

Tenancy Strategy

October 2012

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Tenancy Strategy

1 Introduction and background

- 1.1 Section 150 of the Localism Act 2011 requires housing authorities to publish a 'tenancy strategy' within 12 months of the provision coming into force (i.e. by 15 January 2013). Tenancy strategies must set out matters to which registered providers of social housing should have regard to in relation 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 the existing tenancy.
- 1.2 At the same time, the Regulatory Framework for Social Housing in England 2012 requires that all social landlords publish 'tenancy policies'. This document comprises both Sutton Council's tenancy strategy and its tenancy policy. Although titled a "strategy", in reality it is a statement of policy with regard, principally, to the letting of local authority-owned homes, but it also sets out our stance in relation to housing association lettings in the borough including associations' use of Affordable Rent.
- 1.2 The Council's tenancy strategy has been developed alongside a review of its housing allocations policy. Both have been the subject of wide-ranging consultation with key stakeholders including housing associations that have stock within the borough and the Mayor of London.
- 1.3 Set in the context of housing need in the borough (see below), the tenancy strategy covers tenure, succession rights, use of adapted stock, the Council's approach to tackling tenancy fraud, sustaining tenancies and preventing eviction, under-occupation, rent levels and Affordable Rent. In practice the policies contained within this document relating to the Council's own housing stock will be operated by its managing agent, Sutton Housing Partnership (SHP).
- 1.4 This strategy has been developed to be consistent with the Council's housing strategy and the homelessness strategy contained within it. It also seeks to be in conformity with and to support the aims of the draft revised London Housing Strategy. It should be noted that the latter requires housing associations to have "full regard to borough tenancy strategies where these are in conformity with the London Housing Strategy".
- 1.5 The Council's tenancy strategy comes into effect from **1 October 2012**.
- 1.6 An equality impact assessment was carried out during the drafting of this strategy and can be found at <https://www.sutton.gov.uk/CHttpHandler.ashx?id=19234&p=0>. Copies of housing associations' tenancy policies, where published, can usually be found on their own individual web sites.

Housing need in the borough and the demand for social housing

- 1.7 The Council's current understanding of housing need in the borough is informed principally by its 2011 update housing needs assessment. A key finding from this piece of work is that there has been a considerable increase in the need for affordable housing since publication of the original research in 2008. Using the Government's prescribed methodology, the 2011 update study estimated that to meet all housing need (without recourse to benefit) over 2,500 new affordable homes would need to be produced each year for the next five years.
- 1.8 The scale of demand for social housing is reflected by our housing register as at April 2012 containing nearly 5,500 households of which over 2,000 fell within 'priority need' groups. This, taken with the fact that the estimated need for new affordable housing is considerably in excess of the new supply likely to come forward, serves to illustrate the importance of making best use of the social housing resource available to the borough.

2. Tenure

Legislative and regulatory framework

- 2.1 The Localism Act has introduced greater flexibility in terms of the length of tenancies that may be granted by local authorities, with secure tenancies now able to be let on a fixed term basis (referred to as 'Flexible Tenancies'). The Tenancy Standard within the Regulatory Framework for Social Housing in England 2012 now allows housing association general needs tenancies to be granted on a fixed term (assured shorthold) basis, whether let at a social rent or Affordable Rent.
- 2.2 The Regulatory Framework has set five years as the standard minimum period for all social lettings albeit this can be reduced to two years in exceptional cases. For existing social tenants who were tenants at the time the provisions came into force (1 April 2012) and have remained social tenants since that date, their rights in relation to security of tenure will continue should they transfer to an alternative social housing property, providing it is not let at an Affordable Rent in which case the protection no longer applies.

Council lettings

Use of Introductory tenancies

- 2.3 The Council will grant one year introductory tenancies in the case of all lettings to its permanent housing stock, extendable by up to six months if there remains any minor breach of tenancy at the end of the 12 month period. Before possession proceedings are taken out against an introductory tenant during the tenancy term, he/she will be offered the opportunity of a review.

