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| <b>9 November 2016</b>  |                             | <b>ITEM: 10</b><br><b>Decision 01104389</b> |
| <b>Cabinet</b>  |                             |   |
| <b>Fixed Term Secure Tenancies</b>  |                             |   |
| <b>Wards and communities affected:</b><br>All   | <b>Key Decision:</b><br>Key |   |
| <b>Report of:</b> Councillor Robert Gledhill, Portfolio Holder for Housing                  |                             |   |
| <b>Accountable Head of Service:</b> Richard Birchett, Interim Head of Housing               |                             |   |
| <b>Accountable Director:</b> Roger Harris, Corporate Director of Adults, Housing and Health |                             |   |
| <b>This report is</b> Public  |                             |   |

### **Executive Summary**

On 12 May 2016 the Housing and Planning Act 2016 received Royal Assent. The Act contains provisions on the mandatory granting of fixed term secure tenancies.

From 1 April 2017 life time tenancies are expected to be replaced with secure tenancies for a fixed period of time, for all new tenants. Councils have some discretion over the length of the fixed term, but there is a minimum of two years and maximum of ten years term, except where there are children in the household.

At the end of the fixed term the tenancy will be reviewed and a decision made regarding a further tenancy. It does not mean the tenancy will end at that point but if circumstances remain unchanged it is possible the Council will issue a further fixed term tenancy.

Thurrock Council's tenancy policy determines the types of tenancies offered by the Council. The tenancy policy needs to be reviewed and updated to incorporate the new legislation and to determine any discretionary provisions i.e. length of fixed term tenancies and how households will be assessed at the review stage.

This report outlines the principles for fixed term tenancies and seeks guidance from Members on the length of fixed term tenancies to be offered and factors to be considered at the review stage. It should be noted we are still awaiting final guidance from the DCLG on how fixed term tenancies will operate and any discretion Councils will have. That may affect the eventual tenancy policy the Council adopts.

## 1. Recommendation(s)

It is recommended that Cabinet:

### 1.1 Agree that the length of fixed term tenancies for specific household groups be as follows.

| Tenants with no children      | Recommended default tenancy term |
|-------------------------------|----------------------------------|
| Who are elderly               |                                  |
| With a vulnerability          |                                  |
| Who are caring for someone    |                                  |
| General tenancy               |                                  |
| Tenants with children under 9 |                                  |

## 2. Introduction and Background

### 2.1 On 12 May 2016 the Housing and Planning Act 2016 received Royal Assent.

The Act contains provisions on the mandatory granting of fixed term secure tenancies. Regulations and a statutory Code of Guidance are expected during winter 2016-17 but some are now available.

#### 2.1.1 From 1 April 2017 secure or so called “life time” tenancies will be replaced with secure tenancies for a fixed period of time, for all new tenants. The new provisions will not apply retrospectively to existing tenants before April 2017.

Councils have some discretion over the length of the fixed terms to be offered, but there is a minimum of two years and maximum of ten years term except where there are children in the household.

Councils can issue different length tenancies to different groups so long as they identify this within their tenancy policy.

An individual may seek a review of the length of tenancy offered to them. Guidance in relation to the review procedure will be issued at a later date.

#### 2.1.2 Where the Council receives written notification that there are children in the household under the age of 9 years when the tenancy starts, the fixed term can be extended so that it ends on the 19<sup>th</sup> birthday of the youngest child.

#### 2.1.3. During the fixed term period tenants will have similar rights as current lifetime tenants, with the following exceptions:

They will not have the right to claim compensation for any improvements they have carried out at the property.

In relation to tenancies granted before 1 April 2012, Councils will have a discretion to grant family members succession rights (spouses, civil partners, and those living together have absolute succession rights), but those family members will be ineligible for a lifetime tenancy but instead will be offered a 5 year fixed term tenancy.

