

TENANCY POLICY

**Responsible Cabinet Member – Councillor Veronica Copeland,
Adult Social Care and Housing Portfolio**

Responsible Director – Richard Alty, Director of Place

SUMMARY REPORT

Purpose of the Report

1. The Council is required to produce a Tenancy Strategy and Tenancy Policy as a result of the introduction of the Localism Act 2011. This report seeks approval for these two related housing documents as attached at **Appendix 1 and 2**.

Summary

2. The Localism Act introduced a number of significant changes to Social Housing including the introduction of Flexible Tenancies (Fixed Term Tenancies), changes to regulatory guidance on allocations and the discharge of homelessness duties. The Government's intention is to increase the flexibility within social housing to better meet changing needs. As part of this process the Localism Act requires Local Authorities to produce a Tenancy Strategy. This document sets out the Local Authority's strategic view of how Registered Providers¹ should manage their tenancies. Registered Providers are expected to "have due regard" to the Tenancy Strategy when producing their own Tenancy Policies. The Tenancy Strategy is therefore essentially focused on Registered Providers.
3. Most Registered Providers work in more than one Authority and in the Tees Valley the larger local providers work across all five Local Authorities. There was a potential situation where each local provider would have to take account of five different Tenancy Strategies. To address this issue and to efficiently develop the strategy the five Authorities came together to produce a single strategy. The draft Tenancy Strategy has been widely consulted on across the Tees Valley and all five Authorities are now asked to approve the strategy.
4. The Regulatory Standards Framework² was amended in April 2012 to take account of the Localism Act and requires Registered Providers to also produce a Tenancy Policy. As this Council has retained ownership and management of its Council stock and as we are a

¹ Previously known as Registered Social Landlords, the new definition includes profit and non-profit making social housing providers to be registered with the Homes and Communities Agency

² More details on the Regulatory Standards Framework can be found here:

<http://www.homesandcommunities.co.uk/ourwork/regulatory-framework>

Registered Provider therefore we have to produce a Tenancy Policy. The Tenancy Policy sets out how we will manage tenancies and the new flexibilities introduced in the Localism Act. The most significant change proposed in the Darlington Tenancy Policy is the introduction of Flexible Tenancies for a small number of properties. This change does not affect existing tenants. It will only be introduced as specific properties become vacant and will not affect the rights of those who are already Lifetime Tenants (Secure) and who move into a property identified for a Flexible Tenancy. They will still be offered a Lifetime Tenancy. The change is introduced to ensure better use of limited property types.

5. As Flexible Tenancies will only be awarded to tenants new to social housing they will first be given a one year Introductory Tenancy (following current policy) and then a five year Flexible Tenancy totalling an initial 6 years. The advantage of a Flexible Tenancy is that at about one year before the end of the tenancy a review can take place to see if the original reasons for allocating the property remain, for example if the family size is such that they still need a four bed house. A process is established in the policy for conducting the review and there is also an appeals process³ that is the subject of regulatory guidance.
6. The Localism Act also made changes to the rights of those who become Lifetime Tenants after the 1st April 2012. These changes limit the right to succession and remove the right to retain a Lifetime Tenancy on transfer to another property. Most current Lifetime Tenants will usually still be offered a Lifetime Tenancy if they transfer except where they move into a property that has been identified as a Flexible Tenancy. This change is reflected in the Tenancy Policy.

Recommendation

7. It is recommended that :-
 - (a) The Tees Valley Tenancy Strategy be approved (**Appendix 1**)
 - (b) The Darlington Borough Council Tenancy Policy be approved (**Appendix 2**)

Reasons

8. The recommendations are supported by the following reasons :-
 - (a) These documents respond to the changes introduced through the Localism Act that the Council is required to produce
 - (b) The changes introduced within the Tenancy Policy will help to make the best use some limited types of properties within the Council stock. For some years annual house building has fallen behind the growth in identified needs and this situation is likely to continue for the foreseeable future placing additional pressure on existing stock
 - (c) The changes will also help to manage some of the consequences of the introduction of the Welfare reforms

