

## **Tenancy Policy**

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Portfolio: Communities and Housing

Ward(s) Affected: All

### **Purpose of the Report:**

The purpose of this policy is to set out how the Council will use the range of options that are available to them because of the Localism Act 2011 and the changes to the regulatory standards that all social landlords are expected to meet.

### **Recommendations:**

1. For Cabinet to recommend to Council the tenancy policy

#### **1. Summary**

- 1.1 The policy clarifies how the Council will support tenancy sustainment and prevent unnecessary eviction, tackle tenancy fraud and ensure the appropriate management of tenancies.
- 1.2 The policy is applicable to tenants of Broadland District Council and is part of the Council's continued drive to improve support for our residents.

#### **2. Background**

- 2.1 As a registered provider (RP) the capacity to provide a wide range of tenancies have become available. Many of these powers remained prior to becoming an RP as a local authority however as a non-stock retaining authority our capacity to provide such tenancies was limited by our stock type. As we purchase more

properties through the local authority housing fund in line with our capital programme it is essential to detail which tenancies will be utilised under what circumstances. This clarity makes sure that the right tenancy is utilised in all circumstances thus mitigating the risk of particular rights (such as right to buy) being afforded to a tenant.

- 2.2 The policy has been drafted to meet registered provider requirements. The proposal to implement this policy is to ensure that we are meeting these requirements in addition to providing clarity to residents about which tenancy they will be afforded, the reason why such a tenancy is being afforded as opposed to others and to protect the council from challenge were it to occur.

### **3. Proposed action**

- 3.1 The aims of this Policy are to:

1. Provide clarity regarding the different kinds of tenancies offered by the Council.
2. Establish tenancies that are sustainable in the long term and contribute to stable communities.
3. Balance the needs of the individual with those of the existing community and neighbours.
4. Establish clear messages and standards for new and potential tenants that indicate its commitment to tackling anti-social behaviour.
5. Ensure that the policy operates consistently within the law and other Council priorities and policies.

### **4. Other options**

- 4.1 Cabinet may choose not to adopt but the consequences of this would be that the Council would not meet the legal requirements and therefore be at risk of challenge.

### **5. Issues and risks**

- 5.1 The Council will not be compliant as a Registered Provider if it doesn't adopt a fit for purpose Tenancy policy.
- 5.2 Resource Implications – there are no resource implications associated with this report.
- 5.3 Legal Implications – if this policy is not adopted, we would not comply with the requirements of being a Registered Provider
- 5.4 Equality Implications – a separate equalities impact assessment has been completed.
- 5.5 Environmental Impact – there are no environmental impact implications associated with this report.

- 5.6 Crime and Disorder – there are no crime and disorder implications associated with this report.
- 5.7 Risks – the appended policy has considered all risks.

## **6. Conclusion**

As a Registered Provider we are in a strong position to ensure that we support tenants and help people to thrive. This policy is one step on our journey to ensure we offer the best service we can.

## **7. Recommendations**

- 7.1 For Cabinet to recommend to Council the tenancy policy

## **Background papers**

None

## Tenancy Policy

**Date Issued:** April 2024

**Issued by:** Housing Department

**Authorisation:** This policy was authorised by Cabinet

### **Purpose of the Policy**

The purpose of this policy is to set out how the council will use the range of options that are available to them as a result of the Localism Act 2011 and the changes to the regulatory standards that all social landlords are expected to meet.

The policy clarifies how the council will support tenancy sustainment and prevent unnecessary eviction, tackle tenancy fraud and ensure the appropriate management of tenancies.

The policy is applicable to tenants of the Council.

### **Aims**

The aims of this Policy are to:

1. Provide clarity regarding the different kinds of tenancies offered by the Council.
2. Establish tenancies that are sustainable in the long term and contribute to stable communities.
3. Balance the needs of the individual with those of the existing community and neighbours.
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5. Ensure that the policy operates consistently within the law and other Council priorities and policies.

## Legislation

This policy has been developed in accordance with:

1. Housing Act 1985
2. Housing Act 1996
3. Localism Act 2011
4. Domestic Abuse Act 2021

## Types of Tenancy

The Council will offer the following types of tenancy:

1. Introductory Tenancies
2. Secure Tenancies (Fixed Term)
3. Secure Tenancies (Lifetime)

The council can also, where appropriate provide an agreement to accommodate and will offer the following agreement.

