

Committee/Meeting: Cabinet	Date: 05/12/12	Classification: Unrestricted	Report No: 49/123
Report of: Corporate Director of Development and Renewal – Aman Dalvi Originating officer Martin Ling		Title: Tenancy Strategy Wards Affected: All	

Lead Member	Cllr Rabina Khan – Cabinet Member for Housing
Community Plan Theme	A Great Place to Live
Strategic Priority	Improving and maintaining the quality of housing and the local neighbourhood

1.0 **SUMMARY**

- 1.1 The London Borough of Tower Hamlets is required to produce a tenancy strategy as set out in the Localism Act which gained Royal Assent in November 2011. The tenancy strategy has to be published by January 2013.

If the Council does not agree its tenancy strategy by this date, it will be in breach of the legislation and will not be in a position to influence Registered Providers or expect them to have due regard to its preferred options on tenancies.

Section 150 of the Localism Act covers tenancy strategies and states in subsection (1) that:

(1)A local housing authority in England must prepare and publish a strategy (a “tenancy strategy”) setting out the matters to which the registered providers of social housing for its district are to have regard in formulating policies relating to—

- (a) the kinds of tenancies they grant,
- (b) the circumstances in which they will grant a tenancy of a particular kind,
- (c) where they grant tenancies for a term certain, the lengths of the terms, and
- (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

- 1.2 Before adopting a tenancy strategy, the Council is required to consult with every private Registered Provider of social housing in Tower Hamlets and must give them a reasonable opportunity to comment on its proposals. The Council must also consult the Mayor of London and such other persons as the

Secretary of State may by regulations subscribe. At the time of writing, the Secretary of State had not made any such regulations.

- 1.3 Through the existing allocations system, Councils and Registered Providers generally enter into lifetime tenancies with new tenants. The Government will now allow all social landlords the flexibility to offer shorter term tenancies if they decide that it will enable them to make better use of their housing stock and assist those people with the most pressing need more effectively.
- 1.4 The Council is required to set out its own policy on tenancies and give direction to all the Registered Providers who own and manage homes in the borough. Registered Providers are expected to have 'due regard' to the tenancy strategy but the Council has no specific powers and limited options if it decided to actively enforce its tenancy strategy upon its partners.
- 1.5 The tenancy strategy will not affect existing tenants whose tenancy agreement rights will be fully protected.
- 1.6 The Cabinet approved a draft tenancy strategy on the 5th September 2012 and the statutory consultation with the Mayor of London and Registered Providers ran from Monday 17th September to Friday 2nd November. In addition a public consultation process, also agreed by Cabinet took place over the same period. Details of responses to the consultation are set out below and in appendix 3.

DECISIONS REQUIRED

The Mayor in Cabinet is recommended to:-

- I. Approve the final tenancy strategy attached at appendix 1

2.0 REASONS FOR THE DECISIONS

- 2.1 There is a statutory requirement for the Council to produce a tenancy strategy as set out in the Localism Act which gained Royal Assent in November 2011.

3.0 ALTERNATIVE OPTIONS

- 3.1 The Council has no alternative options to producing a tenancy strategy as it is a statutory requirement.
- 3.2 The Council could adopt a strategy in different terms from that proposed. The strategy in appendix 1 is recommended for reasons set out in the report.

4.0 BACKGROUND

- 4.1 An issues and options paper was considered by Cabinet on the 5th September 2012. The paper set out the full details of the issues for the Cabinet to consider. Before the development of the initial draft there had been substantial consultation with Registered Providers and their views had been incorporated into the paper. The Mayor had previously indicated that he is in favour of

retaining lifetime homes for secure tenants of the Council except in exceptional circumstances where it is clear that the particular property being let will not be suitable for the tenant beyond the short term.

5.0 Tower Hamlets Homes

- 5.1 The Council's ALMO, Tower Hamlets Homes, currently enters into lifetime tenancies with all tenants. Cabinet previously indicated that they wanted to retain lifetime tenancies for Tower Hamlets Homes in order to maintain sustainable communities and enable tenants to have the comfort of being able to enjoy a secure lifetime tenancy. This policy will assist in achieving the twin objectives of making best use of the stock and contributing to maintaining sustainable communities.
- 5.2 Cabinet agreed that they are in favour of the discretionary use of fixed term tenancies in certain circumstances by Tower Hamlets Homes. Since the production of the draft tenancy strategy this area has been discussed more fully with Tower Hamlets Homes staff. It was suggested that the only circumstances where the clause could be used, would be in order to alleviate a situation where a tenant has a terminal illness and requires a property on shorter term basis with additional care. Fixed term tenancies would only be used in those situations where it is clear that the property will only be required in the short term.
- 5.3 In addition, the process for reviewing the tenancy that is being advised to Registered Providers will be adopted by Tower Hamlets Homes. Arrangements for emergency rehousing and decanting for regeneration schemes are covered by other arrangements and fixed term tenancies will not be used in these situations.

