

Agenda Item No: 8

Report To: Cabinet

Date of Meeting: 14th September 2017

Report Title: Tenancy Strategy, Tenancy Policy and Procedure.

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Portfolio Holder Cllr. Gerald White
Portfolio Holder for: Housing



Summary:

This report seeks approval to adopt the new Housing Tenancy Strategy and Tenancy Policy and Procedure. The policy outlines the objectives of the authority with reference to the review of fixed term tenancies and maximising the best use of the authorities housing stock. The report will highlight legislative changes brought in by the Housing and Planning Act 2016.

Key Decision: YES

Significantly Affected Wards: All

Recommendations: **The Cabinet is recommended to:-**

Agree the revised Tenancy Strategy and Tenancy Policy and Procedure for adoption.

Policy Overview: The reviewed strategy and policy has been updated to reflect the changes implemented in the Housing and Planning Act 2016 and still conforms to the Localism Act 2011, The Housing Act 1985, Part VI of the Housing act 1996, as amended by the Homelessness Act 2002. Also achieving the aim of the housing framework 2013 – 2018 to make best use of the councils housing stock.

Financial Implications: There are no direct financial implications because there is no need for increased staffing or new software to manage the introduction of fixed term tenancies for all new tenants. The policy and procedure will offer clear direction for staff and maximise the efficiency of staff time and resources.

Legal Implications Potential County Court legal challenges where the tenant appeals the decision not to renew their tenancy.

Equalities Impact Assessment Completed. No adverse implications for groups of protected characteristics.

**Other Material
Implications: None**

**Exempt from
Publication: NO**

**Background
Papers:** Housing and Planning Act 2016, Localism Act 2011, The
Housing Act 1985, Part VI of the Housing act 1996, as
amended by the Homelessness Act 2002.

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Report Title: Tenancy Strategy and Tenancy Policy and Procedures

Introduction and Background

1. The purpose of the report is to update the existing Tenancy Strategy 2012 and Tenancy Policy 2012 to reflect the legislative changes brought in by the Housing and Planning Act 2016 whilst also adhering to existing relevant legislation that is still in force. ABC Housing have issued 802 introductory fixed term tenancies up to the end of August 2017 since their introduction in 2012. This figure does not include Stanhope properties that are managed by Moat Housing.

Proposal

2. To agree the revised Tenancy Strategy and Tenancy Policy and Procedure.
3. Tenancy Strategy - The Housing and Planning Act 2016 introduced the mandatory use of fixed term tenancies for most new local authority tenancies and some changes to the type of tenancy granted on succession.

This revised Tenancy Strategy takes account of these changes to the legislation and sets out how the council will use fixed term tenancies to make the most effective use of its housing stock in meeting the housing needs of people unable to find suitable accommodation through the open market.

The Tenancy Strategy sets out how the council will make use of the tenancies at its disposal including the length of tenancy offered. The full Tenancy Strategy document is attached at appendix 1.

4. Tenancy Policy and Procedure - Fixed Term Tenancies are one of a range of tools the council can use to ensure its homes are let to those who need them most and are not occupied by tenants who could find suitable accommodation in the private sector. The criteria used when reviewing a fixed term tenancy are reflective of those used to assess applicants applying to the housing register.

The Policy sets out the types of tenancies that can be offered, the duration of the tenancy, succession and the criteria for reviewing fixed term tenancies. The full Tenancy Policy and Procedure document is attached at appendix 2.

5. Following the enactment of the Housing and Planning Act there will no longer be any secure lifetime tenancies offered to new tenants once regulations come into force. Existing tenants with a lifetime tenancy are not affected.

6. Further to the Governments Pay to Stay Policy becoming optional rather than compulsory for Local Authorities to sign up to in February 2017, the service carried out some analysis to weigh up the positive or negative aspects of administering Pay to Stay. Approximately 30% of ABC Housing stock that is in receipt of housing benefits would be liable under the Pay to Stay criteria. Our analysis showed that the administration of Pay to Stay would far outweigh any financial benefits due to any monies being raised needing to go to central government rather than ABC Housing.

The Tenancy Strategy as an alternative to introducing a 'Pay to stay' policy, details the inclusion of an assessment of a tenants' financial circumstance as one of the criteria when reviewing a fixed term tenancy. This will provide a cost effective mechanism to ending a tenancy when a tenant can afford to rent in the private sector.

Equalities Impact Assessment

7. Members are referred to the attached Assessment at appendix 3. Each review of a fixed term tenancy is assessed independently of a persons protected characteristics.

