

East Herts Council

Draft Tenancy Strategy

2012-2015

I. Context

National housing policy.

The Localism Act sets out a number of key proposals which are relevant to housing, including changes to allocations, tenure reform and changes to homelessness legislation. The Localism Act requires local authorities to produce a Tenancy Strategy that sits alongside the Housing Strategy, Homelessness Strategy and Allocations Policy. The legislation requires the Strategy to cover:

- What kind of tenancies to offer
- Circumstances in which the landlord will grant a tenancy of a particular kind
- Where a tenancy is set for a term, the length of term
- Circumstances where the landlord will grant a further tenancy on the ending of the existing tenancy

The Localism Act places a specific duty on all local authorities to produce a Strategic Tenancy Strategy, setting out what individual registered housing providers should take into consideration within their individual tenancy policies. The Government has made it clear that it wants local authorities to have a degree of strategic influence over how registered providers implement these reforms.

Purpose of the local Tenancy Strategy

Under the Localism Act 2011, all local authorities have a duty to produce a Tenancy Strategy, setting out the objectives to be taken into consideration by individual registered providers as they make decisions about their own tenancy policies.

It is vital that when implementing these new flexibilities at a local level that registered providers first and foremost help the district to continue to meet housing need. With this in mind the purpose of this document is to provide appropriate and meaningful guidance at a strategic level to housing providers operating in the area.

This strategy sets out the matters that registered providers of affordable housing in the district must have regard to when they develop policies relating to:

- The kinds of tenancies they should grant
- 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

Additionally, this document provides contextual information on local housing markets and housing need across the district. This will further assist registered providers to understand the effects their policies may have and how they can best support the Council to achieve the following objectives:

- ensure local housing need continues to be met
- new tenancies remain sustainable to avoid homelessness occurring
- overall housing stock numbers do not diminish
- an appropriate choice of tenures at a range of rent levels are made available.

There are 10 different registered providers of approximately 7,800 rented affordable homes in the East Herts. Many registered providers work across a number of local authority areas and will need to consider a number of local authority tenancy strategies in developing their tenancy policies, they will also need to consider the implications of their tenancy policy on their overall business and development plans, including development contracts with the Homes and Communities Agency. Registered providers are obliged to give 'due regard' to the local authority's opinions when setting their own policies regarding all aspects of flexible tenure. The Localism Act does not require the same account to be taken of a local authority's view of their rent policies but, as this is integral to the Council's strategic housing role, this document does include reference to rents and affordability issues.

This tenancy strategy has been developed;

- To meet the requirements of Localism Act 2011
- In consultation with key local stakeholders including local registered providers of affordable housing.
- In consideration of the Council's Housing Strategy and Homeless & Homeless Prevention Strategy

Also as result of the Localism Act the Council is reviewing its Housing register and Allocations Policy. Once finalised this too needs to be considered alongside this Tenancy Strategy.

2. Housing Market Context

The full housing circumstances within the district can be found in other related documents, notably the Council's Local Investment Plan and Housing Strategy. However for the purpose of setting this document in context it is worth stating a few key factors regarding the demand for affordable housing.

Housing Register

As at November 2012 there were 2,936 Households on the Council's Housing Register. This is an increase since April 2011 when there were 2,699. The number of social homes that were available to the Council to offer to an applicant on the housing register in 2011/2012 was 588. This is an increase on previous years because due to a significant number of new affordable homes built in the district, 184 in 2011/2012, primarily obtained through planning obligations. On average for each property advertised through Choice Based Lettings (CBL) there are around 45 households bidding for each property.

Rents and affordability

a) Private Rents

Average private rents for the district are shown in the table below:

	1 bed flat	2 bed flat	2 bed house	3 bed house	4/4+ bed house
Average monthly rent (£)	625	850	900	1,150	1,450
Average weekly rent (£)	144	196	208	265	335

These figures have been calculated using a sample of advertised rents on RightMove for November 2012, from settlements across the district, and are therefore intended as a guide rather than as absolute levels.

b) Social Rents

Details of average social rents across the district are shown in the table below. Again the rent levels have been calculated by taking a sample of advertised vacant properties from April 2011 July 2011 and calculating the average rent for each property type. As with the private rent figures, this is intended as a guide.

	1 bed flat	2 bed flat	2 bed house	3 bed house	4/4+ bed house
Average monthly rent (£)	390	468	450	529	589
Average weekly rent (£)	90	108	104	122	136

c) Affordable Rents

As set out above, RPs receiving grant from the Homes and Communities Agency are now able to provide affordable housing at 'affordable rent' levels; which are capped at no more than 80% of market rent. The rent levels below are an average taken from properties advertised from August 2012 November 2012 and are intended as a guide.