6.0 Direction to Registered Providers

- 6.1 The Council is required to give direction to Registered Providers on how it expects their tenancy policies to operate in the borough. As set previously to Cabinet on the 5th September, a number of Registered Providers in the Borough had already progressed policies which will include letting some properties on assured shorthold tenancies on a fixed term basis and this situation has not changed. Cabinet agreed that whilst they were in favour of lifetime tenancies it was recognised that many Registered Providers will want to make use the new flexibilities in order to more effectively manage their stock. In setting the tenancy strategy for Tower Hamlets, the Cabinet agreed to set out to Registered Providers who do make use of the flexibility, a set of conditions to ensure that the needs of vulnerable groups are met. Registered Providers will be expected to have due regard to these conditions.

These conditions are set out in the tenancy strategy and can be summarised as follows:

6.2 Tenancies:

The following categories of households will be offered lifetime tenancies:

Person over 60 years of age
People with a long term disability
All transferring secure tenants of homes managed by Tower Hamlets Homes and tenants whose homes were transferred under the Housing Choice and other stock transfer programmes and as required under the Localism Act.

Fixed term tenancies of 10 years or more should be offered to the following categories of households:

Households containing one or more children under 10 years old.

6.3 **Review of Tenancies:**

Terms of a review process to be set out starting a minimum of 9 months before end of tenancy and including the advice and assistance that will be given to tenants who are not granted further tenancies.

7.0 **National Affordable Homes Programme**

7.1 Alongside the Localism Act, the Government has introduced a framework for delivering new affordable housing. The Mayor of London now has a duty to set out policies that address regional housing challenges as well as local ones, and he is now directly responsible for the London Affordable Homes Programme (AHP).

7.2 The Mayor of London's Office has agreed a new Affordable Homes programme to deliver new housing over the Comprehensive Spending Review period, ending in 2015. As part of the revised grant arrangements, Registered Providers will be able to charge affordable rents, up to 80% of local market levels on both new properties together with a proportion of re-let properties through a contractual agreement with the GLA.

7.3 The Council has carried out research and developed guidance on what it considers to be an acceptable level for affordable rents. The table below provides an indication of what acceptable affordable rent levels are likely to be for the borough as a whole. This has been informed by the research carried out by POD (2011) which takes account of local socio-economic circumstances. In practice, each scheme will need to apply rent levels which reflect the particular local housing market of that area and the needs of the borough. These rent levels will need to be agreed with the Council as part of the development management process and kept under review.

1 bed	65%
2 bed	55%
3 bed	50%
4 bed	50%

7.4 The Council will support proposals which include affordable rent homes only where the provision of social rent homes has been maximised, specifically for larger family homes. This approach enables the housing needs

of the borough to be met, as identified in the Strategic Housing Market Assessment.

- 7.5 In negotiating rent levels across the borough, the Council will need to consider the impact of welfare reforms on household affordability and in particular the introduction of the Universal Credit cap in 2013. When applicants apply for rehousing they will therefore have a range of rent levels as well as different types of tenancies to consider when deciding which properties to bid for.
- 7.6 The full details of the Council's policy on affordable rents is set out in the Managing Development Plan document. The submission version of the Managing Development – Development Plan Document (MD DPD) as well as supporting documents and representations were submitted to the Secretary of State on May 18, 2012. Following this, the Planning Inspectorate, on behalf of the Secretary of State has undertaken an independent Examination in Public. The Examination took place in September 2012 and the Inspector is expected to report back at the end of November 2012.
- 7.7 In their comments on the draft tenancy strategy, the Greater London Authority (GLA) stated that
'The GLA expects that London boroughs will maximise the delivery of affordable housing through their planning and housing policies and does not accept that this can be achieved by setting specific rent caps in local planning policies or tenancy strategies. The Mayor has clarified this position through consulting on Supplementary Planning Guidance devolving from his London Plan and a minor Alteration to the Plan'
- 7.8 In order to give a clear indication as to what the Council views is on affordable rents in the borough, the direction on rents and affordable homes will be included in the tenancy strategy. This guidance would apply to homes built through section 106 planning gain or potentially through Council funding which sits outside the Affordable Housing programme.

