

**Report of Director Environment and Neighbourhoods**

**Report to Executive Board**

**Date: 20 June 2012**

**Subject: Tenancy Strategy 2013 – 2015 and Lettings Policy Review**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

The Localism Act 2011 requires local housing authorities in England to prepare and publish a Tenancy Strategy setting out the matters which Registered Providers (the council and housing associations) in its district must have regard to in formulating their tenancy policies.

The council's lettings policy will also need to be reviewed as a result of Localism Act and publication of a new Code of Guidance on the Allocation of Accommodation.

**Recommendations**

That Executive Board note the contents of this report, and recommend that the proposals are consulted upon with a view to approving a final version of the Tenancy Strategy by November 2012.

**1 Purpose of this Report**

- 1.1 The purpose of this report is to update Executive Board on:
- the council's legal duty to publish a Tenancy Strategy
  - the draft Tenancy Strategy prepared for consultation
  - the changes that will be required to the council's lettings policy in response to the Localism Act and publication of the Code of Guidance on the Allocation of Accommodation
  - the proposed timetable and process for consultation and implementation

## **2 Background Information**

- 2.1 Leeds City Council owns 58500 properties which are managed by three Arms Length Management Organisations and the Belle Isle Tenant Management Organisation.
- 2.2 There are currently 26850 households on the Leeds Homes Register, of which 3992 (15%) are in a reasonable preference group (Band A and Band B). In 2011/12 the council let 4750 properties.
- 2.3 The Leeds Homes Register is a common housing register shared with 12 partner housing associations. The council also has nomination agreements with all housing associations with stock in Leeds, whereby a minimum of 50% housing association lettings are made to customers in Band A or Band B.
- 2.4 Part 6 Localism Act gives local authorities new powers to change the way they manage their stock, should they chose to do so. An authority is not compelled to change its policies, but is given more freedom over certain aspects of their policies including:
- giving local housing authorities in England the power to determine what classes of persons are or are not 'qualifying persons' who can appear on the housing register and be allocated housing. This will replace the current section 160 A(7) 'suitability test'.
  - giving local authorities the power to discharge the main homelessness duty with an offer of suitable accommodation from a private landlord, without requiring the applicant's agreement, provided the tenancy is for a minimum fixed term of 12 months.
  - giving local authorities the power to offer flexible tenancies of a fixed term (normally for a minimum of 5 years, and not less than two years) to new social tenants, and outlining how flexible tenancies can be terminated.
  - removing the current statutory right of succession to a secure tenancy to people other than spouses, civil partners and partners (for new tenants only) to succeed to a secure tenancy. It also provides discretion for landlords to grant additional succession rights over and above this statutory minimum.
- 2.5 The Localism Act requires local housing authorities in England to prepare and publish a Tenancy Strategy setting out the matters to which Registered Providers in its district must have regard to in formulating their tenancy policies. The council must publish its Tenancy Strategy by April 2013.
- 2.6 The draft Tenancy Strategy 2013 – 2015 attached in Appendix 1 addresses these issues, and is accompanied by the consultation questions for consideration by the council's stakeholders.
- 2.7 The development of the Tenancy Strategy enables the Council to establish the strategic aims for Registered Providers ensure these relate to the City's priorities, such as enabling people to live safely in their own homes, help children to live in safe and supportive families, effectively tackle and reduce anti social behaviour in our communities, increase housing choice and tackle homelessness. The Strategy will also establish the key principles to inform the Lettings Policy.

## 2.8 The Strategy will cover:

- The types of tenancies they should grant, including the use of flexible tenancies
- The circumstances in which they will grant a tenancy of a particular kind
- Where they grant tenancies for set terms, the length that those terms will be
- The circumstances in which they will grant a further tenancy on the ending of the existing tenancy
- The introduction of the new 'affordable rent' product
- The potential to make changes to the Leeds Homes Register and lettings policy (which link to the council's nomination agreements with housing associations)
- Discharging the homelessness duty into the private rented sector
- General tenancy management issues, specifically:
  - offering prospective tenants choice over where they live
  - tackling housing application and tenancy fraud
  - managing the re-housing of potentially dangerous offenders
  - adopting interventions to support tenants, sustain tenancies and prevent unnecessary evictions
  - promoting mobility
  - policy on granting 'discretionary succession' rights

## 3 Main Issues

3.1 The Localism Act requires local housing authorities in England to prepare and publish a Tenancy Strategy setting out the matters to which Registered Providers in its district must have regard to in formulating their tenancy policies.

