



Report for:	Housing and Community Overview and Scrutiny Committee
Date of meeting:	6th November 2019
Part:	1
If Part II, reason:	

Title of report:	Flexible Tenancy Review
Contact:	Cllr Margaret Griffith, Portfolio Holder for Housing Authors: Vivienne Cunningham, Lead Officer (Fixed Term Tenancies Project Officer) Layna Warden, Group Manager (Tenants and Leaseholders)
Purpose of report:	<ol style="list-style-type: none"> 1. To update members on progress with the use of flexible tenancies 2. To detail proposals with regard to continuing use of flexible tenancies 3. To set out proposals for compulsory visits to all general needs tenants at five year intervals
Recommendations	That members consider the report and comment as appropriate
Period for post policy/project review	12 months from date of report
Corporate objectives:	Affordable Housing Building Community Capacity Modern and efficient council
Implications:	<u>Financial</u> There are additional costs associated with carrying out flexible tenancy reviews predominantly in officer time but also in reviewing decisions and hearings held by the Group Manager. If regular visits are introduced for all tenants a growth will be

	<p>required in the need for Housing Officers to carry out more inspections however this is expected to reduce void costs, unauthorised alterations and reduce tenancy fraud.</p> <p><u>Value for money</u></p> <p>There is little evidence so far that using flexible tenancies provides value for money. The proposals for regular tenancy visits will reduce void costs and are expected to provide greater benefits</p>
Risk implications	We have a legal obligation to follow national guidance and this has been considered to ensure legislation and best practice are upheld
Community Impact Assessment	Community Impact Assessment carried out and attached as Appendix A
Health and safety Implications	Housing policies, procedures and contracts build in a requirement that all health and safety requirements are met and any higher risk matters are included in our risk register, which identifies specific mitigating actions.
Consultees:	<p>Mark Gaynor – Director (Housing and Regeneration)</p> <p>Fiona Williamson - Assistant Director (Housing)</p> <p>Tenants and Leaseholders Committee</p> <p>Corporate Management Team</p> <p>Legal Team</p>
Background papers:	Housing and Community Overview and Scrutiny committee report June 2018
Glossary of acronyms and any other abbreviations used in this report:	<p>FTT – Fixed Term Tenancies (Flexible Tenancies)</p> <p>FT - Flexible Tenancy</p> <p>DBC – Dacorum Borough Council</p> <p>LA - Local Authority</p> <p>HA - Housing Association</p> <p>MEX – Mutual Exchange</p> <p>ASB – Anti-social behaviour</p>

1. Introduction and Executive Summary

- 1.1. This report will explain the background with regard to Fixed Term Tenancies (FFT), their introduction and their use in Dacorum Borough Council (DBC). It will provide information on progress with flexible tenancies so far in DBC, and some of the difficulties that have been experienced using these type of tenancies.
- 1.2. The report also looks at research both locally and nationally on the effectiveness of meeting the original aims of the legislation, and what impact this has on tenants and social housing providers.
- 1.3. The report will aim to explain that should DBC cease to use flexible tenancies, what strategy would be put in place so that we continue to interact with our tenants on a regular basis.

2. Background

- 2.1. Following the introduction of the Localism Act 2011, Dacorum Borough Council decided to adopt the use of flexible tenancies and these were introduced in April 2013 for all new DBC tenants offered a general needs tenancy. It was felt older tenants moving into sheltered accommodation were doing so for a number of reasons including stability and suitability and therefore those tenants moving into our supported sheltered housing continued to be offered secure tenancies.
- 2.2. The purpose behind promoting the move to flexible tenancies was to promote better use of resources, increase tenants mobility and to provide housing for those most in need. DBC settled on a term of five years for flexible tenancies following the one year introductory period, and the tenancy would be renewable at review for a further five years if the family's circumstances remained the same and/or they did not have in-excess of £16,000 in savings or earned over £60,000.
- 2.3. If the family needed to downsize then DBC would help them move to a more suitably sized property by the end of their flexible tenancy, and if they needed to upsize then the flexible tenancy at their current property would be renewed for a further five years whilst they awaited a transfer. Those tenants that did not qualify for housing due to their savings or income would not have their flexible tenancy renewed and they would need to find alternative accommodation in the private sector by the end of their flexible tenancy.
- 2.4. Over the last 18 months reviews have been conducted and the majority of tenancies were renewed for a further five years. The reviews need to take place at least 9 months prior to expiry to allow time for any notices to be served by the statutory minimum of 6 months before the flexible tenancy ends.