8.0 Consultation

8.1 Statutory requirements

Before adopting a tenancy strategy, the Council is required to consult with every private Registered Provider of social housing in Tower Hamlets and must give them a reasonable opportunity to comment on its proposals. The Council must also consult the Mayor of London and such other persons as the Secretary of State may by regulations subscribe. At the time of writing, the Secretary of State had not yet made any such regulations.

8.2 Mayor of London

The GLA on behalf of the Mayor of London wrote to the Council setting out his comments on the draft tenancy strategy on 9th October 2012.

The Mayor of London has stated that he is broadly supportive of the government's reforms to the social housing system. A number of policies in

his draft revised London Housing Strategy encourage boroughs and Registered Providers to make full use of their new flexibilities in order to better reflect the situation on the ground and their local priorities.

8.3 **General assessment of draft tenancy strategy**

In responding to consultations, the GLA on behalf of the Mayor makes an assessment of draft tenancy strategies based on five key themes. The Mayor of London's comments and the Council's proposed response to each comment is set out below:

Increasing the supply of affordable housing

Mayor of London's comments: 'The 2012-15 Affordable Housing Programme (AHP) will deliver 55,000 new affordable homes, with 36% of the new Affordable Rent homes being family sized. In order to meet their contractual commitments, and to deliver the much needed new homes, registered providers need more flexibility to manage their existing and new stock, and they need some consistency across the many local housing authorities in which they operate. This is a key theme in the Mayor's draft revised London Housing Strategy.

Tower Hamlets supports the continued use of life time tenancies in most cases, but also acknowledges that Registered Providers may wish to use fixed term tenancies. We are satisfied that the approach set out in your draft tenancy strategy does give Registered Providers the flexibility they need in order to meet their contractual commitments, although we would like to see a more explicit acknowledgement of the link between Registered Providers' ability to grant fixed term tenancies and the affordable housing programme'.

Council response: The tenancy strategy has been enhanced to recognise the link between fixed term tenancies and the affordable housing programme set out in the second paragraph in section 2.3 of the attached tenancy strategy.

Promoting mixed and balanced communities

Mayor of London's comments: We would like to underline the Mayor's commitment to prioritising people who make an active and positive contribution to their community – e.g. through employment or volunteering – and who may also face barriers to accessing suitable housing in other tenures. It might be appropriate to take this into account when determining whether a tenancy is renewed or not, as well as the factors already set out in the tenancy strategy.

Council response: The Council has inserted a clause in section 4 .5 recommending that Registered Providers take into account individual households employment or voluntary sector contributions when reviewing tenancies.

Tackling need - A

Mayor of London's comments: in section 2.1, the draft strategy states that in 'limited circumstances' fixed term tenancies will be used and that 'the tenancy strategy will seek to define... all possible circumstances when THH will be able to grant a fixed term tenancy'. Ideally these circumstances would be stated in the draft tenancy strategy. In its current form, there is not enough detail in the draft strategy to enable us to determine whether those in need will have adequate protections.

Council response: As set out at 5.2, the Council has agreed with Tower Hamlets Homes, the circumstances in which it will issue fixed term tenancies.

Tackling need - B

The Mayor believes that boroughs and social landlords should be working to reduce levels of under occupation in the social rented sector, which, if achieved, will directly benefit those households who are in need of larger accommodation. It may be worth considering how wider use of fixed term tenancies in Tower Hamlets could help to achieve this aim.

Council response: the Council is in the process of agreeing an under occupation plan but does not intend to use fixed term tenancies as a specific tool to reduce under occupation through Tower Hamlets Homes.

Enhancing mobility and choice The Mayor is supportive of any measures that seek to reduce as far as possible the potential barriers facing existing tenants who may need or want to move to a different home. This is particularly important given the recent launch of the Mayor's new pan-London mobility scheme, Housing Moves, which Tower Hamlets is soon to join. We therefore welcome the 'transferring secure tenants' statement, but this could be more explicit about the mobility schemes that Tower Hamlets participates in.

