

Cabinet – 24 October 2012

Black Country Tenancy Strategy

Portfolio: Councillor Adrian Andrew, Deputy Leader, Regeneration

Service: Housing Services

Wards: All

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 The Localism Act 2011 (sections 150) requires local authorities to publish a Tenancy Strategy by January 2013. In conjunction with this, the Act also enables Registered Providers (RPs) to use Fixed term tenancies. Finally the Act brought in the use of Affordable Rents (up to 80% of open market rent), which are being used through the Homes and Communities Agency's (HCA) Affordable Homes Programme 2011-15.
- 1.2 A Tenancy Strategy should contain guidance on the use of flexible tenancies. The Act requires Registered Providers (RPs) to 'have regard' to a local authority's Tenancy Strategy when formulating their own tenancy policies.
- 1.3 As the majority of (non stock transfer) RPs operating in the Black Country have housing stock in all 4 Boroughs, Walsall has jointly developed a Tenancy Strategy with the other 3 Black Country local authorities (led by Dudley MBC). This will ensure a consistent approach to letting housing across the Black Country by these RPs, and support stable and sustainable communities.

2. Recommendations

- 2.1 That Cabinet approve the Black Country Tenancy Strategy as set out in **Appendix A**
- 2.2 That authority be delegated to the Executive Director, Regeneration in consultation with the portfolio holder for Regeneration to make any future minor amendments to the Black Country Tenancy Strategy, following agreement with Dudley MBC, Sandwell MBC and Wolverhampton City Council.

3. Report detail

- 3.1 The Localism Act 2011 Section 150 (1 to 8) introduced a new duty for every local authority to publish a tenancy strategy, that sets out the matters that registered providers of social housing operating in their district must '*have regard*' to when formulating policies relating to:
- the kinds of tenancies that they grant;
 - the circumstances in which they will grant a tenancy of a particular kind;
 - where they grant tenancies for a certain term, the lengths of the terms; and,
 - the circumstances in which they will grant a further tenancy at the end of an existing tenancy
- 3.2 The Localism Act 2011 also states that the Tenancy Strategy must be published by the local authority within 12 months of the act coming into force, which in practice means a Strategy must be published by January 2013.
- 3.3 The majority of major national and regional RPs (eg Accord / Bromford) have housing stock across the Black Country and so a consistent approach by the 4 Black Country LAs seemed appropriate, and was welcomed (during consultation) by these RPs. In addition Whg were also involved in the consultation and shaping of the Strategy. Separate meetings were held between Walsall Council and whg to ensure that whg's own tenancy policy was consistent with the Black Country Tenancy Strategy.
- 3.4 Early consultation showed that the vast majority of the consulted RPs intended to offer Fixed Term tenancies. The Tenancy Strategy focussed on the circumstances and procedure for the review of these fixed term tenancies to achieve the following objectives:
- To help local households to meet their current and future housing needs
 - To encourage Registered Providers to invest in the Black Country and provide affordable housing
 - To create sustainable communities and protect the vulnerable
- 3.5 To achieve these objectives it is proposed that:
- Any fixed term tenancy is offered for a minimum of five years plus any introductory/probationary or starter period. Tenancies of any shorter duration should only be issued in exceptional circumstances.
 - A longer minimum fixed term be considered for those vulnerable tenants, for example, occupants of some supported housing schemes or households containing children of school age
 - Tenants in sheltered housing or Extra Care Housing will not be considered for fixed term tenancies

- There is a presumption that the tenancy will be extended unless the size or needs of the household are such that the property is unsuitable to continue to be occupied. In the circumstances where a tenancy may be terminated and no breach of tenancy has occurred, reasonable efforts must be made to offer suitable alternative accommodation or consideration should be given to extend the tenancy until more suitable housing can be sourced.
- All prospective tenants be advised of the consequences of entering into a fixed term tenancy arrangement prior to the signing of the tenancy agreement.

3.6 Registered Providers will be expected to have procedures in place that will provide clear information to prospective tenants covering:

- the type of tenancy to be issued
- the reasons for issuing such a tenancy
- the grounds upon which a tenant may appeal the prospective landlord's decision
- the circumstances where a fixed term tenancy will be issued, the length of the term and the criteria used for review

3.7 We acknowledge that the use of Affordable Rents is essential to the delivery of new social housing, especially the homes that are and will be being delivered under the Homes and Communities Agency Affordable Housing Programme arrangements. The relevant local authority must be involved at an early stage in discussions about stock conversions and provided with details regarding the property type, location and proposed rent level prior to conversions being implemented. This Cabinet (13th April 2011) has previously approved the use of the Affordable Rent Model by housing providers in Walsall, as part of the funding mechanism for the Local Investment Plan (LIP).