	1 bed flat	2 bed flat	2 bed house	3 bed house	4/4+ bed house
Average monthly rent (£)	477	598	646	845	888
Average weekly rent (£)	110	138	149	195	205

It can be seen from these figures that there is a smaller difference in the rent levels between affordable rents and social rents for 1 bedroom properties but that this difference is much greater for 3 bed dwellings and larger. Therefore the delivery of new smaller affordable rented dwellings is not likely to create a significant affordability issue compared to the family homes. However, smaller properties do not create a significant 'head room' of additional revenue compared to larger homes for future development. With the various changes proposed through welfare reform the Council is anticipating an increased demand for smaller affordable homes.

3. Guidance for Registered providers

To help meet the housing needs of as many households as it can, the Council needs to make the best possible use of its affordable housing stock as well as increase overall stock. This

tenancy strategy has an important role in achieving these aims by providing guidance on the use of both fixed term tenancies and affordable rent.

a) Affordable Rent

Background

Affordable rent was introduced by the government in April 2011; it is rented housing where the rent is up to 80% of the local private market rent. This is typically higher (and cannot be lower) than the social rents that social landlords currently charge. Affordable rent is rebased each time a tenancy is issued or renewed, so will fluctuate in line with local private market rents. The 80% maximum must however be inclusive of all service charges and not exceed the Local Housing Allowance (LHA) cap for housing benefit, so households on lower incomes are still able to afford to live in these homes.

Affordable rent was introduced because higher rents will increase rental incomes and allow more investment by housing associations and other registered providers to deliver additional affordable housing in a time of constrained grant budgets. Funding raised from affordable rent cannot be ring fenced for local use, although use at a regional level is strongly encouraged by the HCA.

Affordable rent is expected to increasingly be used to provide new rented affordable housing. It will be used for all rented affordable homes that are built as part of the Homes and Community Agencies (HCA) development program (2011-15) as well as some new affordable homes built outside the programme, for example, where there is viability or funding issues. Some social rented homes will also be converted to an affordable rent when they become available to be re-let, this has been agreed by the HCA and is also designed to increase investment for more affordable homes.

RP's are also encouraged by the HCA to take a more proactive approach to managing their stock, including disposal of stock where this will bring funds to invest in new homes

The Council understands the need to accept an element of affordable rented housing locally to support future affordable housing development, particularly on schemes which rely upon HCA funding, but there is also a need to balance such provision with providing the best possible outcome for tenants.

The increased cost associated with affordable rent raises concerns about affordability, particularly in relation to tenancy sustainment and homelessness. The Council has concerns about setting affordable rent at the maximum Local Housing Allowance where this is close to 80% of private market rents. It is concerned with the potential impact of higher rents and benefits dependency, particularly for those who are looking to get back into work. The Council will continue to monitor housing need and promote the use of lower cost social rented housing where required and feasible. The Council has the added concern that the impact on affordability will be compounded with the introduction of the 'bedroom tax' in April 2013 and the benefit cap also in 2013.

A brief analysis of affordable rent has been undertaken to inform the development of this strategy and the findings show a relatively low financial impact on smaller housing (such 1 to 2 bedroom flats and houses) but a larger financial impact on larger family housing and a greater financial impact for all house types in some of the more expensive private market areas in East Herts. This is compounded by the fact that East Herts has three broad market areas for the calculation of LHA rates.

Rents for a three bed home in the last 6 months have varied from £150 per week to £240 in areas such as Ware which is at the 80% maximum affordable rent charge inclusive of service charges. Differing policies between registered providers about how they calculate their affordable rent levels and differing policies on which properties are let an affordable rent will have an impact on the ability of households of moving across the district or between registered providers therefore limiting their housing options.

Affordable Rent

When developing their tenancy policies the Council expects providers to have regard to the following;

