

 Executive 11th June 2014		Agenda Item No. 4
Title	HRA Rent Setting for Void Properties	
For further information about this report please contact	Abigail Hay Abigail.hay@warwickdc.gov.uk 01926 456044	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	26 th February 2014 Council Meeting Minute Number 101 12 th February 2014 Executive Meeting Minute number 131 11 th February 2014 Finance And Audit Scrutiny Committee Meeting Minute number 144	
Background Papers	Report to Executive 12 th February 2014: HRA Rent Setting Report	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	Yes - 614
Equality and Sustainability Impact Assessment Undertaken	No

Officer/Councillor Approval		
	Date	Name
Chief Executive/Deputy Chief Executive	07/05/2014	Andrew Jones
Head of Service	07/05/2014	Andrew Jones/Bill Hunt
CMT	19/05/2014	
Section 151 Officer	15/05/2014	Mike Snow
Monitoring Officer	07/05/2014	Andrew Jones
Finance	15/05/2014	Mike Snow
Portfolio Holder(s)	22/05/2014	Councillor Vincett
None Required		
None Required		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 This report considers the options available to the Council in relation to the setting of HRA dwelling rents when a property becomes void.

2. RECOMMENDATION TO COUNCIL

- 2.1 That all void properties (including where a Warwick District Council (WDC) tenant transfers to such), are moved to capped formula ('target') social rent when re-let with immediate effect or as soon as practicably possible.
- 2.2 That Executive notes that adoption of this policy will increase income to the Housing Business Plan by approximately £180m over 50 years, equivalent to approximately 620 new homes compared to making no attempt to reach convergence.

3. REASONS FOR THE RECOMMENDATION

- 3.1 For the Council meeting of 26th February 2014, Members were to be presented with a report setting out the recommendations for the 2014/15 rent increase including the proposal that void properties were moved to capped formula ('target') social rent when re-let.
- 3.2 At the Finance and Audit Scrutiny Committee on 11th February 2014 the Committee put forward an alternative to the recommendation so that if an existing Warwick District Council tenant transfers to a void property, the tenant should still be eligible for the current level of rent and not the capped formula (target) social rent. This was suggested so as not to discourage a WDC tenant from downsizing.
- 3.3 At the Executive meeting on 12th February 2014, the matter was discussed and it was recommended that the original proposal should be put forward to Council.
- 3.4 At the Council meeting on 26th February 2014 the matter was debated and it was resolved that neither the original or amended proposal would be adopted so that further legal advice could be obtained in relation to the recommendation.
- 3.5 The recommendation to move void properties to the capped formula (target) rent is in accordance with the Government's proposed rent policy. The current Rent Restructuring Policy enables the gradual movement towards the capped formula (target) rent through annual rent increases. The Government is now proposing to abolish rent restructuring and strongly encourages Local Authorities to reach convergence through the movement of rent to the capped formula (target) social rent at void stage, rather than through annual rent increases.
- 3.6 Although the recommendation that is being put forward to move void properties to the capped formula (target) social rent when re-let is in line with the proposed Government Policy which is to take effect from April 2015, there is no legal reason why the Council is not able to adopt the policy in advance of this date.

- 3.7 If this policy were to be adopted but not apply equally to all void properties, as in the recommendation proposed by the Finance & Audit Committee, then the Council would need to be satisfied that it was for a proper purpose and not thereby inadvertently breaching the Public Sector Equality Duty (PSED).
- 3.8 In order to establish whether such a policy might potentially be in breach of the Duty in respect of those with “protected characteristics” of gender, age or race, research has been carried out into the demographics of the Council’s existing tenants and applicants on the waiting list. This research shows that:
- The gender profile is almost identical, with 54% of tenants and applicants being female
 - The age profile of existing WDC tenants is significantly weighted to the older age group with 47% of tenants aged 55 and over compared with 29% of HomeChoice applicants
 - 7% of existing WDC tenants are from BME community compared with 14% of HomeChoice applicants
- 3.9 Therefore, those who would be likely to benefit from the proposed amended policy are predominantly white and more elderly. The legal advice that has been received states: “there is therefore a real risk that if the council adopted the policy and were challenged, it would be found to have breached the PSED, unless it can show that the policy was adopted for a proper purpose and the fact that this results in a breach of the Duty is proportionate as a means of achieving that purpose”.
- 3.10 The purpose of the proposed amendment was in order to mitigate the potential consequence that this policy could have on existing Warwick District Council tenants. It was considered that some tenants who are under occupying may not be encouraged to downsize if the rent levels of the smaller property would be the similar to, or indeed more than the larger property that they were “under-occupying”.
- 3.11 Analysis of a sample of transfers that were carried out in 2013/14 was conducted which shows that none of the tenants who transferred would have been disadvantaged under the proposed policy. This is because:
- Most (60%) of tenants would still have witnessed a reduction in rent
 - The remaining 40% (a total of 7 tenants) who would have witnessed an increase in rent, 5 tenants were eligible for the Tenants Incentive Grant Scheme (TIGS) which would have covered the additional rent costs for at least 7 years.
 - The remaining tenants who would have witnessed an increase in rent were in receipt of full housing benefit and therefore were not directly affected by the rent charge.
 - For tenants downsizing, there are also other financial benefits, for example a reduction in energy costs as well as council tax costs
 - Any tenants affected by the under-occupation charge would no longer be subject to this charge and feel the benefits from this.
- 3.12 Therefore, the legal advice is that that there are not sufficient grounds to demonstrate that adopting the proposed amendment, which could potentially breach the PSED, is a proportionate act to achieve its purpose.