4. License agreement

### Introductory Tenancies

Introductory Tenancies will be offered to all new social tenants and are 12 months by statute. Introductory tenants have less security and fewer rights than secure tenants. Their home is at much higher risk of repossession.

After 12 months introductory tenancies become secure tenancies by default unless the Council, as landlord, has taken steps to end or extend the tenancy. Introductory tenants enjoy the majority of rights held by secure tenants. However, the Housing Act 1996 denies Introductory Tenants a number of rights given to secure tenants and they do not have the right to:

exchange their property with any other Tenant.

buy their home (however, the period of Introductory Tenancy may count towards the qualification period of the Right to Buy)

- The Council's purpose in using Introductory Tenancies for new tenants is to:
  - provide tenancy support for new tenants who experience difficulty in complying with their obligations as a tenant in order to turn failing tenancies into sustainable ones .
  - deter new tenants from behaving anti-socially or criminally
  - reduce Anti-Social Behaviour (ASB) and nuisance behaviour among new tenants.
  - encourage community stability and cohesion
  - reduce the impact of residents who behave anti-socially
  - enable early action for any serious breach of the tenancy agreement
  - encourage regular payment of rent.

## **Extending an Introductory Tenancy**

If there have been minor tenancy breaches during the trial period and the tenant, with or without a package of support, has made a commitment to improving their behaviour and has demonstrated early signs of improvement, the Council may decide to extend the introductory tenancy so it may be assured that the improvements are sustained.

Extending an introductory tenancy is a decision that should be made no later than the 6 month tenancy review check, unless a further period is required to establish whether the tenant can satisfactorily manage their tenancy in which a decision will be made no later than 9 months after the start of the tenancy.

An introductory tenancy can only be extended for six months and only once. The trial period will be monitored very carefully so that a decision can be taken whether to terminate the tenancy or allow it to convert to a full secure tenancy at the end of the extended period.

## **Terminating an Introductory Tenancy**

Action to terminate a tenancy can be taken at any time.

Termination should be considered if the tenancy conditions are being breached and that termination is proportionate to that breach. An example of the types of breaches that could lead to termination are:

- Proven non-occupation – with significant belief that the tenant does not intend to return to the property or has failed to return.
- Rent arrears – where the tenant has failed to pay rent regularly or failed to maintain repayment agreements; and/ or failed to co-operate with the appropriate benefits department in making claims for any relevant benefits.
- Anti-Social Behaviour – where the tenant has engaged in serious antisocial behaviour that threatens the safety and security of the property and neighbours, or persistent minor breaches of tenancy.
- Failing to engage – where the tenant has been identified as committing minor breaches of tenancy but has failed to engage with Housing Services staff, or other support networks to improve their behaviour.

The above list is not exhaustive, but the general principles should be that extension is preferred to termination if there are real prospects of improvement so that the tenancy will be conducted in a satisfactory manner and subject to taking account of the safety and comfort of the wider community.

A decision to terminate rather than extend can be taken if there have been substantial tenancy breaches at any time during the trial period, or as part of the 6 month review there is evidence of poor conduct throughout the trial period that has been raised with the tenant and there has not been a satisfactory improvement in their behaviour.

## **Vulnerability**

Where there is evidence of vulnerability, for example:

- Learning difficulties requiring support to carry out day to day tasks
- Physical or sensory disability
- Clear lack of life skills including budgeting and prioritising bills, managing visitors, etc
- Drug and alcohol addiction
- Mental health affecting the ability to maintain a tenancy

There should be evidence of attempts to identify existing or creating new support networks to enable the tenant to receive support and work towards the sustainment of the tenancy.

Where vulnerability exists, the tenancy should not normally be terminated unless evidence can be produced to show the tenant has failed to engage or has not worked successfully with their support networks to improve tenancy conduct.

In dealing with vulnerable cases, a tenant's authority to discuss all relevant aspects of the tenancy with their support networks must be obtained and retained on the tenancy file.

## **Conversion to a Secure Tenancy**

Providing the Council has not commenced possession proceedings or served a Notice of Extension, every introductory tenancy will, upon the anniversary of the tenancy start date, convert to a full secure tenancy.

Conversion is only a change in the status of the tenancy, therefore the tenancy start date will remain the date the initial trial period began.

## **Secure Tenancies**

The Council can issue two types of secure tenancy agreement:

Fixed term (flexible) tenancies and lifetime tenancies.

