
Subject: DOVER DISTRICT COUNCIL DRAFT TENANCY STRATEGY AND POLICY 2021–2026

Meeting and Date: Cabinet – 5 July 2021

Report of: Louise Taylor, Head of Housing

Portfolio Holder: Councillor Derek Murphy, Portfolio Holder for Housing and Health

Decision Type: Key Decision

Classification: Unrestricted

Purpose of the report: To seek Cabinet approval of the draft Tenancy Strategy and Tenancy Management Policy attached at Appendices 1 and 2 for wider statutory consultation with stakeholders and service users.

Recommendation:

1. That Cabinet notes the duty placed on the Council by the Localism Act 2011 to prepare and publish a Tenancy Strategy and Tenancy Management Policy.
2. That Cabinet notes and approves the content of the draft Tenancy Strategy.
3. That Cabinet notes and approves the content of the draft Tenancy Management Policy.
4. That Cabinet notes and approvea the draft consultation plan for both the Tenancy Strategy and Tenancy Management Policy
5. That Cabinet delegates to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, authority to make minor amendments to both the strategy and policy arising from the consultation, and thereafter to adopt both documents on behalf of the Council with effect from 1 September 2021.
6. That Cabinet delegates to the Strategic Director (Corporate Resources), in consultation with the Portfolio Holder for Housing and Health, authority to make future minor amendments to the strategy and policy as required.

1. Summary

- 1.1 Section 150 of the Localism Act requires the Council to develop, publish and keep up to date a Tenancy Strategy that provides guidance to partner Registered Providers of Social Housing (RPSH) on the use of different tenancy types and affordable rents in the Dover District
- 1.2 The Act also requires the Council as a social housing landlord to produce a Tenancy Management Policy that has regard to the Tenancy Strategy and sets out how Dover District Council (DDC) will operationally grant and manage tenancies.

1.3 In addition to requirements in the Localism Act, the Regulator for Social Housing, consumer standards include a Tenancy Standard outlining further areas of management that the Council should address within their tenancy management policy, specifically the management of mutual exchanges and successions.

1.4 The revised strategy and policy are reflective of changing attitudes at both national and local level to the use of flexible fixed term tenancies.

2. Introduction and Background

2.1 Under section 150 of the Localism Act, the Council is required to develop and publish a Tenancy Strategy setting out the Council's preferred position on:

- The type of tenancies granted in the district;
- The circumstances in which particular types of tenancy will be granted;
- The length of time a tenancy will be granted for;
- How tenancies will be managed towards the end, including the offer of a new tenancy

2.2 It should be noted that although the Tenancy Strategy gives the Council's preferred position, RPSH operating in the district are only required to have regard to this.

2.3 The Act also requires the Council as a social housing landlord to produce a Tenancy Management Policy that has regard to the Tenancy Strategy and sets out how DDC will operationally grant and manage tenancies.

2.4 Both the Tenancy Strategy and the Tenancy Management Policy published by DDC in 2011 need updating. When amending the existing Tenancy Strategy, the Council is required to invite comment from its RPSH partners.

3. Tenancy Strategy

3.1 The Localism Act 2011 introduced a raft of fundamental reforms of social housing tenure.

The most significant of these were:

- Both Local Authorities and RPSH are now able to offer fixed term tenancies of a minimum of 5 years, or in exceptional circumstances 2 years instead of the traditionally longer 'lifetime' secure tenancies
- Local Authorities were allowed more flexibility to set their own Allocations Policies to meet local needs and circumstances
- Local Authorities can now place homeless households in suitable Private Rented Sector housing
- A new model of affordable rents of up to 80% of market rent can be applied to new housing developments and in some cases existing housing stock can be converted when vacant from social rent to affordable rent levels.
- Local Authority stock owners and RPSH must prepare and publish a Tenancy Management Policy setting out the types of tenancy they will use when letting their homes.
- New arrangements have been introduced for tenants seeking to mutually exchange homes in cases involving fixed term tenancies and or affordable rents.

- Changes to the rights of succession has limited those able to succeed to a tenancy on the death of the tenant
- 3.2 As a strategic housing authority Dover District Council has a responsibility to develop and publish a Tenancy Strategy giving guidance to partner Registered Providers of Social Housing (RPSH) on the use of different tenancy types and affordable rents in the District.
 - 3.3 The Tenancy Strategy sets out the strategic position of the Council with regards to the use of, review of and ending of fixed term tenancies, affordable rents, mutual exchanges, succession rights and dealing with tenancy fraud. In most respects the strategic position taken by DDC remains the same as that taken in 2011.
 - 3.4 The significant difference relates to the use of fixed term tenancies in the district, where in light of national and local changes in attitude to their use the Council will no longer be recommending they be used as a preferred tenancy type. The rationale for this is set out below.

