

Record of Cabinet portfolio member decision

JOINT TENANCY STRATEGY

DATE OF PUBLICATION – 7 JUNE 2013

- NB: The Head of Legal and Democratic Services must receive a request to call-in this decision by 4.30pm on Friday 14 June 2013.
- Subject to the call-in mechanism this decision will be implemented on Monday 17 June 2013.
- The council's cabinet portfolio holder has taken the executive decision outlined below. This decision is published in accordance with the council's procedure rules.

DECISION TAKER	DETAILS OF DECISION
Mrs A Badcock	<p>To approve the adoption of the Tenancy Strategy.</p> <p>Sections 150-151 of the Localism Act 2011 state that:</p> <p>(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—</p> <ul style="list-style-type: none"> (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. <p>This decision form proposes the adoption of the tenancy strategy for South Oxfordshire DC, attached as an appendix to this decision form.</p>

DECISION TAKER	DETAILS OF DECISION
	<p>Reasons for recommending decision</p> <p>The council is required under s150 of the Localism Act to adopt a tenancy strategy. The council has prepared the attached strategy and carried out the necessary consultation and formulated a final copy of the strategy that all affected parties are content with.</p> <p>The document will be a useful benchmark against we can assess the relative performance of registered providers in the district.</p>
	<p>Alternative option considered</p> <p>The decision is to carry out a duty contained in the Localism Act S150/151. Officers have made no alternative recommendations to the cabinet member</p>

If you have any queries regarding this decision please contact the decision taker above or Paul Staines, Head of Health and Housing, 01491 823471, paul.staines@southandvale.gov.uk

A copy of the report considered by the Cabinet member is available from Steven Corrigan, Democratic Services Manager, Legal & Democratic Services, 01491 823049, steven.corrigan@southandvale.gov.uk

South Oxfordshire and Vale of White Horse District Councils

Joint Tenancy Strategy

Introduction

The Localism Act came into effect in November 2011 and provides local authorities with the flexibility to shape their housing policies to meet local circumstances and priorities.

Both councils have the provision of housing as a key corporate priority and recognise that, within those priorities, housing that is both affordable for local people and those wishing to live and work in the districts is a key component of a sustainable, economically viable community.

The Tenancy Strategy, together with our Homelessness Strategies and new Housing Allocations Policy will form the strategic basis for the councils' vision for affordable housing in the districts. It sets out the matters to which the councils expect Registered Providers (housing associations) operating within the districts will have regard to when setting their own policies in relation to tenancies and rent levels, both for new occupants of social housing and those subject to a review of their tenancy.

Aims of the Strategy

This Strategy seeks to strike a balance between enabling a regime that encourages the development of affordable housing within the new Affordable Rent Model whilst at the same time ensuring that the housing provided remains genuinely affordable in the local context.

The aims of the Tenancy Strategy are to:

- Set out the councils' expectations of Registered Providers in delivering an optimum level of new affordable housing.
- Ensuring that affordable housing provided is genuinely affordable for local people and those wishing to live and work in our communities.
- Establish a framework for affordable housing rents and tenancies that is common across the districts, both for new build and existing properties/tenancies.
- Provide a strategic framework to encourage Registered Providers to make the best use of existing stock by tackling under-occupation and reducing overcrowding.
- To complement the councils' Homelessness Strategies and Housing Allocations Policy

Background

Tenancies

This strategy sets out the councils' expectation of Registered Providers in operating the new Flexible Tenancy regime and the circumstances under which this type of tenancy would be the most appropriate.

The Localism Act allows Registered Providers to provide tenants with Flexible Tenancies. This new type of tenancy will allow affordable housing to be provided for as long as it is needed and remains the most appropriate form of housing for the tenant. It also allows for greater mobility both within the social housing and market housing sectors.

The Localism Act requires that a Tenancy Strategy address the following issues that registered providers must have regard to in setting their Tenancy Policies, these include:

- The kinds of tenancy they can grant
- The circumstances in which they can grant a tenancy of a certain type
- The length of a fixed term tenancy different types of applicant can expect
- The circumstances in which they will grant a further tenancy

Prior to the Localism Act, affordable housing tenancies were almost always arranged on an “assured” basis, which meant a tenant could remain in that home for life. The Flexible Tenancy provides an opportunity for a review of the housing needs of the tenant after a certain period of time to ensure that housing is still appropriate for their current circumstances.