3. National and Local Situation

- 3.1. Following the introduction of The Localism Act 2011, Fixed Term Tenancies were optional for all local authorities and housing associations to adopt.
- 3.2. The Housing and Planning Act 2016 intended to make it mandatory for all local authorities to use fixed term tenancies for all new tenants, however it was later

announced with publication of the social housing Green paper, that fixed term tenancies made tenants feel insecure and less willing to decorate and “make home” in their properties. It was also felt that it made communities less stable by increasing the transient nature of the residents.

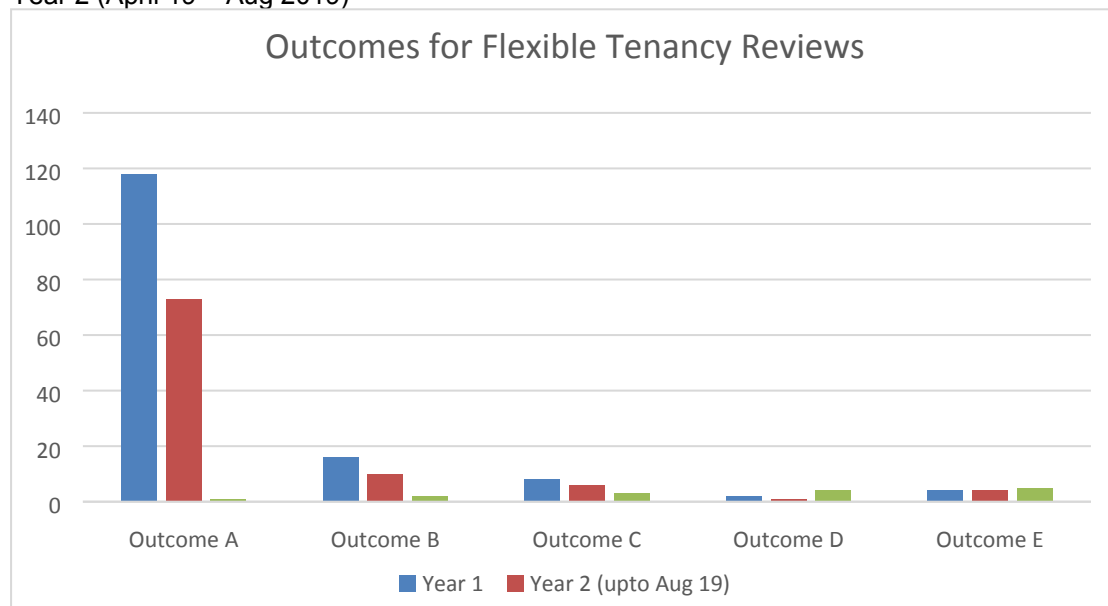
3.3. Locally, although a number of housing providers adopted fixed term/flexible tenancies at the outset they are now moving back to secure/assured tenancies. Hightown Housing Association, our largest housing association provider in Dacorum has already returned to lifetime tenancies, and St Albans District Council are currently reviewing their position with a view to returning to lifetime tenancies. Thrive Homes are continuing with theirs, although they offer them on a seven year tenure and have recently introduced yearly visits to their tenants.

3.4. There has been growing recognition of the importance of housing stability for those who rent, this was highlighted in the Green Paper 2018 following research from social housing providers and academics.

4. Current position for the Housing Service

4.1. We have carried out 259 flexible tenancies so far, from July 2018 to August 2019 and 11 of those have resulted in appeals. The cost implication so far is detailed further in point 5.

The following graph shows the outcome broken down into Year 1 (July 2018 – Mar 2019) and Year 2 (April 19 – Aug 2019)



Outcome A = No change, tenancy renewed

Outcome B = Property too small, tenancy renewed

Outcome C = Property too big, tenancy not renewed

Outcome D = Savings over £16,000 and/or income over £60,000, tenancy not renewed.

Outcome E = Joint tenant no longer at property, not renewed. Sole tenant offered at expiry.

4.2 This shows the majority of tenancies were renewed due to no change in circumstances, those that were not resulted in an appeal by the tenant/s. Of the two cases where tenancies were not reviewed due to an income above £60,000, one decision was over-turned due to medical reasons and the other proceeded to complete a Right to Buy of the home.