Consultation Planned or Undertaken

8. No external consultation has taken place because the change in policy is enforced by new legislation. The draft Tenancy Policy and Procedure has been developed in co-operation with the council's Legal Department.

Next Steps in Process

9. Further to approval and adoption the strategy and policy will be published on the council's website and tenants will be notified.

Conclusion

10. The policy will put in place robust and rigorous process for reviewing fixed term tenancies.
11. The Tenancy Strategy and Tenancy Policy sets out the council's approach to using fixed term tenancies in a fair and proportionate manner. This will ensure that the housing stock is used to meet local housing needs. Those tenants whose circumstances subsequently enable them to afford alternative accommodation will be assisted to move following the appropriate procedure(s).

Portfolio Holder's Views

12. To be inserted.

Contact and Email

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Tenancy Strategy

Date: 1st October 2012
(Revised [July 2017](#))

Service: Housing

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1.0 Introduction

The Tenancy Strategy was developed in 2012 further to the introduction of fixed term (flexible) tenancies through the Localism Act 2011. Each local authority was required to develop a Tenancy Strategy to which other Registered Providers should have 'due regard' when letting their properties in the Borough.

The council will also follow this strategy when implementing its own tenancy policy and procedures.

The Housing and Planning Act 2016 introduced the mandatory use of fixed term tenancies for most new local authority tenancies and some changes to the type of tenancy granted on succession.

This revised Tenancy Strategy takes account of these changes to the legislation and sets out how the council will use fixed term tenancies to make the most effective use of its housing stock in meeting the housing needs of people unable to find suitable accommodation through the open market.

The council will produce a Tenancy Policy and Procedure document that is consistent with principles of the Strategy

It is expected that Registered Providers (Housing Associations) with property within the Ashford Borough will produce their own tenancy policies and procedures which have due regard to this document.

2.0 Background

The Tenancy Strategy 2012 was developed following the common principles that had been developed for the Kent Tenancy Strategy by the Kent Housing Group. With each local authority developing its own Tenancy Strategy there is no longer the need to have an overarching Kent wide strategy.

This tenancy strategy sets out how the council will make use of the tenancies at its disposal (i.e. introductory and fixed term tenancies), as one of the tools available to manage its housing stock effectively.

At 1st April 2016 the council owned and managed 4707 lettable dwellings. During the year 2015/16 approximately 7% of the stock became available for re-letting.

With a limited number of homes available to meet the needs of people who cannot, for a variety of reasons, afford to either purchase a home on the open market or rent from a private landlord it is necessary to manage the social rented and affordable rented housing stock as effectively as possible to assist those in the greatest housing need.

The principles laid down in this strategy will contribute to meeting the Corporate Plan aspiration: To secure quality homes across the borough, catering for a range of ages, tenures and need, in well planned and attractive new places.

3.0 Managing Social and Affordable Rented Homes Effectively

Changes brought forward under Social Housing reform, legislated for by the Localism Act 2011, have offered the council the opportunity to balance the customers' requirements for security, stability and affordability for the long term with our need to provide social housing in a strategic manner to meet the need and demand for social housing alongside our aim to enable sustainable neighbourhoods and communities. In summary those options were:

- Whether to offer flexible (referred to as fixed term) tenancies
- The option to enter into the affordable rent market
- To limit who will qualify to join the housing register
- To 'convert' existing social rented homes to a higher 'affordable rent' when they become available to let to a new tenant.
- To use the private rented sector to discharge the homelessness duty
- To be more proactive in holding each other to account for decisions and actions.

The Housing and Planning Act amends the Housing Act 1985 and the Housing Act 1996 to phase out lifetime tenancies. Secure tenancies will generally have to be for a fixed term and will not automatically be renewed. Local authorities may generally only grant secure tenancies for a fixed term of between 2 and 10 years, or where a child under 9 years old lives in the property until the child turns 19.

Local authorities can continue to offer introductory tenancies.

Amendments have been made to make the rules governing succession to secure tenancies granted before 1 April 2012 the same as those for tenancies granted from that date.

Spouses, civil partners, and those living together as husband and wife continue to have a statutory right to succeed to a lifetime tenancy.

The statutory rights of other family members to succeed to a secure tenancy granted before 1 April 2012 are changed. The changes mean that family members will not have an automatic right to succeed to a lifetime tenancy if they lived with a lifetime tenant for 12 months or more. Instead, local authorities will have discretion to grant them succession rights. Where the deceased tenant had a lifetime tenancy, persons other than spouses and partners who qualify to succeed cannot be given a lifetime tenancy and must be given a five year fixed term tenancy.

