



Housing and Growth Committee

23 March 2023

Title	Tenancy Strategy
Report of	Chair of the Housing and Growth Committee
Wards	All
Status	Public
Urgent	No
Key	Yes
Enclosures	Appendix 1 – Draft Tenancy Strategy
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Summary

The council has developed a new draft Tenancy Strategy to take account of changes to the administration's priorities. If approved by the Housing and Growth Committee, the council will undertake a public consultation on the aims of the draft strategy with key stakeholders including registered providers, tenants, and other third parties including local advocacy groups. Cabinet will then be asked to review the responses to the consultation and approve a final version of the Tenancy Strategy.

Officers Recommendations

1. Housing and Growth Committee considers and, subject to any changes, approves the proposed draft Tenancy Strategy in Appendix 1 for consultation.
2. Housing and Growth Committee notes that the results of the consultation be reported to Cabinet in the new municipal year together with officer recommendations and, if appropriate, a revised strategy.

1. WHY THIS REPORT IS NEEDED

Background

- 1.1 The council's current Local Tenancy Strategy dates from 2015. Under the terms of the Localism Act 2011, councils in England must prepare and publish a 5-year strategy setting out the matters to which the registered providers of social housing for its district, including the local housing authority itself, are to regard in formulating policies relating to:
 - the types of tenancies they will grant;
 - the circumstances under which different types of tenancies will be granted;
 - where they elect to grant fixed-term tenancies, the length of the fixed term; and
 - the circumstances in which they will grant a further tenancy when the fixed term expires.
- 1.2 In deciding the types of tenancies to grant, the council must consider the:
 - purpose of the accommodation;
 - needs of individual households;
 - legislation around the granting of tenancies;
 - sustainability of the community; and
 - efficient use of housing stock.
- 1.3 From April 2012, the council began to offer the majority of new tenants a 12-month introductory tenancy followed by a two or five-year fixed-term tenancy.
- 1.4 The council established new priorities following the May 2022 local elections, including a commitment to move away from 2- and 5-year flexible tenancies ("**flexible tenancies**") and reintroduce secure periodic tenancies for all council tenants.
- 1.5 Support for fixed-term tenancies has changed since the council's existing Local Tenancy Strategy was published. In 2016, the Housing and Planning Act 2016 ("**the 2016 Act**") set out to make fixed term tenancies mandatory, however this proposal was not enacted, and the Government's reversal of this policy was confirmed in the green paper 'A New Deal for Social Housing' in 2018. Although this was not repealed in legislation, the green paper emphasised the need for social housing to provide a stable base, stating that since the 2016 Act there had been "a growing recognition of the importance of housing security for those who rent".

Revision of the draft Tenancy Strategy

- 1.6 It is proposed that the Tenancy Strategy is revised to offer secure periodic tenancies to council tenants. Lifetime tenancies allow for cohesive and stable neighbourhoods where households can put down roots and become part of the community without the fear of having to move on. These will be preceded by a one-year introductory tenancy for new tenants who have not previously held a social tenancy in line with current good practice.
- 1.7 The draft Tenancy Strategy has also been updated to include the information legally required as set out in the Localism Act 2011, including setting a clear expectation of how Private Registered Providers in the borough will manage tenancies. Through the strategy, the council encourages Private Registered Providers to offer lifetime tenancies, and to charge social rents where possible.