- Secure tenants may:
- rent out rooms (though not sub-let the whole property)
- buy their property through the Right to Buy scheme (subject to eligibility)
- exchange their home with another council tenant (with the formal permission of the Council)
- pass on their tenancy to someone else in some circumstances (see Succession below)
- make improvements to their home (with permission from the Council).

Secure tenancies can only be ended by a court order, following a court hearing to look at the reasons behind the breaches of tenancy. They may also be demoted for a year where there is a breach of tenancy.

### **Secure Tenancy – Fixed Term (Flexible Tenancy)**

In some limited cases, a fixed term secure tenancy will be offered; these tenancies will be used for households who have leave to enter or remain in the UK via Ukraine of the UK Immigration Rules, namely one of the following schemes:

- Ukraine Family Visa Scheme
- Homes for Ukraine
- Ukraine Extension Scheme

The length of these tenancies will be granted to reflect the tenants' period of leave to enter or remain in the UK.

### **Review of Fixed Term Tenancies**

Tenants will be contacted by the Council six months before their fixed term tenancy is due to end so that the Council can carry out the review.

Dependent on circumstances the Council will either:

- grant another secure tenancy, either fixed term or lifetime; or
- serve notice that the tenancy will end at the end of the fixed term and not be renewed

The Council will notify the tenant in writing of the outcome of the review.

### **Secure Tenancy – Lifetime**

A lifetime secure tenancy is for the rest of a tenant's life as long as the tenant does not break the conditions of the tenancy.

Introductory tenancies will default automatically to secure tenancies after 12 months unless the Council has ended or extended the tenancy or the tenancy will be a Fixed Term Tenancy in accordance with this policy.



## **Demotion of Secure Tenancies**

A secure tenancy, whether lifetime or fixed term, may be ended by a court order for some kinds of Anti-Social Behaviour and replaced with a demoted tenancy for a year. A demoted tenancy has less security and fewer rights. It is broadly like an introductory tenancy.

A demoted tenancy will automatically revert to a secure tenancy (lifetime or fixed term) at the end of the 12 months, unless action is taken to end the tenancy due to ongoing minor breaches or a major breach.

## **Tenancy enforcement**

The Council's primary aim is to prevent homelessness at all opportunities and therefore tenancy enforcement will be taken with the view of assisting that person to address their behaviour, whether that be antisocial behaviour, rent arrears or any other action(s) that would account as a breach of tenancy. The Council however must balance this priority against economic impact on council finances and making sure a limited public resource is afforded to those who can manage a tenancy. Any action will be taken in partnership with the housing and homelessness prevention services making sure the ending of a tenancy will be a last resort.

Tenancy enforcement practices are well founded in law. They are subject to change. The council will therefore meet any requirements found within the pre-action protocol. This is available by visiting the following link

<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-possession-claims-by-social-landlords>

Enforcement due to anti-social behaviour can be escalated more quickly than rent arrears however the period of evidence collection can be long. The process is as follows:

- First line resolution to be implemented to assist with reducing the impact of the ASB
- Formal warning provided to alleged perpetrators of their behaviour
- Adequate time for residents to adhere to this warning
- Further warning letter detailing the ASB
- Gathering adequate evidence and reviewing cases in line with policy and procedure
- Ensuring information gathered and actions are proportionate
- Applying to courts and awaiting a hearing date
- Possible trial if defended

There will be a period of 14 days between each action. At any point the perpetrator can stop the action which will pause the enforcement. If this pause is for a reasonable amount of time it can result in the process re-starting, especially in the circumstance whereby any notice seeking possession has expired.

The council are dedicated to addressing anti-social behaviour however as detailed in the link below the process is lengthy and requires a partnership approach with the victim.

<https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants/understanding-the-possession-action-process-a-guide-for-social-rented-tenants-in-england-and-wales>

### **Non-Secure Tenancy**

Non-Secure Tenancies do not benefit from all the security and protections offered by secure (lifetime or fixed term) tenancies and normally will apply to the provision of short-term accommodation.

In most circumstances this will be accommodation provided by the Council in accordance with the Homelessness Reduction Act 2017 and/or Housing Act 1996 as applicable.

### **Licence Agreements**

A licence is issued in cases where a household has been placed in Interim Accommodation while enquiry takes place into their homelessness.

License Agreements are not tenancies and are therefore beyond the scope of this policy. Please refer to our Temporary Accommodation Placement policy.

### **Use and Occupation**

In some cases a household will be allowed to stay in a property following the end of the tenancy (and there is no right of succession) or where a joint tenancy has been ended by one of the joint tenants but the other former joint tenant has been left in occupation.