Pay to Stay

The Coalition's Housing Strategy, *Laying the Foundations: A Housing Strategy for England* argued that social housing should be better targeted at the people with the highest level of need. Further to this in 2015 the Chancellor announced that the pay to stay scheme would be made compulsory (in England) for local authorities and that new, lower, income thresholds would be introduced. Outside London this was set at £31,000. Local authorities were expected to repay additional rental income to the Exchequer, thus contributing to deficit reduction, while housing associations, who had discretionary option to introduce pay to stay, would be able to use the additional income to reinvest in new housing. Previously Pay to Stay had been discretionary for all social landlords and the income threshold set at £60,000.

Measures to introduce a mandatory pay to stay scheme for local authorities were included in the Housing and Planning Act 2016.

The findings of a consultation were published in March 2016. The Government confirmed that a taper would be applied above the minimum income thresholds and that households in receipt Universal Credit or Housing Benefit would be exempt from paying higher rents. Affected households would pay an additional 15p in rent per week for every £1 they receive in taxable income above the thresholds. The Government's aim was to implement the mandatory pay to stay scheme from April 2017.

In November 2016 the Government announced that it had decided not to proceed with a compulsory approach and that local authorities and housing associations would continue to have local discretion.

At the same time the government introduced the mandatory use of fixed term tenancies for new tenants in local authority housing. As part of the review the government requires councils to take into account a household's financial circumstances when looking at this, and that, except in exceptional circumstances, tenancies should be targeted on those on lower incomes.

In evaluating if any benefit would be derived from introducing a pay to stay policy the issues highlighted during the national consultation are useful to consider:

- How will tenants be identified as higher earners, would there be access to HMRC data
- Skills to assess 'taxable income' When will tenants be changed over to pay to stay scheme (when sign new tenancy?)
- Any additional software / staff requirements to administer the scheme
- How often would tenants be assessed
- How to deal with changes in tenants' circumstances or income (loss of employment, self employed, inconsistent income, maternity leave, death of a tenant etc.)
- How often the rent changes will come into effect
- How will the market value be determined
- Will the market value be fixed or subject to change

Another concern raised during the national consultation was the possibility that by introducing pay to stay would inadvertently disincentivise tenants to find work or additional work where the extra income would take them over the threshold. Working tenants can be seen as a role model and encouragement to others to seek employment.

In Ashford 70.4 % of tenants are in receipt of housing benefit

The number of tenants who would potentially be eligible to pay a higher rent is not significant and the costs to the authority in accurately assessing tenants and administering a pay to stay scheme would likely outweigh any benefit.

The inclusion of an assessment of a tenants' financial circumstance as one of the criteria when reviewing a fixed term tenancy will provide a cost effective mechanism to end a tenancy and complies with government guidance for reviewing fixed term tenancies.

4.0 Tenancy Preferences

The tenancy types introduced from the 1st October 2012 will continue to be offered further to the completion of a satisfactory twelve month introductory tenancy. That is the council will offer a five year fixed term

tenancy as a minimum for most households which will provide us with the ability to:

- make the best use of available housing
- ensure that housing stock is not under-occupied
- use the stock fairly for those people who need it most

For tenants that are new to social housing, at the commencement of a tenancy, the council will grant one of the following agreement types:

- Non Secure Tenancy Agreement
- Introductory Tenancies - an introductory tenancy for a period of twelve months, if completed satisfactorily after which a Fixed Term Tenancy will be offered

Following the satisfactory completion of an introductory tenancy or once a minor holding a non secure or introductory reaches the age of 18 (and has completed a twelve month introductory period) the council will grant:

- Fixed Term Tenancies – For a minimum period of five years

Existing lifetime tenants will be given a further lifetime tenancy if required to move by the landlord.

Fixed Term Tenancies

Fixed term tenancies will be reviewed at the end of the term. A change of circumstances, as defined in the tenancy policy and procedures, may affect whether the tenancy is re-issued. These changes will include:

- Behaviour of tenant and other household members
- Tenants financial circumstances
- Level of occupation / any special requirements relating to health and wellbeing
- Need to dispose of or refurbish the property

The following points are critical in managing fixed term tenancies and we would like to work with Registered Providers and other partners to ensure they are fair and clear to both tenants and housing providers.

