



DRAFT TENANCY POLICY 2013

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## 1.0 Introduction

- 1.1 Under the Localism Act 2011, all local authorities (whether they have retained housing stock or not) have a duty to produce a tenancy strategy, setting out the objectives to be taken into consideration by individual affordable housing providers as they make decisions about their own tenancy policies. (Both stock owned by South Derbyshire District Council and its registered housing provider partners are referred to as “affordable housing”).
- 1.2 The Localism Act 2011 allows affordable housing providers more freedom to:
- Provide new tenants with a fixed term tenancy where it's believed to be more appropriate than a lifetime tenancy;
  - Establish the length of the fixed-term tenancy to be offered;
  - Develop their own Tenancy Policy setting out the criteria to be issued in determining whether to issue a new tenancy at the end of any fixed term;
  - Continue to grant lifetime tenancies if they wish either for all or specific household groups/property types/locations;
  - Let new build homes or re-let of existing homes under the new affordable rent tenure, which allows for affordable housing providers to charge higher rent levels (upto 80% of market rents).
- 1.3 South Derbyshire's tenancy strategy (agreed by the Housing and Community Services Committee in November 2012) has been developed within the context of the Council's overall Corporate Plan 2009-14 and its strategic objective to “Deliver a range of affordable and decent housing options within safe and clean neighbourhoods.”
- 1.4 With a retained landlord function South Derbyshire District Council Housing Services has a duty to publish a Tenancy Policy which describes the types of tenancies we will offer and the way in which these tenancies will be managed.
- 1.5 The Tenancy Policy has been developed with full regard to South Derbyshire District Council's Tenancy Strategy. The policy follows the principles and objectives of the Tenancy Strategy and should be read in conjunction with it.
- 1.6 This Tenancy Policy sets out:
- The types of tenancies the Council will offer
  - The circumstances in which tenancies will be granted
  - The process for reviewing tenancies
  - How succession rights will be managed
  - Our approach to Tenancy Sustainment
- 1.7 This policy applies to all new tenancies that commence from *[date to be confirmed following consultation]*.

## **2.0 Aims & Objectives**

2.1 The Council will issue tenancies that are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community and the efficient use of our housing stock.

2.2 The Policy seeks to:

- Ensure our customers and staff are aware of the types of tenancies offered
- Ensure that all our tenancies are transparent and fair
- Aid mobility and respond to the changing needs of our customers
- Make best use of our housing stock especially by reducing under occupation and overcrowding, and ensuring adapted homes are lived in by those who need them
- Have regard to SDDC's Tenancy Strategy
- Provide all tenants with the advice and support to be able to manage their tenancies satisfactorily

## **3.0 Local Context**

3.1 South Derbyshire is a semi-rural district in central England covering an area of over 100 square miles. Its population is growing and currently stands at 94,600 (2011 Census). It adjoins, and is heavily influenced by the City of Derby to the north and Burton-upon-Trent to the west. The town of Swadlincote, in the south of the District, is the main urban centre with a population of around 33,000. The percentage population growth of South Derbyshire is expected to be twice that of Derbyshire and England over the next 20 years.

3.2 The Council owns and manages 3,024 properties, comprising 2,043 general needs dwellings and another 981 units of supported housing accommodation, primarily for tenants with disabilities and those over 60 years old.

3.3 On average there are 200 vacant Council properties let to new or transfer applicants each year with, on average, a further 50 let by Registered Providers (Housing Associations). There are currently 2,135 applicants (September 2013) on the district wide housing register.

3.4 As at October 2013, the Council currently grants Introductory Tenancies to applicants new to social housing and secure tenancies to existing tenants of social housing. Introductory tenancies are converted to secure tenancies upon successful completion of an initial 12 month period.

3.5 New tenancies are granted to applicants from the district wide housing register. These applicants will have a range of housing needs which may include homelessness, overcrowding, health issues and family breakdowns.

## **4.0 Types of Tenancies to be Offered**

### **4.1 Introductory Tenancies**

4.2 The majority of new tenants will be introductory tenants for the first year of their tenancy in line with the Council's Introductory Tenancy Procedure. Their tenancies will become flexible or secure tenancies at the end of this period, provided the introductory tenancy's conditions have not been broken.

