clause (7.2.10) relating to the tenant’s responsibilities in terms of dealing with pests (e.g. vermin) at the property – the Council will resolve any property-related issues (e.g. holes in external walls allowing access to rodents), other factors relating to pests are however the responsibility of the tenant.
- 5.11** The tenancy agreement has been formatted to meet the Council’s corporate branding; Members may wish to note that permission to use the painting of Holwell on the cover of the agreement has been kindly given by the artist, a centenarian resident of Gretton Court, whose hobby is water colour painting.

6 Options Considered

- 6.1** Due to the reasons noted above, the option of retaining the existing tenancy agreement has not been considered.
- 6.2** Other options are tabulated below:

Option	Positives	Negatives	Conclusion
Abridge the terms and conditions i.e. reduce the number of clauses and detail	Provides a shorter, less detailed document	Lack of clarity and required detail	Rejected
Expand the terms and conditions even further and in greater detail	May provide more detail and clarity on minor points	Becomes increasing less accessible as a document and removes discretion and flexibility where appropriate	Rejected

7 Consultation

- 7.1** In addition to the statutory process referred to above, consultation has also taken place with the Tenants Forum Executive Committee (TFEC), who have welcomed the adoption of a new tenancy agreement, having advocated for this for some time. TFEC are supportive of the principles although have raised some specific points for consideration that have been taken into account (TFEC feedback is provided in the Background Papers to this report)
- 7.2** The draft agreement was also shared with the Community Safety Partnership, who welcomed the proposed tenancy.

8 Next Steps – Implementation and Communication

- 8.1** If adopted, the new tenancy will take effect from 05 April 2021, allowing the formal notice to be given to all Council tenants. There must be at least 4 weeks between the date the Notice of Variation is served and the date on which the Tenancy Agreement will be varied. Existing tenants will not be required to sign a new agreement. After the Notice of Variation has taken effect all Council tenants will be bound by the terms of the new Tenancy Agreement.
- 8.2** Tenants whose tenancies started or will start before the expiry of the formal Notice will be provided with a copy of the new tenancy in advance of it taking effect.

9 Financial Implications

- 9.1** There are no direct financial implications arising from the report.

Financial Implications reviewed by: Director for Corporate Services

10 Legal and Governance Implications

- 10.1** S102 of the Housing Act 1985 sets out ways a secure tenancy can be varied.
- 10.2** The Council is seeking to vary its terms in accordance with ss102 and 103 of the Housing Act 1985.
- 10.3** The provisions of section 103 of the Housing Act 1985 require the Council to serve a notice of variation on its tenants if it wishes to vary the terms of its tenancies. The notice of variation must be served at least four weeks before it is to take effect.

- 10.4** Prior to service of any notice of variation, the Council must serve on each tenant a preliminary notice in accordance with section 103(2). The preliminary notice informs the tenant of the Council's intention to serve a notice of variation in addition to specifying the proposed variation and its effect providing the opportunity for tenants to comment on the proposed variation(s).
- 10.5** Similarly, the Council's duties in relation to the consultation of tenants on matters of housing management, as set out in Section 105 of the Act. Following consultation, the Council must give a minimum notice period of 4 weeks' notice of any change.

Legal Implications reviewed by: Monitoring Officer

11 Equality and Safeguarding Implications

An Equality Impact Assessment has been completed and is available as a Background Paper to the report; no significant impacts have been identified. Any issues with tenants who cannot:

- read or write;
- read or write in English;
- read due to being visually impaired,
- or will have difficulty with reading the tenancy agreement

will be mitigated through alternative forms of communication e.g. telephone or face to face contact; letters in the person's first language; braille or large print.

12 Community Safety Implications

The new Tenancy Agreement will positively contribute to preventing crime and the fear of crime by stating the types of anti social behaviour and harassment that is prohibited and the enforcement action that the council can take should such behaviour occur.

13 Environmental and Climate Change Implications

No direct implications

14 Other Implications (where significant)

- 14.1** No direct implications.

15 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	Risk of legal challenge due to introduction of new tenancy agreement	Very Low	Marginal	Low Risk
2	New terms and conditions no fit for purpose	Very Low	Critical	Low Risk

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High				
	4 Significant				
	3 Low				
	2 Very Low		1	2	
	1 Almost impossible				

Risk No	Mitigation
1	This is mitigated due to following the statutory process
2	This is mitigated through the use of good practice examples, a cross-service working group, and consultation

16 Background Papers

- 16.1 Preliminary notice of variation sent to all Council tenants and leaseholders October 2020
- 16.2 Individual Tenant Responses to the Consultation
- 16.3 TFEC consultation feedback
- 16.4 Equality Impact Assessment

17 Appendices

- 17.1 Appendix 1 – Draft Tenancy Agreement

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