

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 15 December 2009	<b>Meeting Name:</b> Executive
<b>Report title:</b>		Varying Southwark's Conditions of Tenancy	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Environment and Housing	

## **RECOMMENDATIONS**

1. That the Executive notes the progress made to date in the drafting of amendments to the existing tenancy agreement for secure and introductory tenants.
2. That the Executive notes the recommendations made by Tenant Council, the area housing forums, the tenants' working party, Southwark Group of Tenant Organisations and individual tenants as summarised in Appendices 2 & 3 of this report.
3. That the Executive consider and agree in principle the changes proposed to the conditions of tenancy as laid out in Appendix 1 subject to any amendments that may arise from the further consultation currently being undertaken.
4. That any amendments arising from the further consultation be approved by the deputy leader and executive member for housing.
5. The changes are to take place in respect of all tenants granted tenancies before 19 January 2010 from the 5th April 2010 or as soon as possible thereafter once the requirements of a Notice of Variation are met.
6. That directly following the implementation date all new tenants will be signed up to the new conditions of tenancy with immediate effect.
7. That the Tenants Handbook be prepared and published by the 5 April 2010 or the date from which the changes are to take place (whichever the later) to complement the new tenancy agreement.

## **BACKGROUND INFORMATION**

8. The objectives of the tenancy agreement review can be summarised as follows:
  - Allow for the incorporation of changes in legislation and legal obligations.
  - Ensure compatibility with all London Borough of Southwark policies and procedures introduced or amended since 2004.
  - Produce a shorter, more succinct, user friendly tenancy agreement which reflects best practice.
  - Give officers additional tools to tackle animal related anti-social behaviour
  - To bring in line with the law and other social housing landlords through the removal of an automatic right to two successions on a tenancy and the removal of the tenants right to choose to be permanently re-housed if major works to their property take more than 7 days.

- Increase awareness of noise nuisance related to the laying of laminate or wooden flooring.
  - Make clear both the Council and tenant's health and safety responsibilities.
  - To remove the void sub-clause that states no changes can be made to the conditions of tenancy without tenant council's final approval.
9. All housing management business units, along with estate parking services, arbitration, Southwark Antisocial Behaviour Unit and legal services were asked to provide recommendations for addition, deletion or amendment of the current clauses.

## **KEY ISSUES FOR CONSIDERATION**

### **Policy Implications**

10. The proposed changes will require a review of all current policies and procedures that directly or indirectly related to the existing tenancy agreement.
11. An updated version of the tenant's handbook will have to be prepared and circulated to ensure compatibility, rather than contradiction, between the rights and responsibilities of both council and tenant laid out in each document. It is intended that tenants will join officers between January and April 2010 to carry out this task.
12. The proposed conditions include a number of changes. Those that are a major change in policy are outlined in points 18- 27 below.
13. There will be a change of policy regarding pet ownership. Tenants will have to seek permission to have a pet dog, which the council will give on the condition that it is micro chipped. The clause could be enforced on all new tenants from 2010 and existing tenants from 2012. The Council will run a highly publicised, borough wide, campaign to assist tenants comply with this condition – micro chipping dogs free of charge.
14. This is an approach adopted by the London Borough of Wandsworth which has received high praise from the Royal Society for the Prevention of Cruelty to Animals.
15. There will be a change in policy regarding succession of tenancies. The Housing Act 1985 allows for a tenancy to be passed on either via survivorship (where a joint tenant passes away the tenancy goes to the remaining joint tenant) or to a family member who has been residing in the property for at least 12 months when the current tenant passes away.
16. Presently, Southwark allows a tenancy to be succeeded to twice; this is one more time than prescribed by legislation and one more time than is allowed in all other London boroughs.
17. By removing an automatic right to two successions Southwark will be able to consider whether a discretionary allocation of a new tenancy is the fair and reasonable option in each individual case.
18. Currently if major works take longer than 7 days and cannot be completed with the tenant in situ, the tenant has the right to choose between being temporarily or permanently transferred to another property.

19. The removal of the current clause 22 will mean that tenants no longer have this right with the aim that they return to their original dwelling once the works have been completed.
20. Sub-clause 26.4 of the current conditions of tenancy states that no changes to the conditions of tenancy shall be valid unless agreed by either the tenant or tenant council.
21. In *Kilby v Basildon District Council* [2006] the judge ruled that a similar clause was void because it fetters the statutory powers of the local authority. This opinion was echoed by Andrew Arden QC in a written opinion given in 1999.
22. As such, current sub-clause 26.4 is void and unenforceable. On this basis it is good practice to remove it.