They are not tenancies and the occupiers have no rights of tenancy.

This allows The Housing Solutions Service to consider the housing need of that household in accordance with the Council's Housing Allocation Scheme and subsequently support them with accommodation pending rehousing in an appropriate property as long as the normal conditions of a tenancy are maintained.

## **Tenants in need of additional support**

The needs of vulnerable households have been fully considered when finalising the Tenancy Policy. If the obligations of any tenancy are not maintained by the tenant we will offer support to that tenant to meet those obligations. If, following the offer of support, the tenant continues to fail to meet their obligations, the Council may take enforcement action.

## **Rents**

The Council will follow the Regulator for Social Housing's Rent Standard when setting its rent and will use the social rent formula.

## **Succession**

In all cases, there can only ever be one succession to a secure tenancy. In situations where the original tenancy was a joint tenancy and one of the original tenants has died, the surviving joint tenant will have taken over the tenancy by survivorship. This is counted as a succession in law.

Succession rights are limited to the tenant's spouse or registered civil partner, as long as they were living together at the time of their death (or, if the tenancy is a demoted tenancy, for at least a year beforehand). In exceptional circumstances the Council will consider applications from close family members who have lived in the property on a permanent basis as their family home for a continuous period of at least 12 months prior to the death of the tenant.

Where a succession takes place and the new tenant was not previously a joint tenant but is under-occupying the property, the Council have an opportunity to offer another property to them as suitable alternative accommodation. If an offer of accommodation is made between 6 months and one year after the Council becomes aware of the death of the tenant and it is refused, the Council may take possession action to recover the property.

## **Mutual Exchanges**

Secure tenants and flexible secure tenants (i.e., fixed term) have a legal right to exchange tenancies under the Housing Act 1985.

Landlords, including the Council, are able to withhold consent to exchange tenancies only in certain circumstances as listed under Schedule 3 of the Housing Act 1985. These include where:

- the Council has started eviction proceedings
- the home is adapted for a person with special needs and nobody in the new tenant's household has those needs

- the home the tenant wants to move to is 'substantially more extensive' than the household needs
- the home the tenant wants to move to is too small for their household and they would be overcrowded.

There is no legal definition of the phrase 'substantially more extensive' and the Council have interpreted this as being one bedroom or more in excess of the size of property required, so that the household would be under occupying the property. The Council will consider whether a household is under or over occupying a property with regard to the size criteria used when assessing Housing Benefit or the Housing Element of Universal Credit, i.e.:

- children under 16 of the same gender will be expected to share a bedroom
- children under 10 will be expected to share a bedroom regardless of gender
- a tenant or partner with disabilities requiring a non-resident overnight carer will be allowed an extra bedroom. We will require sufficient documentary evidence for this.

The Council takes into account everyone who lives with the tenant on a permanent basis and will usually only agree to the exchange if the property is the correct size for the incoming tenant and their family. The Council, may at its discretion, consider the additional needs of the household within the next 3 to 6 months.

Consideration will be given for any medical or social need that leads to a family requiring more bedrooms than allowed under these criteria. Medical and social needs will be considered.

Consent may be granted in situations where allowing an exchange, regardless of the size criteria, will enable the best use of the Council's stock. This may include situations where one party would substantially benefit from a move and the only reason for withholding consent would be the size criteria. This would only apply to allow a move where a household would be one bedroom in excess of the size criteria.

Where it is accepted that a household requires more bedrooms than allowed under the size criteria, advice will be given on the impact of any housing benefit claim and therefore any increased net rent liability.

## **Joint Tenancies**

The tenancies granted by the Council may be held on a sole basis or jointly by two or more joint tenants. Joint tenancies may be awarded at the time of allocation or an existing sole tenant may apply for a new joint tenancy to be granted. There is no legal right to a joint tenancy and the Council will consider each application upon its merits.

Consideration will be given to awarding a joint tenancy at the point of offer of a tenancy where the partner or prospective joint tenant are both eligible to be housed in accordance with the Housing Act 1996 and meet one or more of the following:

- the applicant's spouse, registered civil partner or partner who has continuously resided with the applicant in the previous 12 months
- the applicant's carer where a medical need for a residential carer exists and the carer has either:
  - surrendered a tenancy from a Registered Provider in order to move in with the tenant to provide care or
  - lived with the applicant or not sought independent accommodation for a period of 12 months or more due to undertaking caring responsibilities of the applicant and where the exceptional circumstances of the case mean that awarding a joint tenancy will substantially increase the likelihood of that tenancy being sustained.

