

# **Tenancy Strategy 2021**

***Consultation Draft***

## Document Control

Version control	Consultation Draft
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Lead Directorate	Communities and Place
Implementation due date	Summer 2021
Approving body	Cabinet
Approval date	June 2021
Accountable Service Director	David Fletcher

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# 1 Introduction

- 1.1 The Localism Act of 2011 introduced a requirement for local housing authorities in England to prepare and publish a Tenancy Strategy. The legal purpose of a Tenancy Strategy is to help to shape the tenancy policies of registered providers of affordable housing who operate in a local authority's district. Registered providers (RPs) operating in Derby include non-profit making and charitable housing associations registered with Homes England and the Regulator for Social Housing. This includes the Council as a landlord of social housing and its **Arm's Length Management Organisation (ALMO)**, Derby Homes. Derby's first Tenancy Strategy was published in 2012.
- 1.2 This updated strategy sets out the Council's position for 2021 onwards. It provides the basis for action on our own housing stock while also giving a steer to other RPs. Other providers are legally required to 'have regard to' the tenancy strategy but are not bound by it and may in the end adopt a different approach when drawing up their own policies.
- 1.3 In line with the requirements of the Localism Act, the Tenancy Strategy must "set out, as a minimum, the matters to which registered providers of social housing for its district are to have regard in formulating tenancy policies 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 flexible tenancies, the lengths of the terms; and,
  - The circumstances in which they will grant a further tenancy on the termination of the existing tenancy".
- 1.4 Derby City's Tenancy Strategy addresses the requirements, and should be considered alongside:
- The Housing Strategy 2020-2029
  - The Homelessness and Rough Sleeping Strategy 2020-2025
  - The Derby Homefinder Allocation Policy 2020-25
- 1.5 These documents can be found at [www.derby.gov.uk/housing-strategy](http://www.derby.gov.uk/housing-strategy). They provide greater detail in relation to the housing priorities of the city; the Council's own stock portfolio and the portfolio of its RP partners; the city's housing need requirements; and Derby's allocation/nominations arrangements.

- 1.6 'Affordable rents' were also introduced by the Localism Act 2011. This strategy, following our first strategy in 2012, also sets out our approach to the use of Affordable Rents.

## 2 Our Housing Priorities

- 2.1 Derby's [Housing Strategy 2020-2029](#) sets out the local picture regarding housing need and supply and where the most acute shortages are. It also sets out our vision for housing and the key priorities we must deliver on.
- 2.2 Our Vision, along with priorities 1 and 3 of the Housing Strategy are of particular relevance in the drafting of RP tenancy policies. These priorities are:

<b>Priority 1</b>	<b>Best use of stock</b> – getting the most out of the homes that already exist.
<b>Priority 2</b>	<b>Housing quality and standards</b> – promoting well-managed, well-maintained, greener homes.
<b>Priority 3</b>	<b>Vulnerable people</b> - providing suitable accommodation for vulnerable groups.
<b>Priority 4</b>	<b>Housing development and regeneration</b> - supplying a range of new housing that meets need and contributes to urban renewal.

- 2.3 Our vision and strategic priorities shape this tenancy strategy and provide information that is relevant to all RPs operating in Derby. More detailed guidance for RPs in the drawing up of their tenancy policies is provided in 4 below.

## 3 Tenancy Types

### *Security of Tenure and 'Lifetime Tenancies'*

- 3.1 Long-term security of tenure was introduced for most social housing tenants by the Housing Act 1980. The Housing Act 1988 subsequently introduced the assured tenancy regime for housing associations. This regime has applied to most new housing association tenancies created since 15 January 1989.

- 3.2 The level of security of tenure offered by these tenancies has led to them being described as 'lifetime tenancies.' Essentially, with some limited exceptions, if a secure or assured tenant does not breach the conditions of their tenancy agreement they cannot be evicted.