- A clear and transparent review process which is understood by the tenant at the time of tenancy sign up
- Information sharing between registered providers and the council when the decision not to reissue a tenancy has been taken, provided 6 months before the tenancy ends, so as to avoid homelessness

- Clear criteria against which the decision to re-issue the tenancy will be made
- Timely information and advice services to help people understand their housing options which should include, where appropriate, opportunities to move within and outside the social and affordable rent sectors e.g. into market rent or home ownership (including low cost).
- Support to improve financial inclusion, beginning at the start of a tenancy
- An appeals process

The use of fixed term tenancies as a management tool is inappropriate, particularly in relation to tenants who are perceived to present a greater risk to tenancy sustainment or neighbourhood sustainability. Existing tools are available to social landlords e.g. introductory tenancies to manage risk and these should be used rather than using the threat of not renewing a tenancy at the end of the fixed term period.

5.0 Tenancy Preferences by household group

5.1 Fixed term tenancies

Families with children of school age or younger

Our preferred tenancy terms are:

- A five year fixed term tenancy
- Where a household contains a child under 9 a longer tenancy which lasts until the child reaches the age of 19 may be granted

Single and couple households under the age of 55

Our preferred tenancy terms are:

- A five year fixed term tenancy

Households on a low income but not in receipt of housing benefit

Our preferred tenancy terms are:

- A five year fixed term tenancy

Households with a disabled member

Our preferred tenancy terms are:

- A five year fixed term tenancy

Older people over the age of 55

Our preferred tenancy terms are:

- A five year fixed term tenancy for older people living in general needs accommodation
- A 10 year fixed term tenancy for older people living in designated older person accommodation or for those where it is unlikely they will move again within social or affordable accommodation

5.2 Introductory tenancies

An introductory tenancy of 12 months will be offered to all new tenants who are not currently a tenant of the council.

Where an introductory tenancy has been completed satisfactorily a fixed term tenancy will be granted as set out in the section above

5.3 Non secure tenancy

A non secure tenancy will be issued where the prospective tenant has been homeless. This will be for 6 months, subject to a review, prior to an introductory tenancy being issued.

6.0 Monitoring

The Strategy will be reviewed every 3 years (or sooner if there is legislative change). This is to ensure the aims of the Strategy remain relevant to making the best use of the housing stock owned by the council and other affordable housing providers with homes in the borough.



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Appendix 2

Tenancy Policy and Procedures

Date: 2012
(revised [July](#) 2017)

Service: Housing

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1.0 Introduction to the Tenancy Policy

This document sets out and explains the policy and procedures that have been adopted by Ashford Borough Council to support the Tenancy Strategy.

The Tenancy Strategy is available on the council's website at <<insert link>>

The strategic aim is to make the most effective use of the councils housing stock. To assist those members of the community who are unable to meet their own housing needs and/or are vulnerable and require assistance to access and maintain a suitable home.

Fixed Term Tenancies are one of a range of tools the council can use to ensure its homes are let to those who need them most and are not occupied by tenants who could find suitable accommodation in the private sector.

The use of tenancies is governed by legislation, including the requirements of the Localism Act 2011, the Housing Act 1985, Part VI of the Housing Act 1996, as amended by the Homelessness Act 2002 and the Housing and Planning Act 2016.

This document also reflects the current Lettings Policy. The criteria used when reviewing a fixed term tenancy are reflective of those used to assess applicants applying to the housing register.

The council's lettings policy can be found at <http://www.ashford.gov.uk/applying-for-social-housing>

2.0 Who will be offered a tenancy

A tenancy will be offered to:

Applicants coming through choice based lettings having been accepted onto the housing register

Existing tenants subject to satisfactory review of an existing tenancy

Tenants partaking in a mutual exchange agreed by the council

Tenants eligible to succeed a tenancy

3.0 Types of Tenancy

Non secure tenancy

A non secure tenancy will be granted to homelessness applicants. This will be for a period of 6 months and run prior to the granting of an introductory tenancy subject to a satisfactory review.

Introductory

An Introductory tenancy will be offered where the prospective tenant does not currently hold a social tenancy. The introductory tenancy will run for 12

months. Further to a satisfactory review at the end of the tenancy a fixed term tenancy will be offered in accordance with this policy.

Secure Fixed Term

New tenants will be granted a secure fixed term tenancy of between 2 and 10 years unless there is a child under 9 in the household when the tenancy period will be until the child turns 19.

Secure (Lifetime)

Secure (lifetime) tenancies will only be issued in certain circumstances (yet to be defined by Secretary of State)

Or

Where the tenancy is a replacement for an old-style secure tenancy of another dwelling house, and the tenant has not made an application to move.