- *The retention and development of social rent where feasible.*
- *To take into consideration the need for mixed and sustainable communities and to recognise the wide variance across the district in affordable rent properties for the same sized properties. This may include setting rents lower than 80% open market value where market rents are high.*
- *To be pro-active in both setting and re-evaluating their affordable rent levels so tenants in receipt of housing benefits can afford to reside in a property which is suitable for their needs.*
- *To advertise affordable rent vacancies through the Council's choice-based lettings system in the same way as social rent, to ensure fairness and transparency.*
- *All conversions from social rented properties to affordable rent properties at the point of re-let to be based on the agreed contract with the HCA and that those agreed numbers be shared with the Council in order for effective monitoring to take place.*
- *When converting social rented stock to affordable rent within the district to demonstrate a commitment to develop additional affordable housing within the district.*
- *The Council we will seek social rented homes on new developments where no HCA grant has been given, in line with identified needs, subject to the viability and the specific nature of the scheme.*
- *To provide excellent advice and assistance to ensure potential tenants are able to fully understand their housing options and whether affordable rent is an appropriate type of tenancy for them. This may include taking advice from the Council and other partner organisations for some specific vulnerable households.*

b) Flexible Tenure

Background

Historically social housing tenants have been offered an assured or secure tenancy, which granted them a home for life. Fixed term tenancies were introduced as part of the Localism Act with the aim to help registered providers offer more flexible tenancies to enable them to make the best use of their housing stock and to better meet local housing needs.

Registered providers are able to offer fixed term tenancies on a minimum fixed term of five years, however in exceptional circumstances flexible tenancies can be for as little as two years.

Social landlords will still be able to offer the types of tenancies they currently use, for example secure, assured, introductory and demoted tenancies. The new fixed term tenancies are in addition to those currently available and social landlords do not have to use them.

Existing secure and assured tenants cannot have their tenancies converted to a fixed term tenancy and many are offered special protections if they transfer to another home.

The Council accepts that the majority of RPs will want to take advantage of the new provision enabling fixed term tenancies to be issued. The Council also acknowledges that the decision to use fixed term tenancies and the length of the tenancies lies with the registered provider. However, the key to successful implementation of fixed term tenancies is close working between the Council and providers as well as clear and high quality housing advice and information services for tenants and potential tenants. This should start at the point of advertising the property to enable tenants to clearly understand how long a tenancy will be for and when a tenancy will and will not be renewed. Tenants should also have a clear and transparent process to appeal tenancy decisions, including a decision not to renew.

Offering of Fixed Term Tenancies

Where fixed term tenancies are issued, the Council suggests that the following basic principles are adopted as a minimum:

- A minimum of a five year fixed term tenancy for most households. There are some households for whom the Council would prefer a longer tenancy. Where a term of less than five years is proposed the Council expects providers to discuss this at the earliest opportunity as it will have implications for the Council's allocations policy.
- For fixed term tenancies to be re-issued at the end of the term unless there is a significant change of circumstance. The Council would like the opportunity to work with providers to establish the criteria they use to inform this decision.
- That fixed term tenancies are not used as a general management tool. The Council is of the view that there are other more suitable existing tools, such as introductory

tenancies, available to providers to manage the risk of future breaches of tenancy agreements.

- Clear and concise advice and information is provided to tenants at all stages. If a fixed term tenancy is issued, the Council expects that a full review will be undertaken prior to the beginning and end of the tenancy period.
- There are limited benefits for use of fixed term tenancies in older persons designated or supported housing where the majority of tenants remain often for the rest of their lives.

Ending or Renewing a Fixed Term Tenancy

Towards the end of a fixed term tenancy, there are a number of courses of action which providers can take:

1. To re-issued a new Fixed Term Tenancy; or
2. For the tenant to remain in the property but on new terms; or
3. To assist the tenant to find alternative (and more suitable) accommodation; or
4. Not offer any other form of tenancy

The Council recognises that there are a number of situations where it may not be appropriate to re-issue a further fixed term tenancy or it may be contrary to the aims of fixed term tenancies. These include where:

- The property is adapted and no-one residing at the property requires the adaptations
- The property is under-occupied by more than one bedroom
- The property is over-crowded
- The financial circumstances of the tenant have changed to such an extent that other housing options would be more appropriate.
- Breaches of tenancy or tenancy fraud are identified during the fixed term tenancy review process.
- The tenant and/or their advocate do not engage in the fixed term tenancy review process.
- The tenant comes into legal ownership of another home or property.
- The tenant's behaviour during the fixed term of the tenancy has been unacceptable for example sustained and documented anti-social behaviour.
- There is a strong need for the tenant to move to another location, for example to take up employment.

This list is not exhaustive, and there may be other circumstances where the re-issue of a tenancy would not be appropriate.

Where a Fixed Term Tenancy is coming to an end and a notice has been served, the Council expects providers to ensure that tenants receive housing options advice; either provided directly or coordinated via the Council's Housing Options Team. This will ensure that they are aware of the different housing options available to them given their particular circumstances and can access appropriate support.