³ The Flexible Tenancies (Review Procedures) Regulations 2012

- (d) This is a limited introduction of Flexible Tenancies that falls in line with most other local Registered Providers in the Tees Valley

Richard Alty, Director of Place

Background Papers

- (i) Localism Act 2011
- (ii) Regulatory Framework for Social Housing in England: Homes and Communities Agency 2012
- (iii) Welfare Reform Act 2012
- (iv) Darlington Housing Strategy 2012-17
- (v) Darlington Homelessness Strategy 2010
- (vi) The Flexible Tenancies (Review Procedures) Regulations 2012

Ken Davies: Extension 2435

S17 Crime and Disorder	This report has no direct implications for Crime and Disorder
Health and Well Being	Should improve access to properties with major adaptation and ensure housing needs are more effectively met
Carbon Impact	There are no carbon impact implications in this report
Diversity	The impact will fall on housing waiting list applicants and those who became tenants after 1 April 2012 who apply for properties that have been identified for Flexible Tenancies
Wards Affected	All wards where properties are identified for use as Flexible Tenancies
Groups Affected	New Council tenants after 1 November 2012
Budget and Policy Framework	The issues contained within this report do not represent change to Council budget or the Council's policy framework.
Key Decision	This is a key decision
Urgent Decision	No
One Darlington: Perfectly Placed	These policies have implications for sustainable communities
Efficiency	The proposals will lead to a better use of Council stock

MAIN REPORT

Information and Analysis

Background

9. The Government has introduced a number of changes to encourage a more flexible use of social housing. They want local authorities to have a stronger role in how social housing is being used by Registered Providers⁴ in their area and they also want registered housing providers to clearly state the types of tenancy they will offer and the purpose they are being used for. As a consequence all Local Authorities are required to produce a Tenancy Strategy and registered housing providers are required to produce a Tenancy Policy. As Darlington Council has retained its own housing stock and is a Registered Provider we are required to produce both documents:

- (a) **The Tenancy Strategy:** The main purpose of a Tenancy Strategy is to set out the Local Authority's view on how tenancies should be used to meet local needs. Registered Providers operating in the area should give due regard to these broad objectives when formulating their own Tenancy Policies. In order to be effective, a Tenancy Strategy has to be consistent with the objectives detailed within the Housing Strategy.
- (b) **The Tenancy Policy:** The Tenancy Policy covers all the Council stock. It aims to:
 - (i) Explain the different types of tenancy we propose to use in the context of the current housing market in Darlington.
 - (ii) Set out how different tenancy types will be used, why we have decided to make use of them and the circumstances in which we will use them.
 - (iii) Detail information on the new Flexible Tenancies that were introduced through the Localism Act

Both documents are inter-related and therefore should be considered together. However, the Tenancy Policy is the more significant as it addresses the practical implementation of changes introduced in the Localism Act while the Tenancy Strategy is targeted specifically at Registered Providers and is a guidance document.

Proposals

The Tees Valley Tenancy Strategy

10. This Strategy was introduced as part of the Localism Act with the intention of strengthening the Local Authority's strategic overview of how Registered Providers working in the area make use of social housing tenancies to meet local needs. Guidance on producing Tenancy Strategies places particular emphasis on setting out how the new Flexible Tenancies (Fixed

⁴ Previously known as Registered Social Landlords, the new definition includes profit and non-profit making social housing providers to be registered with the Homes and Communities Agency

Term) may be used. The Strategy is therefore mainly targeted at Registered Providers. Apart from the obligation to produce the Strategy there are no other associated powers attached to the Tenancy Strategy. For example there is no power to enforce the Strategy should a Registered Provider not comply with it.