4. POLICY FRAMEWORK

- 4.1 The Council currently has the legal power to set its rents at any level it may determine, subject to a requirement to act reasonably.
- 4.2 However, if the Council were to determine its rent increases without reference the Government's guideline rent formula, there is a risk that such rent increases could exceed:
- a) the level of rent increase permitted under any future Secretary of State direction and subsequent rent standard applicable to local authorities (which would be a breach of statutory law); and/or
 - b) the weekly limit rent for Housing Benefit subsidy purposes (which could lead to the Council having to partially fund the Housing Benefit bill itself).
- 4.3 The financial implications on the HRA business plan of both of these risks would need to be given due consideration before the Council could reasonably determine any rent increases.
- 4.4 The Council has the power to set rents for its HRA properties but must have regard in particular to any relevant standards set by the regulator. The current provisions set standards for Registered Providers which they must comply with, however at the moment this does not apply to Local Authorities. In the recent Rent Setting Consultation issued by the DCLG, it indicated that guidance would be issued for Local Authorities and there was no indication that the regulator would require local authorities to comply with its standards in the same way that Registered Providers do.
- 4.5 Therefore, the Council has the power to set any rent that it wants, so long as it's reasonable. The Council must take into account all relevant considerations and record the reasoning behind the decision in order to be able to demonstrate its reasonableness. In the context of setting rents, an important consideration will of course be to set rents at a level which will enable the Council to meet its HRA business plan requirements.
- 4.6 In addition to reasonableness, the Council should bear in mind that at some point the Secretary of State may direct the social housing regulator to set a rent standard based upon the Government's social rent policy, which the Council would be legally obliged to comply with. There is a risk therefore that before the Council has caught up with its rent increases, a rent standard could be imposed upon local authorities which may prohibit the Council from implementing its next rent increase in full.
- 4.7 A further consideration for the Council is the limit on how much Housing Benefit the Council can recover from central Government (known as Housing Benefit subsidy). Although the subsidy rules do not limit the 'eligible rent' for the purpose of Council tenants claiming Housing Benefit, if a local authority were to increase its average weekly rent above the 'weekly limit rent' set by the Secretary of State for each authority, it would only receive subsidy on the Housing Benefit up to that limit and would have to fund the cost of additional Housing Benefit above the limit rent itself.
- 4.8 Re-letting void homes at capped formula (target) social rent is a change in the council's current rent policy. This will be the only way the Council can continue

the policy of moving towards target social rents if, as expected, the new rent policy proposed by Central Government is implemented.

- 4.9 The recommendation does not constitute a change to matters of Housing Management and therefore is not subject to the duty to consult.
- 4.10 The provisions in the Housing Act relate to the requirement to give notice of an increase in rent of secure tenancy. The proposals do not relate to increase in rent in any secure tenancy, but only to the rent of a new secure tenancy. It is for the prospective tenant to decide whether or not to accept the tenancy at that rent. The proposals do not therefore amount to a rent increase for which there is a requirement to give notice.
- 4.11 A key element of Fit for the Future is ensuring that the Council achieves the required savings to enable it to set a balanced budget whilst maintaining service provision. The Housing Revenue Account is subject to the same regime to ensure efficiency within the service.

5. BUDGETARY FRAMEWORK

- 5.1 The HRA is largely funded from rental income; therefore rent policy has a significant impact on the future sustainability of the HRA Business Plan, and the ability to achieve the strategic objectives outlined in the Plan.
- 5.2 Housing Rents were agreed by Members in February 2014 to be increased by a lower amount than they would have been following standard 'rent restructuring' for 2013/14 and 2014/15, however the HRA Business Plan presented to members in December 2013 assumes rents for all new tenancies remains based upon rents increasing to standard formula ('target') social rents over time.
- 5.3 For illustration, if void properties had been moved to capped formula ('target') social rent from 1st April 2014, rental income for 2014/15 would be approximately £50,000 higher compared to not implementing this policy at all during the year.
- 5.4 However it should be understood the loss in future years on never implementing this policy would be cumulative; in 2015/16 the in-year loss would be £150,000. Over 10 years the projected cumulative loss is £5m, over the 50 Year Business Plan £180m.