#### *Introductory Tenancies*

- 3.3 An introductory/starter tenancy is a trial tenancy that allows the Council/RP to decide if a new tenant can manage their tenancy in accordance with their tenancy agreement. The trial period lasts for 12 months from the date the tenancy starts or the date of occupation, whichever is later. The Council or RP can extend an introductory/starter tenancy for a further 6 months.
- 3.4 Introductory/starter Tenancies can only be used for new tenants. They cannot be used for tenants transferring from a secure Council tenancy or an assured housing association tenancy. Nor can they be used for a mutual exchange - where 2 existing tenancies undertake a house swap. After a successful 12-month introductory period – the tenant is usually offered a life time tenancy.

#### *Flexible Tenancies*

- 3.5 The Localism Act 2011 introduced changes which allow Councils and RPs to grant fixed term or flexible tenancies.
- More detail on our proposed use of Flexible Tenancies for move on accommodation is set out below. Further information on the measures announced under the Localism Act, and subsequent related legislation can be found in Appendix A.

#### **The Council's Position on Secure/Assured Tenancies**

- 3.6 Derby City Council's position on secure/assured tenancies echoes that stated by the government in [A New Deal for Social Housing \(2018\)](#) in the following extract:

*Many residents spoke about the benefits of security in their tenancies, saying that they created strong, supportive communities, and particularly enabled people with vulnerabilities to thrive. Some felt that residents were more likely to look after their property, their neighbours, and the community if they had a lifetime tenancy. While some people thought it was right that residents should move out of social housing if they no longer needed it given the pressures on housing, many also had concerns about the uncertainty when fixed term tenancies came to an end and the impact this could have on their families and communities.*

*We have listened carefully to the views and concerns of residents and have decided not to implement the provisions in the Housing and Planning Act 2016 at this time.*<sup>1</sup>

- 3.7 In other words, the Council recognises the immense value and security that lifetime tenancies provide for residents and communities. Consultation when developing our first Tenancy Strategy in 2012 also found potential problems with implementing flexible tenancies in areas such as:
- a) lengthy administration in reviewing tenancies when approaching the end of their term
  - b) the risk of challenge to decisions to end a tenancy
  - c) greater risk of voids in between lets
  - d) residualisation<sup>2</sup> of estates.

3.8 **The position of the Council is therefore that secure or assured, lifetime tenancies are preferred in the majority of cases. We consider that these are most supportive of our vision for housing and supporting communities.**

#### **The Council's Position on Flexible Tenancies**

- 3.9 Whilst being committed to the use of secure/assured tenancies for the majority of general needs properties, we recognise that flexible tenancies, non-secure tenancies and licences may be appropriate in some circumstances.
- 3.10 These include:
- a) Temporary accommodation under provisions contained within the 1996 Housing Act.
  - b) When they allow the use of an additional property for affordable housing. An example would be where a registered provider brings private sector properties into use as affordable accommodation as part of a leasing scheme and a lifetime tenancy could not be offered due to the length of the lease.
  - c) Where the property is offered for a specific purpose, such as to support foster care by the occupant, but the foster caring comes to an end.
  - d) Property in very short supply where greater control over occupation is necessary to ensure it most effectively meets housing need and makes best use of stock. For example, larger family houses of 4 beds or more or properties with substantial adaptations suited to a disabled person.

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<sup>1</sup> A New Deal for Social Housing, 14 August 2018, paras 183-86. There was an intention in the Housing and Planning Act to make flexible tenancies mandatory, but this statement superseded that intention.

<sup>2</sup> Estate 'residualisation' occurs when higher income households move on resulting in the majority of remaining residents being comprised of households on benefits or low incomes.

- e) Where the tenancy is offered in a property which is due to be decanted for regeneration purposes
- f) Some other legal or contractual obligation which prevents the giving of lifetime tenancies. For example, property procured using funding (such as government funding) which is given on the basis of the use of flexible tenancies or similar.