Any decision to not renew a fixed term tenancy should take full account of the likelihood of re-housing. If RPs are not transferring a tenant to another property within their own stock, then the Council expects that a full consultation with the Council's housing options team will take place to ascertain whether suitable properties are available, what the likely re-housing time is, and other relevant factors.

Where a tenancy is not going to be renewed the Council expects the registered provider to consider the implications of their decision on the Council's homelessness duties and work closely with the tenant to explore real alternative housing options. Providers should take responsibility for providing advice and assistance to such tenants themselves and not excessively burden partners including housing advice and assistance agencies.

Mutual Exchanges

Mutual exchange is a useful tool which can help to make best use of a registered provider's affordable housing stock. The Council does not want the introduction of fixed term tenancies or affordable rent to impact on the effectiveness of mutual exchange. Although there are protections for existing tenants in certain circumstances these are not universal. The Council would like to encourage registered to set out in their tenancy policies the implications to a tenant's security of tenure if they mutually exchange their home and in general adopt policies which promote the continued use of mutual exchange for all tenants.

c) Needs of specific groups

There are some groups for which the type of tenancy they are issued will have more of an impact. The Council has set out below the groups for which it feels that special consideration would be beneficial and guidance on the types of tenancies that it would prefer providers to consider.

Families with children of school age or younger

The Council's preferred tenancy term is a minimum of a five year fixed term tenancy. Security and stability during a child's education is critical. Families also rely on nearby friends and relatives to provide care for their children. The Council expects that these factors should be considered by providers in reaching a decision about the use of fixed term tenancies for this household group.

Households with a disabled member or member with special needs

The Council's preferred tenancy terms are:

- For fixed term tenancies to be used where this will enable the best use of adapted stock
- A minimum ten year fixed term tenancy where it is likely that the disabled person will remain living in the property for some time and still require the adaptations

The Council recognises that in certain circumstances, where the applicant has life long conditions, an assured (lifetime) tenancy may be appropriate. Shorter tenancies may be deemed appropriate by providers and their health and care partners in some situations; for example where there is an adapted family home and the needs of the disabled child may change, or the child may move out.

Older people over the age of 60

At this stage the Council's preferred tenancy terms, are:

- A minimum of a five year fixed term tenancy for older people living in general needs accommodation
- Lifetime tenancies for older people living in sheltered housing (accommodation designated specifically for older people)

In deciding on the use of fixed term tenancies for this household group, or for accommodation that is specific to older people eg, sheltered, the Council would like providers to consider health and wellbeing, the role of friends and relatives in enabling independence, and the possibility that insecurity of tenure may add to someone's worries about their future.

The Council is particularly interested in working with providers to explore how under-occupation of family homes can be addressed; and this will be taken forward through our review of the East Herts Housing Register and Allocations Policy.

Other factors

The Council would also ask that RPs give special consideration to the following when developing their policies:

- Households in rural areas
- Single households under 35

The Council is aware that it currently has or expects to have problems in re-housing these households due to a lack of supply of suitable affordable housing. As the full impact of the Welfare Reform, the benefit cap and Universal Credit becomes known, there may be other groups who experience specific re-housing problems.

Tenancies

When developing their tenancy policies the Council expects registered providers to have regard to the following;

- *The use of introductory and probationary tenancies. The Council does not support the use of fixed term tenancies for management purposes.*
- *To offer lifetime tenancies for older people in designated or specialist housing.*
- *To use five years as the minimum term for all fixed term tenancies. In exceptional circumstances providers may set out shorter fixed term tenancies of a minimum of two years. Such exceptional circumstances should be set out and justified in the provider's tenancy policy. The Council expects registered providers to discuss schemes where tenancies of less than 5 years are being considered with the Housing Options Team individually.*
- *To reference their mutual exchange policy within their tenancy policy, clearly highlighting any impacts exchanging may have on security of tenure.*
- *To take into consideration recommendations from the Council and other partner organisations regarding the use of lifetime or longer term fixed tenancies for specific vulnerable households.*
- *To assess the housing options and appropriate type of tenancy for households which include a disabled member, to best meet the needs of the household as well as ensure the best use long term use of our limited accessible stock and aid and adaptation budgets.*
- *To clearly set the exact circumstances when a tenancy will and will not be renewed in their tenancy policy and clearly communicate this with tenant prior to them signing their tenancy agreement.*
- *That any decision not to renew a fixed term tenancy should take full account of the likelihood of rehousing in consultation with the Council's Housing Options Team to ascertain whether suitable properties are available, what the likely re-housing time is, and other relevant factors.*
- *To take into consideration the individual circumstances of household members before making a decision not to renew a tenancy. Providers should take into consideration recommendations from the Council and other partner organisations regarding the extension of tenancies for specific vulnerable households. Such circumstances may include;*
 - *ill health, disability or terminal illness*
 - *need for support*
 - *impacts on children, including their education*
 - *availability of suitable alternative accommodation within locality*
- *That tenants will be given at least six months notice if the provider is minded to end the tenancy, and that adequate reasons for the decision to end the tenancy are given along with information on the right to appeal the decision. The Council expects providers to;*
 - *provide excellent advice, information and assistance to assist such tenants' access alternative accommodation.*
 - *frame the appeals process in such a way to allow tenants to make an informed decision as to whether to submit an appeal, including how to seek independent advice and where necessary representation.*

