FIXED-TERM TENANCIES TASK GROUP – 6 MARCH 2014

A meeting of the Fixed-term Tenancies Task Group will be held at 5.30pm on Thursday 6 March 2014 in Committee Room 2 at the Town Hall, Rugby.

Councillor Mrs B Garcia
Chairman

A G E N D A

PART 1 – PUBLIC BUSINESS

1. Minutes – to approve the minutes of the meeting held on 12 December 2013.
2. Apologies – to receive apologies for absence form the meeting.
3. Declarations of Interest

To receive declarations of:

(a) non-pecuniary interests as defined by the Council’s Code of Conduct for Councillors;

(b) pecuniary interests as defined by the Council’s Code of Conduct for Councillors; and

(c) notice under Section 106 Local Government Finance Act 1992 – non-payment of Community Charge or Council Tax.

Note: Members are reminded that they should declare the existence and nature of their non-pecuniary interests at the commencement of the meeting (or as soon as the interest becomes apparent). If that interest is a pecuniary interest the Member must withdraw from the room unless one of the exceptions applies.

Membership of Warwickshire County Council or any Parish Council is classed as a non-pecuniary interest under the Code of Conduct. A Member does not need to declare this interest unless the Member chooses to speak on a matter relating to their membership. If the Member does not wish to speak on the matter, the Member may still vote on the matter without making a declaration.

5. Review recommendations and next steps.

**PART 2 – EXEMPT INFORMATION**

There is no business involving exempt information to be transacted.

**Membership of the Task Group:**

Councillors Mrs Garcia (Chairman), Coles, Hazelton, Mahoney, Mrs Parker, Ms Robbins and Helen Walton

Ms Tracey Nuttall (nominee from Tenant Representative Panel)

*If you have any general queries with regard to this agenda please contact Veronika Beckova, Democratic and Scrutiny Services Officer (01788 533523 or e-mail veronika.beckova@rugby.gov.uk). Any specific queries concerning reports should be directed to the listed contact officer.*

*If you wish to attend the meeting and have any special requirements for access please contact the Democratic and Scrutiny Services Officer named above.*
1. Introduction

The Localism Act 2011 introduced new flexibilities for councils and other social housing providers to offer new tenants 'flexible tenancies'. The purpose of this review is to investigate the merits and implications of Rugby Borough Council introducing fixed term tenancies for its council homes and to make a recommendation to Cabinet as to whether or not the council should take advantage of these new powers.

If the task group decides in favour of fixed term tenancies, further work may be carried out on the details of how this would be implemented, following an in-principle decision from Cabinet. As there is still a lack of evidence as to the actual impact of introducing fixed term tenancies elsewhere, the task group may recommend that the decision should be deferred and the situation could be monitored with a view to revisiting this again in the future.

2. Purpose of the meeting

It was agreed in December that this meeting would include:

- Evidence from Kettering Borough Council and High Peak Borough Council on their responses to the new provisions in the Localism Act for local authorities to offer fixed term tenancies
- A briefing on the 'Pay to Stay' policy
- Details of the legal position on whether fixed-term tenancies are discrete tenancies and what mitigations could be put in place with regard to rent arrears if this is the case
- Further information on the potential cost of evictions and details of the proportion of those tenants not in receipt of housing benefit who are over 65 years of age.

As agreed at the last meeting, an invitation was extended to two other local authorities to meet with the task group to discuss how they reached a decision to introduce (or not) fixed term tenancies for their council homes. Evidence received from the lead officer at High Peak Borough Council about the key considerations and arguments that persuaded them not to pursue this policy is detailed in the report below (section 3.1). However, they felt unable to assist the task group further as their council housing was managed by an arms-length management organisation (ALMO) at the time they took the decision, and their policy is currently open to review in the context of the development of their HRA Business Plan. At the time of writing this report we have been unable to gain a response from Kettering Borough Council.
This briefing paper provides information in relation to each of the points listed above. It also includes a review of the evidence received to date and summary of some of the key questions and arguments the task group needs to consider in forming a view as to whether or not to recommend the introduction of fixed term tenancies for the council’s housing stock at this time.