6. RISKS

- 6.1 In 2012, the Government abolished the subsidy system whereby the Council returned all of its rental income to the Government and then were issued with a subsidy payment which was based on what the Government had calculated the Council needed to manage its properties. This resulted in some Councils receiving less than their rental income and some Councils receiving more than their rental income.
- 6.2 In order for the subsidy system to end, each Council was provided with a settlement figure, based on what the Government would have received over the next 30 years from the subsidy system. This resulted in Warwick District Council taking out debt of £136.2 million to be repaid over 50 years.

- 6.3 The Housing Business Plan was developed based on a number of assumptions. One of the most important and significant assumptions underpinning the plan is the rental income to be received during the life of the plan which is used to service the debt and cover the management and maintenance of the existing service, as well as the generation of surpluses which could be used to deliver any aspirations of the Council.
- 6.4 The Housing Business Plan as approved by Members in 2012 had initially assumed that the rent restructuring policy would remain and that over a number of years, all properties would reach convergence at some point. The plan was subsequently revised and presented to Members on December 2013, whereby the rental income assumption was revised in accordance with the Governments proposed social rent policy.
- 6.5 The Governments proposed social rent policy changes already reduces future rental income weakening the ability to deliver new homes. Should the Council decide to go further by not moving all void homes including existing Warwick District Council tenants who transfer, to capped formula ('target') social rent when re-let, then this will have a further significant impact to the Business Plan of £180m.
- 6.6 The Council are only two years into a 50 year Business Plan and a significant reduction to the assumed income has the potential to place the Council in a potentially vulnerable position. Whilst it could be considered that the Housing Business Plan is robust and relatively strong, it is very early stages and should the Council witness other adverse changes to the assumptions contained within the plan, for example updated stock condition data which demonstrates a significant increase in liability, then the plan could become at risk, certainly at least to the delivery of the aspirations to deliver new social housing, and at the very worst case scenario, to the viability of the plan to service its debt and maintain existing services to customers.
- 6.7 The Council are managing the Business Plan very closely and have been reporting performance to the Interim Housing & Property Board and to Finance and Audit Scrutiny committee on a regular basis. The plan has also been updated on to reflect changes in performance and policy, and where necessary mitigating actions have been undertaken.
- 6.8 The Council will need to continue to closely monitor the Business Plan to ensure that principally the plan remains viable and also that any plans which are developed to deliver the aspiration to deliver new homes are realistic and affordable.

7. ALTERNATIVE OPTION(S) CONSIDERED

Do not Attempt to Reach Convergence (Do Nothing)

- 7.1 The Council could choose not to increase the rent when a property became void, and effectively keep rents below formula rent. This would mean rents always remain below the normal level of social rents. This would significantly reduce Business Plan resources, by approximately £180m over 50 years, decreasing the projected number of new homes that could be built by 620.
- 7.2 In addition, this would also result in the Council acting against the Government Guidance for social rent setting which strongly encourages Local Authorities to

reach convergence through the movement of rent to the capped formula (target) rent at void stage.

Attempt to reach convergence, but exclude existing tenants from the policy

- 7.3 This option has been considered; however as set out in paragraphs 3.7 to 3.12, it is likely that such a policy may result in the Council inadvertently breaching the PSED.

Attempt to reach convergence through the application of higher rent increases in future

- 7.4 The Council currently has the legal power to set its rents at any level it may determine, subject to a requirement to act reasonably, and could therefore choose to apply rent increases higher than CPI + 1% in future years to move all rents towards formula rent through annual rent increases. This could be achieved by using the previous rent restructuring formula (RPI + 0.5% + up to £2), or any other formula which the Council deems reasonable.
- 7.5 However setting rent increases higher than the proposed national policy is likely to be challenged by tenants and other interested parties. Additionally the Council may have to repay a proportion of rental income under Rent Rebate Subsidy Limitation, or be otherwise penalised by any mechanism Central Government may introduce in future to discourage non-compliance with central rent policy.

8. BACKGROUND

- 8.1 In December, 2007, the Executive approved the introduction of a Tenants Incentive Grant Scheme (TIGS). This provides a financial incentive to secure tenants who under occupy a property and wish to downsize to smaller accommodation. This supports the Council's intention to make most effective use of its housing stock and meet local housing need.
- 8.2 The current scheme allows secure tenants aged 60 years or over to receive a payment of up to £5000 if they transfer from a three bedroom or larger property to a one or two bedroom property designated for occupation by the elderly, or a one bedroom general needs property.
- 8.3 The current scheme also allows for secure tenants aged less than 60 years of age to receive a payment of up to £5000 if they transfer from a three bedroom property or larger to a one bedroom general needs property.
- 8.4 The Business Plan provides an ongoing budget of £95,000 per year for the TIGS scheme. In addition, the Business Plan also provides a further ongoing budget of £5,000 per year for a Resettlement Support Grant which is available to applicants who require assistance with relocation costs.
- 8.5 The Housing Strategy 2014-2017 identifies the need, in response to the recent changes in welfare policy, for a review of the grant schemes to ensure that they provide the best opportunity to make the best use of stock and assist tenants who may be in need. A report will be presented to Executive by March 2015.