

Cabinet Member Decision Note

Change of Tenancy type at Firethorn Close, Gorse Hill

To: Cabinet Member for Housing and Public Safety

Date: 30th March 2021

Author: Head of Housing Business Development

Wards: Gorsehill and Pinehurst

Parishes Affected: Swindon Central North

1. Purpose and Reasons

- 1.1 This report will outline the proposal to amend the tenancy type for the bungalows at Firethorn Close from lifetime tenancies to flexible fixed term tenancies to help increase the move on from these properties.
- 1.2 The Tenancy Strategy for Swindon Borough Council properties was set out and approved at Cabinet on 24th July 2013 (Cabinet Minute 27, 2013/14 refers) and Council on 26th September 2013 (Council Minute 39(1), 2013/14 refers). As the proposal is a significant policy change for these properties then a Member decision is required.
- 1.3 This proposal will help the Council to achieve Priority 4, Help people to help themselves, whilst always protecting our most vulnerable children and adults.

2. Recommended Action to be Authorised by a Cabinet Member Under Delegated Powers

Recommended that:

- 2.1 The Director of Housing be authorised to approve the change of tenancy from lifetime tenancy to a 4 year fixed term flexible tenancy at the properties at Firethorn Close for all new tenancies commencing after 1st April 2021.

3. Detail

- 3.1 The Firethorn development is a scheme of assisted living homes accommodation catering for Adults with additional needs known and supported by social care and or health. The properties are semi-detached and detached bungalows with a garden. There are two three-bedroom three-person bungalows and twenty-two one bedroom two-person bungalows, 24 bungalows in total.
- 3.2 The scheme opened in June 2018 with the primary focus on medium term move on accommodation to enable tenants with a moderately high level of need to develop or enhance their independence skills and then move on to more independent accommodation.

Cabinet Member Decision Note

Change of Tenancy type at Firethorn Close, Gorse Hill

To: Cabinet Member for Housing and Public Safety

Date: 30th March 2021

- 3.3 Although these properties were developed as move on accommodation the granting of a lifetime secure tenancy has created an entitlement of permanence. This has resulted in some tenants who no longer need the support offered at Firethorn Close being reluctant to engage with the move on process. They are ready to move on to more independent accommodation but in effect are now blocking this high demand accommodation and preventing more complex housing applicants the opportunity to benefit from the accommodation and support at Firethorn Close.
- 3.4 There are currently several tenants who are in this situation whilst there are a number of clients waiting for a tenancy at Firethorn Close.
- 3.5 There was discussion around the type of tenancy offered when the project was being developed and legal advice was sought on whether to grant a tenancy or a licence. Following the legal advice a decision was made to grant secure tenancies as the occupiers had exclusive possession.
- 3.6 To end the current secure tenancy a court order would need to be sought and this takes time and resource. A fixed term tenancy would also need a court order but the most important element is that the occupier would be very much aware that their stay in the accommodation is time limited and this would greatly assist the move on approach.
- 3.7 The Localism Act 2011 amends the Housing Act 1985 to create flexible tenancies, which are secure tenancies granted for a term of no less than two years.
- 3.8 The tenancy agreement we would offer for Firethorn Close would be the flexible tenancy agreement that we were using up until the change to lifetime secure tenancies in March 2020. The only difference is that we would be offering a 4 year fixed term rather than 5 years or 10 years that we originally offered.
- 3.9 There is no limit to the number of times a further flexible tenancy can be offered provided there is a clear demonstrable need for the type of property.
- 3.10 In the last year of the end of the flexible tenancy, a formal review will need to be carried out. In order to ensure we are compliant with the notice requirements, the review must be complete and the relevant notice served no later than six months before the expiry date of the tenancy. We will serve six-month notices on all flexible term tenants, even if we are minded to offer a further tenancy at the same property. We will always explain why we are serving the notice, what we are minded to do and what we expect of tenants during the last 6 months of their flexible tenancy. The two-month notice will only be served where we are requiring the tenant to move or are ending the tenancy.

Cabinet Member Decision Note

Change of Tenancy type at Firethorn Close, Gorse Hill

To: Cabinet Member for Housing and Public Safety

Date: 30th March 2021

- 3.11 There are three possible outcomes at the end of the four year term, either the tenant will: 1. be allowed to stay in their current home – where this is the case they will be granted a new four year flexible tenancy. Or 2. Be asked to move to an appropriate new home – where this is the case, they will be offered an introductory to lifetime secure tenancy at a new property. Or 3. Be asked to move out of their home and find alternative accommodation, with SBC support if necessary.
- 3.12 As required by the Localism Act 2011 tenants have the rights to challenge our decisions about flexible tenancies via a review process. The law says that decisions which can be challenged are: 1.The length of flexible tenancy granted. This may only be requested where the length of the term does not reflect the provisions of this Tenancy Policy. 2. Our decision to end a flexible tenancy at the end of the four year term. Tenants have a right to request a review in these cases.
- 3.13 To be more effective with the 4-year flexible tenancy, it is recommended that these be issued to all new tenants into our Firethorn Close ASC properties, without the need to be a 1-year introductory tenancy beforehand. Initially introductory tenancy legislation was introduced to deal with ASB, however legislation has changed and there are tools that are more effective available to deal with ASB.

