

Agenda Item No: 4 **Report No:** 210/13
Report Title: Tenancy Policy for Lewes District Council
Report To: Housing Working Party **Date:** 17 December 2013
Lead Councillor: Councillor Nicholson
Ward(s) Affected: All
Report By: Corporate Head – Housing Services
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Purpose of Report:

To clarify the Council's position on the use of Flexible Tenancies and Succession policy, prior to consultation.

Officers Recommendation(s):

- 1 To give guidance on the preferred use of flexible tenancies, if at all.
 - 2 To maintain the rules of succession for new tenancies as existing under the Localism Act, and to agree to one reasonable offer of suitable accommodation being made to the qualifying member of the family who would have succeeded under previous legislation
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Reasons for Recommendations

1. Information

- 1.1. Lewes District Council currently offers all new tenants who were not previously tenants of a social landlord an Introductory Tenancy for their first twelve months, which then converts to a secure tenancy provided that there have been no breaches of tenancy or outstanding arrears. If there have been such breaches the Council has the option to extend the Introductory Tenancy for a further six months.
- 1.2. The Localism Act 2011 introduced a new form of social housing tenure: Flexible Tenancies. A Flexible Tenancy is for a specified limited term, renewable at the discretion of the housing provider. Government guidance states most Flexible Tenancies should be for a minimum period of five years.
- 1.3. The Tenancy is reviewed six months prior to the end date and a decision made whether or not it should be renewed. Reasons for not renewing could be, eg, that it is too large or too small for the tenant's current family size, or has an adaptation which the family no longer needs. If the tenancy is not renewed the Housing provider has an obligation to provide advice and assistance in finding other accommodation. There must be a procedure for internal review.

- 1.4. The Council needs to decide whether to use this form of tenure, and if so, for what time period, and whether any particular type of property, such as sheltered accommodation, should be excluded.
- 1.5. It should be noted that the Welfare Reform provisions on the removal of the Spare Room Subsidy already provide an incentive for families who are overoccupying their current home to downsize.
- 1.6. The Council already has a Tenancy Strategy in place, formulated with other East Sussex authorities, which informs other providers in the Lewes District area of the Council's preferences. A Tenancy Policy will determine how the Council manages its own stock.
- 1.7. Our Tenancy Strategy encourages other housing providers in our area to grant secure or assured tenancies for sheltered accommodation and it would therefore seem appropriate to grant secure tenancies as a matter of course for our own sheltered accommodation.
- 1.8. The Localism Act also changes the rules of succession for all new tenancies commencing after 1 April 2012, limiting the right of succession to a secure council tenancy to the spouse or partner of a tenant only, unless the Tenancy Agreement specifically state otherwise. The Council has the option to amend the Tenancy Agreement to permit other family members to succeed.

2. Reasons for using Flexible Tenancies

- 2.1. Family size can be more closely matched to property size, and as a tenant's family size increases or decreases their accommodation can be matched to their needs, freeing up their accommodation for someone else who needs it.
- 2.2. If the applicant does not need the particular adaptations in the property it can be utilised for a short term whilst a more suitable applicant with specific need who wants that particular area is sought.
- 2.3. If a tenant does not manage their tenancy in a satisfactory way the Council can be assured that possession will be obtained at the end of the tenancy and the case will not be capable of defence and hence delay can be avoided.
- 2.4. Flexible tenancies might also be suitable for prospective Foster carers, who need to be occupying larger accommodation before they can be assessed as by Social Services; they could be granted larger accommodation with the proviso that if the placement does not work out they will be downsizing when the Flexible Tenancy ends
- 2.5. Tenants who were not affected financially by Welfare Reform, i.e not claiming Benefit, but nevertheless underoccupying their accommodation could be required to move.

3. Disadvantages of using Flexible Tenancies

- 3.1. Tenants may feel unsettled and fail to engage in the community.

- 3.2. Tenants might be reluctant to decorate or maintain the property because it may not be their permanent home, leading to a deterioration in the Council's stock.
- 3.3. Requiring families who have become settled with their children in local schools to move is disruptive.
- 3.4. The actual number of tenants whose circumstances have changed over a five year period is unlikely to be significant. Most homeless applicants have young families.
- 3.5. Considerable input from staff time would be required in arranging visits to tenants whose tenancies were due to end, assessing their requirements and making alternative accommodation available, which will impact on staff resources.

4. Other Authorities' Policies on Flexible Tenancies

- 4.1. Wealden District Council has adopted Flexible Tenancies. Brighton and Hove City Council, and Eastbourne Homes (an Arms Length Management Association) have not done so. Other local councils do not have their own housing stock. Most housing associations with a significant number of properties in the Lewes District, including Southern Housing Group and Guinness Trust, use Flexible Tenancies.

5. Succession Policy

- 5.1. Under the Housing Act 1985 as amended, <http://www.legislation.gov.uk/ukpga/1985/68/part/IV/crossheading/succession-on-death-of-tenant> if a tenancy predates 1 April 2012 it can be passed on to the surviving son or daughter, or other member of the family of a sole tenant, so long as they are not themselves a successor. Note that under recent case law if one joint tenant dies, no succession has taken place, just a reduction in the number of tenants. The member of the family needs to have resided with the tenant for the previous year and provide documentary proof of this, such as a driving licence or utility bills in their name, and be registered on the electoral register at that address.
- 5.2. If the tenancy commenced after 1 April 2012 only a spouse or partner, including a civil partner, is eligible. (Localism Act 2011) <http://www.legislation.gov.uk/ukpga/2011/20/section/160>
- 5.3. The Council has grounds for possession if a family member succeeds to a property which is reasonably more extensive than they need, and the Council has offered them suitable accommodation provided that the necessary Notice has been served within the correct time period.
- 5.4. It would be possible for the Council to amend the tenancy agreement to permit family members to succeed to all tenancies. I would advise against this course of action, and instead agree to make the surviving family member, if confirmed to have been resident for the required period with the tenant, one reasonable offer of accommodation in the social sector. Offer to be deemed reasonable on the grounds of size, type and area, taking into account scarcity of that type of accommodation and other demand upon it.

5.5. It should be noted that a single person succeeding to a property larger than their needs would automatically become subject to Social Sector Size Criteria, if in receipt of Housing Benefit. Further, a significant number of two and three bedroom houses would not be made available for letting to families if a single person was permitted to succeed.

6. Financial Appraisal

6.1. There are no financial implications

7. Background Papers

8. http://www.lewes.gov.uk/Files/hsg_tenancy_strategy.pdf Appendices