2.1.4 Between nine and six months before the end of the fixed term the Council must review the tenancy and determine one of the following:

- To offer a further fixed term tenancy in the same property;
- To offer a fixed term tenancy in an alternative property;
- To end the tenancy and offer advice on buying a property or other housing options

2.1.5 The Council will continue to issue Introductory tenancies – the fixed term tenancy will start immediately after the introductory tenancy, provided the introductory tenancy has not been extended or possession proceedings started.

2.1.6 Existing old style secure tenants who transfer to alternative properties will receive a new fixed term tenancy except in limited circumstances. Those circumstances will be provided in the Statutory Code of Guidance but are generally expected to include

- people who are required to move by the Council (decants)
- where the move is due to domestic abuse
- moving via a mutual exchange

The Code of Guidance will also provide other limited grounds where discretion can be used to issue a further old style “life time” tenancies.

2.1.7 Criteria for determining the initial tenancy length and outcomes at the end of the fixed term must be contained within the council’s Tenancy Policy which will be revised.

2.1.8 A full consultation with the public was held between July and September 2016. Almost 300 people participated. The outcomes are attached in a report at Appendix 1

2.1.9 A report was taken to Housing Overview & Scrutiny on 6 October 2016 seeking a recommendation for Cabinet on the length of tenancies to be offered. The recommendation from that Committee was to implement 10 year tenancy.

### **3. Issues, Options and Analysis of Options**

#### **3.1 Length of the initial fixed term tenancy**

##### **3.1.1 The Council has discretion to issue fixed term tenancies of between 2 and 10 years.**

The main objective of fixed term tenancies is to ensure that social housing is made available to those who need and are entitled to it, and that when tenants are able to meet their own housing needs they will move on into other options such as affordable rented properties or home ownership. This allows increased mobility when needed and helps to meet the needs of communities.

When deciding on the length of tenancy to be offered, the following advantages and disadvantages should be considered;

##### **3.1.2 Certainty for tenants**

Tenants with a longer tenancy are likely to feel more secure and settled, leading to less anxiety about potential change – this is particularly important for older and vulnerable tenants, those caring for others or with adapted properties or with children settled in local schools.

##### **3.1.3 Increased sustainability within communities**

The council strives to promote and build sustainable communities; this could be difficult where residents are unsure of their ability to stay in one particular place and could result in communities that feel they have less of a stake in the place where they live.

In turn, this could lead to a lower level of concern for the housing stock and environment creating areas in which crime, vandalism and anti-social behaviour are more likely to prosper. All of these factors could have a serious, detrimental impact on any social landlord and its tenants.

##### **3.1.4 Administration costs**

Reviewing tenancies will add an administrative cost to the Council, both in terms of finance and resources. Officers will be required to carry out reviews on tenancies six to nine months before their end date – failure to do so would result in a further tenancy automatically taking place.

If tenants were not offered a further tenancy but refused to move, the Council would still need to take legal action to evict them; this in turn could lead to increased legal costs and officer resource.

Extra void properties as a result of more tenants moving on will increase costs and resources.

### 3.1.5 Changing circumstances of tenants

Where a tenants' circumstances change during the fixed term, no account can be taken until the next review date.

Example: if the tenant's financial income increases substantially so that they can easily afford other housing options such as purchasing a property or privately renting, the tenant will continue as a secure tenant until the review date. Where a longer term tenancy is in place this thwarts the purpose of the policy i.e. to ensure Council accommodation is available to those in need of it.

Example: if the tenant's household size decreases because grown up children leave the home the property may be under-occupied. The tenant may not choose to down-size resulting in a continuing under occupation. Where a longer term tenancy is in place, this could continue for many years.

### 3.1.6 Long waiting lists

The Council holds a waiting list of applicants for housing. Currently there are 739 households with a priority need to be rehoused (at 7 October 2016). The total list is 7701 including transfers.

Shorter term tenancies should result in some tenants moving on to other housing options and subsequently increase the number of properties available for letting to priority groups.

