

APPENDIX F

Item No: 1	Classification: Open	Date: 28 th January 2004	Meeting Name: Overview & Scrutiny Committee
Report Title:		Review of Secure Tenancy Agreement	
Ward (s) or groups affected		All	
From:		Strategic Director of Housing	

RECOMMENDATION

1. That Overview and Scrutiny note the background report on the process that took place to undertake the review of the existing secure tenancy agreement.

BACKGROUND INFORMATION

2. In 2002 Tenant Council nominated tenant representatives to form a Working Party, supported by officers, to review the existing tenancy agreement and to develop proposals to amend and update the agreement. The Working Party convened a number of meetings during the second half of 2002 and into 2003 to undertake this work. It agreed as a terms of reference that its aim should be to modernise the agreement with the objectives of:
 - simplifying the contents
 - focusing on issues of particular concern to tenants and the Council - this included issues such as anti-social behaviour and parking
 - to, where practical, reduce the content of the agreement and concentrate issues of policy and statutory entitlement in a new edition of the tenants handbook. This handbook to be timed for publication with changes to the agreement.

Experts were asked to attend the Working Party as experts on specific subjects and information was obtained about the clauses used by other social landlords as best practice that could be adopted.

3. The Working Party completed its findings and a draft document was prepared for submission to Tenant Council at its meeting on 14th April 2003. The existing tenancy agreement requires that the Council shall consult with both individual tenants and the Tenant Council on any proposed changes to the tenancy agreement. The individual consultation requires the service of a preliminary notice which outlines the changes and invites comments on those changes. This process is undertaken after consultation with the Tenants Council. No changes can be made to the tenancy agreement (apart from rent or charges for services) unless it is agreed by either the tenant or the Tenant Council.
4. The report was presented to Tenant Council and it was agreed that the proposals should be circulated to all Neighbourhood Forums to seek the views of Tenants and Residents Associations and other members of the Forums. A copy of the proposals was also sent to each member of the Council for information and comment.
5. During the next few months each Neighbourhood Forum considered the draft proposals and provided comments. Each Tenant and Residents Association, within each Neighbourhood, was forwarded a copy of the draft proposals contained within the agenda

for the Neighbourhood Forum that considered the item. The comments made by each Forum were incorporated into a report back to Tenant Council on the 6th October 2003. This report contained:

- the original draft proposals considered by Tenant Council 14th April 2003 and considered by Neighbourhood Forums
- an accurate summary of the views of each Forum
- an analysis, clause by clause, of the views expressed by each Forum, together with the concurrent views of the Strategic Director of Housing.

A number of amendments were identified as a result of the consultation with Neighbourhood Forums. These proposed amendments were highlighted in the concurrent report of the Strategic Director of Housing.

6. The Tenant Council considered the report but felt that legal advice should be obtained before the proposals were considered in detail. It was agreed therefore that 10 representatives of Tenant Council should form a group to consider the proposals before the item was again considered. A meeting of Tenant Council representatives took place on the 16th October 2003, and included a representative of Legal Services to provide advice to tenants. The opportunity was taken to review the proposed changes clause by clause, which in turn identified other potential changes to be incorporated into the draft proposals. Those Tenant Council representatives present expressed agreement to proceed with the next stage of the consultation process.
7. The item originally considered on the 6th October 2003 was re-presented to Tenant Council on the 27th October 2003. (following the review undertaken on the 16th October 2003). Tenant Council considered the draft proposals clause by clause and these were duly minuted either to agree, amend, add or delete against each clause. One sub clause relating to parking did require further consideration and it was agreed that this would be the subject of report back.
8. As part of the statutory consultation process each individual secure tenant must be consulted on any changes (with the exception of rent and other charges) to the conditions of tenancy. A document was therefore prepared for circulation to tenants to take account of the detailed consultation with tenant's representatives (via the Neighbourhood Forums and Tenant Council). This document provided an explanatory letter together with details of the current clauses compared to the proposed clauses and requested views on these proposed changes. The Council provided a freepost service for these views as well as a bespoke e-mail address. Tenants were also encouraged to speak to representatives at their local neighbourhood office if they had any questions on the proposals. A taped version of the document was also provided upon request and interpreter facilities were also made available for residents.
9. The document was either hand delivered or posted to each of our 46,000 tenants, with the vast majority being hand delivered to minimise the risk of postal delays. A deadline for views was set for the 5th December 2003. This was to allow time to consider any comments received and to allow for incorporation into a report back item to Tenant Council on the 15th December 2003. In the event 83 written comments and 45 e-mailed comments were received. Of these, 5 responses were received on behalf of Tenant and Resident Associations.
10. The above views were individually considered and a summary of the key themes was provided and submitted to Tenant Council at its meeting on the 15th December 2003. At that meeting a report was presented that:

- confirmed the incorporation of the changes in the draft submitted to individual tenants
- provided a feedback of the main views expressed by tenants
- provided an update on clauses that had been the focus of specific attention at the earlier meeting.