3.2 The Department of Communities and Local Government (DCLG) published a consultation on a new statutory Code of Guidance on the Allocation of Social Housing which closed in March 2012. The government also published draft regulations concerning the rehousing of former members of the Armed Forces. When the final versions of the code and regulations are published they will have immediate effect. The council must have regard to the new Code of Guidance, and give effect to the regulations when it reviews its lettings policy.

3.3 Once the final guidance has been published the council will prepare a revised lettings policy document for consultation and approval.

3.4 This section provides a summary of the issues covered in the draft Tenancy Strategy. Full details are provided in Appendix 1 along with the proposed consultation questions.

## 3.5 Tenancy Strategy Issues.

### 3.6 Types of Tenancies

3.6.1 The default position proposed in the draft Tenancy Strategy is that new tenants would normally be offered the most secure form of tenancy (see section 6.2, Draft Tenancy Strategy). The council's current expectation is that tenants would normally continue to be offered lifetime tenancies, but because Registered Providers are free to introduce fixed term tenancies, the Tenancy Strategy must address their use, even if the authority has no plans to use them.

- 3.6.2 Where a fixed term tenancy is used, housing associations are expected to set out the following:
- the type and length of tenancies they will grant
  - the circumstances in which they will grant particular tenancies
  - when they would grant a fixed term tenancy of less than five years
  - how they decide whether to grant another tenancy at the end of the initial term, the advice and assistance they will offer to tenants if they decide not to renew their tenancy, and the appeals process
  - how they will take account of the individual needs of a vulnerable household.

### **3.7 The Introduction of the new 'Affordable Rent' Product**

- 3.7.1 As part of the 2010 Comprehensive Spending Review, the government announced that from April 2011 a new 'Affordable Rent' model would be introduced. It was intended to be offered primarily by housing associations to assist customers who cannot afford full market rents and would offer an alternative to traditional social rent (see section 7, Draft Tenancy Strategy).
- 3.7.2 Affordable Rent can be set at up to 80% of local market rent. This compares with the existing social rent product which is charged at approximately 50% market rent. The government envisaged Affordable Rent being offered on a proportion of relet properties, and all new Homes and Communities Agency (HCA) funded new developments from April 2012.
- 3.7.3 The government stated 'it is our intention that the additional rental income providers receive will contribute to the provision of new affordable homes', and confirmed Affordable Rent products will be eligible for Housing Benefit (Local decisions: a fairer future for social housing consultation, DCLG January 2011).
- 3.7.4 Some housing associations in Leeds have already entered into development contracts with the HCA to build new homes with affordable rents.
- 3.7.5 The council is proposing to introduce affordable rent for new build properties funded through the receipt of council house sales. In May 2012, Executive Board approval was obtained to enter into the Local Agreement to re-invest in the development of new affordable homes. The conditions include that the homes are let at 80% of market rent.
- 3.7.6 Where housing associations decide to introduce Affordable Rent, the council expects them to advertise properties through the Leeds Homes choice based lettings scheme, clearly stating the property is subject to Affordable Rent and which customer groups the product is aimed at. Prior to letting an Affordable Rent property, the Registered Provider should undertake a financial assessment of the prospective tenant's ability to pay the rent, including whether the customer is likely to be affected by the Department of Work and Pensions (DWP) social sector size criteria (reduction in housing benefit paid to under occupying social sector tenants of working age).
- 3.7.7 The council expects existing social rent tenants to retain their existing rent level where their move is a management transfer instigated by their current landlords (for

example, if they need to move due to a regeneration programme), but not necessarily if they apply to move of their own choice.

### **3.8 Qualification Criteria**

- 3.8.1 The Localism Act section 160ZA requires authorities to only allocate accommodation to eligible and qualifying persons. Eligibility rules remain unchanged and will continue to be set by central government, relating to the rehousing of people from abroad and people who are subject to immigration control.
- 3.8.2 Housing authorities are given the power to determine what classes of people are considered to be 'qualifying' to appear on the housing register and be made offers of accommodation.
- 3.8.3 This power offers the council an opportunity to review and streamline who can appear on the housing register and be considered for an offer of accommodation.
- 3.8.4 Some illustrative examples of customers who could be excluded from applying for housing through qualifying criteria include people:
- who have no housing need
  - who do not meet minimum residency period
  - with unspent convictions for housing or welfare benefits related
  - with significant arrears or other housing related debt
  - whose financial resources (income, savings and assets) exceeds a set limit
  - who are guilty of serious antisocial behaviour
- 3.8.5 The council will review its lettings policy, including its policy on qualifying persons, once the final code of guidance on allocations has been published by the government. Full consultation and an Equality Impact Assessment will be undertaken prior to Executive Board approval of a revised lettings policy being sought.
- 3.8.6 The date of registration quota, which allows up to 25% council properties to be let to customers with a local connection to an area who have been waiting the longest to be rehoused, assists households who are not in assessed housing need, but who still have aspirations to move.
- 3.8.7 The number of customers registered on the Leeds Homes Register has declined from 33,436 in December 2002 to 26,850 in March 2012. This reduction is in marked contrast to a national increase in waiting list numbers over the same time period.
- 3.8.8 The existing power for a housing authority to decide that an applicant is to be treated as ineligible by reason of unacceptable behaviour serious enough to make him unsuitable to be a tenant is to be replaced with the authority's own qualification criteria which must specify which groups of customers it will allow to register for housing.