Permanent lettings

- 2.4 Upon the expiry of the introductory tenancy the Council will grant a non-fixed term secure tenancy ('tenancy for life') in all cases but with the exception that where there remains any breach of tenancy (e.g. rent arrears, ongoing anti-social behaviour etc) at the end of an extended introductory tenancy term, albeit it may have not been sufficiently serious for the Council or SHP to consider seeking possession, a two year fixed term secure tenancy will be granted. The policy will apply to all introductory

tenants who were introductory tenants at the date of commencement of the policy (i.e. 1 October 2012) or became introductory tenants thereafter.

- 2.5 Subject to the satisfactory conduct of the tenant during the two year fixed term period, at the expiry of the term a non-fixed term secure tenancy will be granted of the property in question. Should it be decided that a new tenancy should not be granted the tenant will be informed of the reasons for this and advised that they will need to vacate the property. The Council will, however, offer the opportunity of a review of its decision at no later than six months before the date the tenancy is due to end. In the event that the decision is upheld the Council will offer the tenant assistance with finding alternative accommodation.
- 2.6 The Council's rationale for generally continuing to let homes within its permanent housing stock on a 'tenancy for life' basis, as opposed to adopting a more widespread use of fixed term tenancies, is set out at Appendix A.

Temporary accommodation lettings

- 2.7 Where a property within the permanent stock is to be used as temporary accommodation or in the case of lettings to local authority-owned temporary accommodation unit the Council will grant weekly licences.

Joint tenancies

- 2.8 For household applicants comprising married couples or partners a joint tenancy will be offered providing both parties are eligible to be allocated accommodation.

Housing association lettings

- 2.9 For housing association lettings within the borough the Council's view is that it would prefer to see (non-fixed term) assured tenancies being granted as a general rule, particularly in the case of lettings to families. However, it acknowledges the financial position of associations and accepts that they may need to operate a regime of fixed term tenancies for at least a proportion of their lettings (also see section 8 below).
- 2.10 In accordance with the Regulatory Framework, all associations should set out their policies on tenure in a clear published form, with these covering the types of tenancy they propose to grant including tenure length if tenancies are to be granted on a fixed term basis, the action they will take upon the termination of tenancies in terms of renewing or otherwise, including the circumstances in which they will or will not renew a tenancy.

3. Succession and Assignment

Tenancies let on or after 1 April 2012

- 3.1 For secure tenants who became secure tenants on or after 1 April 2012, in accordance with s86A Housing Act 1985 (inserted by s160 Localism Act 2012), a qualifying spouse or civil partner of a deceased non-successor sole tenant may succeed to a secure tenancy upon the tenant's death. For such tenants the Council offers no further additional 'succession rights' beyond those provided for in the legislation.

Tenancies let before 1 April 2012

- 3.2 For secure tenants who became secure tenants before 1 April 2012 the previous provisions of s87 Housing Act 1985 will continue to apply in which a qualifying spouse

or civil partner or other family member of a deceased non-successor sole tenant may succeed to a secure tenancy upon the tenant's death. In the case of an under-occupying non-spouse or non-civil partner successor the Council (or SHP on its behalf) may seek to repossess the property under Ground 16 of Schedule 2 of the 1985 Act providing it is reasonable to do so and suitable alternative accommodation is made available. In such cases possession will be sought except where extenuating circumstances apply.

Remaining non-successor relatives

- 3.3 Upon the death of a sole tenant where there is no successor, a non-successor relative remaining in the property who is deemed to be vulnerable (taking into account their social care needs on an individual case by case basis) will be offered a tenancy of the property. Unless there are extenuating circumstances non-successor remaining relatives who are not deemed to be vulnerable will be required to vacate, with action taken to re-possess the property should they refuse to do so.
- 3.4 If a vulnerable non-successor remaining relative is under-occupying the property, they will be offered a move to suitable alternative accommodation, with action taken to recover the property if they refuse to move, unless it is considered on social care grounds that a move might adversely affect them in terms of their vulnerability.

