

# Cabinet

Date

Report of:

**Portfolio Holder for Housing  
and Communities**

## DRAFT TENANCY AGREEMENT

1.0 Corporate Priority:		Decision Type:
1.1	Helping people fulfil their potential and achieve their ambitions.	Key Decision
1.2	Work with our partners to address vulnerability and tackle the root causes of social problems, building safe, happy and healthy communities.	
1.3	Focussing on our priority neighbourhoods, support people to overcome disadvantage and live well independently.	

2.0 Summary:	
2.1	The report seeks Cabinet approval to consult stakeholders on a draft tenancy agreement.
2.2	The existing tenancy agreement is out of date and requires significant updating to ensure tenants are aware of their responsibilities to their community and home, whilst informing tenants of the Council's role as landlord.
2.3	The draft updated tenancy agreement (Appendix A), if agreed by Cabinet, will undergo a 12 week consultation with all tenants and associated groups before being presented to Council for approval.

3.0 Recommendations	
3.1	<b>That Cabinet considers the contents of the draft Tenancy Agreement and approves the commencement of consultation.</b>

4.0 Reason for Recommendation:	
4.1	The Tenancy Agreement will assist officers in appropriately managing tenancies, with particular regard to rent collection, antisocial behaviour and providing tenants with information regarding their rights and responsibilities whilst living in their home.
4.2	The proposed agreement will allow officers to effectively enforce the conditions of the agreement whilst providing additional reassurance to tenants that their agreement with the Council is relevant and continues to uphold their rights.

## 5.0 **Alternate Options Considered**

5.1 To retain the existing Tenancy Agreement. This option is not recommended as the current version is out dated and does not adequately cover the necessary elements which allow for effective tenancy management.

## 6.0 **Report Detail**

6.1 Upon allocation of a Council owned property, a tenant is provided with an Introductory Tenancy Agreement, which after 12 months transitions into a Secure Tenancy Agreement with the Council. The Council also manages ten flexible tenancies at properties let at the affordable rent rate. The draft Tenancy Agreement would apply to introductory, flexible and secure tenancies.

6.2 The Tenancy Agreement provides the tenant with assurance that the Council will adhere to its responsibilities, whilst setting out the tenant's responsibilities regarding behaviour, rent payment, impact upon the community and looking after their home.

6.3 The updated Tenancy Agreement will allow the Council to manage tenants and properties more effectively by:

- Updating tenants' rights and responsibilities in line with legislation and best practice guidance
- Providing robust parameters for behaviour and impact on the local community
- Setting out definitive guidance regarding rent payments
- Providing clarity regarding housing maintenance and repair, including the tenant's responsibilities to ensure safety checks are allowed.
- Making clear the legal steps the Council will seek to follow should the tenant not adhere to their responsibilities
- Encouraging communication with each tenant should they fall into difficulty
- Enable support to be provided at an earlier point
- Ensure a clear end to end view of the tenancy is maintained, with clear guidance regarding key milestones of the tenancy
- Clarifying responsibilities and rights regarding different tenancy types and Right To Buy applications.

6.4 The recently approved Housing Improvement Plan (HIP) sets out how the Council will ensure that all tenancies are managed appropriately and effectively. This included the provision of additional Housing Officers, a Tenancy Liaison Officer and a Tenancy Enforcement Officer, alongside a commitment to ensure each Council property is inspected on an annual basis. The updated Tenancy Agreement will provide the Tenancy Management team with a robust framework in which to carry out these inspections and take any required action.

6.5 Tenant safety is paramount, and the ability for officers to inspect properties and facilitate the necessary safety checks, i.e. gas safety, electrical safety etc. is an important element of the draft agreement, which sets out the tenant's responsibility to allow access to their home when requested.

6.6 The draft tenancy agreement has been written in close consultation with the Tenants Forum Executive Committee (TFEC), ensuring tenants' concerns have been incorporated into this version from an early stage.

6.7 It should be noted that upon approval after a 12 week consultation period, each tenant will be issued with a draft Tenancy Agreement. This will be distributed alongside a renewed version of the tenants' handbook. The new version will then be binding from the point of issue to the tenant once a formal 'Notice of Variation' is served.

## 7.0 Consultation and Feedback (including Scrutiny Committee)

7.1 Following Cabinet authorisation, the draft Tenancy Agreement will be shared with all tenants, the Tenant Forum, TFEC and stakeholders, with feedback assessed and built into the final version where appropriate. The proposed consultation length is 12 weeks, and this will begin once Cabinet approval has been received.

## 8.0 Next Steps

8.1 The next steps will be to start a 12 week consultation with tenants and key stakeholders, prior to presenting the finalised version to Full Council for formal approval.

8.2 Upon approval at Council, each tenant will be issued with their new tenancy agreement

## 9.0 Financial Implications

9.1 There are no direct financial implications arising from the policy and the consultation. No financial impacts are expected in terms of Right to Buy applications. The conditions of each tenancy type have not been altered.

## 10.0 Legal and Governance Implications:

10.1 The local authority, as landlord, is afforded general powers of management, regulation and control over its housing stock under s21 of the housing act 1985.

10.2 Section 102 of the Act prescribes the two ways in which the Council may vary the terms of a secure tenancy:

(a) By agreement between the landlord and the tenant. It is however impractical to attempt to reach individual agreement with around 1,800 tenants.

(b) In accordance with section 103 by giving a notice of variation of the tenancy to the tenant.