Transition to secure periodic tenancies

- 1.8 The aim following the approval of the draft Tenancy Strategy is to migrate the current flexible tenancies to secure periodic tenancies over as short a period as possible and to stop granting new ones at the earliest possible opportunity. The migration model will cover the following:
- Introductory tenants who were previously told their tenancy would become secure periodic tenancies after the initial 12 months will be allowed to convert as normal.
 - Introductory tenants who were previously told their tenancy would become flexible tenancies after the initial 12 months will be asked to sign a variation to allow the tenancy to become a secure periodic tenancy.
 - Flexible tenancies with 9 months or less to go will be allowed to convert to secure periodic tenancies.
 - Flexible tenancies with more than 9 months will be asked to sign a variation to allow the tenancy to change to a secure periodic tenancy with immediate effect.
 - Joint flexible tenancies with more than 9 months, and where one of the joint tenants is absent, will be asked to serve 4 weeks' notice and then granted a new secure periodic tenancy; we cannot legally vary the tenancy with only one of the joint tenants.
- 1.9 After seeking legal advice, in order to prevent further tenancy rights being conferred and to minimise the duration of the current flexible tenancies, variation of an existing flexible tenancy is to be undertaken. This involves the cooperation of the tenant(s) who must sign the variation alongside the council. Where the tenant does not sign, their current tenancy will prevail. Following approval of the Tenancy Strategy, a variation exercise will commence. Experience shows that not all flexible tenants will sign the variation and we may be left with a percentage that remain on the current tenancy until it naturally ends and becomes a secure periodic tenancy. The variation exercise will target tenants with flexible tenancies and provide them with the information on the process and their rights to help them with their decision. The variation exercise is expected to run over a 12-month period and will likely commence with the introductory to flexible tenancies and those flexible tenancies with the longest remaining duration periods.
- 1.10 The position at 31 March 2023 will be:
- 147 tenancies will naturally convert to secure either because they are introductory tenancies which will convert to secure periodic tenancies, or they are flexible tenancies within the last nine months of their tenancy and they will therefore be granted a secure periodic tenancy.
 - 841 tenancies will need to be varied to prevent them converting to a flexible tenancy.
 - 467 flexible tenancies will need to be varied to a secure periodic tenancy.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Government's White Paper, The Charter for Social Housing Residents, affirms social rented homes as places where residents can put down roots and build communities. In recognition of this the current administration has pledged that Barnet Council will no longer grant flexible tenancies, and will instead grant secure periodic tenancies to all council tenants.
- 2.2 The original aims of flexible tenancies were to mitigate the risks of anti-social behaviour and to allow tenants to demonstrate their ability to manage their tenancies, giving landlords the ability to take remedial action in the event of a breach, and or to prevent renewal of a

flexible tenancy where it is coming to an end. The reality is that the renewal process for flexible tenancies places a huge pressure on landlords to process reviews and serve the appropriate notices before the tenancy ends.

- 2.3 Where renewal is not being permitted, the tenant is advised to seek alternative accommodation when the tenancy comes to an end, and for the most part this will result in a homeless application. Tenants on flexible tenancies often struggle to stabilise and set down roots even when the tenancy is extended. The current flexible tenancy agreements also do not have the relevant forfeiture clauses, which has hampered the action the council may take to address cases with high levels of rent arrears and/or anti-social behaviour.
- 2.4 We are still in the first “renewal” cycle for the flexible tenancies that started to be issued in 2012; it is therefore difficult to say how effective flexible tenancies have been in helping to make the most effective use of the housing stock, although there is little evidence to suggest that it has had a significant impact. As of 24 February 2023, 2,385 flexible tenancies have been issued, of which 1,916 were lettings and 469 were flexible tenancy renewals. Based on data from 1 October 2017 to 24 February 2023, the majority of flexible tenancies have been renewed, with only 63 non-renewal decisions being made, of which 38 successfully appealed. A total of 4% of flexible tenancy reviews therefore resulted in non-renewal decisions. 15% of the renewals qualified for and were granted a secure tenancy. Additionally, 85 flexible tenancies have become secure tenancies due to the renewal date being missed, with the majority due to the review and approval being completed too late, in addition to 16 lapsed notices, 2 missed sign-ups, and 2 deliberate lapses on regeneration schemes.
- 2.5 The flexible tenancy renewal process is challenging to manage for both tenants and Barnet Homes:
- tenants often become very anxious about whether they will be offered a renewal, and are often reluctant to engage in the process as a result;
 - minor tenancy breaches such as low-level arrears are not a reason to renew, and so create former tenant arrears that can no longer be pursued under the tenancy agreement once renewal occurs.
- 2.6 Variation of flexible tenancies will allow the current tenancy to move to a secure periodic tenancy without inflating former tenant arrears, as the tenancy remains current. If the council were to grant new secure periodic tenancies to all those on flexible tenancies, their current tenancy would end and any arrears would become a former tenant debt, make it more problematic for the council to recover.
- 2.7 In seeking permission to stop granting any new flexible tenancies at the earliest opportunity, we will reduce the numbers of flexible tenancies we will need to vary, thereby reducing some of the administration needed in the variation exercise following approval of the tenancy strategy later in the year.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The council could choose to continue to grant flexible tenancies in the circumstances set out in the current Local Tenancy Strategy. This approach is not recommended, as it will

not achieve the benefits set out in section 2 of this paper, and it will not deliver the election manifesto commitment made by the current administration.