Assignment

- 3.5 Under the Housing Act 1985, as amended, a secure tenant may assign his or her tenancy only in a limited number of prescribed circumstances (to a would-be successor, by order of a matrimonial court or by way of exchange). The Council offers no further additional 'assignment rights' beyond those provided for in the legislation.

4. Adapted stock

- 4.1 Where a household is occupying a property that has been adapted for someone with a physical disability and where that household no longer needs an adapted property, depending on the circumstances of the case, including an assessment of the suitability of the accommodation for another household and the cost of any further works that may be needed, the Council will offer the household in question suitable alternative accommodation.
- 4.2 Where a household is under-occupying an adapted property but the household still needs an adapted property, depending on the circumstances of the case including an assessment of the suitability of the accommodation for another household and the cost of any further works that may be needed, the Council will offer the household in question suitable alternative accommodation which is either suitably pre-adapted or to which an appropriate adaptation will be carried out as necessary.
- 4.3 Where a household needs an adaptation made to their property, this will be provided according to their needs. However, if they are under-occupying their home they will be offered a suitable alternative already-adapted property, if one is available. If not, in the first instance they will be encouraged to move to a suitable smaller property with that property duly adapted, before they move in if necessary. Only if a mutually agreeable alternative home cannot be found will an adaptation be made to their current property taking into consideration the reasonableness of carrying out the adaptation.

5. Sub-letting and Tenancy Fraud

- 5.1 In accordance with the provisions of the Housing Act 1985, as amended, a secure tenant may only sublet part of the dwelling with permission of the landlord, which should not be unreasonably withheld. He or she may not, however, sublet the whole of the dwelling.
- 5.2 Through SHP the Council will take all measures available as it sees fit to combat unlawful sub-letting or other instances of tenancy fraud. SHP will carry out regular tenancy checks to ensure that Council homes remain occupied by the bona fide tenant and family where appropriate. SHP will also work with other social housing providers with stock in the borough to assist them with tackling tenancy fraud.

6. Sustaining Tenancies and Preventing Evictions

- 6.1 Through SHP the Council will develop and provide services that support its tenants (particularly those who are identified as vulnerable and showing a clear indication of failure to maintain their tenancy and / or those engaging in anti-social behaviour) to maintain their tenancy and prevent unnecessary evictions. It will also provide appropriate assistance for vulnerable perpetrators of anti-social behaviour to prevent and tackle any issues that arise and also ensure that residents who experience anti-social behaviour are well supported.
- 6.2 In order to encourage social housing tenants to report incidences of anti-social behaviour it is important that they feel that they will be listened to and that action will be taken. The Council is committed, through SHP, to using the full range of powers to tackle anti-social behaviour including interventions such as mediation and provision of support but will, where such interventions do not work, support the taking firm action against any breach of tenancy conditions.

7. Under-occupation

- 7.1 The Council's housing allocation scheme seeks to ensure that accommodation let to households is of the right size. It also gives priority to existing social tenants, who are under-occupying, to encourage them to down size and thus free up larger units for other households in need. Further incentivisation is provided through offering households financial assistance to help with the costs of moving.

8. Rent

Council lettings

- 8.1 Council dwelling rents will be set in accordance with national rent policy.

Housing association lettings and the use of Affordable Rent

- 8.2 In response to the Government's proposals, the Council carried out an analysis of the affordability of Affordable Rent locally in 2011, which was subsequently updated in 2012. This, together with our overall understanding of housing need and the pressures of housing demand as reflected in the make-up of the housing register (see section 1), inform our stance on Affordable Rent and determine what we believe would be appropriate affordable housing investment in the borough in the short to medium term.
- 8.3 The analysis we've carried out suggests that new units priced at 80% of the market would meet a significant level of need in the borough. However, this is based on the assumption that such rent levels (and applicable service charges) continue to be fully

covered by housing benefit and that there would not be any significant loss of benefit to households when Universal Credit is introduced. We are concerned, though, that the impact of the proposed total benefits cap could make larger (three bed +) properties particularly unaffordable for non-working families.

