

Cabinet

9 February 2022

Tenancy Strategy 2022-2027

Ordinary Decision



Report of Corporate Management Team

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Councillor James Rowlandson, Cabinet Portfolio Holder for Resources, Investment and Assets

Councillor Alan Shield, Portfolio Holder for Equality and Inclusion

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 The purpose of this report is for Cabinet to:
 - (a) approve the updated Tenancy Strategy 2022-27;
 - (b) elect to adopt an Introductory Tenancy Scheme for the Council's housing stock; and
 - (c) approve the Council's Secure and Introductory Tenancy Agreement.

Executive summary

- 2 Under Section 150 of the Localism Act 2011, the Council is required to prepare and publish a Tenancy Strategy. The Tenancy Strategy sets out the Council's expectations to the registered providers of social housing operating within the County regarding the types of tenancy they should offer to their tenants.
- 3 The existing Tenancy Strategy has been in place since 2012 and required a review to take account of changes in legislation, welfare reform and the impact of the Covid-19 pandemic, highlighting the importance of safe stable homes. The provision of affordable and secure homes is now an even a greater priority for those households where renting is the only option available to them.

- 4 The Council has previously agreed to build 500 new council homes between now and 2026 and the review of the Tenancy Strategy has also taken account of the Council's role in the direct provision of affordable social rent homes.
- 5 In re-establishing its role as a direct provider of social housing, the Council can decide to elect to operate an introductory tenancy scheme under section 124 of the Housing Act 1996.
- 6 The Council previously operated an introductory tenancy scheme up until the large-scale voluntary stock transfer in 2015. An introductory tenancy scheme provides a probationary tenancy for the first 12 months for all new tenants, tenants have fewer rights, and the Council can secure possession more easily if the tenant does not abide by the terms of the tenancy agreement for example, they do not keep up with their rent payments or cause antisocial behaviour. At the end of the 12-month introductory tenancy, providing the tenancy has been conducted satisfactorily, the tenant will automatically become a secure tenant of the Council.
- 7 The report also seeks approval of the Council's new tenancy agreement setting out the contractual relationship between the Council as landlord and the tenant. The document is a combined introductory and secure tenancy agreement which enables the smooth progression between the two forms of tenure. The tenancy agreement makes clear the distinction between the clauses appertaining to an introductory tenancy and a secure tenancy.

Recommendation(s)

- 8 Cabinet is recommended to:
 - (a) approve the Tenancy Strategy as set out in Appendix 2 to this report,
 - (b) elect to operate an Introductory Tenancy Scheme for all new council tenancies, and
 - (c) approve the Secure and Introductory Tenancy Agreement set out in Appendix 4 to this report.

Background

- 9 Cabinet has previously agreed to develop 500 new council homes up to March 2026. This decision has far reaching implication for the Council. In addition to building the homes, it must put in place appropriate arrangements to fulfil its obligations as a landlord and manage the homes once they are built. This will mean establishing appropriate arrangements to comply fully with the legal requirements and regulatory framework, establish a Housing Revenue Account HRA to properly account for the Council's income and expenditure on the Council housing service, directly employ staff and procure ICT systems to fulfil its management and maintenance responsibilities.
- 10 Under Section 150 of the Localism Act 2011 the Council is required to prepare and publish a Tenancy Strategy and this legal requirement exists whether or not the Council is a stock owning authority. All Registered Providers must have regard to the Council's Tenancy Strategy when formulating their own tenancy policies.
- 11 As the Council progresses with its preparations to become a direct provider of social housing, it needs to make some key decisions regarding the types of tenancy it will offer to its tenants and of course agree the contractual terms and conditions between the Council as the landlord and its tenants. The tenancy agreement is a key document in establishing the legal basis for the landlord and tenant relationship. The tenancy agreement sets out the legislative requirements as well as contractual terms that will ensure that the Council is able to manage and maintain its homes in an effective and efficient way