4. Flexible Tenancies

- 4.1 One of the key objectives of fixed term tenancies was to enable social housing providers to make the best use of the social housing stock by addressing under occupation and encouraging those people who can afford to do so, to move to other tenures such a private rented accommodation or homeownership.
- 4.2 The appetite for fixed term tenancies among RPSH has been mixed with some local providers electing to use them and others continuing to offer lifetime tenancies.
- 4.3 Dover District Council started using flexible fixed term tenancies for new tenants under the age of 55 in May 2014. Two years later in 2016, the Housing and Planning Act included (as yet unenacted) sections of legislation, that sought to make the use of fixed term tenancies by local authorities mandatory.
- 4.4 The Grenfell Tower fire in June 2017 was one of the UK's worst modern disasters and in the aftermath of this the Government has unveiled important planned changes to the regulation and management of social housing. In its Green paper 'A new deal of social housing' published 14 August 2018 the Government confirmed that it no longer intended to implement the provisions in the Housing and Planning Act 2016 that sought to make fixed term tenancies mandatory for local authorities after listening to residents' concerns.
- 4.5 The Social Housing White Paper published on 17 November 2020 set out a Charter for Social Housing Residents and affirms the Government's continuing commitment to give social housing tenants a greater voice, the right to safe and secure accommodation and of the importance of good quality homes and neighbourhood to live in.
- 4.6 Support for flexible tenancies has changed dramatically since the Council's last Tenancy Strategy published in 2011 and nationally some of the changes detailed above have been the catalyst for some large RPSH and Councils to evaluate the benefits of fixed term tenancies and as a consequence end their offer of these entirely.
- 4.7 The development of this strategy has taken into account the changing national attitude to flexible fixed term tenancies, the responses from our RPSH partners and our own experience of their use. Although they were intended to help social

landlords make the best use of affordable housing there have been a number of significant disadvantages to their use including:

- Tenants feeling concerned and anxious about their futures based on their tenure type.
- Lack of investment by families in their home and community because they feel they will be moved on
- Little impact in terms of stock turnover and vacancies
- Potential conflict with the Government priority to give tenants a stronger voice
- Significant administrative costs involved with the scheme particularly where the majority of tenancies are set to continue.

Further, more detailed analysis of the advantages and disadvantages of the use of flexible tenancies is set out at appendix 3.

5. Position of Registered Providers Operating in the Dover District

5.1 In the formulation of the Tenancy Strategy all RPSH with accommodation in the Dover District were invited to share with the Council their current position on the use of flexible tenancies for their own stock and their future intended use of this type of tenancy.

5.2 There are 13 RPSH operating in the Dover District with a combined total of 2714 units of social housing between them. Of the 13 RPSH, 9 responded directly or have publicly announced their intention to move away from flexible tenancies. The 9 RPSH who responded to the survey represent 82% (2330) of the RPSH stock in the District and 27% of the combined LA & RPSH stock in DDC area.

5.3 The table below illustrates the results attained from the preliminary consultation. 5 of the registered providers did not respond to our preliminary consultation so we could not ascertain their quantity of stock in the Dover area, however government figures released via live tables on dwelling stock revealed that there was a total of 2714 PRP properties in the Dover district.

Registered Provider	Quantity of Housing Stock in DDC area	Are Flexible Tenancies used in the Dover Area?			Number of properties at Affordable Rents	
		Yes	No	Unk.	Quantity	%
Clarion Housing	74	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	3%
English Rural Housing Association	13	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	0	0%
Orbit Housing Association	222	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	74	33%
West Kent Housing Association	106	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	80	75%
Housing 21	114	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	0	0%
Southern Housing Group	775	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	62	8%
Moat Homes Ltd	123	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	58	47%

Town & Country	592	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	46	8%
Sanctuary Housing**	211*	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Not Known	
Home Group	47*	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not Known	
Riverside	10*	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not Known	
Anchor Hanover	62*	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not Known	
Milldale Housing Cooperative (MBM)	2*	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not Known	
Totals	2714	3	6	4	322	

* *Extracted from Locata 17/05/2021 nationally.*

***Have provided information on flexible tenancies*

5.4 This research demonstrates that locally, fewer RPSH now employ fixed term tenancies, and feedback from some of them was that they feel they are at odds with sustainable communities as well as difficult and costly to administer. They have chosen instead to use probationary tenancies of up to 12 months before granting the 'lifetime' periodic tenancies once the probationary period has been successfully completed.

