

Southend-on-Sea Borough Council

Tenancy Policy

2013-18

DRAFT



Tenancy Policy

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1. INTRODUCTION

Affordable housing no longer has to be let on a tenancy for life. The Localism Act 2011 allows local authorities to grant 'flexible tenancies' for a fixed period. There are now a range of options available when issuing such tenancies in addition to the secure lifetime tenancies traditionally issued.

The purpose of this policy is to provide details of the types of tenancies that the Council will grant, the circumstances in which these will be granted and the process for reviewing and renewing flexible tenancies.

For the purpose of this Policy, 'The Council' refers to any functions carried out by, or on behalf of Southend-on-Sea Borough Council.

2. STRATEGIC TENANCY STRATEGY

The Council adopted the *Southend-on-Sea Borough Council Strategic Tenancy Strategy 2013-18* in January 2013. This document provides guidance to local social housing landlords in the use of flexible tenancies. The document set out the principles of using flexible tenancies to promote best use of the social housing stock. This Policy is informed by the Strategic Tenancy Strategy and provides greater detail outlining how the Council will grant tenancies in accordance with the new powers.

3. POLICY AIMS

The Government's approach to social housing reform has provided the context for the development of this policy. In accordance with the ambitions of the Localism Act 2011 this policy is part of the Council's wider housing strategy and will assist the Council to:

- Enable decisions about who lives where and for how long to be taken on the basis of local need and circumstances
- Deliver a social housing system that is better focused and which protects and supports those who need it most
- Shift the perception of social housing so that it is seen as a springboard into work and self-sufficiency
- Allow the council to make best use of its housing stock

In accordance with the aims of the Strategic Tenancy the aims of this Policy are to:

- Target scarce resources at those in greatest need
- Targeting subsidised affordable housing to those most in need in a fair and transparent way
- Ensuring residents on social/new affordable rent live in homes that are appropriate to their housing needs
- Ensuring residents in social/new affordable rent remain in their homes but with rent that better reflects the actual cost of housing and their ability to pay

- Creating a link with tenancies that will support and incentivise work
- Encouraging Mobility between tenures where appropriate

In accordance with the Localism Act 2011 Southend-on-Sea Borough Council, or agents acting on the Council's behalf, will issue tenancies that are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community and the efficient use of our housing stock

This policy will be subject to regular review and will be updated where necessary in accordance with changes to national legislation, the Strategic Tenancy Strategy or major changes to Southend's Housing Strategy or policies.

The policy applies to all Southend-on-Sea Borough Council tenancies which commence after *date to be confirmed*.

4. THE TYPES OF TENANCIES WE OFFER

In the majority of circumstances local authorities can only grant secure tenancies although there are some instances whereby other tenancy types can be offered.

The list below provides a description of the tenancy types that the Council will grant in the future. It is important to appreciate that all the tenancies outlined below operate according to statutory criteria.

As is the case with most security of tenure legislation, the Council cannot choose to set up an individual tenancy outside those criteria (regardless of the situation and tenant agreement).

Introductory Tenancies

Unless a new tenant (or one of them in the case of joint tenancies) already has a secure tenancy (or another social housing equivalent to a secure tenancy, for example an assured non short-hold tenancy), the tenancy offered will be an introductory tenancy for a trial period. The trial period normally lasts for one year, but may be extended. During the trial period tenants have less security and fewer rights. For example:

- Their home is at much higher risk of repossession if they do not keep to the tenancy agreement
- They cannot buy their home
- They cannot exchange homes with other tenants

The Council has successfully used introductory tenancies for a number of years and will continue to grant Introductory Tenancies, usually for a minimum period of 12 months, to all new tenants.

Secure lifetime and Flexible Tenancies

If the trial period of an introductory tenancy is successfully completed, tenants automatically become 'secure' tenants and may be issued a **lifetime** or a **flexible** tenancy.

Secure tenants have certain rights, as set out in their tenancy agreement, such as the Right to Buy, rent out rooms (but not sublet the whole property), do a mutual exchange or make improvements to the home.

If the tenant had a secure tenancy (or other social housing equivalent) immediately beforehand, they are secure tenants from the beginning of the tenancy.