4.3 All introductory tenants will receive a tenancy agreement setting out the introductory tenancy period and indicating the type of tenancy to be granted at the end of the introductory period, subject to there having been no breach of the tenancy agreement during the introductory tenancy period.

4.4 New tenants who are transferring from another social or affordable home, whether with SDDC or another social landlord, will not normally be offered an introductory tenancy if they are a secure or assured tenant or hold a flexible (fixed term) tenancy.

4.5 Before the end of the twelve month introductory period, the tenant may be offered:

- A flexible or secure tenancy, or
- an extension to the introductory period, if they need more time to demonstrate that they can keep to tenancy terms, or to clear rent arrears; or
- the tenancy may be ended.

4.6 An introductory tenancy may be brought to an end if the tenancy terms are broken. This includes where tenants commit crime, or anti-social behaviour, or fail to pay their rent.

### **4.7 Flexible Tenancies**

4.8 A flexible tenancy is a form of secure tenancy, which is for a fixed period, and was created under the Localism Act 2011. Although it contains many features of a secure tenancy, the main difference is that a secure tenancy can only be brought to an end by the landlord if a court order is granted, and the court considered possession reasonable. With a flexible tenancy, the court has to award the landlord possession as long as the fixed term has expired, the correct notices have been served and any appeal has been considered.

4.9 From the date on which the Tenancy Policy is implemented, the majority of new tenancies offered by the Council will be flexible tenancies following the completion of a satisfactory introductory tenancy.

4.10 The majority of flexible tenancies will be for an initial period of five years. Five year flexible tenancies provide a reasonable degree of security, for example for

vulnerable people, and for people with children, while enabling the Council to make the best use of the housing stock for those in need. Flexible tenancies will be subject to review toward the end of the term in line with the renewal criteria.

- 4.11 Fixed term tenancies of less than five years may be considered for applicants being offered supported accommodation as a “halfway” house as they make the transition to independent living. These are more appropriate for people leaving specialised accommodation (e.g. Hostels) to encourage them to take responsibility for their own lives and utilise opportunities for greater independence through employment and to move-on to more mainstream accommodation.
- 4.12 A review of each tenancy will be carried out between six and 12 months before the end of the tenancy term. This review will aim to assess the individual circumstances of each tenant so that an informed decision can be taken as to whether to renew the tenancy.
- 4.13 A decision will be made no less than six months before the end of the tenancy, in order to allow adequate time to find alternative accommodation if a tenancy is not being renewed.
- 4.14 In practice the majority of flexible tenancies will be renewed several times, allowing tenants to be settled in their local community, much as with a secure tenancy. However, some tenants’ needs may change over time, and we will work with them to move them to accommodation which meets those needs. Where tenants no longer need a particular type of accommodation – such as a larger family home or an adapted home – the flexible tenancy will allow us to move them to more suitable accommodation and make that property available to people who need it
- 4.15 Flexible tenancies will normally be renewed for a period of 5 years as a matter of course. However, there may be exceptional circumstances which may justify granting a flexible tenancy of less than five years. An example would be where the tenant has not kept to an agreement to correct a breach of the tenancy agreement during the flexible tenancy. This will be addressed at the review meeting, and a new flexible tenancy of two rather than five years may be offered.
- 4.16 The use of shorter tenancies in these circumstances is intended to help reinforce the tenant’s responsibilities under the tenancy agreement and to enable any necessary support to be put in place.
- 4.17 If there has been a major change in circumstances the Council may not renew a fixed term tenancy. Examples may include:
  - The property is under-occupied. The tenant would normally be offered an alternative home with a registered provider (we would class under-occupation as permanently under-occupying by more than two bedrooms).