5. Impact on Resources

5.1. On average, each review takes around an hour and a half to collate the paperwork and complete the visit. If the tenant/s appeal the outcome, the time increases considerably due to the need to prepare the relevant paperwork, arrange a hearing with a Team Leader and Group Manager who will be conducting the review. Additionally time is required from the Independent Reviewing Officer to assess cases when required.

5.2. The costs in officer time are shown below:

To carry out reviews	388.5 hrs	salary cost: £7855.47
To carry out appeals	44 hrs	salary cost: £889.68
Lead Officer approval	129.5 hrs	salary cost: £3170.16

5.3. While the reviews by the Housing Officers is not an issue as this allows us to build a relationship with our tenant and carry out an inspection of the home, the review process can be very distressing for tenants who are concerned about the future of their tenancy. Additionally considerable resource has been required from internal and external legal services. This is for situation including where one of the joint tenants has left the property, complications where one tenant wishes to leave (eg Domestic Abuse cases) and discussions around the correct paperwork and wording on documents needed to end a flexible tenancy.

6. Legal and current challenges

6.1. When joint tenants wish to end their flexible tenancy it is a requirement of the tenancy agreement that both tenants must sign. In cases where Domestic Abuse is involved this has proved to be especially difficult for the tenant wishing to flee. This can lead the tenant to continue to live in a possibly dangerous situation.

6.2. When a flexible tenancy is renewed and there are rent arrears in place at expiry, these arrears are then classed as a "former tenant arrear" and therefore can be more difficult to collect. This is due to a flexible tenancy being re-granted at expiry as it is not a continuation of the flexible tenancy. This scenario would also apply if there were any injunctions or court orders applied to the flexible tenancy. Essentially the slate is wiped clean for the tenant.

6.3. Many of our flexible tenants have entered into a mutual exchange (MEX) during the lifetime of their flexible tenancy, and some of these families have moved to a property with a "spare bedroom" as allowed in our MEX Policy. At their flexible tenancy review, we have to inform them that we will not be renewing their flexible tenancy at their new property as it is too large for them in accordance with our Allocations Policy and they have to move again. This has caused some dismay and distress to tenants; most of these tenants have lodged an appeal.

6.4. The current IT system (Orchard) does not have the capacity to help monitor the need for a FT review. We have to rely on reports from Orchard and use spreadsheets. This is both tiresome and open to human error, as the reports

do not include those tenants that have transferred or moved by way of a MEX – these have to collated and entered manually.

6.5. The time taken up with FT reviews has meant that less time is available to conduct the general audits we carry out on all general needs properties, which has meant those tenants with a secure tenancy are not being visited as often.

6.6. It is possible that following the expiry of a non-renewed FT the tenant/s refuse to move out. This has not happened so far, but we would need to take legal action for an eviction. This would incur time and considerable expense with no guarantee a Judge would rule in our favour.

7. Current Position

7.1. We are currently consulting with tenants and prospective tenants for their views on flexible tenancies and we should have the results of this by the end of November. However, Tenancy Officers have reported that when visiting tenants, most have expressed some anxiety at the process of their tenancy renewal, and some were not even aware that their tenancy had an expiry date.

7.2. We feel sure that the over-riding response will be that tenants will welcome having a secure tenancy that will give them security and confidence in their home and help create more stable communities.

8. Proposals

8.1. One of the benefits of conducting the FT reviews was that we were able to identify tenants that were struggling or having difficulties, poor maintenance of the property, suspected abandonment or sub-letting. This enabled us to offer support, signpost, refer to the Tenancy Sustainment Team or take tenancy action.

8.2. The requirement to visit should be incorporated into our tenancy agreement, making it a condition of tenancy. If DBC cease to use flexible tenancies, a mandatory visit to all our general needs tenants at least once every five years for an “MOT” of sorts – checking their welfare and identifying any support needs, checking the condition of the property and identifying any unauthorised alterations, and also offering practical advice if the tenant’s circumstances have changed.

8.3. Regular visits will be beneficial to tenancy management, helping to improve relations between tenant and landlord. In addition, when tenancies are terminated the properties will come back to us in a better condition and therefore save on void costs.

8.4. The Housing Service currently conduct a 6 week and a 9 month visit to all introductory tenants, so further visits will just be an extension of this practice into their secure tenancy.