### **Community Impact Statement**

23. The changes will have a profound affect on all Southwark Council's secure and introductory tenants and as such tenant council, all area housing forums and the Southwark Group of Tenant Organisations as well as all individual tenants were consulted.
24. The proposal to remove an automatic right to a second succession might have a disproportionate affect on those tenants living with extended families or older tenants who have adult children living with them.
25. To mitigate this we have proposed the introduction of a sub-clause that allows the Council to issue new tenancies in certain exceptional circumstances. We will also review the succession procedure to ensure this is implemented.
26. The Preliminary Notice consultations paper was sent out in writing to all Southwark tenants. To ensure accessibility to all tenants the Preliminary Notice consultation letter and booklet included language strap lines and large print explaining an audio version was available to any tenant with a visual impairment. These were also offered to tenants with literacy issues or where the tenant's written English was not as strong as their spoken.
27. While the letter and documents were not translated into any other language, tenants for who English is not their first language, were offered the option of having the proposed changes explained to them with the use of an interpreter. Around 10 tenants took up this option.
28. Any tenant who contacted the Council by telephone, letter or email requesting further information or additional explanations of the changes was responded to directly by the project officer responsible and given support until fully satisfied.
29. The proposed changes also see the Civil Partnerships legislation incorporated in to clauses where previously reference was made to a spouses or same sex partner.
30. The new updated tenancy agreement will be made available in audio as well as written English.

## **Resource Implications**

31. An initial budget of £202,000 has been identified for the printing and distribution of an updated tenant's handbook, this budget would also allow for an audio version of the handbook to be made available to tenants with vision impairments, literacy or language issues.
32. The introduction of compulsory dog chipping would have a number of associated costs; those to cover the cost of enforcement and those to cover dog chipping events. Initial estimates put the costing at approximately £70,000.

## **Consultation**

33. Tenant council, all area housing forums, a tenants' working party and all secure and introductory tenants were consulted on the proposed changes as follows:-
34. Tenant Council were approached and nominated representatives to form a working party supported by an officer to both examine the list of recommendations made by the various business units and also make any of their own suggestions. The working party met 6 times between April and August 2009 and were supplied with copies of 6 other London borough tenancy agreements.
35. Two articles appeared in Southwark Housing News alerting tenants to the upcoming consultation.
36. The proposed changes were also submitted to the area housing forums (AHFs) for consideration. A special Tenant Council took place on 27<sup>th</sup> July to discuss the proposals and the AHFs' responses. Tenant Council recommended that the proposals go back out to the AHFs once more, this time containing the full draft text of each clause. Housing Management agreed to postpone consultation with all individual tenants until this had occurred.
37. All AHFs were supplied with the full draft text and met again throughout August to consider the proposed changes. A second special Tenant Council was held on 1<sup>st</sup> September 2009 and the Council's proposed changes and the AHFs recommendations were discussed clause by clause.
38. On the 30<sup>th</sup> September all secure and introductory tenants were sent a letter entitled 'Preliminary notice of the Council's intention to vary your conditions of tenancy', enclosing a 12 page booklet and an addendum that explained, in plain English, what changes the council was proposing to make to their conditions of tenancy. This letter and booklet was sent out in pursuant of Section 103 of the Housing Act 1985.
39. Tenants were given until November 2<sup>nd</sup> to submit their comments though this deadline was informally extend to 13<sup>th</sup> November to take account of responses delayed by the postal strike. 400 tenants responded, the details of which can be located in Appendix 2.
40. On 13<sup>th</sup> November recommendations and feedback from Tenant Council, AHFs, tenant's working party, Southwark Group of Tenant Organisations and individual tenants was presented to the deputy leader and executive member for housing for consideration.

41. Revisions to the proposals were presented to Tenant Council on the 30th November 2009 for comment, a summary of whose recommendations can be found in Appendix 3.
42. At the 30<sup>th</sup> November special meeting, tenant council voted to support a Southwark Group of Tenants Organisations (SGTO) Motion which outlined concerns regarding the transparency of the consultation process, the nature of the proposed changes and the council's refusal to accept SGTO's proposed amendment to the health and safety clause. The SGTO's amendment to the health and safety clause also was supported by 5 tenant and resident associations.
43. The SGTO has been informed that the council will not be adopting their preferred language for this clause. The council's proposed text states that the council 'will undertake [its] statutory and contractual responsibilities to make sure the health and safety of our tenants is not put at risk'. This language allows for changes in legislation to occur without the tenancy agreement becoming outdated. To reference 'fire risk assessments' specifically could be problematic should legislation be passed that changes their name or process.
44. In response to the concerns raised by tenant council and the SGTO, the Council is sending the full text of the proposed conditions of tenancy to all Southwark tenants inviting any comments by 18<sup>th</sup> January 2010.
45. Any further comments arising from this further consultation will be presented to the deputy leader and executive member for housing who will consider and approve any further changes to the proposed conditions as necessary by way of an IDM .
46. A formal Notice of Variation will then be served on all tenants in February 2010, giving the required 4 weeks notice of the changes to the conditions of tenancy in accordance with section 103 (4) of the Housing Act 1985.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

47. Section 103 of the Housing Act 1985 gives the local authority the power to vary the terms of a secure tenancy and sets out the procedure to be followed before the terms may be varied. Section 103 applies to introductory tenancies by virtue of section 111A of the Housing Act 1985 . The section provides a two stage process. Firstly tenants must be served with a preliminary notice specifying the variation and its effect and inviting tenants to comment on the proposed variation within such time as specified in the notice as the landlord considers reasonable and that the landlord shall consider any comments made by tenants within the specified time. The landlord may then serve a notice of variation specifying the variation effected by it and the date on which it takes effect. The period between the date the notice of variation is served and the date the variation comes into effect must be at least 4 weeks.