- The tenant's financial circumstances have significantly improved so that other housing options are available, such as home ownership or renting at market value.
- Breaches of tenancy or tenancy fraud have been identified during the fixed term tenancy review process (which would result in enforcement action).
- Possession proceedings have commenced for breach of tenancy conditions (for example, rent payments, anti-social behaviour).
- The tenant and/or his or her advocate do not engage in the review of the flexible tenancy.
- The property has been extensively adapted at significant cost (such as a tracking hoist, through the floor lift, etc) for a person with a disability but the household no longer requires the adaptations. In such cases, the tenant would normally be offered an alternative home with a registered provider
- Works are planned on the property in the next five years (which would require its redevelopment or demolition)

4.18 Exceptions to this may include where care and support needs have been identified and these can only be maintained if the household continues to remain in the property (and the loss of the care and support would be detrimental to the household)

4.19 Older people living in designated supported accommodation schemes will be offered secure lifetime tenancies following the successful completion of the introductory tenancy period

#### **4.20 Secure Lifetime Tenancies**

4.21 Lifetime secure and assured tenancies are those which are only reviewed if the tenant breaches the conditions of their tenancy agreement.

4.22 Lifetime tenancies are intended for:

- All existing tenants of South Derbyshire District Council or those of registered providers who currently have a lifetime tenancy agreement.
- New lettings to designated supported older person accommodation.

#### **4.23 Temporary Agreements**

4.24 These agreements are short-term, usually for no more than 12 months, which give a tenant the right to stay in a scheme such as hostel/supported or temporary housing until they are ready to be re-housed.

### **5.0 Flexible Tenancy Renewal or termination**

5.1 A review meeting will be held to consider if a new flexible tenancy will be offered at the same or another property.

- 5.2 The Council will contact the tenant at least 42 weeks before the tenancy expires to seek to arrange a review meeting, which should ideally take place at least 39 weeks before the tenancy expires. The meeting will be arranged at a time that is convenient for the tenant(s) and the tenant will be asked to bring all relevant information to the meeting.
- 5.3 The review meeting will be organised by a Housing Officer. The tenant(s) will be encouraged to invite any support worker, friend or other representative the tenant may wish to bring. For joint tenancies both parties should attend. Tenants must participate in the review and provide any information requested. Every effort will be made to ensure that tenants participate in the review and that they are held in a way that is sensitive to the needs of vulnerable people. This may involve holding meetings in tenants' homes if preferred.
- 5.4 The tenant needs to respond and co-operate with invitations to arrange a review: the Council will make at least four attempts to contact them, including: initial letter, telephone call and/or email, attempted home visit, and follow-up letter. If the tenant does not respond we will attempt to verify whether the tenant is actually living at the address (or subletting, or has abandoned, for example), and will also investigate any information suggesting that special support is required for reasons of tenant vulnerability, lack of literacy or language skills.
- 5.5 If we do not identify any issues of vulnerability, we will inform the tenant of our final attempt to make contact, and issue six months' notice of our intention to end the tenancy on its expiry date.
- 5.6 In some circumstances the review meeting can be held without the tenant being present. In these cases the tenant must be living at the property and be unable to participate in the review due to vulnerability or for some other good reason. Instead a support worker, friend or representative of the tenant will be invited to attend the review meeting. In any event, the review in these circumstances will only occur with the tenant's consent.
- 5.7 The review will assess whether the combined income and capital of the tenant, their spouse, civil partner or partner are at a level that they are no longer entitled to occupy social housing in accordance with the threshold set in the Allocations Policy. For tenants who aspire to other housing options, they will be made an appointment with the Housing Options Team to explore this further.
- 5.8 Advice will be given where appropriate on other housing options the tenant, or members of their household, may be interested in such as; Supported Accommodation, mutual exchange and housing in the private rented sector.
- 5.9 Advice may be given on a range of matters including signposting to other Council services or the Tenancy Sustainment Officer. Referrals may be made to other services such as Adult or Children's Services. The meeting should also be an

opportunity for the tenant to discuss any difficulties they are experiencing in managing their tenancy or to report any nuisance or harassment that may have gone unreported.