Tenancy Strategy

- 12 The Localism Act 2011 introduced a requirement for local authorities to produce a tenancy strategy setting out the matters to which all registered providers of social housing operating within their area, including the Council itself, should have regard to when framing their own tenancy policies including:
 - (a) the type of tenancies they will grant;
 - (b) where they grant tenancies for a fixed term, the length of those terms;
 - (c) the circumstances in which they will grant tenancies of a particular type;
 - (d) any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period;
 - (e) the circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property;

- (f) the way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term;
 - (g) their policy on considering the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability;
 - (h) the advice and assistance they will give to tenants on finding alternative accommodation if they decide not to grant another tenancy;
 - (i) their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.
- 13 The Council's existing Tenancy Strategy has been in place since 2012 and much has changed since this time including legislative changes and the reform of the welfare system and other updates as follows:
- (a) Welfare Reform Act 2012: This brought about wide-ranging reforms to the welfare system including:
 - i. the introduction of Universal Credit, bringing together a range of benefits into a single monthly payment with housing costs paid direct to working age tenants in arrears,
 - ii. a reduction in Local Housing Allowance (LHA) rates, and
 - iii. Housing Benefit reductions for working age tenants under occupying their home;
 - (b) Welfare Reform and Work Act 2016: additional reforms including:
 - i. a 1% rent reduction each year for four years for social housing tenants;
 - ii. further lowering of the Benefit Cap;
 - (c) Allocation of Housing (Right to Move) Regulations 2015: Local authorities must not disqualify certain persons on the grounds that they do not have a local connection:
 - i. because of a need to move to the local authority's district to avoid hardship; and
 - ii. need to move because the tenant works in the district; or
 - iii. need to move to take up an offer of work;
 - (d) Housing and Planning Act 2016: changes to actively promote homeownership, including:
 - i. the end of secure lifetime tenancies in local authority housing;
 - ii. changes to succession rules that restrict the right to

- succeed the tenancy to spouses and partners only, and
- iii. a voluntary extension of Right to Buy to housing association tenants. A review of the new legislation was carried out and reflected within the new strategy. These changes make having an affordable, secure home a greater priority for those households where renting is the only option available to them.
 - (e) there have also been changes to the Council Plan, Housing Strategy and the findings of the Strategic Housing Market Assessment as well as changes in the Registered Providers operating across the County.
- 14 The Covid-19 pandemic has had a severe impact upon many people's lives including the Government stepping in to prevent possession proceedings from progressing during stages of the pandemic. This has underpinned the importance of ensuring people have the opportunity of access and retain an affordable, secure home.
- 15 The Council must keep its tenancy strategy under review in the light of changing legislation and other factors and may amend it when necessary but when doing so is required to consult with the registered providers operating in the County.
- 16 All registered providers have been consulted and several amendments have been made to the original draft strategy to reflect the issues raised. A summary report on the feedback received and amendments made as a result of the consultation is given in Appendix 3.
- 17 The Tenancy Strategy aims to:
- (a) Ensure, wherever possible, that people have the opportunity of a lifetime tenancy so they can remain in their home as long as it is suitable for them, whilst recognising that fixed term tenancies can also meet housing need in specific circumstances;
 - (b) help people access suitable housing options which meet their needs;
 - (c) tackle under-occupation by giving people the opportunity to move to smaller accommodation if they find themselves in a property that is too big for their needs. This will help release larger properties for those that need them, including overcrowded households;
 - (d) where appropriate, supporting people to remain in their homes by undertaking adaptations where resources permit;
 - (e) consider the role that "starter" tenancies can have in encouraging new tenants to follow the requirements of their tenancy agreement particularly in relation to rent payments and anti-social

behaviour, with the prospect of obtaining a lifetime tenancy at the end of any “probationary” period;

- (f) provide clear tenancy agreements that set out the obligations of the landlord and the expectations the tenant in simple terms, underpinned by comprehensive pre-tenancy advice and appropriate levels of tenancy support where required to avoid tenancy failure and homelessness.