A lifetime tenancy can only be brought to an end via a court order. A flexible tenancy can be ended at the completion of the prescribed fixed term, provided that the correct notices have been served and any appeal has been considered.

From *date to be confirmed* the majority of new tenancies offered by Southend-on-Sea Borough Council will be flexible tenancies following the completion of a satisfactory introductory tenancy. The circumstances in which tenants may be granted lifetime or flexible tenancies, following completion of an introductory period are set out below:

Household type	Tenancy Type	Proposed Length of new tenancy
New tenants		
Those entering part 2 (age 60+) sheltered accommodation.	Secure	Lifetime
Households requiring an adapted property	Flexible (secure)	5 years
Families that include at least 1 child living in the property	Flexible (secure)	5 years
Single Households or couples without children	Flexible (secure)	5 years
Existing tenants (pre April 2012)		
Households that move to another social rented property	Secure	Lifetime (in accordance with Localism Act)
Households that choose to move to Affordable rent property	Secure	5 Years

There may also be other groups of people including those with enduring or lifetime health conditions who could be considered for lifetime tenancies dependent on their individual circumstances, each case will need to be considered on its own merits.

In exceptional circumstances, the council may grant a flexible tenancy for a shorter period. In accordance with the Localism Act the Council will not grant flexible tenancies which are shorter than two years in duration. Examples of the circumstances in which tenancies of less than 5 years may be used are provided below:

Exceptional Circumstances	Tenancy length
Household is overcrowded at the time of review, but no alternative accommodation is available	2 years
A Notice Seeking Possession has been issued due to rent arrears and the court has accepted a payment agreement which the tenant has kept to	2 years
Household has previously been issued a flexible tenancy and: <ul style="list-style-type: none"> • Carries out a mutual exchange • Succession issues arise • A joint tenancy ends 	2 years -If unexpired portion of flexible tenancy is less than 2 years 5 years -If unexpired portion of tenancy exceeds 2 years
If an introductory tenancy has been extended due to anti-social behaviour	2 years

A decision to grant a tenancy shorter than five years will be considered by the Council where it is felt appropriate on the basis of the tenant's previous record and discussions with the tenant at the tenancy review meeting (See section 5).

Mutual exchange

Mutual exchanges shall be dealt with in accordance to the Mutual Exchange Policy, however, for the purposes of this policy, particular attention is drawn to the following:

- Mutual exchanges between secure, social rent tenants will be dealt with via deed of assignment, therefore new tenancy agreements do not need to be signed.
- Where a tenant with a pre 2012 secure lifetime tenancy exchanges with a tenant of a fixed term tenancy, they will be required to surrender their tenancy before being granted a new tenancy.

A tenant with a pre-April 2012 secure tenancy can exchange with any other social tenant and retain their security of tenure.

Demoted Tenancies

A secure tenancy may be ended by a court order for some kinds of antisocial behaviour and replaced with a demoted tenancy for a year. A demoted tenancy has less security and fewer rights than secure tenancies. It is broadly like an introductory tenancy. It is a useful alternative to a suspended possession order in some instances. If a flexible tenancy is demoted and the demotion period has been completed successfully, the tenancy will automatically become a secure lifetime tenancy. If a flexible tenancy is required, a notice must be served, prior to the end of the demotion period, advising the tenant that the tenancy is to be a fixed term tenancy, the length of the fixed term and other express terms of the tenancy.

Non-secure Tenancies

There are a few exceptional situations that operate outside the normal framework (introductory, secure and occasionally demoted tenancies). These tenancies have less security and protection and normally apply to short-term accommodation. The most common of these exceptions is tenancies granted by the council under its homelessness functions.

Family Intervention Tenancies

Family Intervention Tenancies are non-secure tenancies that are sometimes offered for the purpose of providing support services to tenants against whom a possession order for antisocial behavior has, or could have, been made in relation to their tenancy on the grounds of antisocial behavior. If the tenant does not comply with the conditions of the agreement, they can be evicted, provided that the Council has served a valid notice of intent, notice to quit and has carried out appropriate procedure for any review or oral hearing.

The term of a Family Intervention Tenancy will be dependent on the family's unique circumstances. Provided that the terms of the Family Intervention Tenancies have been adhered to, the tenant(s) shall be offered an Introductory Tenancy.