Under 18s

Where a prospective tenants is under 18 years of old a tenancy will be held in trust for them by an adult until they reach 18.

4.0 Tenancies offered to household types

Families with children of school age or younger

- A five year fixed term tenancy
- Where a household contains a child under 9 a longer tenancy which lasts until the child reaches the age of 19 **must** be granted

Single and couple households under the age of 55

- A five year fixed term tenancy

Households on a low income but not in receipt of housing benefit

- A five year fixed term tenancy

Households with a disabled member

- A five year fixed term tenancy

Older people over the age of 55

- A five year fixed term tenancy for older people living in general needs accommodation
- A 10 year fixed term tenancy for older people living in designated older person accommodation or for those where it is unlikely they will move again within social or affordable accommodation

5.0 Reviewing tenancies

Introductory tenancy

An introductory tenancy will be monitored throughout the first 12 months and where the tenancy has been conducted satisfactorily it will be converted to a fixed term secure tenancy.

An introductory tenancy may be extended from 12 months to 18 months where there are concerns around how the tenancy is being managed, such as where a breach of tenancy has occurred but the breach is not serious enough to warrant possession action.

In the event of a serious breach of the tenancy agreement, the tenancy will either be terminated or extended for an agreed period of time and subject to further review.

Secure fixed term tenancy

The review process for a secure fixed term tenancies will commence 6- 9 months prior to the tenancy end date. The tenant will be advised of the review and asked to provide any documentation necessary for the review to be completed. The tenant will be notified of the outcomes of the review at least 6 months prior to the tenancy end date.

There are 3 possible outcomes:

- a) grant a new secure fixed term tenancy
- b) seek possession but offer secure fixed term tenancy of another dwelling
- c) seek possession without offering a tenancy of another dwelling

The criteria used to determine the outcome of the review include but are not limited to:

- Level of occupation and any special requirements (e.g. disabled adaptations)
- The age and personal circumstances of each household member that live at the property;
- The size and type of the property;
- Whether the property is statutorily overcrowded;
- Tenants financial circumstances;
- Whether there are any rent arrears or other tenancy related debts owed;
- Whether the tenant or anyone else that lives at the property has been involved in anti-social behaviour;
- Whether the tenant has broken any terms of the tenancy agreement;
- Whether the tenant has been served with a legal notice or are subject to court proceedings or a court order;
- The need to dispose of or refurbish the property; and
- Any other relevant facts resulting in a change of circumstances.

Where a new fixed term tenancy is issued, the length of the tenancy will be dependent on any breaches of the former tenancy. Minor breaches of the tenancy may result in the new tenancy being reduced to 2 years.

6.0 Succession to Tenancy

Changes to succession rules were introduced in the Housing and Planning Act 2016. When they commence they will apply to all tenancies irrespective of when they were granted.

Spouses/civil partners succeed in the first instance, and other family members can only succeed if:

- i) there is no spouse/civil partner occupying as their only /principal home and
- ii) the tenancy agreement makes express provision for succession in this way.

For existing lifetime tenancies, spouses/civil partners and those living together as husband and wife will continue to have a statutory right to succeed. However where the successor is not from this group, the periodic tenancy comes to an end immediately after vesting and a new 5 year fixed term tenancy arises.

7.0 Vulnerability

Where a tenant has support needs they will be referred to appropriate support services to assist them to manage and maintain their tenancy. [In cases where a tenant is identified as vulnerable, the council will undertake a risk assessment which will be taken into account when conducting the tenancy review.](#)

8.0 Appeals

An applicant has a right to request a review of the council's decision in two cases:

1. about the length of term of the tenancy; or
2. to seek possession.

This request must be made within 21 days of the notification of the council's decision. There is no power for Ashford Borough Council to extend the time for requesting a review.

The procedure for the reviews are as set out in The Flexible Tenancies (Review Procedures) Regulations 2012.

These are that an application for a review must be in writing and include:-

- A. the applicants name and address,
- B. a description (including the date) of the original decision and
- C. a statement of the grounds on which a review is sought.
- D. whether the applicant wants the review to be by way of an oral hearing or not, and
- E. whether the applicant agrees to receive communications by email or not, and, if he does, the email address.

- F. If the application is a request to review the length of the term of the tenancy offered then it must also include the reasons why the length of the term does not agree with the Council's policy as to the length of the term.

If the review proceeds on written representations the Council must give the applicant at least five days notice of the date on which it intends to review the decision. In making the decision the person reviewing must take into account the written representations and must not have been involved in the original decision. The person reviewing the decision must also be more senior to the person making the original decision.