Council response

This comment is noted and the two schemes that the Council participates in, Housing Moves and the Seaside and Country Homes scheme for the over 60's age group have been referred to in the tenancy strategy.

A copy of the letter from the Mayor's office is attached at appendix 2

8.4 Registered Providers

Registered Providers have been fully involved in the development of proposals through the following avenues:

- Regular reports to the Tower Hamlets Housing Forum and selection of 2 representatives to sit on the Tenancy Strategy Project Board
- Letter to all Registered Providers in the Borough setting out Council's approach and requesting information on Registered Providers emerging policies

- Half day seminar to discuss the tenancy strategy issues in detail with a report back on the emerging Registered Providers policies

All Registered Providers were sent a copy of the draft tenancy strategy at the same time as the Mayor of London and were given six weeks to respond.

Nine Registered Providers have responded to the statutory consultation by the closing date and none have raised any specific objections or made any specific comments which would have led to an alteration to the draft strategy. A summary of their comments is set out in Appendix 3. In addition a presentation was given to the Tower Hamlets Housing Forum in September 2012 which set out the Council's draft tenancy strategy. The Registered Providers present welcomed the Council's direction and agreed to take part in the on-going monitoring and review of the tenancy strategy.

8.5 Resident consultation

Cabinet agreed that a 'light touch' consultation would run concurrently with the statutory consultation. Following an article in East End Life, comments were invited through a website survey, at residents meetings, through an invitation to all tenants associations to comment on the draft and a series of focus groups with residents on the housing register. Overall the responses indicated broad support for the Council's approach but highlighted the need to ensure that the tenancy strategy is kept under review.

The responses can be summarised as follows:

8.6 Residents Scrutiny Panel

A presentation was given to the Residents Scrutiny Panel on Tuesday 25th September. The meeting was in broad agreement with the Council's draft tenancy strategy.

8.7 Tenants and Residents Federation

The Federation supported the Council's preference for lifetime tenancies and raised concerns about the level of consultation that Registered Providers were carrying out with their residents. It was also suggested that the Council should be firmer with Registered Providers who do not retain lifetime tenancies.

8.8 Tenants and Residents Associations

To date, one Tenants and Residents Association has formally responded to the consultation and they supported the Council's position on lifetime tenancies and in its direction to Registered Providers.

8.9 Focus Groups

Four focus groups were held across the Borough during September and October 2012 with nearly 60 households taking part in discussions about the draft tenancy strategy. The households were drawn from a range of people who were currently on the common housing register. Tenants from Registered

Providers also attended two of the sessions. The attendees were representative of the broad demography of the borough covering a range of age groups, ethnic backgrounds and household sizes.

The conversations were wide ranging and in addition to specific discussion about the tenancy strategy, participants raised a number of concerns about meeting the housing shortage, rent levels, condition in temporary accommodation, housing quality and housing management issues.

General view - With regard to the tenancy strategy there was clear support for the continuation of lifetime tenancies. Attendees recognised the idea behind using fixed term tenancies to tackle issues such as overcrowding and making better use of adapted properties but were generally of the view that a lifetime tenancy was important to enable people to have stability and contribute to the local community.

Anti-social behaviour - This was the one area where a number of participants felt strongly that fixed term tenancies could be used – in most meetings there was real feeling that anti-social tenants were rehoused and that it was difficult to change their behaviour. Consideration was given to including a clause in the tenancy strategy that would enable Tower Hamlets Homes and encourage Registered Providers to consider using fixed term tenancies for households with a history of anti-social behaviour. However the numbers of households affected is very small and all landlords are able to use both probationary tenancies and other management tools to tackle anti-social behaviour, so this approach is not recommended.

8.10 **Website survey**

A short survey was carried out through the Council website and 18 residents responded. In general the respondents were in broad agreement with the direction to retain lifetime tenancies.

8.11 A fuller report on the consultation is attached at Appendix 3.

9.0 **Review /Communication**

9.1 It is recommended that the tenancy strategy is kept under review through Tower Hamlets Housing Forum to ensure that impact of policy adopted by the Council and its partners can be fully understood and that action can be taken if the policy has any negative effects on the Council's lettings policy.

10.0 **COMMENTS OF THE CHIEF FINANCIAL OFFICER**

10.1 This report seeks approval to adopt, following the statutory consultation process, the Council's proposed tenancy strategy that has been prepared in accordance with the requirements of the Localism Act. The strategy will affect all Registered Providers of Social Housing within the Borough, and will include the council owned properties managed by Tower Hamlets Homes.