11. The impacts of Tenancy Strategies are likely to be limited. Registered Providers are only obliged to “have regard” to the Strategy. For regional Registered Providers and in particular national providers such as Home Housing or Hanover the number of Tenancy Strategies that they are expected to have regard to can be huge. A number of Tenancy Strategies have now been published and there are noticeable differences between them making it extremely difficult if not impossible for larger providers to comply with each one.
12. A decision was made to produce a Tees Valley-wide Tenancy Strategy rather than five separate Local Authority strategies. This was reported to Adults and Housing Scrutiny Committee in March 2012. The reasons for this decision were:
 - (a) Most Registered Providers work in at least two of the Tees Valley Local Authorities and most of the major housing providers work in all five Authorities. There was the potential for significant duplication of work as the same providers would be involved in five different consultation exercises.
 - (b) As each Registered Provider has to have due regard to the Tenancy Strategy there was the potential for Registered Providers to have to consider five quite different Tenancy Strategies when producing their Tenancy Policies. A single policy makes it much more likely that they will be able to comply with the Tenancy Strategy.
13. The Tees Valley Strategy has been produced following a wide ranging consultation programme including Registered Providers and other stakeholders in which virtually all the active Registered Providers in the Tees Valley participated. When consultations first began in the summer of 2011 most Registered Providers were reluctant to introduce Flexible Tenancies. This contrasts with the current position where most of the local providers are either intending or have introduced Flexible Tenancies. The current position is that in four of the five Local Authorities the main housing provider is planning or has introduced Flexible Tenancies. Flexible Tenancies are going to be used in slightly different ways across the Tees Valley but there will only be limited implementation.
14. The change in position is based on a growing recognition that in a very limited number of circumstances a Flexible Tenancy has the potential to be a useful tool in making best use of properties that have limited availability such as four bed houses. It is not unusual to find that over time the needs of a family who are allocated a larger property change and the family size reduces. A Flexible Tenancy creates the opportunity to review the situation on a five year cycle unlike a Lifetime Tenancy where it is entirely dependant on when the tenant chooses to move. This may be despite the level of under-occupation that may occur or the number of families living in over crowded conditions. The Welfare Reforms also address this issue and these reforms are another driver for the use of Flexible Tenancies.
15. The development of the Tenancy Strategy has therefore reflected the changes in attitude since the Localism Bill was produced. The Strategy must make clear:

- (a) The kinds of tenancies to be granted.
 - (b) The circumstances in which a particular kind of tenancy will be granted.
 - (c) Where tenancies are to be granted for a certain term, the length of the term and the circumstances under which a new tenancy shall be granted.
16. The Strategy must have regard to the Local Authority Homelessness Strategy and the Allocations policy. The key points in the Tenancy Strategy are:
- (a) A Lifetime Tenancy should be the main form of tenancy offered and a Flexible Tenancy should be the exception.
 - (b) Where a Flexible Tenancy is offered it should normally be for five years. Only in exceptional circumstances should it be a minimum of two years.
 - (c) At the end of the Flexible Tenancy it should be normal to offer another Flexible Tenancy.
 - (d) Where a tenancy is going to be ended a protocol has been established that Registered Providers are expected to comply with. This includes the provision of good quality advice and a right to review the decision not to renew.
 - (e) Where a Registered Provider is considering disposing of stock it should consult the Local Authority and if possible any income from the disposal should be used within the Local Authority.
 - (f) The Tenancy Strategy will be periodically reviewed by the five Local Authorities.

Tenancy Policy

17. The Tenancy Policy complies with the Tees Valley Tenancy Strategy and deals with the practical management of the different types of Council tenancies. It covers all general needs, sheltered and extra care tenancies managed by Darlington Borough Council. Its aims to:
- (a) Explain the different types of tenancy we propose to use in the context of the current housing market in Darlington.
 - (b) Set out how different tenancy types will be used, why we have decided to make use of them and the circumstances in which we will use them.
 - (c) Detail information on the new Flexible Tenancies that were introduced through the Localism Act
18. The Policy is the first opportunity to consider how we will make use of the power to introduce Flexible Tenancies. The Government has claimed that the introduction of Flexible Tenancies will allow for more flexible arrangements for people entering social housing, enable social landlords to manage their social homes more effectively and fairly, and deliver better results for local communities. The introduction of Flexible Tenancies