Introductory Tenancy Scheme

- 18 Section 124 of the Housing Act 1996 allows local authorities to elect to operate an introductory tenancy scheme. Where a council does so, every new tenant for a council property is given an introductory tenancy, except in a few exceptions, such as a tenant who is already a secure tenant transferring from one property to another.
- 19 A tenancy remains introductory until the end of the “trial period” of twelve months. In certain circumstances, for example where there has been a breach of the tenancy that may not have been severe enough to warrant possession proceedings, the introductory tenancy can be extended by a further 6 months. An introductory tenancy can only be brought to an end by obtaining a court order for possession although the Court would be obliged to make an order providing due process has been followed.
- 20 Introductory tenants have similar rights to secure tenants except for:
 - (a) the right to sub-let part of their home;
 - (b) the right to improve their home;
 - (c) the right to buy their home;
 - (d) the right to exchange their home;
 - (e) the same legal protection from eviction for breach of tenancy.
- 21 Introductory tenancies are used by social landlords, as part of a range of tools to help them manage tenancies and address anti-social behaviour.
- 22 The advantages of adopting an introductory tenancy scheme are:
 - (a) encourage compliance with the tenancy agreement with the prospect of a secure tenancy at the end of the trial period;
 - (b) tenancy issues may be resolved more quickly by the threat of swift action and possible eviction;
 - (c) there is the mandatory right to possession providing due process set out in the regulations is followed.

- 23 Introductory tenancies will require a slightly more intensive housing management approach from the housing team during the trial period to ensure the tenancy is monitored effectively.
- 24 For those tenants that comply fully with their tenancy agreement, there would be no noticeable difference. The tenant would still have exclusive occupation of the property, the rent level would be the same and they would be able to live in the home without any undue interference by the Council.

Council House Tenancy Agreement

- 25 The council house tenancy agreement sets out the legal and contractual arrangements between the Council as landlord and its tenants. This will be a key document for the Council staff in managing and maintaining the Council's homes in line with the legislative and regulatory requirements.
- 26 A combined Introductory and Secure Tenancy Agreement has been developed in line with the approach taken by many other councils. The agreement makes clear which parts appertain to each specific form of tenancy. The combined agreement allows the smooth transition from being an introductory tenant to becoming a secure tenant once the trial period come to an end.
- 27 The draft agreement has been developed jointly between the housing and legal teams involving reviewing several existing tenancy agreements already in use by other local authorities.
- 28 Once approved the tenancy agreement will be provided in a user-friendly format.

Decision Options

Decision options – Tenancy Strategy

- 29 The following decision options are available for consideration by Cabinet in relation to the Tenancy Strategy.

Option 1 – Approve the Tenancy Strategy

The Council is required to formulate and publish a Tenancy Strategy based on the requirements of the Localism Act 2011. The Tenancy Strategy must be kept under review and amended from time to time following consultation with registered providers who operate in the County.

Option 2 – Reject the Tenancy Strategy

The Council could be at risk of failing to meet its duty in formulating and publishing a Tenancy Strategy, that is kept under review and amended from time to time. The existing Tenancy Strategy approved in 2012

would remain in place.

Option 3 – Defer the Tenancy Strategy

The strategy could be deferred for further consideration to another meeting of the Cabinet.

- 30 Cabinet is recommended to agree Option 1 for the following reasons:

There is a statutory requirement upon the Council to publish a Tenancy Strategy. This strategy provides guidance to registered providers of social housing in County Durham on the types of tenancy they should offer.

When amending or replacing the strategy, the Council consulted with registered providers of social housing who operate in County Durham.

The feedback received during the consultation did not highlight any concerns that required a reconsideration of the strategy. Several amendments were made to the Tenancy Strategy to reflect the feedback received.

Decision Options – Introductory Tenancy Scheme

- 31 The Cabinet also has some options in relation to electing to adopt an Introductory Tenancy Scheme.

Option 1 – Adopt an Introductory Tenancy Scheme

If the Council adopts an Introductory Tenancy Scheme, all new tenants will become an introductory tenant of the Council except for tenants who transfer from another council home or housing association home, who will become a secure tenant.