10.2 Although indications are that most of the main providers in the borough are likely to continue with the current lifetime tenancy allocation, the Localism Act

includes the option to award fixed term tenancies for periods of five years and above. The incorporation of a fixed term tenancy model can enable better use and occupation of the dwelling stock in order to reflect tenants' needs in some circumstances. However if adopted, the process must be carefully managed to ensure that pressures are not increased on the homelessness service and consequently Council budgets if tenants leave social housing at the end of their fixed term tenancy period.

- 10.3 If adopted, the costs of administering a fixed term tenancy model will be borne by each Registered Provider, which in relation to the THH managed stock will be absorbed within HRA budgets. The costs of preparation and any on-going and subsequent consultation on the tenancy strategy have been met from within existing revenue resources.

11. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 11.1 The Localism Act 2011 introduced a new category of tenancy for social housing, known as flexible tenancies. This was done by inserting new provisions into the Housing Act 1985. Flexible tenancies are tenancies for a fixed term, rather than being lifetime tenancies like the secure tenancies presently offered by the Council. Sections 107A to 107E of the Housing Act 1985 specify the steps the Council would need to take in order to grant and terminate flexible tenancies.
- 11.2 The Council is required by section 150 of the Localism Act 2011 to prepare and publish a tenancy strategy by 14 January 2013. The tenancy strategy must set out the matters that registered providers of social housing in Tower Hamlets are to have regard to when formulating policies relating to:
- (a) the kinds of tenancies they grant;
 - (b) the circumstances in which they will grant a tenancy of a particular kind;
 - (c) the length of term, if a tenancy is granted for a term certain; and
 - (d) the circumstances in which a further tenancy will be granted on the coming to an end of an existing tenancy.
- 11.3 The requirement that registered providers of social housing have regard to the strategy does not mean that they would have to follow it. There may be reasonable grounds on which a registered provider could choose to take a different approach.
- 11.4 The Council must have regard to the tenancy strategy in exercising its housing management functions, which would mean that Tower Hamlets Homes Ltd would also need to have regard to the tenancy strategy when managing the Council's housing stock.
- 11.5 When preparing its strategy, the Council must have regard to its current allocations scheme under section 166A of the Housing Act 1006 (the Lettings Policy), its current homelessness strategy under section 1 of the

Homelessness Act 2002 and the London housing strategy under section 333A of the Greater London Authority Act 1999.

- 11.6 Before adopting a tenancy strategy, the Council is required to consult with every private registered provider of social housing in Tower Hamlets and must give them a reasonable opportunity to comment on its proposals. The Council must also consult the Mayor of London and such other persons as the Secretary of State may by regulations subscribe. At the time of writing, the Secretary of State had not yet made any such regulations.
- 11.7 Before adopting a tenancy strategy, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. An equality analysis has been prepared, which is set out in Appendix 4 to the report and contains information relevant to consideration of the matters required by the Council's public sector equality duty.

12.0 ONE TOWER HAMLETS CONSIDERATIONS

- 12.1 A full Equality Assessment has been carried out on the tenancy strategy and is attached at Appendix 4. Within the tenancy strategy the different types of tenancies lengths can have both negative and positive impacts on different groups. Because of the nature of the legislation, and flexibility for Registered Providers in how they operate their tenancy policies, this is unavoidable. The introduction of a tenancy strategy will not in itself impact on the overall levels of poverty in the Borough.

13.0 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 13.1 There are no specific sustainable action for a greener environment implications.

14.0 RISK MANAGEMENT IMPLICATIONS

- 14.1 There are no risk management implications in the final version of the tenancy strategy

15.0 CRIME AND DISORDER REDUCTION IMPLICATIONS

- 15.1 There are no specific crime and disorder reduction implications.

16.0 EFFICIENCY STATEMENT

- 16.1 There are no efficiency implications in the final tenancy strategy.

17.0 APPENDICES

- 17.1 Appendix 1 – Draft Tenancy Strategy
Appendix 2 – Letter from the GLA in response to the statutory consultation
Appendix 3 – Report on Consultation
Appendix 4 – Equality Impact Assessment
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Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

List of “Background Papers” used in the preparation of this report

A bundle of non-exempt representations received from Registered Providers and other respondents to the consultation.

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