3. **Evidence from other local authorities**

3.1 **High Peak Borough Council**

Evidence from internet research into the considerations by High Peak Borough Council in determining their approach to fixed term tenancies was presented at the last meeting of the task group. Since then the scrutiny officer has discussed the matter with the Strategic Housing Manager at High Peak Borough Council, who made following additional points:

- The council’s housing stock was managed by an ALMO when the council took decisions relating to the provisions in the Localism Act 2011.
- The Board of the ALMO and councillors held a series of workshops to discuss options around affordable rent, allocations and tenancies.
- The cost of tenancy reviews was a key consideration in the decision not to introduce fixed-term tenancies. They could not envisage many cases where they would not renew a tenancy and therefore did not consider that the cost involved could be justified.
- They also felt that fixed term tenancies could disincentivise work if people were required to move out of their property when their income reached a certain level.
- Bringing the housing back in-house has changed councillors’ perceptions. Scrutiny members are currently engaged in a series of workshops around the HRA business plan, and the policy with regard to tenancies is being reviewed in this wider context.

3.2 **Kettering Borough Council**

We have been unsuccessful in gaining additional evidence from Kettering Borough Council. However, there are a number of points, taken from their report to Council recommending the Tenancy Policy and the council’s positive approach to flexible tenure within its own housing stock, which are worth stating here:

- Their guiding principle was the “need to make better use of the housing stock owned by both the Council and housing associations in the Borough, due to increasing demand from applicants and lack of affordable housing supply to meet their needs”.
- In relation to ‘Use of Resources’ the report stated: “There are no resource implications at present. However, there are implications for the Council’s housing services, and in particular, the management of its own housing stock in the future. One of the Government’s reasons for promoting fixed term tenancies is the desperate shortage in supply of social rented homes. This is borne out in our Borough, as the Council is placing increasing...
numbers of homeless households into privately rented homes due to the shortage of social housing supply locally."

- The report identified medium to long term resource implications. These included additional staff time taken in conducting reviews and appeals, increased churn within the housing stock leading to increased void and re-letting costs; and increased pressure on staff resources as a result of having to provide additional advice and assistance to tenants whose tenancies are under review.
- The report recommended that the outcomes delivered by the Tenancy Policy "need to be carefully monitored, to assess the impact on both the management of our own housing stock and wider housing services across the Borough". Annual reviews were proposed.

4. Pay to Stay Policy

At the last meeting of the task group, a member highlighted the Government’s ‘Pay to Stay’ policy which was subject to consultation in August 2012. The aim of the proposed policy is for social landlords to be able to charge market rents to tenants where their household income exceeds £60,000 and they wish to continue living in social housing under the secured tenancy scheme.

Consideration of this policy proposal falls outside the scope of the one page strategy for this task group. However, it is clearly of relevance to the discussion about fairness in the use of council housing, and so officers have prepared a briefing paper clarifying the status of this policy proposal and whether local authorities are required or empowered to ask tenants to declare their household income. The briefing paper is attached at appendix 1. If the task group wishes to pursue this further, this would need to be proposed as a new and separate area of work.

5. Legal position on fixed term tenancies

At the last meeting the Head of Housing advised that he was seeking legal advice on the issue of whether each fixed-term tenancy would be classed as a discrete tenancy. If so, it was suggested that this would complicate the recovery process of any former tenants’ outstanding rent arrears as upon signing of a new tenancy, the outstanding rent arrears would be cleared. At present the council works with tenants on repayment plans for rent arrears.

In summary, the view of counsel is that:

- there is as yet no body of decided caselaw on this specific matter
- with reference to other local authorities that have introduced fixed term tenancies, the first opportunity for a renewal decision to be challenged will be in November 2014
- essentially each fixed term tenancy will be a new tenancy (not a renewal or extension) and there is no presumption that a new statutory tenancy will preserve rent arrears
• however, it is open to the Council to include a provision in their Tenancy Strategy that rent arrears are a basis for refusing new Flexible Tenancies, unless a satisfactory payment plan has been entered into; and
• there is nothing stopping the Council from obtaining judgment against a tenant for past rent arrears, regardless of whether a new tenancy has been entered.

Given the sensitive nature of legal counsel, it is not appropriate to share the full legal opinion publicly with the task group, but task group members will be able to view the advice on a confidential basis at the meeting if they wish.

6. Additional data

6.1 Cost of evictions

At the last meeting members asked for further information on the potential costs of evictions. As part of the ‘check’ stage of the current end to end rents service review, officers researched typical costs of court cases and evictions. Practice guidance from the Chartered Institute of Housing states that the average cost of taking a case to court is around £2,000 and it has been estimated that every eviction costs a landlord £6,000. These costs include staff costs, legal costs, void costs, homelessness costs and the costs to the agencies.

6.2 Tenants over 65 not in receipt of benefit

Members also asked for data on the proportion of tenants not in receipt of housing benefit who are over 65 years of age. Typically tenants over 65 years of age would continue to be offered secure lifetime tenancies. It had previously been reported to the task group that between 60 and 70% of our tenant households are in receipt of housing benefit, and members wanted to have a clear idea of the number of these who were over 65.