### 3.1.7 Options for specific schemes requiring shorter tenancy agreements

There are circumstances where issuing a longer tenancy would not be appropriate due to the circumstances of the tenant

- Example: A new scheme (Right Size) is due to be implemented as part of the recent Housing Allocations scheme review whereby elderly owner occupiers could be offered a sheltered tenancy in return for a lease of their property to the Council to house homeless households.

If such a scheme were adopted it would require the issuing of shorter tenancies to the owner occupiers to ensure that the sheltered tenancy only lasts as long as the lease of their property back to the council

- Example: The Council may wish in the future to introduce a key worker scheme to assist with recruitment to certain key roles, for example social workers. In such circumstances it would be preferable to offer a shorter fixed term tenancy since the tenants circumstances are more likely to change

### 3.2 Recommendation for fixed term tenancy length

Members of the Cabinet are asked to determine the length of fixed term tenancies for different groups of people.

To assist in this process tenants can be grouped according to whether or not there are children in the household and for other exceptional circumstances

#### 3.2.1 Group A - Tenants with no children

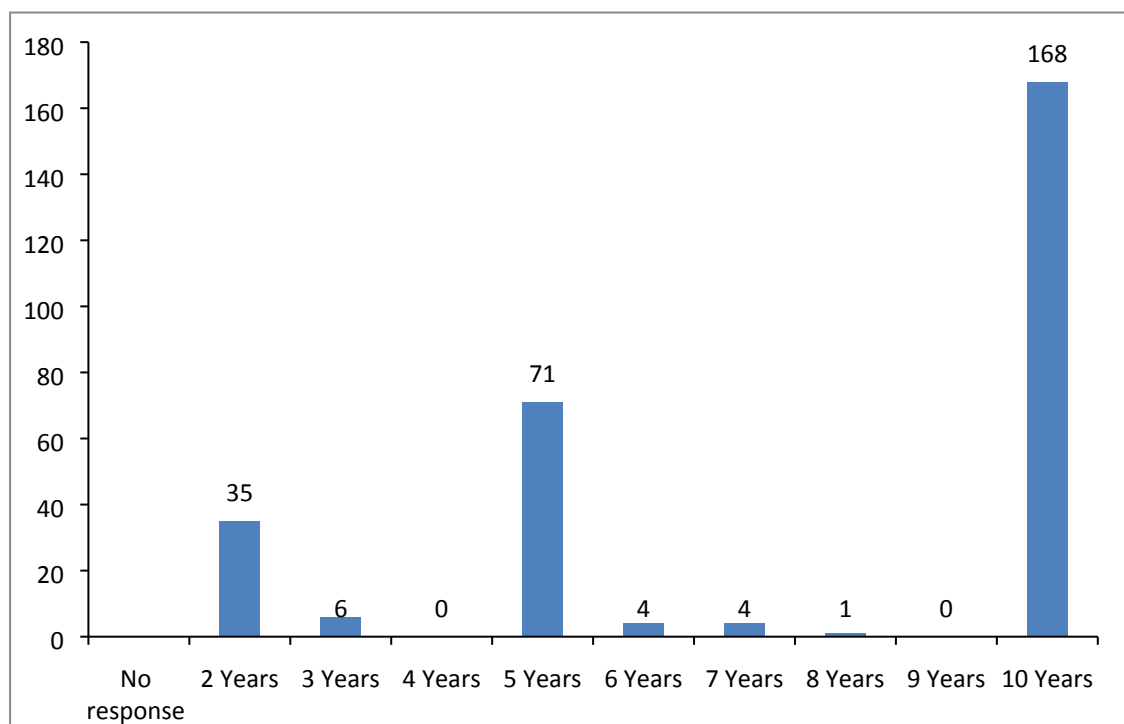
This group can be broken down further into those

- who are elderly – both in sheltered and non-sheltered accommodation
- with a vulnerability – e.g. long term mental or physical health issues
- who are caring for someone
- those with none of the above

Some tenants may meet more than one category.

Participants in the consultation were asked how long a fixed term tenancy should be, for people below pensionable age with no children.