Joint Tenancies

Any of the tenancies granted by the Council can be issued as a joint tenancy based on the following circumstances:

- The proposed joint tenants are both eligible for housing as defined by legislation **and**
- Where the proposed joint tenants are married or civil partners **or**
- Where the proposed joint tenants live together and the relationship is an 'established' one i.e. evidence they have lived together for at least 12 months prior to the joint tenancy application **or**

- Where the proposed joint tenants are in a 'mutually supportive' and 'established' relationship.

In the context of deciding whether or not to grant joint tenancies the council has some discretion (in contrast to its lack of individual discretion about the type of tenancy). But it must, of course, act consistently and in accordance with this policy.

5. FLEXIBLE TENANCY REVIEW

Flexible tenancy renewal

The Council will inform tenants of the processes for reviewing flexible tenancies when they first sign-up for their tenancy and again 12 months before the tenancy is due to come to an end.

Flexible Tenancy Review

Where a flexible tenancy is coming to an end a review will be undertaken in accordance with the renewal criteria (page 9).

This will include a tenancy review meeting between a representative from the Council and the tenant to discuss the tenant's current situation and housing needs. The tenancy review meeting will be arranged at least 12 months prior to the tenancy end date.

No less than 10 months prior to the fixed tenancy expiring, the Council shall conduct a tenancy review, which may include a home visit. The purpose of the review is to determine whether the tenancy should be renewed in accordance with the renewal criteria or whether other housing options can be pursued and the tenancy ended.

The tenancy review shall assess the extent to which a household's circumstances have changed, whether the current property remains suitable and if it makes best use of local housing stock. It is expected that in the majority of cases that an additional flexible tenancy will be granted at the same or alternative address. However, in some circumstances where the renewal criteria have not been met an additional flexible tenancy will not be offered.

Tenancy Review Meeting

The tenancy review meeting will offer the opportunity for the Council to communicate with residents about any tenancy issues and provide advice to tenants on a range of housing related issues. The meeting also provides the opportunity for the tenant to discuss their current and future housing needs, aspirations and alternative housing options where appropriate including: sheltered housing, supported housing, home ownership, shared ownership, mutual exchange or private renting.

If the tenancy is joint, both named tenants must be present at the meeting. A support worker, friend, or other representative may accompany the tenant(s) to the meeting

but must provide their name, address and relationship at least 24 hours prior to the meeting taking place. A translator may also be present.

Failure to attend a review meeting.

The tenant shall be sent a letter inviting them to arrange a review meeting. If a response is not received within 28 days, the landlord shall make 1 more attempt to contact them including a telephone call and home visit. The telephone call and/or home visit will allow the council to identify if there are any unknown language issues or vulnerabilities, in which case appropriate support will be put in place to arrange the meeting. If the tenant(s) still fail to engage, or refuse to attend the meeting, we will issue the tenant 6 months notice of our intention to end the tenancy.

If the tenant believes they will have difficulty accessing the review meeting, they must inform the council who will make appropriate arrangements to ensure tenant participation. In exceptional circumstances, a meeting can be held without the tenant(s) present, so long as a representative attends and the tenant has consented to this.

Tenancy Renewal Criteria

The following criteria will be used when conducting a tenancy review in determining whether a new flexible tenancy will be offered:

➤ **Is the property a suitable size for the household?**

The Council will undertake an assessment using the bedroom eligibility calculations from the Allocations Policy to determine whether the property is suitable for the size of tenant's household.

In cases where it is demonstrated that the household are under-occupying their accommodation the Council will not generally renew the flexible tenancy at their current property and the household will be assisted to source alternative, smaller accommodation which matches their needs in line with the Council's Allocations Policy. Tenants that are required to move to a smaller property will be given priority on the Council's Homeseekers register and will be eligible to apply for an under-occupation grant (subject to funds being available).

The tenant will be awarded appropriate priority according to the Council's Allocations Policy and be encouraged to bid for suitable sized properties from the time that they receive notice that the tenancy at their current property will not be renewed. If the household are not successful in securing a property within 6 months the Council will make a Direct Let to a property which is suitable for the household's needs.

The Council will offer support to the household to relocate to more appropriately sized housing and the property that the household moves to should be more affordable in most cases.