9. Research

9.1. Local research has been undertaken and both Hightown HA and St Albans District Council have cited the resources required to maintain the use of FTT far outweighs their benefits. Both organisations adopted the use of FTT for

better use of their stock, but like us have not found the outcomes to be what was anticipated.

9.2. Many LAs and HAs have now tried the FTT framework and found it has not best served their tenants and communities. They are now reverting back to lifetime tenancies, Many of the larger HAs (Clarion, Peabody, London Quadrant, Grand Union) have abandoned FTTs, and earlier this year Kensington and Chelsea Borough Council also announced they would no longer be using FTTs.

9.3. The key aims behind the Government's introduction of FTT were as follows:

- Make the best use of council stock
- Increase mobility
- Target social housing for those in genuine need
- Support tenants to take up work
- Support tenants into other housing options
- Support vulnerable/young people to develop skills to maintain tenancies
- Tackle ASB and other tenancy issues

The evidence to date suggests that flexible tenancies have had a very small impact on making the best use of stock and no impact on any of the other objectives.

9.4. Research carried out by Professor Suzanne Fitzpatrick and Dr Beth Watts from Heriot Watt University in May 2018, studied the effectiveness of flexible tenancies by carrying out phases of interviews with tenants who had fixed term tenancies. This research concluded that:

- Tenants only had a vague idea on the grounds their tenancies may be terminated
- The idea that tenancies could be terminated due to a rise in income was surprising to most tenants, an idea most disapproved of.
- There was little evidence that tenants adjusted their behaviour as a result of having a fixed term tenancy.
- Most tenants were only mildly or moderately anxious about their tenancy status – although these tenants had a least 2 more years on their tenancy. It was found that it was of considerable distress to a minority – especially older tenants, families with young children or those with a disability.
- There was very little support of the idea that tenancy renewal should be linked to job searching or volunteering – indeed some shock that this could even be a consideration.

9.5. The policy recommendations presented to the government by the researchers were that the FTT policy framework should be abandoned, that the government should not bring into force the relevant sections in the Housing & Planning Act 2016 that compel local authorities to only use FTT in all new lets, but if brought into force, amendments should be made to give exemptions to those with disabilities, older tenants and those with vulnerabilities, and that LAs should have the ability to offer FTTs of up to 10 years.

- 9.6. The government gave credence to such research and subsequently decided not to implement the changes outlined in the Housing and Planning Act 2016. There has been a significant shift since then with a growing recognition of the importance of housing stability for all those that rent. The events at Grenfell have also influenced the need in social housing for communities and tenants to be at the forefront of our decision making processes.
- 9.7. Figures from the Right to Buy within DBC have shown a sharp decrease in sales over the last two years fallen from 89 in year ending 2017 to 29 in the last financial year. This could indicate that those now in DBC properties do not have the finances to purchase, and those with a higher income that could privately rent are reluctant to do so due to the instability in this sector. The White Paper "Fixing our Broken Housing Market" states the loss of a private sector tenancy is now the most common cause of homelessness.

10. Conclusion

- 10.1. The current allocation policy at DBC means that only those most in need are offered properties, and realistically the proportion of those tenants whose circumstances improve enough to purchase a property, or move into the private rented sector are low. Therefore, realistically, the only properties we are likely to get back are those that need to downsize.
- 10.2. DBC already have an incentive scheme in place to assist those tenants wishing to transfer to a smaller property, and the current benefit cap also encourages tenants who are in receipt of housing benefit to downsize when the needs arises.
- 10.3. Forcing tenants to downsize into a smaller property, when available properties are scarce causes alarm and distress, and increases tenant's anxiety they will be made homeless at the end of their tenancy.
- 10.4. DBC already have in place a Tenancy Sustainment Team to assist vulnerable tenants to maintain their tenancy, mutual exchanges and transfers are promoted to increase mobility and our anti-social behaviour(ASB) policies address any ASB issues.
- 10.5. Introducing five yearly visits to each general needs property, will meet the needs of the service to improve the condition of our stock. It will provide an improved service to all our general needs tenants and help us to get to know our tenants and the community, helping us to build stronger, safer communities.
- 10.6. If the decision to cease using flexible tenancies is taken, then consideration is required as to whether we leave the current FTs to roll into periodic tenancies at their individual expiry date, or we contact all the FT tenants to come in to sign a new agreement over a set time period.