Flexible tenancies will only be applied to new-build properties and some existing homes that have become empty and available for re-letting. It will not apply to existing tenants (as at 1st April 2012) who will continue to enjoy the same security of tenure should they move to an alternative social tenancy. This will however not apply should they choose to move to a property let on affordable rent terms.

Affordable Rents

The councils’ Tenancy Strategy also recognises the key importance of providing housing that is affordable and seeks to offer guidance for Registered Providers as to the rents the councils expect them to charge for affordable housing properties in the districts.

Until recently rent levels were set by government at rates which were significantly lower than local market rents. These ‘target rents’ were generally around 40% - 50% of market rates. This was possible because government provided grant to build affordable housing that kept rent levels low.

The Comprehensive Spending Review in 2010 changed the way in which new affordable housing is funded. It significantly reduced direct grant funding and instead introduced what’s called the Affordable Rent Model. This new model allows rent levels to be up to a maximum of 80% of market rates and is designed to increase the revenue stream from affordable housing which will enable Registered Providers to achieve increased borrowing to finance new development.

These higher Affordable Rent levels will only be applied to new-build properties plus a proportion of existing homes available for re-letting. They will also apply to Flexible tenancies upon review.

The Strategy

This section sets out the councils’ expectations of Registered Providers in relation to:

Tenancies

1. The types of tenancies to be granted; what they will grant and, if these are for a fixed term, how long that fixed term will be.
2. The circumstances under which the councils would expect particular types of tenancies to be granted
3. The length of a fixed term tenancy
4. The circumstances under which a tenancy might not be reissued at the end of its term
5. Advice and assistance provided for residents undergoing a review

Rents

1. The councils' approach to the setting of rent levels for new build affordable housing
2. Re-lets of existing stock or upon tenancy review

Tenancies

1. Types of tenancy to be granted

The introduction of the fixed-term, Flexible Tenancy in social housing provides flexibility in allowing a review of the tenant's circumstances at the end of a specified length of time. The aim of the review is to determine the most suitable ongoing housing option for the tenant which, it is anticipated in most cases, will result in a further fixed term tenancy being granted for the same property.

The review is also an opportunity for alternative housing options to be considered where a tenant's circumstances have changed. Options may include considering a move to another affordable rented property more suited to the tenant in size, type and even location, or where low cost home ownership, such as 'shared ownership' may now be affordable.

The councils welcome the introduction of Flexible Tenancies and the opportunities that it provides to review the housing needs of existing tenants. We believe that such a review is essential in an area of high housing need such as southern Oxfordshire.

2. The circumstances under which particular types of tenancies are granted

The councils recognise that there are some circumstances where a fixed term tenancy will not be suitable and a lifetime assured tenancy should be granted instead. In particular, fixed terms tenancies are not generally expected to be introduced under the following circumstances:

- Housing specifically designated for older people or general needs housing where the occupier will be 60+ years of age.
- Housing specifically designated for vulnerable people such as those with learning or physical disabilities, or anyone with enduring mental health issues. The exception to this will be where the accommodation is designed for move-on to more permanent housing or where specific adaptations may not be required long term.

This list is not designed to be either exhaustive or proscriptive and the councils accept that there may be additional circumstances where a Registered Provider may not wish to apply a fixed term tenancy.

3. The length of a fixed term tenancy

By law a fixed term tenancy must be for at least 2 years (not including any period of starter tenancy) however the council expects that, save in exceptional cases, a fixed term would be for a minimum of 5 years.

Fixed terms of less than 5 years may be appropriate under certain circumstances, for instance:

- To enable greater flexibility for an RP if any issues have arisen during a starter tenancy period and a shorter fixed term would effectively extend a period of closer monitoring with the aim of promoting a sustainable tenancy in the longer term.
- Similarly where an existing five year tenancy is coming to an end, and a further shorter term is more appropriate, as the tenant has a history of not keeping to the terms of their tenancy agreement but the circumstances do not support ending the tenancy.
- Where a short tenancy is being offered for a fixed period and there is no intention to renew – for example where it is offered to a young person, as an opportunity to save for a deposit, or as an incentive to engage in training,

education or employment.

4. The circumstances under which a fixed term tenancy may not be reissued at the end of it's term.

The council recognises that there is a valid role, at the end of a fixed term tenancy, for both the Registered Provider and tenant to consider the continuing suitability of the property in the light of any changes in the tenant's circumstances.

However the councils would wish Registered Providers to balance this ability with an acknowledgement that sustainable communities are best created by allowing people to make long term plans for themselves and their families without the spectre of review hanging over their heads, this is particularly true for families with dependant children of school age.