4. Stock Disposals

There are two main areas for consideration relating to the disposal of Registered Provider properties; which properties are disposed of and where the income from the properties is reinvested.

The Homes and Community Agency acting as regulator for the sector require that registered providers consult with the Council prior to making an application to them for consent to dispose of property whether for an individual unit or as part of a general consent.

When responding to such consultation requests the Council will take into account:

- the reasons for the disposal,
- the type of unit,
- any implications to meet need if this type of unit is lost,
- the registered provider's subsequent plans for replacing the unit
- the information contained within the annual Disposal Proceeds Fund for the area

It is important that registered providers therefore maintain a dialogue with the Council about their development plans to ensure there is not a net loss of social housing locally.

Registered providers are reminded that the regulator requires that a print off of their Disposal Proceed Fund annual return should be copied to each local authority in which proceeds arose or were spent. The Council will expect in the first instance that any balances are directed to support local affordable housing schemes.

5. Monitoring

To assess the impact of this strategy with our registered providers the Council proposes to monitor the following indicators:

- Number of conversions
- Number of disposals
- Number of replacement AH units
- Levels of rents set by bedroom size
- Number of Affordable Rent tenancies
- Refusal rates and reason

Whilst there is no statutory requirement setting out timescales in which to review the strategy the Council will consider amongst other things the following indicators that may trigger a partial or full review of the strategy:

- Changes in patterns of homelessness
- Major affordability changes - local prices and local incomes
- Balance of tenures failing to meet local need
- Policy changes elsewhere which impact on this document

Glossary

Affordable Rent means rented housing let by a Registered Provider of social housing to households who are eligible for Social Rented housing at a rent of no more than 80% of the Local Market Rent, including service charges where applicable, and upon the approved Financial Terms at a fixed term tenancy for a period not less than that recommended by the social housing regulator currently the Tenant Services Authority (or its successor body) and with regard to any advice set out in the local Strategic Tenancy Policy adopted by the Council

Benefit Cap is a maximum allowance on the total amount of benefit a household is entitled to receive under the proposed new universal credit system to be introduced in April 2013 if they are not in receipt of certain exempt benefits such as Disability Living Allowance. At the time of publication of this document the benefit cap for single persons is £350 per week and for a family £500 per week.

Social Rent means housing let at a periodical rent due at intervals of a month or less without any fine deposit or premium which is let at or below Target Rent and is let on the Registered Provider's standard form of letting as an Assured Tenancy and upon the approved Financial Terms

Conversion is when a property is let at different terms and conditions to those it previously had i.e.: changed from a social rented property to an affordable rented property.

Fixed term tenancies are a new type of tenancy introduced under the Localism Act 2012 available for registered providers to use from the date of inception of the Act that has a specified term of not less than 5 years or 2 years in exceptional circumstances. Fixed term tenancies can be used for Affordable Rent or Social Rent properties.

Homes and Communities Agency (HCA) includes any successor body or agent exercising statutory powers for the provision of financial assistance to registered providers for the provision of Affordable Housing

Local Housing Allowance (LHA) is the maximum amount of Housing Benefit payable by number of bedrooms in a property in a Local Authority Area. It is updated annually and is calculated using the 30th percentile of market rent for each property size in that local authority area.

Mutual Exchange is a facility that enables a tenant to exchange their property and tenancy with another of their own Registered Provider's tenants or with a tenant of a different Registered Provider.

Registered providers is the term used for housing associations or other private sector developers, local Councils etc who have registered to provide social housing with the Homes & Communities Agency.

Universal Credit is a new approach to welfare to be introduced under the Governments welfare reforms in 2013. It will be an integrated benefit in place of Income support, income-based job seekers allowance, income related employment and support allowance, housing benefit, child tax credit and working tax credit. Households in receipt of universal credit and not in receipt of specific exempt benefits will be subject to the benefit cap defined above.