Following the “trial” period of 12 months, an introductory tenant will automatically become a secure tenant of the Council unless the Council has taken action to extend the introductory tenancy by 6 months or to end the introductory tenancy.

Adopting an introductory tenancy scheme will give the Council a greater ability to manage tenancies during the first 12 months of tenancy helping to control anti-social behaviour and rent arrears more effectively.

Option 2 – Do not adopt an Introductory Tenancy Scheme

If the Council does not adopt an introductory tenancy scheme, all new tenants will become secure tenants from the start of their tenancy.

Secure tenants have a wider range of rights and it is more difficult for the Council to obtain possession of the property should the tenant default on their rent payments or cause anti-social behaviour.

This will make it more difficult for the Council to manage new tenancies

and encourage tenants to comply with the requirements of their tenancy agreement.

- 32 Cabinet is recommended to agree Option 1 as this will give the Council staff more tools to manage its homes effectively and for the tenants who comply with the terms of their tenancy agreement there will be no discernible difference.
- 33 There are no options in relation to whether or not to approve the tenancy agreement. The Council requires a tenancy agreement to establish the contractual relationship between the Council as Landlord and its tenants. The tenancy agreement sets out the legal requirements and contractual arrangements between the Council and its tenants.

Background papers

Housing Act 1985

Section 124 of Housing Act 1996

Section 150 of the Localism Act 2011

Durham County Council Tenancy Strategy 2012

Other useful documents

Previous Cabinet reports / None

Author(s)

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Appendix 1: Implications

Legal Implications

- Under Section 124 of Housing Act 1996, a local housing authority or a housing action trust may elect to operate an introductory tenancy regime.
- Under Section 150 of the Localism Act 2011, 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:
 - the kinds of tenancies they grant,
 - the circumstances in which they will grant a tenancy of a particular kind,
 - where they grant tenancies for a term certain, the lengths of the terms, and
 - the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.
- The Tenancy Agreement sets out the contractual relationship between the Council as Landlord and its tenants.

Finance

Not applicable.

Consultation

Under Section 151 of the Localism Act 2011, before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must:

- (a) send a copy of the draft strategy, or proposed modification, to every private registered provider of social housing for its district, and
- (b) give the private registered provider a reasonable opportunity to comment on those proposals.

Equality and Diversity / Public Sector Equality Duty

The tenancy agreement contains specific clauses in relation to the conduct of tenants and highlights that hate crimes constitute a breach of the tenancy agreement and the risk of eviction. The Tenancy Strategy has been the subject of an equality impact assessment which is included with this report as Appendix 5.

Climate Change

All the Council's homes will meet high energy efficiency standards and use low carbon heating.

Human Rights

The tenancy agreement sets out the legal and contractual arrangements between the Council and its tenants. The agreement makes clear the rights of tenants in relation to renting a home from the Council.

Crime and Disorder

The tenancy agreement is a key document that sets out the legal and contractual arrangements between the Council as Landlord and its tenants. There are several clauses within the tenancy agreement setting out requirements in relation to the conduct of the tenancy and action that can be taken in respect of any breaches.

The report recommends the adoption of an introductory tenancy scheme which gives the Council stronger powers to deal with antisocial behaviour carried out by introductory tenants.

Staffing

Appropriate staffing resources will be put in place to manage and maintain the Council's homes and ensure compliance with the terms of the Council's tenancy agreement.

Accommodation

Not applicable.

Risk

If an introductory tenancy scheme is not adopted there is a risk that antisocial behaviour may be more difficult to deal with in respect of new council tenants. There is also a risk that rent arrears amongst new tenants may be higher than would otherwise be the case if an introductory tenancy scheme is not implemented.

Procurement

Not applicable.

Appendix 2: Tenancy Strategy 2022-2027

See document attached separately

Appendix 3: Tenancy Strategy Consultation Report

See document attached separately.

Appendix 4 – Secure and Introductory Tenancy Agreement

See document attached separately.

Appendix 5 – Equality Impact Assessment

See document attached separately.