11. There was some debate on the feedback from individual tenants and some delegates raised issues that had already been the subject of consideration at previous meetings of the Tenants Council. As a result of time constraints a motion was proposed which was agreed by 13 votes, with 0 votes against and 0 abstentions.

“ Tenants Council requires certain clarification on the draft proposals for the variations to the terms of your tenancy agreement/conditions of tenancy. Further Housing legal advice, which must be independent, needs to be sought with reference to Tenants Council delegates concerns raised at the meeting. The Executive needs to do the same and support the recommendation of Tenant Council before we move forward together”.

12. A subsequent meeting with the Chair and Vice-Chair of the Tenant Council took place. It was agreed that Tenant Council has already made and voted on various elements of the conditions of tenancy and these views had been accepted by the Council and incorporated into the draft proposals circulated to individual tenants. The further debate on those clauses and the subsequent motion did not take account of the process that had already been completed. It was therefore decided by the Chair and Vice-Chair that the matter be reconsidered at Tenant Council at its next meeting on Monday 12th January 2004.

13. Tenant Council further considered an item on the review of the existing secure tenancy agreement at its meeting on Monday 12th January 2004. The background to this meeting is summarised above.

14. Tenant Council, after detailed debate agreed the following motion:

“It is proposed that the clauses agreed on the 27th October 2003 by Tenant Council are reaffirmed and that the proposed amendments detailed below are ratified by Tenants Council tonight and these are specified in paragraph 6,7 and 8 (Supplemental Item to Tenants Council 15.12.03 – Review of Tenancy Agreement), and in the case of paragraph 7 the following be added:

The Council shall be legally bound by the content of the Handbook.

In the case of paragraph 6 the time limit of 15 minutes be extended to 30 minutes.

Finally that existing clause 27 in its entirety is retained in the Tenancy Agreement”.

Proposed: Althea Smith
 Seconded: Gary Glover
 For: 9
 Against: 6
 Absentions: 1

15. The Council is required to obtain the decision of the Executive before implementation of any changes to the conditions of tenancy. An Item was therefore submitted to the Executive on the 13th January 2004: this Item summarised the sequence of events and decisions taken by Tenant Council, and recommended agreement to the motion agreed by Tenant Council. The Executive considered the proposed changes to the tenancy agreement, together with the motion submitted by Tenant Council, and agreed the detailed changes.

16. Southwark Housing provided detailed briefings to the Housing Scrutiny Sub Committee on managing the tenancy review process. Reports were provided to three meetings of the Sub Committee during the second half of 2003. The Sub Committee provided positive input and made recommendations, which were incorporated into the process. This included a number of the draft clauses contained in the draft agreement.

LEGAL CONCURRENT

17. The Assistant Borough Solicitor has reviewed the consultation process undertaken by the Council. He is satisfied that the Council has complied with its obligations under section 103 of the Housing Act 1985 to serve preliminary notices on each tenant detailing the proposed changes and that tenants responses were considered by the Executive before it resolved to implement the new Conditions of tenancy.

The Assistant Borough Solicitor is also satisfied that the agreement of Tenants Council to the new Conditions of Tenancy has also been obtained under Clause 31 of the current Conditions of Tenancy.

The Assistant Borough Solicitor therefore reiterates the advice given to the Executive that the Council is now able to serve a Notice of Variation on each tenant as required by section 103 of the Housing Act 1985 so as to give effect to the new Conditions of Tenancy.

Lead Officer	<i>Chris Brown</i>	
Report Author	<i>Harry Marshall</i>	
Version	<i>Final</i>	
Dated	<i>28th January 2004</i>	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
Executive Member	No	No
Date final report sent to Scrutiny Team	23 rd January 2004	