If the review is to proceed by oral hearing the Council must give the applicant at least five days written notice of the hearing. At any time prior to the hearing an applicant may request a postponement to a later date and the Council must give at least five days written notice of the new hearing date.

The hearing must be conducted by a person more senior to the person making the original decision. The hearing must be conducted with minimum formality.

At the hearing the applicant may:-

1. make oral or written representations;
2. be accompanied or represented by another person (whether professionally qualified or not);
3. call persons to give evidence on any relevant matter;
4. Put questions to any person giving evidence (and so can his representative).

The person making the original decision may [be called upon to](#) attend the hearing.

If the applicant fails to attend the hearing the person conducting it can proceed with it or give directions as appropriate.

The person conducting the hearing may adjourn (at the request of the applicant) or otherwise. If adjourning for more than one day the person conducting the hearing must advise the applicant and any other person involved whose attendance is required in writing.

The decision on the review must be made by the person who conducted the hearing.

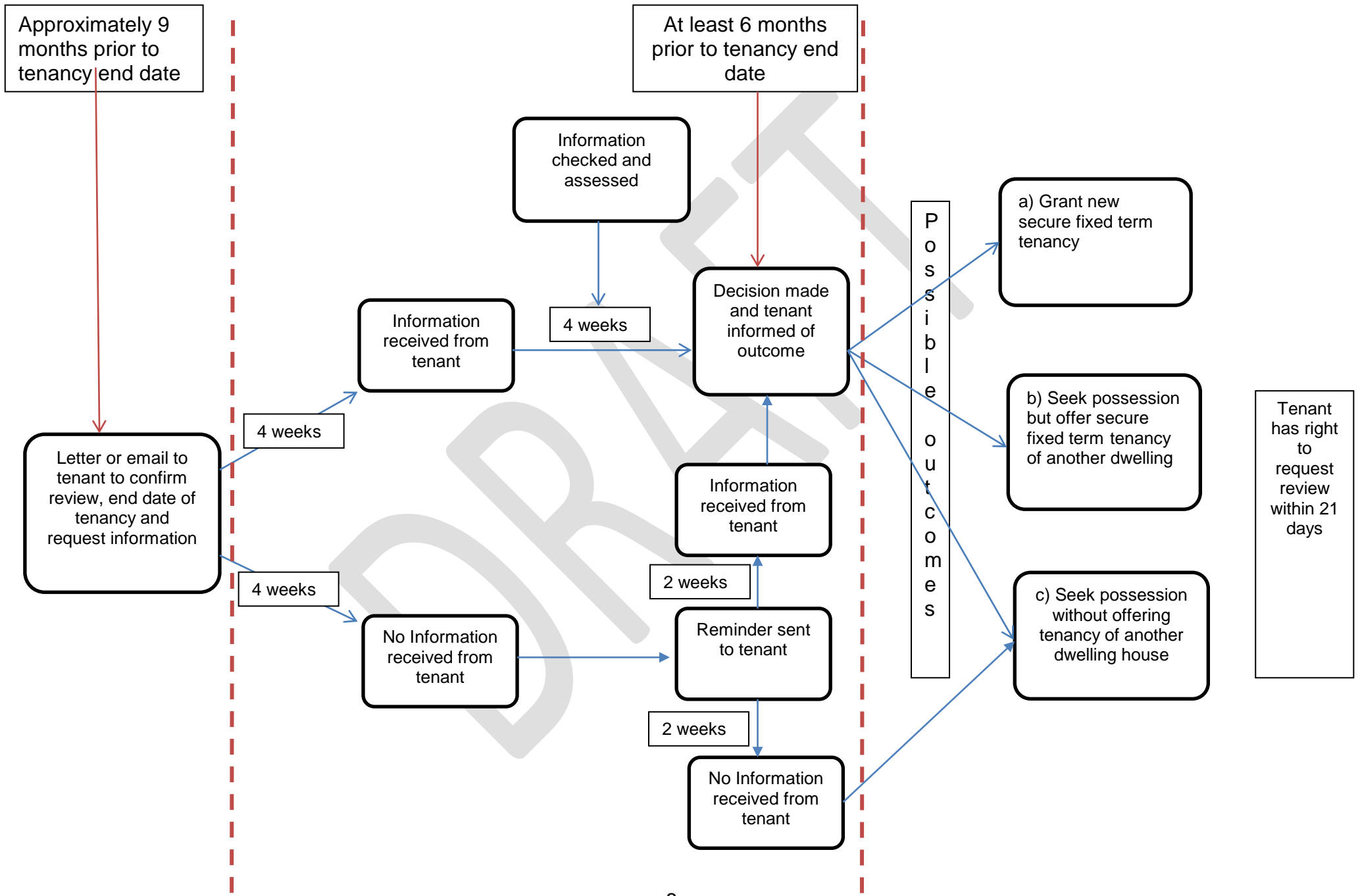
There is no further right of appeal if you are dissatisfied with the outcome of the review.