We expect that the majority of fixed term tenancies will be renewed because neither will circumstances have changed significantly nor will the conduct of the tenancy suggest otherwise.

The councils expect Registered Providers to make a decision not to renew a tenancy in only certain circumstances which are:

- The property is no longer suitable for the tenant and an alternative affordable home is being offered that is in a location and of a type and size that will be more appropriate for the tenant for the foreseeable future.
- The tenant's own financial circumstances have improved to a level where other forms of tenure could be affordable such as shared ownership or even open market purchase.
- The conduct of the tenant, including accumulation of arrears or other housing debts and their history of addressing these issues is such that they would not be accepted onto the councils' housing registers.
- The tenants have breached the terms of their tenancy or have been involved in criminal activity or anti social behaviour.

5. Advice and assistance provided for residents undergoing a review

The councils will expect Registered Providers to:

- Provide clear information at the outset of a tenancy about any review process and how it will be conducted.
- Establish clear and transparent processes for reviews including appeals.
- Commence reviews of tenancies within 6 months of the end date of the tenancy
- Ensure that, as far as is possible reviews are not intrusive

The councils require that all Registered Providers publish their policies on reviews and make them readily available to all tenants prior to their review.

Finally the councils require that, they be notified, 6 months in advance, of each case where a fixed term tenancy is unlikely to be renewed regardless of whether alternative social housing is going to be offered and expect that in all circumstances a tenancy will not be brought to an end that would result in a household being found unintentionally homeless in accordance with the Homelessness Act 1996.

The councils also expect that procedures for bringing tenancies to an end will comply with the Equality Act 2010 and the Human Rights Act 1998.

Affordable Rents

1. The councils' approach to the setting of rent levels for new build affordable housing

The councils wish to promote an environment that promotes the development of affordable housing and recognise the key requirements of the government's Affordable Rent Model.

Nonetheless the councils also wish to ensure that affordable housing provided is genuinely affordable for local people and complements the councils' allocations policies that seek to encourage people to move into work

The councils have recently commissioned an update to the 2008 Housing Needs Assessment (HNA). This revealed that, across both districts, affordable housing charged at 80% of market rents will be beyond the reach of many people in housing need and far from encouraging people into work could increase reliance on Housing Benefit.

Similarly, in 2011 the councils commissioned an update to the 2009 Affordable Housing Viability Study (AHVS) to take into account the introduction of the Affordable Rent model. The results show that for some greenfield developments, across both districts, it will not be necessary to charge 80% of market rents for the affordable housing requirement for the scheme to be financially viable for developers.

These two studies inform the councils' approach to affordable rent levels. The councils support the introduction of the Affordable Rent Model in the interests of advancing housing delivery but require issues of site viability and local affordability to be reflected in determining the rent levels to be charged.

We therefore expect to work with Registered Providers on a site by site basis to agree affordable rent levels and will expect this discussion to be informed by detailed site viability assessments provided by the Registered Providers. In the absence of such information the councils will not be minded to support affordable rents at 80% of market rates.

The following general principles will inform negotiations with registered providers over affordable rent levels

- The councils expect to benefit from development opportunities generated through Affordable Rent in the districts.
- Affordable Rent should not reinforce long term benefit dependency and should reflect incomes that households could reasonably be expected to sustain without Housing Benefit
- Affordable Rent tenancies for elderly households in sheltered accommodation are not supported, as they have fixed incomes.
- Registered Providers should take account of wider welfare benefit policy when rent setting
- Affordable Rent tenancies should ideally be linked with support for non working households to access training and employment

In addition the councils would generally expect.

- A commitment from Registered Providers to charge only the minimum rents necessary for the progression of their business plan.
- That rent levels will not exceed the Local Housing Allowance for the location of the property.
- Where analysis demonstrates that development is viable at rent levels below those proposed, that the Registered Provider demonstrate to the council(s) the added value for the district(s) of those rent levels

- A commitment from Registered Providers that they will use their own resources to ensure that no three or four bedroom house will be charged at more than 60% of local market rents.

2.The councils' approach to the setting of rent levels for existing property; new tenancies and tenancy review

The councils' recognise the importance to Registered Providers business plans of rent levels in existing stock and wish to work with them to use existing housing assets to maximise their capacity to develop much needed affordable housing.

However the councils also require that the issue of local affordability be factored into decisions over increasing rent levels.