3.8 The Strategy will be reviewed on an annual basis.

4. Council priorities

4.1 As expressed in the Corporate Plan 2011/12 – 2014/15, part of the Council's shared vision for the Borough is that Walsall will be a great place to live, work and invest, where "everyone has the chance to live in a home fit for their purpose and fit for their future". The Black Country Tenancy Strategy guides RPs how to administer flexible tenancies in a reasonable and fair manner to tenants, helping to maximise the use of housing stock and respond to housing need. The flexibility in use of housing stock reflects a key objective of the Marmott Review – Fair Society, Healthy Lives (2010), by helping to create and develop healthy and sustainable communities through making best use of homes to meet people's needs.

5. Risk management

- 5.1 Legal Challenge - The council has a legal obligation to adopt a Tenancy Strategy by January 2013, and failure to do so would leave the Council open to legal challenge. Adoption by Cabinet of the Black Country Tenancy Strategy would fulfill these obligations.
- 5.2 Impact of Tenancy Strategy – There is a risk that whilst RPs must 'have regard' to the Tenancy Strategy, they may not fully engage with the principles. To mitigate any likelihood of the Strategy not being part of an RPs core practice, the 4 LAs have carried out substantial consultation with all the major RPs to seek their input and agreement to the content of the Strategy. This has included being an agenda item at the last 3 Walsall Housing Partnership meetings.

6. Financial implications

The cost of producing the Tenancy Strategy has been met from existing resources.

7. Legal implications

Section 150(1) of the Localism Act states that all local authorities must publish a strategy that sets out the matters that registered providers of social housing operating in their district must '*have regard*' to when formulating policies relating to Fixed Term Tenancies and Affordable Rents. Further Sections cover the need to publish a Strategy within 12 months of the provisions coming into force (January 2013), that it should be sent to every Registered Provider for consultation, and that regard should be had to current allocation and homeless strategies. All of these sections have been considered in the development of the Strategy and so adoption of this Strategy should ensure the Council is not open to legal challenge in this context.

8. Property implications

There are no explicit property implications.

9. Staffing implications

There are no significant implications.

10. Equality implications

An Equality Impact Assessment (EQIA) has been developed and no key areas for concern have been raised. Equalities monitoring data of those accessing affordable tenancies will be assessed to highlight any potential discrimination for those with affordable tenancies.

11. Consultation

Elected members have received training in respect of the changes proposed under the Localism Act 2011. Consultation on the Draft Tenancy Strategy has taken place with Registered Providers. Consultation on the content of a Draft Tenancy Strategy was carried out with RPs at Walsall Housing Partnership in December 2011 and March 2012, and the Final Draft Tenancy Strategy was approved at Walsall Housing Partnership on the 27th June 2012. Dudley Council took the lead for the development of the Black Country Tenancy Strategy, and in addition to local consultation above, they wrote to a substantial number of housing providers and Local Authorities across the region to seek views on the Strategy.

Background papers

None

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24 October 2012



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Portfolio Holder – Regeneration
24 October 2012

Appendix A

Black Country Tenancy Strategy

Dudley MBC

Sandwell MBC

Walsall MBC

Wolverhampton City Council

CONSULTATION DRAFT

Black Country Tenancy Strategy

Overview

This Black Country Tenancy Strategy has been developed in response to the Localism Act 2011. Section 150 (1) to (8) set out the issues and administration procedures to be followed by local authorities with regard to their Tenancy Strategy. Section 150 (1) of the Act states that a local authority must publish a Tenancy Strategy that sets out the matters that registered providers of social housing operating in their district must '*have regard*' to when formulating policies relating to:

- the kinds of tenancies that they grant;
- the circumstances in which they will grant a tenancy of a particular kind;
- where they grant tenancies for a certain term, the lengths of the terms; and,
- the circumstances in which they will grant a further tenancy at the end of an existing tenancy.

Section 150 (3) also states that local authorities must have regard to their tenancy strategy when delivering their housing management function. A local housing authority must publish its tenancy strategy before the end of the period of 12 months beginning with the day on which this section comes into force (Section 150 (4)).