3.2 In formulating the tenancy strategy, officers have considered how the council could make best use of stock regarding very large units and heavily adapted properties. Often where households are in occupation for a number of years, their need for these types of properties may diminish. These types of units are in short supply with very few lettings in a 12-month period. The possibility of having long term flexible tenancies of 10 years or over for properties with 3 or 4 bedrooms and/or for properties that require or have significant adaptations was assessed, and in order to inform a recommendation quantitative analysis was undertaken.

3.3 As at 31 December 2022:

- There were 86 applicants on the waiting list waiting to move to smaller properties; only 7 of those were releasing 4 bedroom properties or larger and only 2 of them were releasing an adapted property. The rest were releasing smaller properties (2 bedroom properties) which are not usually in short supply.
- 38 applicants needed 4-bedroom units or larger and a further 7 were being assessed for a large unit.
- 63 applicants needed an adapted unit.
- The council offers downsizing or trade-down incentives for tenants releasing larger or adapted units. Since 2020/21 13 large and 6 adapted units have been released in this way.
- The council also had an active programme of visiting 3- and 4-bedroom units to assess their suitability for adaptations.
- Demand for large and adapted units far exceeds the supply.

3.4 Due to the significant shortage of larger properties and adapted properties, it is believed that the administration involved in managing longer flexible tenancies would pose a problem due to very low numbers of properties and long periods between renewals leading to the workforce becoming de-skilled in managing this tenancy type. Effective management of tenancy data and the 'organisational memory' regarding these households is likely to be compromised over longer review periods, which creates a risk that the flexible tenancies will lapse and become secure tenancies. Based on the data available, it is not believed that even at 10-year intervals these types of housing will be likely to be no longer needed by the occupying household at the point of tenancy review. In consideration of this and in light of the trade-down incentives that are available and the success of these schemes, as well as the potential for the council to review its incentives and undertake targeted campaigns to promote and encourage those who are under-occupying to move to a smaller property, it is not recommended that longer (e.g., 10-year) fixed-term tenancies are granted for larger or heavily adapted properties.

4. POST DECISION IMPLEMENTATION

4.1 The council will deliver a communications strategy to engage with and seek feedback on the draft strategy from residents, private registered providers, and other stakeholders. An

eight-week consultation period will take place during April and May 2023, following which the results will be analysed.

- 4.2 The Tenancy Strategy will be revised, if appropriate, following the outcomes of the consultation and will be presented to the Cabinet for approval in the new municipal year.
- 4.3 If the strategy is approved, Barnet Homes will implement a tenancy migration plan to issue new secure periodic tenancies to existing tenants on fixed-term tenancies. Based on the legal advice received, to vary the tenancy the council will be required to ask tenants to agree a variation of the terms of their existing flexible tenancies in order to convert this to a secure periodic tenancy. Flexible tenancies held jointly and where one of the joint tenants is no longer around will be required to surrender their flexible tenancy and be granted a secure periodic tenancy.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The council's new draft Corporate Plan 2023-26 is centred around being a council that cares for people, our places, and the planet. The Tenancy Strategy will play a key role in helping to achieve the ambitions under the People priority to care for people by tackling inequalities, being family friendly, and living well.
- 5.1.2 The Housing Strategy 2019 to 2024 sets out how the council and its partners will improve the quality of housing available and deliver the additional housing that is required in the borough due to the growing population. The strategy details delivering more housing that people can afford, including the use of Affordable Rents to provide more homes for rent on council land. A new housing strategy is currently in development and will focus on similar core aims.
- 5.1.3 The Health and Wellbeing Strategy 2021 to 2025 recognises that the condition of and access to local housing has an important role in the quality of life and health of both individuals and communities.
- 5.1.4 The Growth Strategy 2020 to 2030 includes priorities to increase the supply of housing, deliver more homes that people can afford, deliver homes on public sector land, and support our growing older population.
- 5.1.5 Barnet's Joint Strategic Needs Assessment highlights the fact that there is a long-term shift in housing tenure towards renting and away from owner occupancy (either outright or with a mortgage), reflecting a sustained reduction in housing affordability and an imbalance between housing demand and supply.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 There is limited supply of social housing in Barnet. In 2021/22 there were over 2,100 homeless applications and only 625 social housing units available to let. The Tenancy Strategy will provide council homes in Barnet for those in most housing need who cannot afford home ownership or high private sector rents, will support the council to work with social landlords to meet the housing and support needs of residents, and will promote the health and wellbeing of individuals and build sustainable, balanced, and cohesive

communities.