In some cases the Council will use its discretion in granting an additional flexible tenancy to an under-occupying household, such circumstance may include:

- Where the property is adapted to meet the needs of the household
- Where the household will shortly not be under-occupying e.g. where a dependent child reaches an age which triggers a requirement for an extra bedroom
- Where it can be demonstrated that an under-occupying household would suffer serious harm moving into alternative accommodation

Where a household is assessed as over-occupying their accommodation the Council will offer advice to make a transfer application, discuss possibility of mutual exchange and other housing options. If no alternative accommodation can be found an additional, 2 year flexible tenancy will be offered unless the household are statutorily overcrowded.

➤ **Has the tenancy been conducted in a satisfactory manner i.e. has there been anti-social behaviour or rent arrears?**

In cases where there have been provable breaches of tenancy or where agreements to remedy those breaches have not been maintained these will be discussed at the tenancy review meeting.

Where a tenant or household member has been guilty of serious and persistent breaches of tenancy the Council will not offer a further flexible tenancy. Serious and persistent breaches of tenancy will include cases where the breaches would be of a magnitude that the Council would seek and it would be reasonable for the Court to grant a possession order.

Where rent arrears have resulted in a Notice Seeking Possession being issued, the court has accepted a payment agreement and this has been adhered to by the tenant, The Council may renew the fixed term tenancy for the reduced period of 2 years.

➤ **Does the property still meet the housing needs of the tenant, e.g. does it have suitable adaptations?**

A flexible tenancy may be granted to a person with disabilities in a property that has been built or adapted to meet their needs. If the disabled tenant is no

longer resident or no longer requires the adaptations at the end of the fixed term tenancy the Council will discuss alternative housing options with the tenant including transferring to more appropriate accommodation.

This will ensure that the adapted property can continue to be used to meet the needs of disabled persons in Southend.

➤ **Have there been any other significant changes regarding income/assets?**

The income and assets of the tenant and their spouse/partner will be assessed as part of the tenancy review to determine whether they would still qualify for social housing using the thresholds (which are updated annually) included in the Council's Allocations Policy.

6. TERMINATION OF TENANCIES AND APPEALS

The Council will seek to support tenants and help them maintain their tenancies but may take action to end tenancies (before the end of any fixed term) where:

- There are breaches of tenancy conditions
- The tenancy is for a property which the Council need possession of so that a redevelopment or regeneration scheme can proceed.
- The tenancy has been obtained by fraud

Where the tenancy is for a fixed term a tenancy review will be carried out at least 10 months prior to the date on which the tenancy is due to end which will determine whether or not a further tenancy should be granted.

Appeals

Tenants/prospective tenants can appeal against:

- The type of tenancy offered at the end of the introductory tenancy
- The decision not to grant another tenancy at the end of the fixed term
- The length of the fixed term tenancy offered, if not in accordance with this policy

Requests for reviews must be made within 21 days of receiving notice of the council's decision.

Terminating a flexible tenancy

If it is decided, as a result of the tenancy review, that a tenancy will not be renewed, written notice advising the tenant of such will be served by South Essex Homes.

A tenant can appeal the Council's decision to offer a flexible tenancy or to convert an introductory tenancy to a flexible tenancy. The appeal must be made within 21 days of the tenant receiving the offer.

Should the Council decide not to renew a flexible tenancy, the tenant shall be informed, in writing a minimum of 6 months prior to the tenancy expiring. The notice shall contain the reasons for the tenancy not being renewed and also advise of the right to appeal within 21 days (as set out in Government Regulations). On or before the day the tenancy expires, the tenant shall be given 2 months notice requiring possession.

Upon informing the tenant of the decision not to renew the tenancy, appropriate advice will be offered to support the tenant into finding alternative accommodation. The Council will work proactively with any tenant who has been served notice to assist them to explore their options for alternative accommodation. The Council's Housing Options team will continue to be a source of advice for those seeking alternative housing in Southend.

Should the Council's decision to end a flexible tenancy be upheld following review South Essex Homes will, on behalf of the Council, seek possession of the property.

Well in advance of a tenancy being terminated, the Council will work proactively with tenants who find themselves in this situation, and help them explore their options for alternative housing, which could include home ownership, a privately rented home or more suitable affordable rented accommodation. If the tenant refuses to move when the notice period expires the normal possession procedure will take effect.