The Localism Act introduces provision for a new flexible secure tenancy for registered providers of social housing referred to as a Fixed Term Tenancy (FTT). As the term suggests, these tenancies can be issued for fixed terms and, based on a set of fixed circumstances, can either be renewed or terminated at the close of the term. The legislation also brings in the use of 'Affordable Rents' for social housing tenants that are set at up to 80% of the local private rented market level (in accordance with Homes and Communities Agency – Affordable Homes Programme 2011-15).

The purpose of this strategy is to indicate how these new freedoms will be used in a strategic way to make the best use of affordable* housing stock across the Black Country local authority areas consisting of Dudley, Sandwell, Walsall and Wolverhampton. All Registered Providers operating across the Black Country area will be expected to give regard to the objectives and principles set out in the strategy.

The overarching strategic objective of this strategy is to create a consistent and fair approach to the use of Fixed Term Tenancies and Affordable Rents across the Black Country Region in order to:

- help local households to meet their current and future housing needs
- encourage Registered Providers to invest in the Black Country to provide more affordable housing options
- create sustainable communities and continue to protect the vulnerable

We welcome the use of these new powers, alongside the use of existing powers, where they can contribute to:

- Making the best use of social housing stock
- Addressing issues such as under occupation or overcrowding
- Assisting tenants to improve their employability prospects and improve the economic circumstances of their household (by supporting access to training, employment, mentoring etc) which will widen the range of housing options that are available to them
- Encouraging and maintaining thriving sustainable communities

Administration of Fixed Term Tenancies

Use of tenancies and their duration

Local authorities and Registered Providers already have the powers to use a wide range of tenancy types. These have been used to good effect over the years. Social housing providers, up until this point, have tended to offer longer term tenancies, however, new powers are now available to offer fixed term tenancies. Registered Providers continue to have a range of tenancy options, including Secure, Assured, Assured Shorthold Starter and Demoted tenancies that have been used to good effect over the years. These should still be used as appropriate and Fixed Term Tenancies should not necessarily be the default tenancy type.

Each Black Country authority that has its own housing stock is developing its approach to using fixed term tenancies. Generally, there are no plans to introduce the wide scale use of fixed term tenancies but each authority continues to retain the right to use such tenancies where circumstances dictate that this may be the most effective way to utilise their housing stock.

The use of fixed term tenancies must be considered very carefully in order to ensure that communities are sustainable and the most vulnerable tenants or prospective tenants are provided with an appropriate type and length of tenancy to provide them with the protection and stability that they require to live successfully within their local community.

In order to achieve that we require that:

- Any fixed term tenancy is offered for a minimum of five years plus any introductory/probationary or starter period. Tenancies of any shorter duration should only be issued in exceptional circumstances.
- A longer minimum fixed term be considered for those vulnerable tenants that may benefit from an additional period of stability, for example, occupants of some supported housing schemes or households containing children of school age
- Tenants in sheltered housing or Extra Care Housing will not be considered for fixed term tenancies

- All prospective tenants be advised of the consequences of entering into a fixed term tenancy arrangement prior to the signing of the tenancy agreement.

Registered Providers will be expected to have procedures in place that will provide clear information to prospective tenants covering:

- the type of tenancy to be issued
- the reasons for issuing such a tenancy
- the grounds upon which a tenant may appeal the prospective landlord's decision
- the circumstances where a fixed term tenancy will be issued, the length of the term and the criteria used for review

Fixed term tenancy - Review and termination

We expect that fixed term tenancies will be reviewed **at least six months** prior to the tenancy end date.

The review process must give due regard to the need to create sustainable communities containing a range of households with mixed income levels. We have, therefore, not set any household income criteria within the tenancy review process. Each household should be assessed and advised on the range of housing options that are available to them and advice and assistance should be offered to higher income households so that they can consider staircasing into home ownership products if this is affordable and an expressed desire of the household.

We expect that there will be a **presumption that the tenancy will be extended** unless the size or needs of the household are such that the property is unsuitable to continue to be occupied. This could be because of overcrowding, under occupation or the property cannot be adapted to meet specific needs or there is evidence that a breach of tenancy has occurred that would have resulted in a court order being obtained.

In the circumstances where a tenancy may be terminated and no breach of tenancy has occurred, reasonable efforts must be made to offer suitable alternative accommodation or consideration should be given to extend the tenancy until more suitable housing can be sourced.

The review should NOT be used as an alternative to using the legal remedies and proceedings that are available for the management of tenancies if there is sufficient time and evidence to commence the appropriate legal proceedings.