Where an application for a joint tenancy is made by an existing sole tenant, the same criteria will apply as above, with the word 'tenant' substituted for 'applicant'.

To ensure the best use of the Council's housing stock, children of applicants or tenants will not normally be considered as joint tenants unless exceptional circumstances criteria as a carer are satisfied.

A joint tenancy may not be awarded in any of the following circumstances:

- the existing tenant has more than 3 minor breaches or is significantly breaching their tenancy agreement
- the prospective joint tenant has an interest in another property or land
- the prospective joint tenant has previously demonstrated that they are unable to sustain a tenancy or are unsuitable to be a tenant. This will be by conduct that, if a secure tenancy was in place, would result in a breach of that tenancy.
- the property has additional features or adaptations which are specific to the needs of the tenant and, in creating a joint tenancy; it would have a direct effect on the possible future best use of the property.

### **Termination of Joint Tenancies**

A joint tenancy may be terminated by any joint tenant by providing the statutory notice. The notice will terminate the tenancy for all joint tenants. Any joint tenant who has not submitted the notice to terminate can apply for a tenancy of the property in their sole name.

In such circumstances, a request for a sole tenancy should be made prior to the end of the tenancy unless there are exceptional reasons why a request should be considered after the end of the tenancy. Any decision to offer a new sole tenancy of the property or another suitable property is at the discretion of the Council as exercised by the nominated officer.

In considering requests for a new sole tenancy to be issued the following factors will be considered:

- whether the tenancy has been satisfactorily conducted in accordance with the requirements of the tenancy agreement
- whether the remaining tenant would have had the right to succeed to the property
- whether there are special characteristics about the property and the remaining tenant does not require the type of property they are living in
- whether the dwelling house is significantly in excess of the household housing need at the time of the application and whether it is reasonable to ask them to move to smaller accommodation to support better use of our housing stock
- whether the remaining tenant is a perpetrator of domestic abuse and the other tenant has left the property as a result of that abuse
- where there is evidence that matrimonial or court procedures were in progress to change the tenancy into the sole name of the remaining tenant but the processes had not been completed or the order issued prior to the serving of the notice to quit
- any exceptional circumstances which are relevant to the decision.

Where a decision cannot be made on whether the remaining tenant can be offered a new sole tenancy before the end of the joint tenancy, they will be allowed to remain in the property on a use and occupation basis without security of tenure or any of the rights of a secure tenant. A use and occupation charge will be made. Any failure to pay the use and occupation charge or conduct which would be akin to the breach of the Council's tenancy agreement will result in eviction. For minor breaches including failure to pay the use and occupation charge, the occupier will be provided with appropriate support and will have three months to rectify the issue before eviction is considered.

If a decision is not made prior to the end of the tenancy or where a decision is made to offer a sole tenancy of a different property, the former tenant will remain in the property on a use and occupation basis. Where the decision is made to offer a sole tenancy of a different property the remaining party will be entitled to one suitable offer of accommodation through the Housing Allocations Scheme.

In some limited cases the decision will be not to offer a sole tenancy of the property or any other property, in which case action will be taken to recover possession of the property they are residing in.

### **Appeals and Complaints**

It is important that tenants and prospective tenants are able to appeal against decisions made in regard to this Tenancy Policy in a clear, fair and efficient process. Appeals should be heard as soon as possible to ensure that there are no delays in accepting an offer of a tenancy or in making alternative arrangements where a tenancy is not granted.

The appeals process is:

- An appeal should be made by the tenant or prospective tenant within 21 days of the decision regarding their tenancy. Appeals should be submitted in writing to the Housing Manager.
- The appeal will be conducted by another Council Officer who was not involved in the original decision and must be senior to the person who made the original decision. The appeals process will be based on written representations. The senior officer may interview tenants, prospective tenants and other interested parties but there will be no requirement to hold a full oral hearing.
- The appeal decision should be made within 20 working days of the appeal request being made or as soon as reasonably practicable afterwards.
- If the tenant or prospective tenant is dissatisfied with the response from the Manager, they will have a further right of appeal to the Senior Manager. Such requests should be made in writing to the Senior Manager within 21 days of the initial appeal decision being provided to the tenant or prospective tenant.

Complaints will be handled under the Councils corporate Complaints Policy.

### **Review of Policy**

This policy will be reviewed if there are significant changes required in the light of best practice and any changes to legislation and Government guidance.