The results are shown below



3.2.2 The majority of participants (57%) indicated that the maximum ten year tenancy should be the default position. 24% thought it should be 5 years.

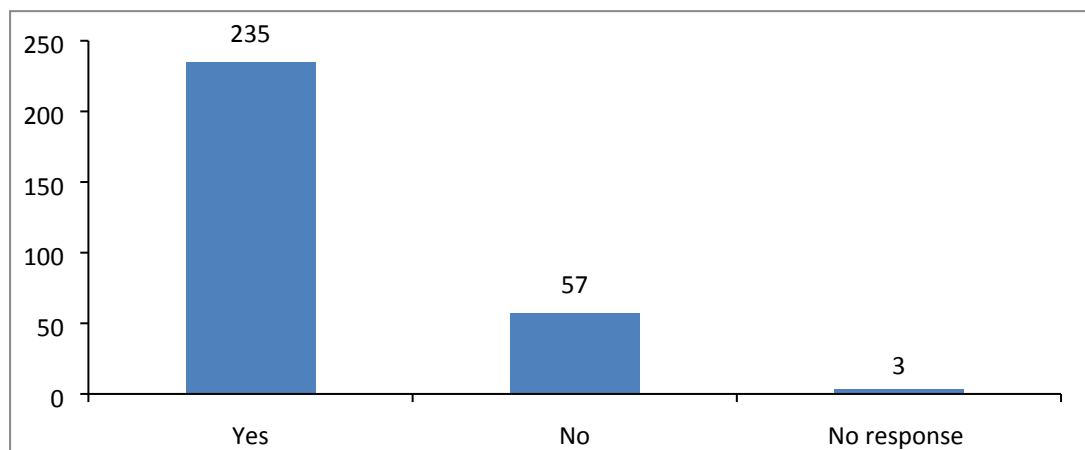
Where people have long term needs such as mental health or are caring for someone within the household this majority increased to 65% and 68% respectively.

Where the same question was asked about people above pensionable age the number recommending a ten year tenancy increased further to 87%.

### 3.2.3 Group B - Tenants with children

Where there are children in the household under the age of 9 years when the tenancy starts, the fixed term can be extended so that it ends on the 19<sup>th</sup> birthday of the youngest child.

Participants in the consultation were asked for their views on whether this should be implemented. The following results were shown:



Where there are children in the household above the age of 9 years, a lesser fixed term could be applied. For example - the default position could be a fixed term of the time up until that youngest child's 19<sup>th</sup> birthday with a set minimum term

### 3.2.4 Group C – tenants with special circumstances

Shorter tenancies could be issued to tenants with limited immigration rights – such as for the period of time up until the right expires

Shorter tenancies could be issued to people being offered accommodation to meet a time limited need in pursuance of a specific initiative – such as the Right Size campaign or a keyworker scheme

3.2.5 Members are asked to recommend the default length of tenancies for those within the categories below:

- 3.2.5.1 Tenants with no children
- 3.2.5.2 Tenants with no children who are vulnerable or caring for someone
- 3.2.5.3 Tenants with no children who are elderly
- 3.2.5.4 General Tenancy
- 3.2.5.5 Tenants with children aged below 9 years
- 3.2.5.6 Tenants with children aged above 9 years

### 3.3. Review at the end of the fixed term

Between nine and six months before the end of the fixed term the Council must review the tenancy and determine one of the following:

- To offer a further fixed term tenancy in the same property;
- To offer a fixed term tenancy in an alternative property;
- To end the tenancy and offer advice on buying a property or other housing options

Criteria for determining the outcomes at the end of the fixed term must be contained within the council's Tenancy Policy and appeal procedures will also be available.