Review and appeal

Reviews will take place at least six months prior to the fixed term tenancy ending. Tenants must be notified of the review outcome and the decision at least three months before the fixed term tenancy ends.

All tenants must be given information about the landlord's review process and the appeals process. All appeals must be heard by a member of the Board/senior officer, or panel of people who have not been involved in the original decision making process.

Existing tenants

We expect that all existing tenants who may wish to transfer to another social rented home will be offered the opportunity, where possible, to transfer whilst retaining their existing level of security of tenure, even if the transfer is from one social landlord to another.

Administration of Affordable Rents

Affordable rents

We acknowledge that the use of Affordable Rents is essential to the delivery of new social housing, especially the homes that are and will be being delivered under the Homes and Communities Agency Affordable Housing Programme arrangements. However, householders within the Black Country generally have low incomes and we expect landlords to take this into account and take a responsible view when determining when and how Affordable Rents (new build and conversions) will be used.

We expect landlords to offer prospective tenants the opportunity to discuss and evaluate if a tenancy at an Affordable Rent level is a sustainable housing option for them.

Affordable rent conversions

The relevant local authority must be involved at an early stage in discussions about stock conversions and provided with details regarding the property type, location and proposed rent level prior to conversions being implemented. The participating local authorities want to ensure that all conversions are suitable and appropriate for their local areas.

Any decisions on implementation must give careful consideration to the sustainability of local communities. Fundamentally, we expect all housing providers to ensure that any Affordable Rents are genuinely affordable for local tenants. The number of conversions in each locality must be carefully managed to ensure that local housing estates continue to contain households with a mix of incomes and that the local community is sustainable.

Consideration should also be given in special circumstances to de-converting Affordable Rents in tenancies where tenants are struggling to meet rent levels on affordability grounds.

Monitoring and Review

The Black Country authorities will review this strategy on an annual basis. Registered Providers will be required to submit half yearly data (date to be agreed) in relation to:

- The number of tenancies issued (all types)
- The number of fixed term tenancies issued
- The number of fixed term tenancies reviewed and the outcome of the review
- The number of Affordable Rents implemented (through new build and conversion)
- The profile of tenants who have accepted Affordable Rent tenancies
- Demographic data associated with meeting the requirements of the Public Sector Equality Duty.

The Black Country authorities will collectively produce and publish half yearly reports containing a summary and analysis of this data.

Further Information

A copy of this policy, or other related policies, is available for inspection, without charge to members of the public. Copies can be made available upon request (a charge may apply). This information can be obtained from:

Dudley MBC

www.dudley.gov.uk

Dudley Council Plus 0300 555 2345

Sandwell MBC

http://www.sandwell.gov.uk/info/200053/housing_associations_and_co-ops

Housing and Partnerships Team 0121 569 5102

Walsall MBC

http://cms.walsall.gov.uk/index/housing/housing_strategies_and_policies.htm

01922 655413 or HousingServices@walsall.gov.uk

Wolverhampton CC

www.wolverhampton.gov.uk/housing/strategy_performance/default.htm

01902 551155 or Housing.Strategy@wolverhampton.gov.uk

Glossary of Terms

* Affordable housing is defined as per National Planning Policy Framework (NPPF) – Communities and Local Government – March 2012

Affordable housing

Affordable housing includes social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Affordable housing should:

– Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.

– Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is:

Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime. The proposals set out in the Three Year Review of Rent Restructuring (July 2004) were implemented as policy in April 2006. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency as a condition of grant.

Affordable rented housing is:

Rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

Intermediate affordable housing is:

Housing at prices and rents above those of social rent, but below market price or rents, and which meet the criteria set out above. These can include shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent but does not include affordable rented housing.

These definitions replace those given in previous editions of PPS3 (2006 and 2010) and related guidance such as Delivering Affordable Housing 2006. The definition does not exclude homes provided by private sector bodies or provided without grant funding. Where such homes meet the definition above, they may be considered, for planning purposes, as affordable housing. Whereas, those homes that do not meet the definition, for example, 'low cost market' housing, may not be considered, for planning purposes, as affordable housing.

There is further guidance on Affordable Rent in the Homes and Communities Agency Affordable Homes Rent Framework document. The terms 'affordability' and 'affordable housing' have different meanings. 'Affordability' is a measure of whether housing may be afforded by certain groups of households. 'Affordable housing' refers to particular products outside the main housing market.