however is also seen as a controversial step. Widespread use is seen as a mechanism that may destabilise communities and create unnecessary disruption to family life. In introducing Flexible Tenancies the Government made reference to the implications of the Welfare Reforms and in particular the “bedroom tax” which will penalise people of working age who are in receipt of state benefits if they under-occupy. Undoubtedly the introduction of the Welfare Reforms will see more people move for financial reasons and Flexible Tenancies introduces some flexibility that will be useful in dealing with this challenge.

19. The main driver behind the introduction of Flexible Tenancies is the Government’s recognition that there is a growing problem about the lack of investment in housing and it concedes that in the current financial climate the backlog in new development will continue increasing the pressure on existing housing stock. This is an issue reflected in Darlington’s new Housing Strategy. The Government therefore want to see the existing stock being fully utilised and in particular social housing.
20. Flexible Tenancies have all the same rights as Lifetime Tenancies including the right to repair, right to buy, and a right of succession. They can also take in lodgers and sublet the property with the agreement of the Council. The only difference is the tenancy is time limited.
21. The introduction of Flexible Tenancies does not affect existing Lifetime Tenants as their rights are transferable and it can only apply when a property becomes available to let. The introduction of Flexible Tenancies is therefore a long-term measure, as no matter how extensively they are introduced the true impact will not be known until the time the tenancies are reaching their end date. This will generally be 6 years taking account of a 1 year Introductory Tenancy and then a 5 year Flexible Tenancy.
22. In Darlington there are a number of special circumstances where the introduction of Flexible Tenancies will improve the use of the stock. These include:

Table 1: Introduction of Flexible Tenancies

Property type	Reason
All 4 Bed properties	Darlington only has 72 four bedroom houses within its stock. In the period 1/4/2011 to 31/4/2012 only 8 four bed properties became available to let.
Properties with adaptation with a value over £7500	There are a small number of properties where very expensive adaptations costing more than £7,500 have been completed that can not easily be reversed. These all include fitting a “through floor” lift. In the past two years four properties have been adapted in this category and in total there are approximately 20 within the stock including properties with major extensions.
2 Bed Extra Care Housing flats	Currently there is only 1 property of this type

<p>All Rural Houses:</p> <ul style="list-style-type: none"> • Bishopton • Brafferton • Heighington • High Coniscliffe • Hurworth • Killerby • Middleton St George • Piercebridge • Sadberge • Stainton • Summerhouses • Walworth 	<p>In over half the rural areas there are 3 or less houses. Four areas have less than 40 properties with Middleton St George having the largest provision of 67 houses. Turn over is very low with only 6 houses being let during a 12 month period</p>
<p>Properties in areas of major modernisation and regeneration</p>	<p>Darlington has sustained a successful programme of modernisation and regeneration of its stock but one of the issues that has been a problem is the best use of stock during the lead in time and then during the work. We will consider introducing Flexible Tenancies for individual projects to help ensure the best use of the stock during these periods of upheaval</p>
<p>Properties for Foster families</p>	<p>Sometimes foster carers need larger accommodation in order for their fostering application to be progressed. In some cases people who foster decide not to continue fostering and they will no longer have a need of a larger property.</p>

23. In total Flexible Tenancies will cover only about 5% of the total Council stock and will represent less than 3% of relets each year. Some of the properties will go to existing tenants who will retain a Lifetime Tenancy and this will reduce the scale of introduction. Therefore the impact of the introduction of Flexible Tenancies will be focused; in the long-term and accumulative as identified properties become available to let. The exception may be where a regeneration programme is commissioned. For the period of the programme 2 year Flexible Tenancies might be offered to ensure the best use of the stock thus reducing the number of long-term voids related to this work.