5.5 In consideration of the information from our partner RPSH and of the potential negative impact their use could have on the stability, health and resilience of our local communities the revised Tenancy Strategy recommends that all social housing landlords operating in the Dover District consider instead offering tenancies with the greatest level of security taking into account the personal circumstances of each household involved.

5.6 Although the tenancy strategy sets out the Councils preferred position it must be remembered that RPSH operating in the district need only have regard to this and might still choose to use flexible tenancies or may be required to as a condition of funding. Where this is the case the Strategy sets out the Councils preferred arrangements for this.

6. DDC Tenancy Management Policy

6.1 As a stock owning authority DDC are also required to develop and publish a tenancy Management Policy setting out how we will operationally manage tenancies for our own properties. This policy applies only to DDC tenants and the key differences between the new version and the 2011 Policy are:

- The phasing out of fixed term tenancies
- Greater clarity regarding joint tenancies

6.2 A copy of the draft Tenancy Management Policy is attached at appendix 2 setting out the types of tenancy the Council propose to offer new tenants in future, how tenancy fraud will be tackled, successions and mutual exchange requests responded to and how tenancies will be brought to an end.

6.3 Since May 2014 DDC have been offering most new tenants a year-long introductory tenancy followed by a five-year flexible tenancy. There are currently 616 tenants with this type of agreement. The redrafted Tenancy Management Policy will mean that future new tenants in the Dover District will usually be offered introductory tenancies followed by lifetime secure tenancies rather than flexible fixed term tenancies. Those

housed temporarily because of homelessness will continue to be offered non secure tenancies under the relevant provisions of the Housing Act 1996.

- 6.4 Tenancies created in May 2014 started to fall due for review from August 2019. Unfortunately a number of these reviews were missed by East Kent Housing and this position was exacerbated by the national lockdowns in response to the Covid pandemic. As a consequence, 64 flexible tenancies rolled over into weekly periodic tenancies. As it was already too late to reoffer a new fixed term tenancy these tenants have been written to and advised that they now have secure tenancies. A further 61 cases will shortly be in the same position and will be dealt with in the same way.
- 6.5 To regularise the position for the remaining fixed term tenants it is proposed that the following action be taken. Until and subject to Cabinet approval, consultation and adoption of the revised tenancy management policy existing flexible tenancies falling due for review will follow the established arrangements and be offered a new fixed term tenancy.
- 6.6 All new tenants will be offered an introductory tenancy of 12 months and advised that this will become a flexible tenancy unless the proposed revisions to the Tenancy Management Policy are approved. This is because a tenancy cannot become a flexible tenancy unless notice of this is given before the tenant signs the tenancy agreement and there will be a period before the policy is formally adopted.
- 6.7 Upon approval and adoption of the revised Tenancy Management Policy those tenants who have already completed their 1 year introductory tenancy and moved into the flexible tenancy period or had their flexible tenancy renewed will be contacted. Where their tenancy is being well maintained and there are no breaches of the tenancy conditions they will be invited to make use of the break clause in their tenancy agreement and give up their current fixed term tenancy and be re offered a lifetime secure tenancy. The effect of this will be to improve their security of tenure and will not affect any of their existing tenancy rights.
- 6.8 In cases where there is a current ongoing breach of tenancy conditions the tenant will be asked to remedy this before any action is taken to change the tenancy type.
- 6.9 Joint tenancies: A Joint Tenancy is where more than one person has the responsibility for meeting the requirements of the tenancy agreement. Both tenants are entitled to stay in the home until the end of the tenancy.
- 6.10 The Tenancy Management Policy provides greater clarity to the situations in which the Council will allow a joint tenancy to be brought to an end in circumstances where one of the joint tenants cannot be traced. It also sets out the circumstances that will be taken into account when requests to create joint tenancies from a sole tenancy are received.

7. Tenancy Audits

- 7.1 One of the benefits of conducting flexible tenancy reviews was the opportunity that it presented to have contact with each tenant and identify any issues they were having with their tenancy. Situations where the tenant is struggling or having difficulty maintaining their tenancy or repairs are outstanding would be picked up along with any potential tenancy fraud.
- 7.2 For some time, housing officers have been conducting tenancy audits on a rolling 5-year programme. These visits offer the same opportunity as flexible tenancy reviews

to have contact with existing tenants, establish any support need they have and or desire to move to alternative accommodation.