For re-lets and new tenancies the councils recognise that the rent levels charged are one factor that tenants can take into account when choosing the property. For these properties therefore the councils consider that the requirements for new build properties outlined in the previous section also apply to re-lets of existing dwellings.

When considering the issue of tenancy review, one option that a Registered Provider has is to increase the rent charge if they conclude that a persons financial circumstances merit it. The councils recognise this and are supportive of these new flexibilities.

Generally the councils would require Registered Providers to carry out a full income and expenditure analysis before calculating an appropriate rent level.

When calculating income and capital, the councils supports taking the tenant's income into account plus that of their partner or spouse and also some income and capital of wider non dependant family members who live in the home.

Generally the councils support calculations of affordability based upon a working premise that housing costs should not exceed 35% of net income with net income being 74% of gross.

Within these general guidelines on affordability the councils believe that Registered Providers should operate within the following local limitations.

- Under-occupation is a key issue for both councils and in order to incentivise down sizing and reduce under-occupation in 3 and 4 bed properties we would also seek to limit rent rises to 2 bed properties so as to make them attractive.
- Our research shows that increases to larger properties could be over 50% if a rise to the full 80% of market rents was implemented. We would not be supportive of rises of this magnitude - again on affordability grounds and would wish to see this limited to 60% of market rents.

Maximising the use of Existing Stock

The Housing Needs Assessment (updated in 2011) has estimated that in excess of 900 social rented homes in each district could be under-occupied by 2 or more bedrooms.

The issue of under-occupation is further highlighted by the Welfare Reform Act 2012 which sets out future restrictions on housing benefit to be applied in the social housing sector. These changes will affect social housing tenants of working age and may also have an impact on the size of home that some Housing Register applicants can apply for.

The councils' recognise the importance of both of these issues and also that flexible tenancies will be a tool in tackling under-occupation. The councils are committed to working with Registered Providers to ensure best use of existing social rented stock.

The councils offer tenants under-occupying a high priority in our allocations policy and expect that Registered Providers recognise this and do not generally renew tenancies for households that are under-occupying their property.

The councils recognise that there will be some exceptions to this, for example where a household's care requirements require additional space, and will expect Registered Providers to consider each case on its merits.

Tenancy Strategy Review

The council will review this Tenancy Strategy annually and invite key stakeholders to input into this review. We will make any necessary adjustments to ensure that any changes in circumstances can be taken into account.

In addition, an annual review process will be undertaken between the council and Registered Provider partners to assess performance in line with the guidance in this strategy.

Actions and responsibilities will be determined for both the councils and the Registered Providers to address issues identified as a result of this process.

Glossary

Affordable Housing	Subsidised housing made available to people who cannot afford to rent or buy housing generally available in South Oxfordshire or the Vale of White Horse districts on the open market and who are eligible under the councils' Allocations policies.
Affordable Rent	Rent for affordable housing up to a maximum of 80% of open market rates for that location.
Allocations Policy	This is a policy setting out how the council allocates affordable housing in line with priority housing need for the district.
Choice Based Lettings Scheme	This is a scheme whereby councils regularly advertise a list of available affordable housing for applicants on the councils' waiting list (Housing Register) to 'bid' for. This enables applicants to choose which properties they are interested in being considered for. Allocation of the housing will be in accordance with the councils' Allocations policy.
Comprehensive Spending Review	A review carried out by Government every 3 years to fix spending limits in the public sector.
Fixed Term tenancy	A tenancy with a fixed start and finish date.

Flexible tenancy	A Fixed Term tenancy that is periodically reviewed to consider the most appropriate ongoing tenancy option.
Homes and Communities Agency	A national housing and regeneration agency with responsibility for allocating government funding for affordable housing in England.
Housing Benefit	Provision of financial assistance towards rent and some service charges for tenants of both private and affordable rented accommodation.
Local Housing Allowance	A set level of Housing Benefit paid to eligible people on low incomes renting in the private sector. The level of allowance is set in relation to local private rented housing costs and can vary depending on which part of the country the property is located.
Registered Providers	Providers of social (affordable) housing who are registered with and regulated by the Tenant Services Authority which is a government agency.
Shared Ownership	Purchase of an initial 'share' of a property with rent paid on the remaining share. Shared Ownership properties are usually (but not exclusively) offered for sale by Registered Providers who retain ownership of the unsold share.
Target Rent	Rent level determined by a government formula based on average local incomes and property values compared with national averages.
Welfare Benefit Reform	The Welfare Benefit Reform Act 2012 introduces significant changes to the benefits and tax credit systems.