- 5.10 For tenants on low incomes, the review will also consider whether they are receiving all benefits that they are entitled to.
- 5.11 An assessment of the size of property needed by the tenant will be completed using the Bedroom Standard in the Council's Allocations Policy, to determine if there is under occupation or overcrowding. The household members included in the assessment will be the same as those included in any application for housing under the Housing Allocations Policy. Friends, lodgers and sub tenants living with the tenant are excluded.
- 5.12 If the property is under occupied, in most cases, an alternative property which better meets the tenant's needs will be offered in due course. Moving to a smaller property may make the rent more affordable. If there is overcrowding, and a transfer application has not yet been completed advice will be given about making a transfer application, applying for a mutual exchange and any other options. A further flexible tenancy at the same address will be issued so long as the family are not statutorily overcrowded.
- 5.13 If the property is no longer meeting the needs of the tenant and his/her household, the review will consider what options might be available to better meet those needs. For tenants with medical or mobility needs, a transfer application may be needed, or it may be appropriate to consider adaptations to the tenant's current home. If the property has been adapted for a person with a disability and there is now no such person living at the property, the review will consider what the future housing needs of the resident household are, and complete a transfer application
- 5.14 Any proven breaches of the tenancy agreement and agreements to remedy those breaches will be considered.
- 5.15 Following the review, the following outcomes are possible:
  - Tenant offered a new five year flexible tenancy at the same address. This will apply to most tenants;
  - Tenant offered a new two year flexible tenancy at the same address. This will apply where there have been breaches of tenancy, rent arrears, or where the review has identified a need to move but no suitable property is available immediately;
  - Tenant offered new flexible tenancy at an alternative address. This will apply where the home no longer meets the needs of the tenant, and an alternative home can be identified before the tenancy expires;
  - Tenancy ended: this will apply where the tenant refuses to engage in the review, where the tenant is no longer resident at the address, where the tenant's resources

exceed the financial limits set in our allocation policy; or where there have been serious and persistent breaches of the tenancy agreement and legal action is already being pursued against the tenant

#### **5.16 Circumstances where a new flexible tenancy may be offered but not at the same property**

5.17 These are where there is under occupation or where there are adaptations, which the resident household no longer requires, that could be used by another household. In most cases the tenant will not be offered a new flexible tenancy at the same property and will be offered the opportunity to bid, for a maximum period of six months, for a flexible tenancy at an alternative property, of the size needed. If bidding is unsuccessful, one direct offer of accommodation will be made.

5.18 Any direct offer will take into account where possible, and subject to the availability of properties, the tenants' preferences, support networks and any other relevant considerations. The Council's Allocations policy allows for up to 5% of lettings each year to be let directly to tenants, without being advertised through Choice Based Lettings.

5.19 With regard to under occupation it may be appropriate to offer a new flexible tenancy at the same property where:

- The impact moving could have on a serious health condition of the tenant or another household member
- The property has been adapted for a disabled person and it would be costly and disruptive to reinstate those adaptations at another property
- The household will shortly not be under occupying, for example where dependent children will require separate bedrooms in the immediate future.

#### **5.20 Circumstances where a new flexible tenancy may not be offered at any property**

5.21 There has been a serious and persistent breach of the Tenancy Agreement at a level where the Council has commenced possession proceedings. Some examples of persistent breaches include a failure to keep to a rent arrears agreement for a sustained period and causing persistent nuisance.

5.22 When deciding not to offer a new tenancy at any property, regard will be made to the views of any support agency working with the tenant and their family, the vulnerability of household members and the impact on other household members of not offering any new tenancy. The impact that offering another tenancy may have on neighbours and the community will also be considered where the breach of the tenancy agreement relates to nuisance or anti-social behaviour.

5.23 The tenant or member of their household has been convicted of serious housing related anti-social behaviour in another court, and the offence meets the criteria to

trigger any Mandatory Right of Possession. (**NB** The government at the time of writing this policy is proposing to create a mandatory Right of Possession in some circumstances. This may therefore become the subject of forthcoming legislation and guidance. This section of the policy will only be implemented if any such guidance is published and the necessary changes to legislation are made).

5.24 The tenant has not participated in the review and it would have been reasonable for them to participate, and where their non participation is unrelated to their vulnerability.

## **5.25 Ending a flexible tenancy**

5.26 Following the review meeting the Housing Officer will decide whether or not to offer a new flexible tenancy at the same or another property. This decision will then be proposed to a senior officer for final sign off.