- 5.2.2 Consultation on the draft Tenancy Strategy will be delivered through existing resources within the council and Barnet Homes, and through continued engagement of the consultants Campbell Tickell, which is funded through existing budgets.
- 5.2.3 Following approval, the strategy will be delivered within the existing budgetary framework within the Housing Revenue Account. At present it is assumed that the additional resource required to undertake the variations for existing flexible tenancies will be met through existing resource in Barnet Homes, however this will be reviewed alongside the potential timescales and will be brought back to Cabinet with the final draft strategy for approval.
- 5.2.4 Alongside the review of the Tenancy Strategy, Barnet Homes is reviewing its Tenancy Management Policy; this sets out the principles and practices in place regarding a range of tenancy-related matters including sole and joint tenancies, tenancy fraud, introductory and demoted tenancies, ending a tenancy, right to appeal, changes to a tenancy, and succession. The purpose of ending fixed term tenancies is to provide tenants with a guaranteed security; it will also enable Barnet Homes to focus officer time on tenancy management issues, such as preventing tenancy fraud and undertaking tenancy audits.

5.3 Legal and Constitutional References

5.3.1 Section 150 of the Localism Act 2011 sets out that:

- (1) A local housing authority in England must prepare and publish a strategy (a “tenancy strategy”) setting out the matters to which the registered providers of social housing for its district are to have regard in formulating policies relating to—
 - (a) the kinds of tenancies they grant,
 - (b) the circumstances in which they will grant a tenancy of a particular kind,
 - (c) where they grant tenancies for a term certain, the lengths of the terms, and
 - (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

5.3.2 A housing authority must have regard to its tenancy strategy in housing management functions (section 150(3) of the Localism Act 2011). A local housing authority must keep its tenancy strategy under review and may modify or replace it from time to time (section 150 (5) of the Localism Act 2011).

5.3.3 Section 150(6) of the Localism Act states that if a local housing authority modifies its tenancy strategy, it must publish the modifications or the strategy as modified (as it considers appropriate).

5.3.4 Under Section 151 of the Localism Act 2011, before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must:

- (1)(a) send a copy of the draft strategy, or proposed modification, to every private registered provider of social housing for its district, and
- (b) give the private registered provider a reasonable opportunity to comment on those proposals.

5.3.5 Under Section 151 of the Localism Act 2011, when preparing or modifying its tenancy

strategy, a local authority must have regard to:

- (3)(a) its current allocation scheme under section 166A of the Housing Act 1996,
- (b) its current homelessness strategy under section 1 of the Homelessness Act 2002,
- and
- (c) in the case of an authority that is a London borough council, the London housing strategy.

5.3.6 Under section 2.2 (Tenure) of the Tenancy Standard provided by the Regulator of Social Housing, registered providers of social housing are required to publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud, and set out:

- (a) The type of tenancies they will grant;
- (b) Where they grant tenancies for a fixed term, the length of those terms;
- (c) The circumstances in which they will grant tenancies of a particular type.
- (d) Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.
- (e) The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.
- (f) The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.
- (g) Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.
- (h) The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.
- (i) Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.

5.3.7 The council's Constitution (Article 7 – Committees, Forums, Working Groups, and Partnerships) sets out the responsibilities of the Housing and Growth Committee which include:

- (1) Responsibility for:
 - housing (including housing strategy, homelessness, social housing and housing grants, private sector housing and leasing, housing licencing and enforcement, HRA Revenue Account and Capital Programme).