8. Consultation

- 8.1 It is a requirement of the Localism Act that RPSH are invited to comment on any revisions to the Tenancy Strategy and of s.105 of the Housing Act 1985 that the local authority consult with tenants when making changes to the management arrangements for Council owned homes.
- 8.2 The length of time in which RPSH are given the opportunity to comment on the amended Tenancy Strategy is not expressed in the legislation.
- 8.3 The statutory requirement is set out at s.151(1) of the Localism Act 2011 which states: Before adopting a tenancy strategy, or making a modification to it reflecting a major change of policy, the authority must— (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.
- 8.4 It is intended to carry out a relatively short window of 28 days in which to ask the RPSH to comment. This is on the basis that the largest majority of RPSH operating in the District have already indicated that they no longer intend to use flexible tenancies and for those that chose to still use these the strategy does not overrule their adopted tenancy policy anyway.
- 8.5 The Council's tenants have already been advised via their newsletter that the tenancy policy is under review and the options being recommended to Cabinet. Changes to the use of flexible tenancies will affect 616 tenants who currently have flexible tenancies but in all of these cases the changes proposed actually improve the level of security their tenancy offers them.
- 8.6 In the few cases where there are outstanding issues and it is proposed the tenancy remain of fixed term until these are remedied it is within the tenants gift to remedy these matters and at that point a new secure tenancy will be offered.
- 8.7 Full details of the planned consultation and arrangements for this are included at appendix 4.

9. Identification of Options

- 9.1 Option 1: Approve for wider statutory consultation the draft Tenancy Strategy and Tenancy Policy and delegate to the Strategic Director (Corporate Services) in consultation with the Portfolio Holder for Health and Housing authority to make minor revisions to both documents following the outcome of the consultation exercise and thereafter adopt formally both documents. In the event that significant consultation responses are received in respect of either document, revised versions will be brought back to Cabinet for approval.
- 9.2 Option 2: Approve for consultation the Tenancy Strategy only
- 9.3 Option 3: Approve for consultation the Tenancy Management policy only.
- 9.4 Option 4: Not approve either document

10. Evaluation of Options

- 10.1 Option 1 is the recommended option. The current Tenancy Strategy and Policy are out of date and require updating to ensure the Council fulfils its statutory duties. A full consultation exercise is required with each registered provider operating in the District sent a copy of our draft strategy for comment. Consultation with our own and prospective tenants will be required for the tenancy policy. Adoption of the proposed strategy allows the Council to fulfil its statutory duty.
- 10.2 Option 2 Approve for consultation the draft Tenancy Strategy only. This is not the recommended option as the Council has a duty to provide both documents to fulfil its statutory responsibility.
- 10.3 Option 3 Approve for consultation the draft Tenancy Management Policy only. This is not the recommended option as the Tenancy Management Policy must be drafted with the Tenancy Strategy in mind. The 2011 – 2016 Tenancy Strategy is out of date and will be at odds with the revisions made to the new Tenancy Management policy.
- 10.4 Option 4 Not approve either document. This is not the recommended option as the Council has a statutory duty to provide both and the current versions of these documents are out of date. Failure to develop and publish a Tenancy Strategy and Tenancy Management Policy could result in the failing to meet its statutory duty.

11. Resource Implications

- 11.1 Both the Tenancy Strategy and the Tenancy Management policy will be delivered within existing resources in the Housing Revenue Account (HRA). Housing Officers currently undertake tenancy management functions and the gradual replacement of fixed term tenancies with lifetime secure tenancies will be no more onerous than the current arrangements for review. The purpose of ending fixed term tenancies is to provide tenants with a guaranteed security but this will also enable the council to focus officer time on tenancy management issues, such as preventing tenancy fraud and undertaking tenancy audits.

12. Climate Change and Environmental Implications

- 12.1 There should be no environmental or climate change implications as a consequence of this decision being taken.

13. Corporate Implications

- 13.1 Comment from the Director of Finance (linked to the MTFP) 'Accountancy have been consulted in the writing of this report and have no further comment (AC)'.
- 13.2 Comment from the Solicitor to the Council: The Head of Governance has been consulted during the preparation of this report and has no further comment to make.
- 13.3 Comment from the Equalities Officer: An Equality Impact Assessment has been carried out to identify and mitigate any negative impact upon the protected characteristic groups. The Equality Officer has been consulted during the development of the report and has no further comments to make, other than to remind Members that in discharging their responsibilities they are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>
- 13.4 Other Officers (as appropriate): None received.

14. Appendices

Appendix 1 – Dover District Council Draft Tenancy Strategy 2021-2026

Appendix 2 – Dover District Council Draft Tenancy Management Policy 2021-2026

Appendix 3 – Advantages and Disadvantages of Fixed-Term Tenancies

Appendix 4 – Proposed Consultation Plan

Appendix 5 - Equality Impact Assessment

15. Background Papers

Current Tenancy Strategy

Current Tenancy Management Policy

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