5.27 If agreed a Notice of Non-Renewal will be served at least six months before the tenancy is due to end setting out:

- That the landlord does not propose to grant a further tenancy on expiry of the term
- Why no further tenancy is being granted
- That the tenant has a right to appeal, how they can do this and the timescales for appealing
- A Notice Requiring Possession will then be served on the tenant giving at least two months notice that possession is required. This can be served at any time until the last day of the tenancy (although such a last day notice would have the effect of extending the tenancy by two months). If the tenant does not move out on the last day of the tenancy, a court order will be applied for to end the tenancy.

5.28 Where a flexible tenancy is being ended by the tenant, at least four weeks written notice must be given by the tenant to South Derbyshire District Council. The tenancy will then come to an end on the date provided.

## **6.0 Flexible Tenancy Appeals**

### **6.1 Appeals about the length of the flexible tenancy or about decisions not to offer a new flexible tenancy at the same or another property**

6.2 Following an offer to grant a flexible tenancy, or service of notice by the Council on an introductory tenant confirming that their introductory tenancy is to become a flexible tenancy, appeals can be made by the tenant on the basis that the length of flexible tenancy does not comply with the Tenancy Policy.

6.3 The tenant can also appeal against the decision not to offer a new flexible tenancy at the same or another property in accordance with the Tenancy Policy.

- 6.4 In line with the requirements of the Localism Act 2011, such an appeal request must be made within 21 days of the tenant receiving the flexible tenancy offer or Notice of Non-Renewal. The appeal should be requested in writing and needs to set out why the tenant considers the action proposed does not comply with the Tenancy Policy.
- 6.5 The Council (as at October 2013) already operates an appeal hearing process on the proposed ending of Introductory Tenancies. These are chaired by the Director of Service with support from the Chief Legal Officer. This process ensures that the full reasons for an appeal are considered as it may be difficult for the tenant to capture all circumstances in writing. The Housing Officer presents the rationale for ending the tenancy. The Tenant is able to make their case verbally as well as via any representative they are allowed to bring.
- 6.6 It is proposed that the appeal process for Flexible Tenancies will mirror that currently undertaken for Introductory Tenancies. Where the appeal is being considered on the basis of non-renewal the tenant must be notified of the hearing date and the Hearing must be carried out, before the date specified in the notice as the earliest that formal possession proceedings will be commenced i.e. the appeal process must be completed before an application to court is made.
- 6.7 Once a final decision is made by the Appeal Hearing the reasons for the decision will be set out clearly in writing.
- 6.8 The Hearing can decide to:
- Uphold the original decision
  - Offer an alternative flexible tenancy term in line with the Tenancy Policy
  - Offer a secure tenancy in line with the Tenancy Policy
  - Offer a further flexible tenancy at the same or another property in line with the Tenancy Policy.
- 6.9 If the original decision is upheld, the tenant will be informed of how they can challenge the reasonableness of the decision either by making a complaint to the Housing Ombudsman, bringing a claim for Judicial Review or obtaining independent housing advice.

## **7.0 Advice and assistance**

- 7.1 Tenants will be offered advice and assistance in any situation where they have been affected by a decision to offer either:
- A flexible tenancy on a reduced term
  - A flexible tenancy at another property or,
  - No further flexible tenancy at any property.

7.2 If a further flexible tenancy is being offered at another property advice will include how to bid for another property (unless a direct offer is being made), how long it may take before another property is likely to become available and general advice on moving and what needs to be done to prepare for a move. More detailed advice and assistance can be given to suit individual circumstances particularly where tenants are vulnerable.

7.3 If no further flexible tenancy is being offered at any property advice will be given including accessing private rented housing in South Derbyshire, Low Cost Home Ownership and Right to Buy.

## **8.0 Succession**

(NB This section applies to all tenants both flexible and secure tenants.)

8.1 When a tenant dies the tenancy can sometimes be passed on to another member of the family and this is known as succession. There are different succession rights in law for different types of tenancies and this is known as a statutory succession.

### **8.2 Secure tenancies granted before 1st April 2012**

8.3 The law allows for one statutory succession to either:

- The deceased tenant's spouse or civil partner provided they were residing with the deceased tenant at the time of their death as their main home, *or*
- A member of the deceased tenant's family who had been residing with the deceased tenant for twelve months prior to the tenant's death as their main home.