5.4 Insight

5.4.1 No specific insight has been used in this report.

5.5 Social Value

5.5.1 There are no specific social value aspects to this report.

5.6 Risk Management

- 5.6.1 The move to issuing secure tenancies instead of fixed-term tenancies is expected to have a positive impact on community cohesion, with tenants likely to feel more of a commitment to the areas in which they live. It will also relieve the administration in managing fixed-term tenancies, including assessing whether tenancies should be extended.
- 5.6.2 The intention of implementing fixed-term tenancies was to provide local flexibility in the granting of tenancies that would help to ensure that, in a borough with high demand for social housing and relatively low availability of homes each year, the council's housing stock could be managed effectively and more homes could be provided for those most in housing need by dealing effectively with under-occupation so that such households could be offered properties more suited to their housing need.
- 5.6.3 In practice, it has been found that the use of fixed-term tenancies has not been an effective tool in reducing the number of under-occupiers, with none offered a smaller property due to under-occupation. The majority of households upon review of their fixed-term tenancy have had it continued at the same property for a further five years, with a total of only 5 tenancies ending or being reissued at an alternative property. The review process has highlighted that the majority of households under-occupying are elderly tenants who, through the Tenancy Strategy policy hold secure tenancies and therefore are not subject to the review process.
- 5.6.4 There is a risk that ceasing to offer fixed-term tenancies could remove a tool for taking action against tenants who are in breach of their tenancy agreement. Tenancy is not a tool for tackling issues such as anti-social behaviour, and breaches of tenancy will continue to be managed through effective tenancy management practices.

5.7 Equalities and Diversity

- 5.6.1 Equality and diversity issues are a mandatory consideration in the decision making of the council. This requires elected Members to satisfy themselves that equality considerations are integrated into day-to-day business and that all proposals emerging from the finance and business planning process have properly taken into consideration what impact, if any, there is on any protected group and what mitigating factors can be put in place.
- 5.7.2 The Equality Act 2010, Section 149 sets out the Public Sector Equality Duty which requires Public Bodies to have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant characteristic and persons who do not share it.
- 5.7.3 The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership.
- 5.7.4 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having

due regard, in particular, to the need to:

- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

5.7.5 An Equality Impact Assessment will be undertaken after consultation to assess the potential impacts of the Tenancy Strategy and prior to reporting back to the Cabinet.

5.8 Corporate Parenting

5.8.1 Foster carers are included in the group that would receive highest priority (if their housing prevents them from being able to start, or continue, to provide foster care) through the council's Housing Allocation Scheme. Council housing also remains the most affordable housing option for care leavers. Care leavers are placed into suitable accommodation when leaving care to allow a successful transition to independent living whilst also developing their skills by providing the right support to help them maintain their tenancies.

5.8.2 As a corporate parent to all children in care and care leavers, the council must have regard to the need to act in the best interests and promote the physical and mental health and wellbeing of those children and young people, help them gain access to and make the best use of services provided, promote high aspirations and seek to secure the best outcomes for them, help ensure they are safe and have stability in their home lives, and prepare them for adulthood and independent living.

5.9 Consultation and Engagement

5.9.1 Subject to approval by the Housing and Growth Committee, a public consultation will take place during April to May 2023. This will include an online survey and inviting comments from residents, the public, private registered providers, partner organisations, and other stakeholders.

6. Environmental Impact

6.1 There are no direct environmental implications from noting the recommendations. Implementing the recommendations in the report will lead to a neutral impact on the council's carbon and ecology impact.

7. BACKGROUND PAPERS

5.10 Relevant previous decisions are listed in the table below:

Item	Decision	Link
Item 10, Housing and Growth Committee, 13 June 2022	Housing Strategy, Homelessness and Rough Sleeping Strategy, and Housing Allocations Scheme: approval to instruct officers to explore the emerging housing allocations priorities of the new administration, and where considered appropriate, review and propose amendments to the Housing Allocations Scheme and Tenancy Strategy.	https://barnet.moderngov.co.uk/documents/s72887/20220613HAG-Housing%20Strategy%20Homelessness%20and%20Rough%20Sleeping%20Strategy%20Housing%20Allocations%20Scheme.pdf
Item 11, Housing Committee, 29 June 2015	Review of Local Tenancy Strategy: approval of changes to the Local Tenancy Strategy	https://barnet.moderngov.co.uk/documents/s24082/Review%20of%20Local%20Tenancy%20Strategy.pdf
Item 6, Cabinet, 4 April 2012	Local Tenancy Strategy: approval of the new Local Tenancy Strategy	https://barnet.moderngov.co.uk/Data/Cabinet/201204041900/Agenda/Document%203.pdf