4. Alternative Options

- 4.1 The option of not changing the tenancy would mean that the current situation of limited move on from these supported housing units would continue.

5. Consultation

- 5.1 The following Opposition and Minority Group Spokespersons / Ward Members have been consulted on the recommendations of the report and their responses are also summarised below:

Councillor Dixon - I support the motivation to provide the properties for the most in need. But I would like to see that there is appropriate support for tenants if they are moved on to other accommodation. Tenants should be supported as part of the process, not just as part of the move but also once they have moved on to other accommodation. I would like to see that alternative accommodation is of a similar rent level and is within the SBC social housing provision and that the tenants are offered

Cabinet Member Decision Note

Change of Tenancy type at Firethorn Close, Gorse Hill

To: Cabinet Member for Housing and Public Safety

Date: 30th March 2021

permanent tenancies with SBC. I would not want to see that any tenant is moved outside Swindon.

Councillor Donachie – No Comment received.

6. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 6.1 Many of the clients who have been assessed for accommodation and support at Firethorn Close and waiting for a unit to become vacant are currently in accommodation which is more expensive for Swindon BC to fund.

Legal and Human Rights Implications

- 6.2 Individuals who require supported living are considered and assessed not only for Firethorn Close but also other supported living schemes in Swindon. These schemes which are managed by Housing Associations offer assured shorthold tenancies which are generally for 6 months and offer no lifetime tenancy. Each tenant who moves in will be aware that the tenancy is short term and not granted for life.
- 6.3 A secure life time tenancy can only be ended for prescribed reasons or breaches of the tenancy. Some of these reasons/breaches give rise to mandatory grounds of possession and some give rise to discretionary grounds of possession (i.e. where the Court has discretion in whether or not to grant a possession order). As life time secure tenancies are 'open ended' there is no right to possession of the property based upon the length of occupation. With the proposed 4 year fixed term flexible tenancy, as well as retaining the ability to regain possession of the property during the term following a breach of the tenancy, there is a further mandatory ground of possession enabling the Council to regain possession of the property at the end of the fixed term.

Climate Change Impact

The proposals would not bring a change in service delivery and Officers believe that there is no expected effect on the Council's carbon footprint.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 6.4 Staff would be better able to manage the expectations of tenants if the tenancy was fixed term. There are no other implications.

Cabinet Member Decision Note

Change of Tenancy type at Firethorn Close, Gorse Hill

To: Cabinet Member for Housing and Public Safety

Date: 30th March 2021

Diversity Impact Assessment

- 6.5 A Diversity Impact Assessment already exists for the Council's Allocations Policy.

Risk Management

- 6.6 The recommendations of this report will help ensure the best placement is available to clients who require supported accommodation.

7. Consultees

- 7.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.

8. Background Papers

- 8.1 None

9. Appendices

- 9.1 None

10. Declarations of Interest

Opposition and Minority Group Spokespersons / Ward Members

- 10.1 Opposition spokespersons / Ward Members are reminded to consider whether they have any known interests in any of the matters referred to in this Decision Note. If such an interest exists this should be declared to the Monitoring Officer (or Senior Committee Clerk), and they should take no part in the consideration of the Briefing Note and should refer the Briefing Note to their Group Leader.

Cabinet Member(s)

- 10.2 Cabinet Members are reminded to consider whether they have any known interests in any of the matters referred to in this Decision Note. If such an interest exists this should be declared to the Monitoring Officer (or Senior Committee Clerk), and they should take no part in the consideration of the Decision Note and should refer the Decision Note to the Leader of the Council instead for consideration.

11. Sign-off

- 11.1 The Cabinet Member is requested to respond with 5 days of the date of this report (5th April 2021).

Cabinet Member Decision Note

Change of Tenancy type at Firethorn Close, Gorse Hill

To: Cabinet Member for Housing and Public Safety

Date: 30th March 2021

- 11.2 Decisions of Cabinet Members will be published in the Members' Bulletin. The Decision must not be implemented until such time that a five-day "Call-in" period has expired. This date will be specified in the Members Bulletin. If a Decision is "called-in" it will be referred to the Scrutiny Committee for consideration. It must only be implemented if the Scrutiny Committee has raised no objection. If an objection is forthcoming the matter will be referred back to the Decision-Maker.
- 11.3 The Cabinet Member is requested to indicate one of the following responses to the Recommendations set out in Section 2 of this report:
- (To be signed electronically)