As on 19 December 2013 there were 539 tenants aged over 65 who were not in receipt of housing benefit out of a total of 1605 tenants aged over 65. This represents 11.5% of the total number of tenants (with a current rent account) and 34% of all tenants over 65.

7. Review of evidence received to date

The Localism Act 2011 enables councils and other social housing providers to offer ‘flexible tenancies’ to new tenants from April 2012. This does not affect existing secure tenants.

The task group is reminded that a flexible tenancy is a fixed-term tenancy which would normally last for a minimum term of 5 years, although in some exceptional circumstances they may last for a minimum term of no less than two years, in addition to any probationary tenancy.
Key points from the evidence received to date are outlined below.

7.1 Housing stock and housing need

- The council has 3885 properties including 12 pitches at Woodside – 1427 designated sheltered housing and 2458 general needs. Around 200 sheltered properties are due to be redesignated.

- The Strategic Housing Market Assessment predicts an increase in the number of households in housing need, with an estimated 43% of households in the borough unable to afford market housing without subsidy.

- Following a review of the allocations policy in 2013 the housing list was cut by around 700. There are currently 628 on the waiting list.

- 60-70% of our tenants are in receipt of benefits.

- We currently do not have an understanding of the numbers moving into work and the types of salaries. Anecdotally, most would move into lower paid work and potentially insecure and part-time employment.

- In 2011/12 there was a turnover of 360 council properties. 44% of these related to sheltered housing and 66% general needs.

- 20% of our properties are let to tenants with children.

- 64.6% of those on the housing waiting list require one bedroom.

- In 2013, 12 tenants were evicted from council properties.

- Almost 600 households living in 3, 4, and 5 bedroom general needs properties in the borough are not in receipt of housing benefit.

- The council does not collect housing income data from tenants who are not in receipt of housing benefit, and there is no legal requirement for tenants to disclose this information.

7.2 How are others responding?

- All Warwickshire districts and boroughs with stock continue to offer secure tenancies.

- In a national survey in January 2013, 29 out of 50 councils who responded were rejecting use of FTTs.

- Of the Council’s 15 statistical nearest neighbours, 7 manage their own stock and of these 3 have introduced fixed-term tenancies.

- Some larger local registered providers have introduced FTTs.
7.3 Costs of Fixed-Term Tenancies

- Officers estimate administration costs relating to fixed term tenancies amount to approximately £17,900 for the first year (of renewals), and £89,500 over a 5 year period.

- This figure is based on an average of 235 general needs voids per year, with each requiring a tenancy review prior to the end of the tenancy. The costs reflect estimated officer and management time relating to these tenancy reviews.

- In addition officers provided indicative costs of ending fixed term tenancies. Research suggests that less than 1% of fixed term tenancies end after five years, and in Rugby this would mean 3 tenancies per year ending.

- Potential costs of ending fixed term tenancies include:
  - Void costs of £4,233 per annum and £21,165 over a 5 year period (on the basis of 3 voids per year) – including rent loss and repairs
  - If tenancies are ended due to rent arrears (not taking account of court or eviction action):
    - 10 cases per year - £14,110 (£70,550 over 5 years)
    - 20 cases per year £28,220 (£141,100 over 5 years).

7.4 Key questions and issues to be resolved

As the task group moves towards taking a view on the introduction of fixed term tenancies in Rugby, it may be helpful to rehearse here some of the arguments that have been put forward for and against the proposals.

The Government’s policy aim in introducing these powers is “to ensure that social landlords grant tenancies which are compatible with the purpose of the housing, the needs of individual households, the sustainability if the community and the efficient use of their housing stock”.

Further to this, key arguments in favour of introducing fixed term tenancies that have been articulated in discussions within the task group are:

- Our council housing is a public resource that should be used for public benefit

- The purpose of council housing is to meet housing need for those unable to afford private sector housing. It is a welfare benefit and should be viewed as a springboard into work and self-sufficiency

- Fixed-term tenancies enable more efficient use of housing stock to meet the needs of households for the period during which they are in housing
need. This is necessary because we are unable to meet demand from those in housing need within our existing stock.

- Fixed-term tenancies help ensure that council homes go to those in greatest need and better meet the needs of tenants. They offer landlords flexibility to provide suitable housing when the circumstances of households change.

- It is unfair for people who can afford to relinquish their council home to remain in the property when there are many on the housing waiting list in greater need.