Procedure for reviewing a secure fixed term tenancy

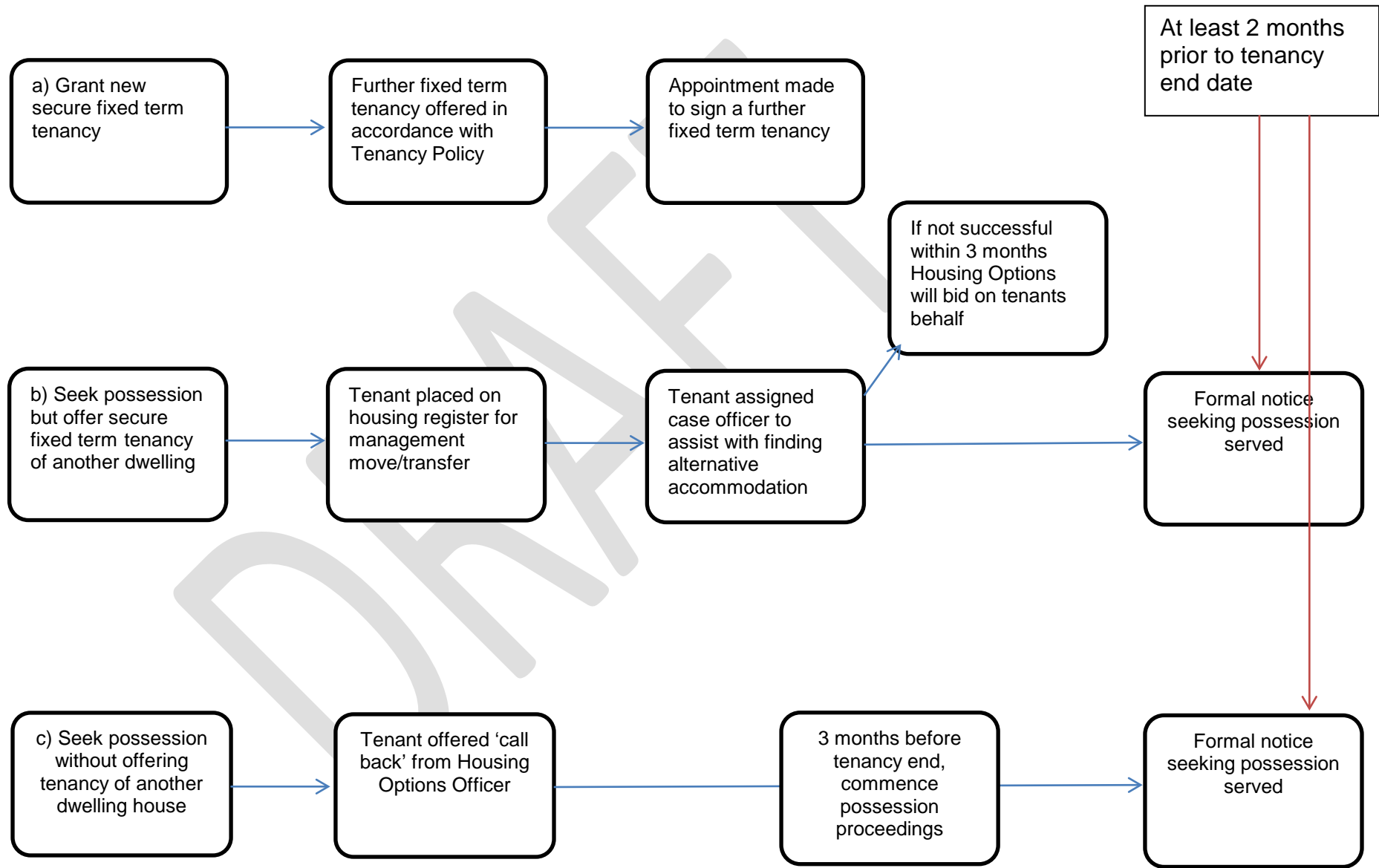
The flow chart below summarises the procedure for reviewing a secure fixed term tenancy.