3.11 The Council accepts that non-secure tenancies may be preferred in some of the categories contained within 3.10. In fact, where contractual requirements or overwhelming practicality (such as with properties due to be decanted for regeneration) have necessitated use of non-secure arrangements, it has already implemented them.

***Flexible Tenancies for move on accommodation in line with Derby's Homelessness and Rough Sleeping Strategy***

3.12 This draft new strategy goes further than its predecessor though, in proposing to allow for the use of flexible tenancies for the provision of move on accommodation for homeless households. In fact, Derby, along with many LAs has long since used occupational arrangements such as non-secure tenancies to provide accommodation for homelessness households under the provisions contained within the 1996 Housing Act.

3.13 In line with the Homelessness and Rough Sleeping Strategy 2020-25, housing pathways have been developed. These are aimed at responding to the housing and support needs of those at risk of rough sleeping, those actually rough sleeping, and those recovering from rough sleeping. Our objective, mirroring that of the government's 'Everyone In'<sup>3</sup> agenda, is to ensure that every rough sleeper has access to accommodation and support appropriate to what they need next. In order to maximise flow through these pathways towards greater levels of independence it is essential that move on options remain available. The use of flexible tenancies will allow for residents to move towards greater levels of independence when they are ready and ensures the continued availability of supported accommodation for those that need it.

***Flexible Tenancies to make best use of Housing Stock and respond to acute supply shortages – Larger Properties and Substantially Adapted Properties***

3.14 Larger properties (those with 4 or more bedrooms) and properties with substantial disability-related adaptations are in acutely short supply. There are many households in cramped and overcrowded properties who would benefit greatly from larger properties being more readily available. There are also a large number of people on the housing register in need of properties with major adaptations who are awaiting the provision of suitable housing.

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<sup>3</sup> <https://www.gov.uk/government/news/3-2-million-emergency-support-for-rough-sleepers-during-coronavirus-outbreak>



- 3.15 There is therefore a strong case for letting these property types on flexible tenancies too. Doing so would allow these properties to be made available for those in need when they become under occupied - if for example, when children grow up and move out - or when adaptations are no longer required, because for example the disabled person no longer resides at the property.
- 3.16 Nevertheless, the advantages of retaining lifetime tenancies for these properties persist. Adopting a policy position is therefore a question of balancing the benefits of lifetime tenancies with meeting the needs of those requiring larger or substantially adapted properties. This remains a significant challenge.
- 3.17 The Council will therefore continue to assess the advantages and disadvantages of providing flexible tenancies for those living in larger properties or substantially adapted properties through a wider engagement process. At this stage the Council does not intend to implement flexible tenancies for this purpose but may choose to do so in the future. Any subsequent change made in this area will be subject to our standard consultation and formal approval processes.

#### **4 Guidance for Registered Providers in Formulating their Tenancy Policies**

- 4.1 Where RPs let properties on flexible tenancies, we recommend the following apply:
- a) For general needs housing, any fixed term should be for a minimum of 5 years in accordance with Homes England and the Regulator for Social Housing guidance.
  - b) All prospective tenants should be made aware of the type and length of tenancy prior to sign up.
  - c) Tenants should also be informed of the circumstances in which they will be granted a further tenancy at the end of the term of their current tenancy. The criteria for not renewing a tenancy must be clearly published in the provider's tenancy policy, in accordance with the requirements of the legislation.
  - d) Tenancy policies should recognise the benefit of a period of stability for those with young families and children in education.
  - e) Where flexible tenancies are being used to support the delivery of an Affordable Rents programme, consideration should be given to the geographical distribution of these properties to ensure that areas with high levels of tenancy turnover are not further destabilised as a result.
  - f) If a flexible tenancy is not being renewed on the basis of under-occupation, or where the property's major adaptations are no longer needed, it is expected that RPs offer a smaller alternative, or in non-adapted property within their own stock, or through partnership working with other providers

and the Council, and allow the tenant to remain housed until an alternative is found.