Supporting Vulnerable Tenants and preventing unnecessary evictions

The Council and South Essex Homes will work to target resources to support tenants with vulnerabilities to ensure that they are able to maintain their tenancies.

The support available to tenants includes:

- Notification of landlord and tenant obligations
- Floating support (where appropriate)
- Tenancy sustainment support (where required)
- Access to free skills for life and finance courses
- Close partnership working with statutory and voluntary support agencies.
- The use of Family Intervention tenancies

7. TENANCY FRAUD

If it is identified that a tenant has committed social housing fraud, enforcement action or criminal proceedings may be taken. Tenancy fraud includes obtaining a property by deception, subletting the whole of the property or subletting part of the property without written consent.

The Council aims to prevent and detect tenancy fraud through:

- Requesting photographic I.D. when applying for the Housing Register
- Publicity/Fraud awareness
- Unannounced tenancy checks
- Cross checking internal/Experian systems including data matching
- Liaising with internal departments/External agencies

8. SUCCESSION RIGHTS

If a tenant dies during their tenancy in certain circumstances the tenancy can be passed on to specific members of their household, providing they meet certain conditions. A tenant's succession rights are contained in the Council's tenancy agreement.

Pre April 2012 tenancies

If a tenancy was granted prior to April 2012, the law entitles **one** statutory succession to either a spouse/ partner that was residing with the tenant **or** a family member who has been residing in the property for 12 months prior to the tenant's death. The following people are defined as family members:

- | | | |
|--------------|-----------------|---------------|
| ○ Spouse | ○ Civil Partner | ○ Co-habitee |
| ○ Parent | ○ Grandparent | ○ Child |
| ○ Grandchild | ○ Brother | ○ Sister |
| ○ Uncle | ○ Aunt | ○ Nephew |
| ○ Niece | ○ Half Brother | ○ Half Sister |

Qualifying family members shall succeed the tenancy and not the property, therefore if they are under-occupying their home, or do not require it's adaptations they shall be required to move to a property that is more appropriate for their needs.

Post April 2012 tenancies

Under the Localism Act there is no statutory right of succession to family members from April 2012. Therefore, if a tenancy was acquired after April 2012, the council shall grant succession to a spouse or civil partner only.

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

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Discretionary Succession

Where an established member of the deceased tenant's household does not have a statutory right to succession the Council may in exceptional circumstances grant discretionary succession dependent upon the circumstances of the case.

In exceptional circumstances, the Council may grant another introductory tenancy to somebody who does not have the right to succeed if the current allocation policy makes provision for such an allocation. At present this means where the person has enjoyed an established occupancy of the property, has a reasonable expectation of a property of that type and would be a suitable tenant.

9. RENTS

Properties owned by the Council are presently charged at social rent levels. The Government's aim is for Council rents to more closely match those charged by Housing Associations, a process known as rent restructuring. As well as charging rent there may be charges for services such as cleaning, caretaking, emergency alarm systems etc. These will be shown as a separate weekly charge for those homes which benefit from these services.

The Council has aspirations to develop new affordable homes itself and may decide to charge an Affordable Rent for these homes. An affordable rent must be no higher than 80% of local market rent inclusive of service charges.

Affordable Rent conversions by Registered Provider partners is dealt with in line with the Southend-on-Sea Strategic Tenancy Strategy 2013–2018 and in the interests of affordability, shall not exceed local housing allowance rates.

10. EXCEPTIONAL CIRCUMSTANCES

On occasion the Corporate Director for People, or a delegated person acting on his behalf, may in exceptional circumstances and in compliance with legislation, use discretion in making decisions in relation to the Tenancy Policy. In these circumstances discretion will be exercised taking into account the context of the case in relation to the prevailing housing market situation in Southend, overall levels of housing needs and the balance between housing supply and demand.

11. EQUALITY & DIVERSITY

The Council will need to ensure that the Tenancy Policy meets the requirements set out in the Equalities Act 2010, ensuring that the nine protected characteristics which cannot be used as a reason to discriminate against people unfairly. The nine characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation. The Council will seek to ensure that this Tenancy Policy meets the 2010

Act requirements and will publish an equalities impact assessment to set out how it has achieved this objective.

12. APPENDICES

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