- 8.4 Accordingly, in terms of housing association units to be let at Affordable Rent levels, whilst the Council is happy to see all new one and two bedroom units priced at 80% of the market, we would not wish to see larger units all being produced at this level. Rather we would prefer these to be set at a maximum of 65% of the market or at least a significant proportion (e.g. 50%) of them being set at this lower level.
- 8.5 We would also wish to see appropriate price differentiation between property sizes and types (e.g. the rent for a two bedroom house should be significantly lower than that of a similar three bedroom house in the same location). However, the Council would be prepared to look at each scheme in light of its own particular circumstances and would be willing to consider alternative size/price point combinations providing there is a rationale for these.
- 8.6 The Council has a major concern regarding the re-letting of existing social or target-rented housing association homes as Affordable Rented units. We acknowledge the likelihood of the need for conversion to happen in order that providers can fund new development in the current economic climate, and indeed meet the Homes and Community Agency's expectations. However, we would wish to ensure, firstly, that this is kept to the minimum necessary and that, secondly, the financial gain is re-invested within our borough and not used to cross-subsidise new development elsewhere.
- 8.7 The Council would be prepared to consider being part of an arrangement whereby a provider operating within Sutton and our neighbouring boroughs, or perhaps within the SW London sub-region, reinvests surpluses within the wider area on the basis that this is balanced out over time to ensure that individual boroughs reap the rewards of this in proportion to the number of socially rented units converted in their areas.
- 8.8 In order to preserve existing social rented properties to meet the needs of families, we would not wish to see the conversion of three bed + properties, supported living units or wheelchair adapted homes.

9. Monitoring and Review of the Strategy

- 9.1 The Council will undertake regular and detailed monitoring of this tenancy strategy in terms of collecting and maintaining a database of information on the following:
- lettings of local authority-owned homes under fixed term tenancies
 - lettings of housing association homes in relation to:
 - use of Affordable Rent (nos. of units and rent levels for both new build and conversions; the impact of welfare benefit reform etc)
 - use of fixed term tenancies (lengths of term and renewals)
 - the extent of tenancy fraud and the work undertaken across the social domain to address it
 - the extent of under-occupation across the social sector
- 9.2 The Council will review this tenancy strategy within two years of its adoption, and as part of the review will take into account emerging evidence of the effective or otherwise

of the use of fixed term tenancies. It will continue to be reviewed periodically thereafter.

October 2012

Rationale for Sutton Council's Approach to the use of Fixed Term Tenancies

Sutton Council strongly supports the principle of the Localism Act which has given us the freedom to shape our housing allocations policy and tenancy strategy to meet the needs of our borough and local people.

We are aware that there is a shortage of social housing to meet local need, and we are already seeing additional pressure put on housing resources in the private rented sector that we expect to impact further on that need and our ability to meet demand.

However, we are also mindful that when it comes to social housing we cannot think just in terms of the management of stock, we are also dealing with people's homes, together with the hopes and aspirations that people invest in their homes.

Our overriding principle therefore, when seeking to take advantage of the new powers the Localism Act has given us, is to provide those most in need with the stability that comes with having secure accommodation. We want our tenants to take pride in their homes and their area. We want them to put down roots and feel part of a community.

We believe that providing this stability at a time when they are facing other difficulties in their lives, whether that is due to poverty, disability or potential homelessness, will be of most help to them in getting their lives back on track and removing one element of uncertainty in their lives. A commitment to an area and feeling part of a community can result in less anti-social behaviour, which will make for better neighbours. A supportive community can reduce the reliance on social services support and improve health and wellbeing.

We want to provide social housing in a way that is fair and transparent, where people's needs are met, but not to the disadvantage of others. We also want to avoid a two-tier system, where one group might be stigmatised through no fault of their own.