3.8.9 This means the council must decide its own qualification criteria and amend the lettings policy accordingly when this section of the Localism Act comes into force. On the commencement of section 160ZA Localism Act, the council will update the wording in the lettings policy to state that its qualification criteria for inclusion on the housing register will be:

- customers aged 16 years old and over
- unless an existing secure or introductory tenant, or an assured tenant of accommodation allocated by a local housing authority, a person not classified as ineligible under section 160 (A)(3) or (5) Housing Act 1996, for example, persons subject to immigration control<sup>1</sup> or persons from abroad, unless they are of a class prescribed by regulations made by the Secretary of State, and
- considered suitable to be a council tenant. A customer will not be considered to be a qualifying person if they, or a member of their household, are guilty of unacceptable behaviour which would, if he/she was a secure tenant, notionally entitle the council to an outright possession order on grounds 1-7 of Schedule 2 of the Housing Act 1985.

3.8.10 This will allow the current procedures to continue to operate pending full consultation on a wider range of options.

### **3.9 Armed Forces**

3.9.1 The Secretary of State has issued draft regulations stating that local housing authorities must not apply residency requirement criteria to armed forces personnel. This would include criteria requiring a person to have lived within a particular area for a particular period of time. Currently, Leeds City Council's lettings policy only takes residency into account in establishing whether a customer has a local connection. Further changes may be required depending on the precise wording of the final guidance.

3.9.2 The Secretary of State has also issued draft regulations that local housing authorities in England must frame their allocation scheme to give additional preference to persons who formerly served in the regular forces, who fall within the reasonable preference categories and who have urgent housing needs. Again, further changes to the lettings policy may be required once the regulations are finalised.

### **3.10 Discharge of Homelessness Duty through an Offer of Accommodation in the Private Sector**

3.10.1 Currently, there are a limited number of ways a local authority can bring its duty towards a statutorily homeless customer to an end. Section 148 Localism Act gives authorities the power to discharge duty to homeless customers through the offer of a private rented tenancy. The minimum length of a private rented tenancy considered suitable for a homeless household will be 12 months, and there are

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<sup>1</sup> as defined by section 13(2) Asylum and Immigration Act 1996

safeguards for the customer should the tenancy breakdown within 2 years through no fault of theirs.

3.10.2 Leeds Housing Options Service operates a successful private lettings scheme which has assisted homeless customers with rehousing and provides a tenancy guarantee scheme.

3.10.3 On a practical level, there may be challenges in encouraging private landlords to offer longer term tenancies where there is an alternative market, but the council will consult on whether to use this power (see section 9, Draft Tenancy Strategy).

### **3.11 General Management Issues**

3.11.1 The draft Tenancy Strategy makes reference to a number of other expectations on Registered Providers, including:

- developing their Tenancy Policy
- conducting regular tenancy visits
- assisting the local authority in discharging its duties to customers on Leeds Homes Register
- promoting mobility in the social sector by participating in the national mutual exchange scheme
- tackling housing application and tenancy fraud
- offering prospective tenants choice over where they live
- promoting best use of stock by tackling under occupation and overcrowding
- adopting interventions to support tenants, sustain tenancies and prevent unnecessary evictions
- developing a policy on granting 'discretionary succession' rights
- managing the rehousing of potentially dangerous offenders

## **4 Welfare Reform Implications**

4.1 The Tenure Strategy and Lettings Policy Review will need to reflect and respond to benefit entitlement changes included in the 2012 Welfare Reform Act. The most significant change relating to social housing tenants will be new rules relating to housing benefit entitlement for tenants who are under-occupying their home. The new rules will come into force in April 2013. The implications are set out in a separate report on the agenda.