- g) The Council expects to be notified of all decisions not to renew a tenancy to enable housing advice to be provided for those households affected.
- h) Registered Providers should be able to demonstrate how their approach to fixed term tenancies addresses the priorities of Derby's [Housing Strategy 2020-2029](#)

4.2 Our recommended approach to the use of Affordable Rents is set out in paragraphs 5.4-5.8 below.

## 5 Affordable Rent

### Background

- 5.1 Affordable rents were introduced by the Localism Act 2011. The policy's primary objective was to allow Registered Providers to generate additional rental income to support investment in building more affordable homes, despite reductions in government grant. This would be achieved by charging a higher rent than social rent, but remaining at a level that was still affordable to tenants with low to medium incomes (where eligible, with support through Housing Benefit).
- 5.2 The Ministry of Housing Communities and Local Government (MHCLG) has issued guidance on setting rents for social housing<sup>4</sup>. Registered Providers' property valuations for initial rent setting must be in accordance with a method recognised by the Royal Institute of Chartered Surveyors (RICS). The resulting Affordable Rent (subject to certain exceptions) shall not exceed 80% of market rent.
- 5.3 The level of Affordable Rent will be recalculated at any subsequent grant of a new tenancy.

### The Council's Position on Affordable Rents

- 5.4 We are broadly supportive of the principle of Affordable Rents, as a means of broadening housing diversity and choice, and generating additional funds to support the viability of new-build programmes. We also recognise that some

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<sup>4</sup> MHCLG: Policy statement on rents for social housing. February 2019  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932836/Rent\\_Standard\\_-\\_April\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932836/Rent_Standard_-_April_2020.pdf)

Registered Providers have entered into a contract within the Affordable Homes Programme managed by Homes England which requires an Affordable Rent element.

- 5.5 It is the Council 's position that Affordable Rents should only be used where it can be evidenced that the rent is genuinely affordable to the local population. Local Housing Allowance provides a good benchmark against which to assess affordability, and MHCLG guidance states that RPs should have regard to it when setting affordable rent. Another useful benchmark of affordability is the rent cap for social rents. While not strictly applicable to Affordable Rents, the Council would want to discourage Affordable Rents above that level.
- 5.6 It is recommended therefore that Affordable Rents do not exceed the rent cap, the exception being where a higher rent is critical to ensure the viability of building larger properties of 4 or more bedrooms, or properties with specialist features.
- 5.7 Affordable Rent for new developments should be considered on a case by case basis, seeking to balance the need to ensure viability, maximise income, and meeting the needs of local people and their community.
- 5.8 The Council would welcome the opportunity to discuss with Registered Providers their approach to Affordable Rent before implementation.

## **6 Actions**

- a) Following the public consultation period, the Council will produce a finalised version of this document, which will be implemented later in 2021.
- b) The Council will keep under review relevant legislation, government guidance and local housing conditions. It will also monitor the impact of this strategy and its effectiveness in supporting the objectives of Derby's [Housing Strategy 2020-2029](#). It will amend this strategy (following consultation) if a significant change in any of these factors so requires.
- c) The Council will also consider in depth the merits and demerits of using flexible tenancies with respect to properties 4 beds or larger in size and those with substantial disability-related adaptations. If it decides a change to the position set out in this tenancy strategy is appropriate, it will undertake an extensive consultation with all relevant stakeholders.

## Appendix A: The Flexibilities Announced Under the Localism Act 2011

- a) Enabled Social landlords, after the expiry of introductory or starter tenancies, to grant tenancies for a fixed length of time.
- b) Set the statutory minimum length of tenancy at 2-years (to be used only in exceptional circumstances) with a tenancy term of 5-years being considered the norm.
- c) Stated that there is no upper limit on the length of the tenancy, as social landlords could still offer lifetime tenancies.
- d) Stated that prospective tenants must be given prior written notice that their tenancy is to be a flexible tenancy and have the right to request a review of the length of the term.
- e) Stated that when a social landlord decides not to reissue a tenancy at the end of the term, they must give 6-months' notice of this decision before the end of the tenancy and must provide advice and assistance for tenants to help them to find suitable alternative accommodation.