3.3.1 Participants in the consultation were asked in what circumstances they felt a further fixed term tenancy in the same property should not be issued

The following results were shown:

|   |     |
|---|-----|
| Where the household exhibited Anti-Social Behaviour       | 95% |
| Where the property was being under occupied               | 67% |
| Where the household had rent arrears                      | 63% |
| Where the household had higher income levels              | 40% |
| Where the property was now unsuitable for medical reasons | 53% |

3.3.2 When considering whether or not to offer a further fixed term the following factors could be considered

- The household is under occupying the property and this is likely to continue for the foreseeable future – in such circumstances an alternative property could be offered that meets the family size



- The household has exhibited anti-social behaviour during the fixed term and this has not been addressed by the tenant to a satisfactory level at the point of review – in such circumstances no further tenancy would be offered (NB domestic abuse issues will always be considered where applicable)
- The tenancy has not been managed in a suitable manner i.e. there have been a number of tenancy breach instances such as rent arrears – in such circumstances no further tenancy would be offered
- The household is in receipt of income levels much higher than those determined within the financial qualification criteria in the Housing allocations Scheme so that the household can easily afford alternative housing – in such circumstances advice will be provided regarding options such as purchasing a property
- The property has been adapted to meet the needs of a member of the household who is no longer residing at the property – in such circumstances an alternative property should be offered that meets the family's needs and size

3.3.3 Clearly defined processes for assessing the above, including a long term view of the tenancy history, will be provided within the tenancy policy.

Mechanisms for appeal and consistency of decision making at a management level will be built into the tenancy policy document.

#### **4. Reasons for Recommendation**

- 4.1 The Housing and Planning Act 2016 has now received royal assent and the new provisions regarding fixed term secure tenancies must be implemented from 1 April 2017
- 4.2 Changes to the Council's Tenancy Policy are required and the applicable principles will need to be agreed before the policy is updated.

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 The consultation for Fixed Term tenancies took place between 25 July 2016 and 23 September 2016, approximately 8 weeks. During this time, there was a range of activity to encourage feedback and instigate discussion within various groups.
- 5.2 A letter regarding the online survey was sent to all current social housing tenants and all of those on the housing waiting list, informing them of the change and encouraging them to take part in the consultation. In addition, the details for the consultation were shared on the Thurrock Council website and Twitter account, as well as the intranet so that staff could raise awareness and also get involved themselves.

- 5.3 The chairs for all the council forums were contacted such as the BME Forum, Mental Health Forum, and Women's Forum, LGBT Forum and the Disability Forum to request the groups take part in the consultation.
- 5.4 Fixed Term Tenancies were also discussed with certain groups face to face, such as the Sheltered Housing Officers and the Tenants Excellence Panel, so that they could raise awareness and assist tenants in completing the consultation.

**6. Impact on corporate policies, priorities, performance and community impact**

- None

**7. Implications**

**7.1 Financial**

Implications verified by: **Julie Curtis**  
**HRA and Development Accountant**

Increased administration due to extra checks and monitoring of fixed term tenancies at the end of their term will be required. Extra void properties as a result of more tenants moving on will increase costs and resources.

The possibility of higher evictions where tenancies end and tenants refuse to leave could also lead to increased legal costs

**7.2 Legal**

Implications verified by: **Martin Hall**  
**Housing Solicitor / Team leader**

The Housing and Planning Act 2016 received Royal assent in May 2016 and is likely to be implemented in the next 12 months, although no date has been specified as of yet.

The Council must implement the new arrangements, in line with regulations to be provided before the end of 2016.

Fixed term tenancies will be more complex to administer than current secure tenancies, particularly around the need to consider the age of children in the household and the requirement to review the tenant's circumstances 6 to 9 months prior to the end of the fixed term. Management of these tenancies will require new procedures around monitoring and possessions claims.

### 7.3 **Diversity and Equality**

Implications verified by: **Natalie Warren**  
**Community Development & Equalities  
Manager**

An equality impact assessment has been undertaken and is attached at Annex two

### 7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

There is a large increase in the duties to be undertaken by officers to implement the monitoring and assessing of fixed term periods. This will necessitate an increase in the workforce.

### 8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None

### 9. **Appendices to the report**

- Appendix 1 – Consultation results
- Appendix 2 – Community and Equality Impact Assessment

### **Report Author:**

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