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If tenant could purchase a home they must be offered advice on buying a home regardless of outcome reached



Review criteria

Criteria	Considerations	Comment on renewal of tenancy
Behaviour of tenant and other household members	<p>Adherence to tenancy condition</p> <p>Anti social behaviour</p> <p>Criminal activity</p> <p>Rent arrears</p> <p>Maintaining property in acceptable condition</p>	<p>Where a tenant is under a NOSP ground 2 for anti social behaviour a further tenancy maybe offered but limited to 2 years.</p> <p>Where a tenant has more than 6 weeks rent arrears and no maintained agreement or is under a court order a further tenancy maybe offered but limited to 2 years.</p>
Tenants financial circumstances	<p>Exceed the income thresholds to join the housing register</p> <p>Have means to purchase a property on the open market or though shared ownership</p> <p>Have immediate means to rent suitable accommodation privately for a minimum of 1 year</p>	<p>Where a tenant has sufficient income to be able to access a suitable home on the open market and has no other overriding need for social housing their tenancy will not be renewed</p> <p>Income thresholds will be considered in line with section 17.1 in the lettings policy currently 1 bed need £30,000 gross 2 or 3 bed need £40,000 gross 4 or 5 bed need £50,000 gross</p>
Level of occupation / any special requirements	<p>Under occupation.</p> <p>Adaptations</p>	<p>Where a tenant is under occupying by 2 or more bedrooms their tenancy will not be renewed but assisted to find alternative accommodation that meets the size criteria for their household.</p> <p>If adaptations are no longer required/relevant the tenancy will not be renewed. Tenant will be assisted to find an alternative suitable property.</p>
Need to dispose of or refurbish the property	<p>Existing review criteria will be used to assess which outcome is appropriate</p>	<p>Tenancy for the existing property will not be renewed.</p> <p>Dependent on the outcome of the review an alternative offer of accommodation maybe offered or assistance given to find a suitable home.</p>

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
 - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
 - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a

policy, for example, is being developed and agreed but also when it is implemented.

- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Lead officer:	Anthony Crossley
Decision maker:	Sharon Williams
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	Tenancy Strategy and Tenancy Policy and Procedure
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	14 th September 2017
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	The new Housing Tenancy Strategy and Tenancy Policy and Procedure outlines the objectives of the authority with reference to the review of fixed term tenancies and maximising the best use of the authorities housing stock. This responds to legislative changes brought in by the Housing and Planning Act 2016. Fixed term tenancies were first used in 2012 but did not apply to all new tenants. This has subsequently been amended by national legislation and therefore all new tenancies will be fixed term.
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	Revision of existing policies and in response to legislative change.
Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	Peer review. Changes are mandatory.

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	Medium	Negative and major. This is because legislation dictates that we can no longer offer secure lifetime tenancies.
Middle age	Low	Neutral
Young adult	Low	Neutral
Children	Low	Positive because of potential greater length of tenancy to provide stability during education.
<u>DISABILITY</u> Physical	Low	Neutral
Mental	Low	Neutral
Sensory	Low	Neutral
<u>GENDER RE-ASSIGNMENT</u>	Low	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	Medium	Negative due to changes to succession that now means a tenant does not have automatic right to have a new tenancy in the property they reside in.
<u>PREGNANCY/MATERNITY</u>	Low	Neutral
<u>RACE</u>	Low	Neutral
<u>RELIGION OR BELIEF</u>	Low	Neutral
<u>SEX</u> Men	Low	Neutral
Women	Low	Neutral
<u>SEXUAL ORIENTATION</u>	Low	Neutral

<p>Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.</p>	<p>AGE: Unless there is substantial change in the persons circumstances the tenancy will be extended for a further ten years. MARRIAGE/CIVIL PARTNERSHIP: Assistance to find alternative accommodation.</p>
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<p>Is the decision relevant to the aims of the equality duty? Guidance on the aims can be found in the EHRC's Essential Guide, alongside fuller PSED Technical Guidance.</p>	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	Yes
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	Yes
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

<p>Conclusion:</p> <ul style="list-style-type: none"> • Consider how due regard has been had to the equality duty, from start to finish. • There should be no unlawful discrimination arising from the decision (see guidance above). • Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified. • How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported? 	<p>The policy is response to mandatory changes in legislation. A persons protected characteristics are not a consideration as to whether a tenancy is offered or renewed.</p> <p><i>The council's revised policy register will assist services to meet this</i></p>
<p>EIA completion date:</p>	<p>10th August 2017</p>

