

Report To: Cabinet

Date of Meeting: 16th December 2014

Lead Member: Cllr. Hugh Irving, Lead Member, Customers and Communities

Report Author: Dave O'Brien, Service Charge Officer

Title: Variation of Council Housing Tenancy Agreement

1. What is the report about?

The council are revising the council housing tenancy agreement to reflect changes in the law and practice that have arisen in recent years and to enable the council to deal with issues such as anti-social behaviour more effectively.

The council must follow a legally prescribed process to amend the terms of the tenancy agreement, including a two month consultation period with all tenants and issuing of a Final Notice of Variation before any new terms can be implemented.

The purpose of this report is to update members on progress to date and seek approval from Cabinet to adopt the new tenancy agreement. (Appendix 1) Subject to approval by Cabinet a formal variation notice will be issued to all current tenants early in 2015, with the terms of the revised tenancy agreement taking effect from 1st April 2015. The new agreement will be used for new tenancies commencing from 1 December 2014 to avoid the need for further consultation.

2. What are the Recommendations?

A decision is required to adopt the revised final version of the Council House Tenancy Agreement with Final Notice of Variation at Cabinet on 16 December 2014.

3. Report details.

3.1. The current tenancy agreement has been in use for nearly 20 years and is no longer fit for purpose.

3.2. There has been a need to update the agreement to reflect changes in the law and practice that have arisen in recent years and to enable us to deal with issues such as anti-social behaviour more effectively.

3.3. There are a number of planned changes in law regarding penalties for issues such as anti-social behaviour and criminal activities in the home later this year. This is reflected in the new agreement in a generic way to give it extra protection from future legislative changes. Examples are the two proposed new powers to replace the ASBO (Anti-Social Behaviour Order) with the Criminal Behaviour Order (CBO) and the Drinking Banning Order (DBO).

3.4. Before commencing a review of the tenancy agreement in May 2014 legal opinion was engaged, internally and from external counsel, to establish the prescribed process and steps in varying the agreement. Best practice was also reviewed as well as comparisons with neighbouring authorities who had also revised their agreements within the last two years.

3.5. The draft revised agreement was informed and developed through a variation of mechanisms including the member and tenant HRAS Self Financing Steering Group; informal drop information sessions with tenants; and regular updates with the Lead Member. Before issuing to tenants for consultation the finalised draft and a preliminary notice of variation was also reviewed by the council's internal legal team and external counsel.

3.6. Formal consultation ran between 11 August and the 12 October 2014. Details of which can be seen in section 7 below. There have been 501 responses, with over 90% of feedback being positive towards the contents of the agreement and 82% seeing no change or changes for the better. (Please see appendix 2)

3.7. All tenants have been issued with a range of documents including:

- Preliminary Notice of Variation - prepared by external counsel this clearly outlines proposed changes to the agreement
- Draft revised tenancy agreement - the new draft not only reflects changes in legislation but also best practice and importantly new sections headed Your Tenancy Agreement and Enforcement of Tenancy Conditions take account of the changes. It also expands the section of "Your Rent and Other Charges" to take into account the requirement by Welsh Government that we must depool (separate) Service Charges from rents from April 2015 (see accompanying report on service charge implementation).

3.8. Feedback from the consultation exercise has been collated and final changes to the draft agreement have been made. Legal opinion on the final document has been sought along with a request to produce the Final Notice of Variation to accompany the new tenancy agreement. (Please see appendix 3) This summarises the changes between the current and new versions of the agreement.

3.9. Subject to approval from Cabinet, the Final Notice of Variation and new Tenancy Agreement will be issued to all current tenants in January 2015.

3.10. It is also planned to issue a Tenants Handbook during 2015 to be used in conjunction with the tenancy agreement. Offering more information to tenants and useful information, it will be in a format that can be updated in future. (Appendix 4)

4. How does the decision contribute to the Corporate Priorities?

By clarifying the responsibilities of both Tenant and Landlord and the subsequent enforcing of the agreement, that it will assist in the corporate priorities of clean and tidy streets, good quality housing and vulnerable people are protected and are able to live as independently as possible. This would be achieved by the Council being more able to effectively deal with the minority of tenants whose anti-social household actions cause concern or distress for other tenants.