24. A number of protections will be introduced to support Flexible Tenancies:

- (a) A review process and criteria have been introduced to determine what should happen at the end of the tenancy. This process will start at the beginning of the last year of the tenancy. It is designed to provide an early decision and certainly for the tenant in advance of the minimum the statutory requirements. Where there is a continuing need for the property a further five years will be awarded.

- (b) A special appeals mechanism has been introduced concerning the length of tenancy on offer and the refusal to renew a tenancy. Other forms of complaint will be dealt with in existing procedures.
- (c) There is a protocol for dealing with situations where the tenancy is to be ended setting out what assistance the tenant can expect.

25. The Tenancy Policy also covers the other forms of tenancy that are currently on offer:

- (a) Lifetime Tenancy
- (b) Introductory Tenancy

26. The Localism Act also introduces changes to Lifetime Tenancies

- (a) New tenants will have a reduced right of succession. They are entitled to one succession. They can be succeeded by a Husband/Wife (spouse) or Civil Partner but not a son or daughter or other relative.
- (b) New tenants will not have the right to a Lifetime Tenancy if they transfer. This only has implications if they exchange/transfer to a property with a Flexible Tenancy. They would be offered a Flexible Tenancy.
- (c) Should a pre November 2012 tenant carry out a mutual exchange with someone with a Flexible Tenancy they will afterwards be treated as a post November 2012 tenant. This is because the normal assignment of tenancy that takes place between Lifetime Tenancies is not available. Both tenancies have to be terminated and new tenancies awarded. The pre November 2012 is therefore brought to an end.

Set out below is the new structure for tenancies:

Table 2: Structure of Tenancies

Tenancy Type	Who Can Be Offered	Property Type	Length of Tenancy	Rights
Introductory Tenancy	Anyone who is not already a Lifetime Tenant with the Council or another Registered Provider. Will apply to Flexible and Lifetime Tenancies.	All property types	1 year This may be extended to 18 months if there has been a problem with the tenancy	Introductory Tenancies do not have all the rights of a secure tenant. Tenants could be evicted more quickly and easily if they break the Tenancy Agreement
Lifetime Tenancy: Pre November	Anyone who has successfully completed an Introductory	All properties types	There is no limit on the length of	They retain all rights set out in the Tenancy

Tenancy Type	Who Can Be Offered	Property Type	Length of Tenancy	Rights
2012	Tenancy or is already a Lifetime Tenant		tenancy	Agreement
Lifetime Tenancy: Post November 2012	Anyone who becomes a tenant after November 2012 and then has successfully completed an Introductory Tenancy	All property types except 4 bedroom properties, rural properties and those with major adaptations (over £7,500) Properties included in major modernisation programmes	There is no limit on the length of tenancy	One right of succession. There is no right to transfer the Lifetime status to another property. All other rights are the same as pre November 2012 tenants
Affordable Tenancy	Anyone moving into a property developed with a Homes and Communities Agency (HCA) development agreement. Can apply to either Lifetime or Flexible Tenancies	Not available at present	This could be either a Lifetime or Flexible Tenancy	N/A
Flexible Tenancy	Anyone who is not a pre 1 st November 2012 Lifetime Tenant with the Council or another Registered Provider Foster carers needing a larger property who are not existing tenants	All 4 bedroom properties All rural homes Properties with major adaptation – over £7,500.00 2 bedroom extra care housing flats Properties included in major modernisation programmes	For most properties: initially a 1 year Introductory Tenancy followed by 5 year Flexible Tenancy. Properties in major modernisation programmes - 2 year Flexible Tenancy	Same as post November 2012 tenant except there is a time limit on the tenancy

Outcome of Consultation

27. The Tenants Board have had two opportunities to consider the introduction of the Flexible Tenancies. A presentation was made to the Board prior to the final drafting of the Tenancy Policy when the proposal was outline. There was overwhelming support for this initiative. They were then sent a full copy of the full Tenancy Strategy to consider in advance of the wider consultation.

28. A copy of the Tenancy Policy was also placed on the Council Website and other stakeholders were notified of the consultation.