Tenants with flexible tenancies have the same protection from eviction as tenants with a secure or assured tenancy. Landlords are still required to rely on one of the grounds for possession and also prove they acted reasonably when deciding to seek possession.

- a) The Localism Act states tenants with flexible tenancies have the following rights:
- b) Right to exchange with limited exceptions
- c) Right to buy / acquire (on the same conditions assured tenants)
- d) Right to take in lodgers and to sub-let part of the property (with landlord's permission).
- e) Right to have repairs carried out.
- f) Right to consultation and information.
- g) Right to one succession to spouse or partner of the deceased tenant.

Landlords will be able to offer other relatives the opportunity to succeed but will not be required to do so

## **Appendix B: Changes to the National Policy Position and Legislative Framework**

Since the introduction of the Localism Act 2011 several other pieces of legislation have been enacted that impact on the tenancy offer that can be offered by local authorities and registered providers.

### **Housing and Planning Act 2016**

Proposals in the [Housing and Planning Act 2016](#) were set to end the granting of secure tenancies to all but a few 'nationally' agreed exceptions.

The [Social Housing Green Paper 2018](#) 'rowed back' on that, in announcing that these proposals would not be enacted at the time. This allowed Local Authorities to continue to determine the types of tenancy that they would offer, locally. There have been no suggestions since this time that the government has any plans to end the use of lifetime tenancies.

### **Homelessness Reduction Act 2017**

The [Homelessness Reduction Act 2017](#) added two new duties to the original statutory rehousing duty:

- A duty to prevent homelessness
- A duty to relieve homelessness

The legislation extends entitlements to help, places a renewed focus on the prevention of homelessness and local joint working, and has the potential to provide more client-focussed, personalised statutory homelessness services.

### **Secure Tenancies (Victims of Domestic Abuse) Act 2018**

The [Secure Tenancies \(Victims of Domestic Abuse\) Act 2018](#) supports victims of domestic abuse in social housing to leave their abusive situation. The bill will require local authorities, when re-housing an existing lifetime social tenant, or offering them a new sole tenancy in their own home, to grant a new lifetime tenancy if the local authority is satisfied that the tenant or a member of their household has been a victim of domestic abuse and the new tenancy is granted in connection with that abuse.

## Glossary of Terms

**Affordable housing:** Includes social rented housing, affordable rented housing and low-cost home ownership such as shared ownership.

**Affordable Rent:** Rents offered by RPs of social housing at up to 80% of the rent that would be charged if the property were let in the open market.

**Fixed Term Tenancy:** A flexible tenancy with a fixed start and finish date, usually for 5 years. At the end of the fixed term the tenancy may end or it may be renewed, depending on the criteria for renewal specified in the RP's Tenancy Policy.

**Homes England:** The national housing and regeneration agency for England, responsible for allocating funding for new affordable housing.

**Homelessness duty:** A local authority owes the "main homelessness duty" when the authority is satisfied that a homeless household is eligible for assistance, unintentionally homeless and falls within a specified priority need group. Where this duty is owed, the authority must ensure that suitable accommodation is available to the household.

**Local Housing Allowance:** The current published maximum level of housing benefit payable for particular types of property, based on bedroom size and location.

**Market rent:** The rental income level that a property would most probably command on the open market if rented privately.

**Regulator of Social Housing:** The central Regulator for all Social Housing Providers, including Housing Associations and Local Authorities.

**Social rent:** Rent levels for Social Housing for which guideline target rents are determined through a National Rent Regime aimed at helping ensure that all Social Rent levels are brought into line and are comparable. Social Rents are usually significantly lower than market rent levels.

**Tenancy policy:** An RP's policy that defines how the provider will make decisions about the types of tenancy they will provide to tenants.