10.3 Under section 103 of the housing act 1985 the council has a unilateral right to vary the conditions of a tenancy by way of notice, followed by a period of consultation before the service of a final notice setting out the terms of the revised tenancy agreement and the date upon which the same will take effect, which is presently envisaged for the April 2020.

10.4 Section 103 sets out a two stage process. The Council is first required to serve a preliminary notice on the tenant to inform them that the Council intends to serve them a notice of variation. The preliminary notice must specify the proposed variation to the tenancy and its effect, and give the tenant the opportunity to make comments on the intended variation within a reasonable timescale. It is recommended that a copy of the draft tenancy agreement is served with the notice to vary. The Council must then consider these comments.

- 10.5 The second stage is to serve a notice of variation specifying what variation is affected by it and the date on which it takes effect. The period between the date of service and the date on which it takes effect for a notice of variation must be the longer of a minimum of 4 weeks or the rental period. The notice should be accompanied by such information as the Council considers necessary to enable the tenant to understand the nature and effect of the variation.
- 10.6 In accordance with the statutory process all Council housing tenants will be served with a preliminary notice in December 2019 with the draft new tenancy conditions and a notice of variation later with the final conditions and other information as required. The notice of variation will be served at a time which has allowed sufficient time for comments to have been made and considered with a notice period that enables the variation to take effect in April 2019.
- 10.7 If a tenant gives a valid notice to quit after the service of a notice of variation but before the date on which the variation is to take effect then their tenancy shall not be varied unless the notice to quit is withdrawn, with the Council' written agreement, before the effective date.
- 10.8 The Council has a duty under section 104 of the Act to publish and supply to its secure tenants information to explain in simple terms the effect of the tenancy conditions, Part IV of the Act (governing secure tenancies and the rights of secure tenants) and the repair obligations of the Landlord and Tenant Act 1985 (incorporated into the Council's conditions of tenancy). The information to be provided to all tenants with the notice of variation, and to new tenants at the grant of a tenancy thereafter, complies with this duty.
- 10.9 A tenancy is not a secure tenancy if it falls within one of the exceptions set out in Schedule 1 to the Act, such as a tenancy granted pursuant to a homelessness function under Part 7 of the Housing Act 1996. Such a tenancy is contractual and there is no statutory or other mechanism for the landlord to vary the terms of the tenancy unilaterally. In these cases the tenant will served with a Notice to Quit to terminate the current tenancy and offered a new non-secure tenancy on the new conditions to start immediately on termination of the old tenancy.
- 10.10 Once the varied tenancy is adopted, all subsequent Court proceedings will need to have a clause endorsed in the particulars of claim to reflect the date that the Council's Secure tenancy was varied. A copy of the correspondence and Notice served Under Section 103 of the Housing Act 1985 will also need to be attached to all Court proceedings thereafter. It is also the duty of the Housing department to ensure that copies of all the signed notices served along with covering letters and the date of service is maintained within their offices for record purposes. It is also advisable that copies are kept on all Secure tenancy files as a matter of pragmatism.
- 10.11 The Council must adhere to the Regulator for Social Housing's Regulatory Standards which require it to ensure that service charges are limited to the cost of providing the services and provide tenants with clear information on how service charges are set.

## 11.0 **Equality and Safeguarding Implications:**

- 11.1 An Equalities Impact Assessment has been considered for this report by the Housing & Communities Manager which confirms that there are no specifically

adversely affected groups and therefore no action plan is necessary.

11.2 Upon completion of the consultation period, a full equality impact assessment will be completed.

**12.0 Community Safety Implications:**

12.1 The proposed Tenancy Agreement provides officers with a more robust and clear framework within which to manage tenancies and properties across the Borough. The proposed Agreement provides significantly more information and parameters regarding antisocial behaviour, nuisance and community cohesion which will allow greater day to day management of our properties.

12.2 The consultation period provide statutory partners, e.g. the Leicestershire Police with the opportunity to feedback on the proposed document.

**13.0 Other Implications**

13.1 None

**14.0 Risk & Mitigation:**

14.1 Risk 1: Consultation period highlights significant issues to be addressed before the final version can be approved.  
Mitigation: Regular liaison with TFEC and members throughout the consultation period should make this unlikely

Risk 2: Tenants do not accept the final version of the tenancy agreement  
Mitigation: Further negotiation with tenants to achieve a suitable outcome will be necessary. The existing agreement will continue to apply until a new version has been adopted

14.2

<b>L I K E L I H O O D</b>	<b>A</b>	<b>Very High</b>				
	<b>B</b>	<b>High</b>				
	<b>C</b>	<b>Significant</b>				
	<b>D</b>	<b>Low</b>		1		
	<b>E</b>	<b>Very Low</b>				
	<b>F</b>	<b>Almost Impossible</b>				
			<b>Negligible 1</b>	<b>Marginal 2</b>	<b>Critical 3</b>	<b>Catastrophic 4</b>
			<b>IMPACT</b>			

Risk No	Risk Description
1	Enforcement will create capacity issues. This is mitigated due to the Housing Improvement Plan additional resources provided.

### Background Papers:

None

### Appendices

Appendix A: Draft Tenancy Agreement

	Report Timeline:	Date of sign-off: <i>(initials and date)</i>
	Equalities Check & Challenge	N/A
	SLT Sign off	N/A
	Previously Considered by Cabinet	N/A
	Director Approval	18.11.2019
	Legal Approval	18.11.2019
	Finance Approval	19.11.2019
	Chief Finance Officer Sign Off	19.11.2019
	Monitoring Officer Sign Off	19.11.2019
	Chief Executive Sign Off	19.11.2019

### Report Author

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