48. Further consultation requirements are set out under section 105 of the Housing Act 1985, sections 137 and 143A of the Housing Act 1996 in relation secure, introductory and demoted tenants respectively. Whereby the Council is required to consult with tenants on matters of housing management that represent a change in the policy of the landlord authority and are likely to substantially affect its secure tenants as a whole or a group of them and consider representations made during the process before making any decision on the matter. The matter is one of housing management if in the option of the landlord it relates to housing management, maintenance, improvement or demolition of houses let under secure, introductory and demoted tenancies. A change in the practice or policy of the Council which is likely to substantially affect its secure, introductory and demoted tenants as a whole or a group of them who form a distinct social group.
49. The principles of consultation, so as to achieve procedural fairness to reach a reasonable decision are as follows:-
- Be undertaken when the proposals are still at a formative stage, although, it should be noted that the Council may have a preferred option and, provided it consults on all possible options and not merely its preferred option, the Council should not fall foul of not consulting at the formative stage
  - Include sufficient reasons for the proposals to allow any interested party the opportunity to consider the proposal and formulate a response
  - The Council must allow adequate time for interested parties to consider the proposal and formulate their response; and
  - Take all the results from interested parties must be conscientiously taken into account when the ultimate decision is taken
50. Tenancy agreements come within the scope of the Unfair terms in Consumer Contracts Regulations 1999. The regulations apply to contracts which have not been individually negotiated and sets out the circumstances in which a term will be considered unfair. A term will be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer, in this case the tenant. The proposed new terms do not appear to fall foul of the regulations.
51. The body of the report sets out the detail the consultation that has been carried out with tenants, Tenants' Council and the Area Housing Forums. Together with further consultation being undertaken following representations by Tenants Council and SGTO. The steps taken are considered to meet the statutory consultation requirements.
52. Counsel's advice has been sought as to the legality and enforceability of the current agreement and the proposed changes and any recommendations have been taken into consideration. In particular, the need to remove the second succession and as to the illegality and unenforceability of the current clause 26(4) requiring the agreement of Tenants' Council for any changes other than rent changes. Further, Counsel has seen the consultation documentation and been advised of all the steps being taken by way of consultation and considers the statutory requirements will be met.
53. Section 104 of the Housing Act 1985 requires the local authority to publish information about its secure tenancies in simple terms to explain the effect of express terms of its secure tenancies and to supply copies of such information to its secure tenants. Identical provision is made in respect of introductory tenancies and demoted tenancies under sections 136 and 143M of the Housing Act 1996.

54. The Council provides this information in the form of a Tenant's handbook. It is noted that the handbook is to be prepared and published by the date from which the new conditions are to take effect .

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
LBS's current conditions of tenancy	Housing Management, Business Support Services, 160 Tooley Street	Alice Orr-Ewing 0207 525 7791
Preliminary notice of the Council's intention to vary your conditions of tenancy Letter September 2009	Housing Management, Business Support Services, 160 Tooley Street	Alice Orr-Ewing 0207 525 7791
Preliminary Notice of Variation booklet and addendum	Housing Management, Business Support Services, 160 Tooley Street	Alice Orr-Ewing 0207 525 7791
Tenants' working party recommendations	Housing Management, Business Support Services, 160 Tooley Street	Alice Orr-Ewing 0207 525 7791
Summary of tenant council's recommendations	Housing Management, Business Support Services, 160 Tooley Street	Alice Orr-Ewing 0207 525 7791
Summary of area housing forums recommendations	Housing Management, Business Support Services, 160 Tooley Street	Alice Orr-Ewing 0207 525 7791
Preliminary notice of the Council's intention to vary your conditions of tenancy letter December 2009	Housing Management, Business Support Services, 160 Tooley Street	Alice Orr-Ewing 0207 525 7791

## APPENDICES

No.	Title
Appendix 1	Proposed and current conditions of tenancy side by side with summary of feedback
Appendix 2	Summary of individual tenant consultation responses
Appendix 3	Tenant council's comments made on 30 <sup>th</sup> November 2009

## AUDIT TRAIL

<b>Lead Officer</b>	Gill Davies, Strategic Director of Environment and Housing	
<b>Report Author</b>	Alice Orr-Ewing, Performance Improvement Officer	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
<b>Executive Member</b>	Yes	Yes
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