Some of the questions and concerns raised about the viability of introducing fixed term tenancies include:

- There are indications that only a very small proportion of tenants would be able to afford to access alternative housing options and would not, therefore, have their tenancy renewed.

- Over time there will be significant costs to the council in administering fixed term tenancies and no identifiable savings to be made.

- Fixed term tenancies could have a detrimental effect on communities and undermine community cohesion and sustainability.

- Fixed term tenancies have the potential to disincentivise employment if people feel they will lose their home if their income reaches a particular level.

There has been some discussion of whether there may be alternative approaches that could be adopted that would achieve the same policy aims. For example:

- The under-occupancy charge is already encouraging better use of council housing, with more tenants now living in homes more suited to their household’s needs.

- The ‘Pay to Stay’ policy, if introduced, could address the question of fairness by ensuring that tenants who can afford to pay a higher rent do not receive (in effect) a public subsidy by living in a council home at a low rent.

As part of the rents review officers are exploring potential means of monitoring tenants' financial standing and circumstances. This could lead to alternative approaches such as targeted tenant incentive schemes which could help to raise aspirations and provide clearer pathways out of social housing. Officers will discuss these possibilities with task group members at the meeting.
8. Next steps

The one page strategy for the review is attached at appendix 2 for reference. It states the intention that the review should take a maximum of 6 months, and aim to report to Customer and Partnerships Committee on 3 April 2014.

With this in mind, following consideration of the additional data and evidence presented to this meeting, it is hoped that the Task Group may be in a position to take a view as to whether to:

- seek an in-principle decision from Cabinet in favour of the introduction of fixed-term tenancies, with a view to undertaking further work to establish how this would be implemented;
- recommend that the decision is deferred and that the situation is monitored with a view to revisiting this again in the future, potentially in several years when evidence on the actual costs and resource implications of the review process will be available;
- recommend further exploration of alternative approaches that may achieve the desired policy outcomes; or
- recommend that fixed term tenancies are not introduced by the council in the short to medium term.

Debbie Dawson, Scrutiny Officer, February 2014
Pay to Stay – Summary Briefing

“Pay to Stay” is a proposed policy whereby households with high incomes living in social housing pay higher than the social rent level. This policy is currently going through a consultation process, with no confirmed date as to when responses will be published, however April 2015 is when the policy would be implemented.

Consultation 1 (13 June-12 September 2012)

As a result of the initial consultation, section 2.22 of the Government’s Budget Policy released in March 2013 outlined that the Government will be taking steps to allow landlords to charge market rents to households living in social housing with incomes of more than £60,000 a year.

Summary of responses (July 2013)

A summary of responses from local authorities, private registered providers and other organisations as well as individuals.

The next steps produced in this document propose:

- Regulatory controls preventing private registered providers from charging market rents to social households with an income of over £60,000 per year should be removed, and a further consultation will address changes to regulation and guidance, particularly for local authorities.
- It will be the responsibility of households to declare their income if they earn over £60,000, either as an individual, or two individuals with a joint high income, with any further household members not being taken into account. However it was suggested by respondents that households should be prevented from being able to transfer the tenancy to a lower earner in the household.
- All additional income from the introduction of the policy will be reinvested in affordable housing, particularly new properties, and helping to meet housing need.

The practicalities of how household income would be disclosed were discussed, with the following sources of information being suggested:

- Existing systems such as HM Revenue and Customs or banks and building societies
- For tenants to be obliged to inform landlords when their income reaches the threshold, with penalties for those who do not do so, or give false information
• Any new statutory powers for tenants to disclose their income was only welcomed by about a third of respondents, as part of an allocations process, however a large number who said no thought that the administrative costs would outweigh the benefits.

The responses to the first consultation (section 3.43) also discussed whether the policy would affect existing secure tenancies. It was deemed impossible at the moment as:

“Amending existing tenancy agreements which currently specify conditions for rent increase to charge higher rent than specified would not be possible under the current regulatory framework.”

Consultation 2 (31 October-24 December 2013)

Specific issues arising from the responses of the initial consultation will be addressed as part of the “Rents for Social Housing from 2015-16” consultation. This document includes how the policy would be implemented if/when it goes ahead, and details that it is the landlord’s decision as to whether they implement the policy (section 91).