8.4 Family members are defined as; parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces and partners. The law does not allow for joint succession, so if there are a number of potential joint successors they need to choose who will take over the tenancy. If they cannot choose, the landlord is able to do so. Where the successor is not a spouse or civil partner but is a member of the family, and the property is too large for them, they can be granted the tenancy of a smaller property which meets their needs.

### **8.5 Secure tenancies granted on or after 1st April 2012 and flexible tenants.**

8.6 The law allows one statutory succession to a spouse or civil partner of the deceased tenant, who was living with them at the time of the tenant's death as their main home.

8.7 Where there is a statutory succession to a flexible tenancy, the tenancy will last until the flexible tenancy ends. The offer of a new flexible tenancy will then be considered in line with the Tenancy Policy.

## **8.8 Successor is unable to remain**

8.9 Where the property is too large for the statutory successor the Council will require them to move to an alternative property which meets their needs unless their circumstances are exceptional. Housing need will be assessed in line with the Council's Bedroom Standard in the Allocations Policy. The statutory successor can bid for alternative properties for six months after which if no property is selected a direct offer will be made.

## **8.10 Discretionary succession**

8.11 In certain circumstances if the tenant dies and there has already been one statutory succession at the property, the Council may allow a person or household to remain in the property. To be eligible the applicant must:

- Be a spouse or civil partner of the deceased secure tenant and have lived with them as their main home for a minimum of one year, or
- Be a family member defined as; parents, grandparents, adult children, grandchildren and brothers and sisters who have lived with the deceased secure tenant as their main home for a minimum of three years.

8.12 Where there is more than one person living in the household who is eligible for a discretionary succession, the Council expects the household to decide who should benefit. Provided that person meets the criteria outlined here, the Council will generally respect this choice. However, the final decision will be agreed by the Council.

8.13 Discretionary successors will only be able to remain in the original home, if it is the size needed in accordance with the Council's Bedroom Standard in the Housing Allocation Policy. If the discretionary successor is required to move they will be able to bid for an alternative property for six months after which one direct offer will be made.

8.14 Where the criteria above is met, a new flexible tenancy will be offered (following the successful completion of an introductory tenancy). This may be at the original home, or another property, depending on the size of property needed which will be assessed under the Council's Bedroom Standard or any equivalent standard set out in the Housing Allocation Policy. If a property, other than the original home is offered the applicant will be able to bid for a period of six months after which one direct offer will be made. Upon expiry of the flexible tenancy a further flexible tenancy may be offered in line with the Tenancy Policy.

## **9.0 Supporting Tenants**

9.1 The Council is committed to ensuring that tenants are well informed about their rights, responsibilities and how to access services. Information is available through

a range of media including a comprehensive sign up interview at the start of a tenancy, tenant's handbook, quarterly newsletter and the Council's website. We will consult tenants on all matters relating to the management of their homes.

9.2 The Housing Options Service provides advice and assistance to tenants who wish to move home

9.3 Support for new tenants includes:

- Information at the outset on what is expected of a tenant throughout their tenancy. For flexible tenancies this will include information on when a new tenancy will be offered.
- Visits to introductory tenants within four weeks of the start of their tenancy to ensure they have settled into their new home and to provide more detailed information on available services.
- Regular communication with Housing Officers to make agreements to pay rent and arrears
- Tenancy support, welfare benefit and debt management advice through our Tenancy Sustainment Officer.
- Housing related support through our Careline Support Co-ordinators.
- Close working with the Housing Benefit team to ensure claims are assessed and paid promptly.
- Referrals to appropriate agencies for tenants with social or mental health issues to help them to live independently.
- Low cost home contents insurance

9.4 Ending a tenancy and seeking possession for a breach of tenancy conditions is always a last resort, and is only ever considered after all available support has been offered but has been declined or failed. Much of the support detailed above is designed to provide support at an early stage and prevent eviction. Even once possession is being pursued, support will continue to be offered, tenants will be clearly advised of the processes being followed, the seriousness of the situation and their legal rights.

## **10.0 Reviewing the Tenancy Policy**

10.1 This Tenancy Policy will be subject to regular review and any changes will be agreed by the Housing & Community Services Committee. The Tenancy Policy will be reviewed every three years or sooner if the Tenancy Strategy is amended, or circumstances and legislation change significantly.