Through depooling (separating) Service Charges from rent payments it will also provide greater transparency of what Council services the tenant is paying for leading to improved service quality and thereby improved neighbourhoods. This is in line with Welsh Government expectations and will enable Housing Services to meet our regulatory requirements.

5. What will it cost and how will it affect other services?

Despite this being a substantial exercise, project costs have been contained within existing HRA budgets.

The cost of legal advice, consultation, printing and postage incurred from inception to the issuing of the new agreement is estimated at £33k.

As this is the formal agreement between Denbighshire County Council as a Landlord and its Tenants, it concerns the functions carried out by Housing and Community Development. There should be no impact on other services.

6. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? (Appendix 5)

The revised tenancy allows the introduction of servicing charging for residents, a Welsh Government requirement as part of their new rent setting policy.

As would be anticipated given the need to maintain communal shared areas, early indications show that the level of Service Charges for apartments and sheltered complexes are higher than in general needs accommodation due to the costs of maintaining communal areas. As over 1200 units are designated for older people, then this may have a disproportionate impact upon these tenants. However this is mitigated by 72% of sheltered tenants receiving help towards their rent and service charge items through Housing Benefit.

To mitigate impacts for other tenants in following the introduction of service charges in year one we are recommending that rents be reduced by the amount of the Service Charge, and hence no additional charges will be incurred over and above the existing rental payments that tenants would make. This will phase in and hence lessen the impact of any future charges. Additionally we are commencing a rolling review of all our service contracts, to ensure VFM and this may actually reduce the costs of some services, which will then be passed onto tenants.

The proposed changes to the Tenancy Agreement will apply equally to General Needs and Sheltered accommodation. There is nothing discriminatory towards any of the protected groups.

7. What consultations have been carried out with Scrutiny and others?

A 9 week consultation period that has involved all tenants, representatives from Denbighshire Tenants and Residents Federation, Councillors and Denbighshire Housing staff was completed on 12 October 2014.

7.1. As part of the consultation, every tenant and joint tenant (4,200) was issued with a Preliminary Notice of Variation letter. In addition to this Notice they were also provided with:

- a cover letter explaining what we are proposing and what we have enclosed in the pack
- a draft copy of the proposed new tenancy agreement along with a copy of our current tenancy agreement in direct comparison
- a pro forma consultation form for tenants to comment on the changes shown, along with a pre-paid reply envelope
- meetings and updates with Housing Rent Account Self Financing Steering Group, 31 July, 17 September and 14 November.
- all members sent pack contents and briefing 11 August
- consultation feedback input from Councillors and Informal Cabinet

7.2. All new tenancies granted from 11 August 2014 have had the same letters and packs provided at sign up.

7.3. The consultation on the preliminary notice ran for 2 months from 11 August to 12 October 2014 giving ample opportunity for tenants to respond. Methods of consultation include:

- the pro forma response form
- general written communication to Housing and Community Development
- drop in sessions throughout the County between 3 September and 7 October
- email response to tenancy.agreement@denbighshire.gov.uk
- multi point phone lines set up for basic telephone queries or feedback
- opportunity to contact their Neighbourhood Officer with basic queries

7.4. A Newsletter has also been issued to all tenants containing an article on the new tenancy. We have also responded on a 1 to 1 basis to anyone who has requested assistance in their understanding of the change.

8. Chief Finance Officer Statement

The additional costs incurred will be contained within the HRA for the year.

9. What risks are there and is there anything we can do to reduce them?

A detailed project plan has been developed and progress is monitored through the HRAS Steering Group.

Our ability to tackle issues such as ASB would be greatly hampered if we are unable to have a Tenancy Agreement that is fit for purpose. In addition we would not be able to comply with the Welsh Governments requirement to depool service charges from rents next year which will result in reduced income in years to come.

Contact numbers will again be provided to deal with any questions that may arise from the issuing of the new agreement.

10. Power to make the Decision

The process undertaken and changes proposed also reflect compliance with Section 103 of the Housing Act 1985.