The Royal Borough of Kensington and Chelsea have produced a draft tenancy policy and have stated that they intend to participate in the Pay to Stay scheme if/when it is implemented, and have identified that their tenancy policy would therefore need to be reviewed. However, this council has committed to the proposed Pay to Stay policy prior to the confirmation of significant details such as the threshold amount of income, how the household income data is to be collected and whether or not capital should be included as part of a higher threshold.
FIXED-TERM TENANCIES TASK GROUP REVIEW

ONE PAGE STRATEGY

What is the broad topic area?
The Council’s tenancy policy

What is the specific topic area?
The Localism Act introduced new flexibilities for housing providers to offer new tenants a tenancy for a fixed term. The council needs to take a view as to whether it wishes to take advantage of this new flexibility.

The review will explore the benefits and risks of introducing fixed-term tenancies for council homes and, if appropriate, consider the detail of how this would be implemented. It will include consideration of the potential impact of fixed-term tenancies on community sustainability.

What is the ambition of the review?
The council’s tenancy policy supports best use of its housing stock to meet local housing needs and ensures sustainable local communities.

How well do we perform at the moment?
The Council is party to a Joint Tenancy Strategy agreed on a county-wide basis. This is scheduled to be reviewed in January 2014. The strategy allows the council to continue to offer qualifying tenants ‘secure tenancies’. The Council currently offers introductory tenancies for the first 12 months to new tenants, and then tenants normally transfer to secure tenancy after that period.

Key considerations for the task group include how well the council currently satisfies demand for social housing and the availability of alternative housing options for those whose tenancy might not be renewed. The task group will draw on the evidence collated for the previous review of housing stock and housing need, and the ensuing actions taken to redesignate properties to better meet local need.

In terms of current council housing provision:
- The council owns just over 3,900 properties, 37% of which is sheltered housing
- Over the last three years we have let on average 315 properties per year and roughly 20% of these were let to existing RBC tenants. Around 44% of lettings were of sheltered housing.
- As at 1 April 2013 there were 2,068 applicants on the housing register of which 425 (21%) had a high or medium level of need. This was a significant increase on the previous year when there were 1,655 applicants including 282 (17%) in high or medium need.

The task group will also need to understand the housing market in Rugby now and likely future trends (eg. average house prices and market rents, and availability of affordable housing) as well as the profile of income levels of council tenants and borough residents.

Who shall we consult about the current service and about how we can improve it?
- Tenant Representative Panel (to be co-opted to the task group)
- Current housing applicants (survey through Housing Options Team?)
- Rugby Homelessness Forum
Appendix 2

The group is also able to draw on existing findings of RSL and housing staff consultation carried out by the housing team (autumn 2012). If introduction of fixed term tenancies is proposed, fuller consultation with tenants and residents may be required.

What other help do we need?
- The task group could learn from the experiences of other housing providers and local authorities who have decided to introduce fixed-term tenancies, about their reasons for choosing this approach and the potential benefits eg. Midland Heart, Waterloo, Solihull Community Housing (introducing FTTs from 2013/14), St Edmundsbury Borough Council (introduced them in 2012).
- The task group may also want to hear from Warwickshire Rural Housing Association about their rationale for not adopting this approach
- Officer support from Housing Service and Legal Services Team
- Briefings, research and guidance produced by external organisations such as HQN and CIH

How long should it take?
Maximum of 6 months, aiming to report to Customer and Partnerships Committee on 30 January 2014.

What will be the outcome?
An informed and evidence-based view about whether to offer fixed-term tenancies in Rugby. If the review supports the introduction of fixed-term tenancies, there should also be robust recommendations to inform the revised tenancy policy.

Potential key lines of enquiry

Key considerations the task group may wish to explore in determining the merits of introducing fixed term tenancies in Rugby include:
- Impact on social mobility – would fixed term tenancies encourage tenants to move when appropriate, to release accommodation for others in housing need?
- Opportunity to make better use of council housing stock
- Potential to encourage people to access employment or risk of disincentivising work?
- Availability and affordability of alternative housing options
- Cost (to the council) of administering fixed term tenancies (including undertaking tenancy reviews) and higher rates of tenant turnover
- Defining the purpose of council housing
- Impact (positive or negative) on community sustainability, including access to education and health services
- Implications of welfare reforms (including under-occupancy rules)
- Impact on mutual exchanges
- Opportunity to adapt to changing needs of tenants

If fixed term tenancies are proposed, considerations regarding the tenancy policy include:
- FTT for all lettings, new lettings or certain groups? Decisions based on property type or applicant group?
- Duration of fixed-term tenancies. Should there be one term (5 years) or exceptions that would be offered shorter terms
- Equality and diversity – should certain groups be exempted from fixed term tenancies?
- What factors determine decisions about review or termination of tenancy?
- Fairness – what appeals process would be put in place?