## **4 Corporate Considerations**

5.1 Consultation and Engagement

5.1.1 Before adopting a tenancy strategy, or making a major modification, the authority must send a copy of the draft strategy, or proposed modification, to every private registered provider of social housing in its district, and give them a reasonable opportunity to comment on it.

5.1.2 In preparing the draft version of the Tenancy Strategy attached in Appendix 1, the council has held discussions with members of the Leeds Homelessness Forum, the

ALMO / BITMO Chief Executives and Chief Executives of housing associations in May 2012. The council also incorporated feedback from the ALMOs and BITMO in drafting its response to Department of Communities and Local Government consultation on social housing reform (January 2011) and the revised code of guidance on allocation of accommodation (March 2012).

- 5.1.3 This report recommends Executive Board approve the commencement of further consultation on the Tenancy Strategy with RSLs and other stakeholders.

## **5.2 Equality and Diversity / Cohesion and Integration**

- 5.2.1 The council has undertaken an Equality, Diversity, Cohesion and Integration Screening Assessment. A summary of the findings is included in the Equality, Diversity, Cohesion and Integration Screening Assessment. There are no specific implications of commencing consultation on the draft Tenancy Strategy, because it is a legal obligation to develop a strategy. A full assessment of all the options being considered would be undertaken prior to implementing a final version. The development of the Tenancy Strategy will include a robust and comprehensive Equality Impact Assessment to ensure that equality of access to public sector housing and protection of vulnerable people are paramount in determining the final recommendations.

## **5.3 Council Policies and City Priorities**

- 5.3.1 The Tenancy Strategy sits below the Council's Housing Strategy and works in conjunction with the Council's Homelessness Strategy and lettings policy. These documents will be reviewed to reflect the changes introduced by the Localism Act, the Department of Communities and Local Government Code of Guidance consultation 'Allocation of accommodation: guidance for local housing authorities in England' and regulations on rehousing former members of the Armed Forces.

- 5.3.2 The Tenancy Strategy relates to:

- **Vision for Leeds** - 'Leeds will be fair, open and welcoming', 'All Leeds' communities will be successful'
- **City Priority Plans** - Health and Wellbeing: 'Support more people to live safely in their own homes'
- **Council Business Plan** - Create the environment for effective partnership working'

- 5.3.3 Housing law, in place prior to the Localism Act, permits local authorities to establish local lettings policies of part of a wider lettings policy. The purpose of local lettings policies is to promote the sustainability of housing and communities. The efficacy of local lettings policies will be reviewed as part of the overall review of the Lettings Policy; not least the impact of welfare reform on local lettings policies. Currently a local lettings policy needs to be first approved by an ALMO or TMO board and then Council approval is made through the delegated decision process. Consideration will need to be given on the role of Area Committees in reviewing and approving local lettings policies.



## **5.4 Resources and Value for Money**

- 5.4.1 Through the Tenancy Strategy, the council aims to ensure social housing stock within the Leeds area is managed efficiently and best use is made of the limited resource, for example, by ensuring landlords put in place policies to support their tenants remain in their current property, reduce incidences of avoidable possession action and reduce homelessness and associated social and financial costs such as temporary accommodation placements.
- 5.4.2 The council aims to operate an efficient lettings process, to reduce the length of time properties remain empty to ensure the needs of customers in housing need are met.

## **5.5 Legal Implications, Access to Information and Call In**

- 5.5.1 Section 150 Localism Act 2011 requires the council to produce a Tenancy Strategy by April 2013, which sets out the matters to which Registered Providers in its district must have regard to in formulating their tenancy policies.

## **5.6 Risk Management**

- 5.6.1 The council has a duty to produce a Tenancy Strategy, and a more detailed Tenancy Policy. The council must also review its lettings policy in light of new legislation and statutory guidance.

## **6. Conclusions**

- 6.1.1 The council is required to produce a Tenancy Strategy setting out the matters to which Registered Providers must have regard to in developing their tenancy policies.
- 6.1.2 This report gives details about the draft strategy for consultation.

## **7. Recommendations**

- 7.1. The Executive Board recommends that the draft Tenancy Strategy is consulted upon with key stakeholders.
- 7.2 The Executive Board recommends that final versions of the Tenancy Strategy and lettings policy are prepared for consideration by Executive Board in November 2012, taking into account the outcome of the consultation exercise.
- 7.1.3 That Executive Board approve the revised wording to the lettings policy outlined in section 3.8.10 of this report.

## **8. Background Documents<sup>2</sup>**

- 8.1 Executive Board Agenda Item 12: Reinvigorating the Right To Buy – Sale of Council Homes, 16 May 2012

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<sup>2</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.