

Meeting: EB
Date: 30/01/2024
Classification: Part 1
Key Decision: Yes
Title of Report: Southend on Sea City Council Tenancy Strategy 2024

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Executive Councillor: Cllr David Garston, Portfolio Holder for Housing & Planning

1. Executive Summary

- 1.1. The Localism Act of 2011¹ introduced a requirement for local housing authorities (LAs) in England to prepare and publish a Tenancy Strategy. The purpose of a tenancy strategy is to give Registered Providers of Social Housing (RPs) operating in Southend-on-Sea an **indication of the approach the Council would like them to take** when preparing their Tenancy Management Policies. Under the Localism Act 2011, RPs must in turn have regard to the council's Tenancy Strategy when exercising its housing management functions. As a RP itself, a tenancy strategy also impacts upon the types of tenancy the Council will offer to prospective tenants of the Council's housing stock.
- 1.2. Southend's Strategy was out of date. Therefore, this report provides an updated strategy that sets out the Council's position for 2024/25 onwards.

2. Recommendations

- 2.1. It is recommended that Cabinet approve the updated Tenancy Strategy for 2024-2029 (Appendix 1), in particular:
- 2.1.1. The council's stance/ask of RPs with regards to the use of flexible/fixed term tenancies (see paragraph 3.1).**
 - 2.1.2. The council's position on how fixed term/flexible tenancies interplay with domestic abuse (see paragraph 3.2).**
 - 2.1.3. The council's proposal on affordable rent (see paragraph 3.3).**

¹ [Localism Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

3. Background and key strategy positions

3.1. The council's stance/ask of RPs with regards to the use of fixed term/flexible tenancies:

RPs must have regard to the Council's Tenancy Strategy in exercising their housing management functions and policies. The revised Regulatory Framework for Social Housing requires RPs to publish clear and accessible tenancy policies that outline their approach to tenancy management, RPs must also highlight how they intend to make use of legislation contained within the Localism Act 2011 relating to flexible/fixed term tenancies.

Flexible tenancies² were intended to give LAs and RPs greater freedom to manage their housing stock and ensure that social housing is allocated to those who need it most. Thus, tenancy strategies enable local authorities to provide a strategic lead on the use of the new social tenure.

The development of this strategy has considered the changing national attitude to flexible fixed-term tenancies. Although intended to support social housing landlords to make better use of their stock, flexible tenancies have not been widely adopted, and in 2021/22 flexible tenancies made up **just 3% of new LA lets**³. From 1st October 2022, Estuary Housing Association (the 2nd largest RP in Southend, after the council/SEH) no longer issues Fixed Term Tenancies. This decision followed consultation with tenants that had a fixed term tenancy and 90% agreed that Estuary should stop issuing fixed term tenancies.

Below are some of the key issues/concerns around fixed term tenancies:

- **Resource intensive to administer** - there is a significant amount of administration, staffing resource and costs involved in conducting tenancy reviews. For example, Dover District Council found that their IT system (Northgate, the same system used by South Essex Homes) does not have the capacity to help monitor the need for a FT review. As a result, a further administrative burden and cost is placed upon the team, reducing the amount of time that housing staff must focus on tenancy management, tenancy enforcement and tenancy sustainability tasks.
- **Not providing the expected flexibility of use of stock** - fixed term tenancies do not address the underlying structural problem of the shortage of housing options offered at a price that households can afford. For example, Dartford reviewed their use of flexible tenancies in 2021 and noted that when looking at the first group of tenants who were issued with a flexible tenancy, their income circumstances did not

² A flexible tenancy is a form of secure tenancy that is granted for a fixed term of a minimum two years (most cases it should be granted for a minimum term of five years). A review must then take place after certain period of time which will seek to establish whether the household circumstances have changed, a council can then decide to not renew the tenancy.

³ [Social housing lettings in England, tenancies: April 2021 to March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/social-housing-lettings-in-england-tenancies-april-2021-to-march-2022)

generally change over the fixed term. Thus, it is unlikely that tenant's income levels will change significantly enough to end their tenancies to free up housing stock, including those that are working.

- **Risk of legal challenge** - a rigorous tenancy review process is required that is robust in the face of legal challenge, as there are specific legal complications surrounding flexible tenancies. Recent case law confirms that to have a successful outcome the tenancy agreement must contain a forfeiture clause and this process must be used rather than straightforward possession action.
- **Tenant concerns over security and sense of belonging** - tenants feeling concerned and anxious about their futures based on their tenure type.
- **The sustainability of the community** - lack of investment by families in their home and community because they feel they will be moved on.

Therefore, the proposed strategy states that *SCC do **not** plan to adopt flexible tenancies*. We would encourage RP partners to consider if the administrative costs to operate flexible tenancies would hinder the resources available to prevent homelessness, keep the property in a good state of repair and/or ensure they can conform to the requirements of the Social Housing (Regulation) Act 2023 and new Consumer Standards.

3.2. **The council's position on how fixed term/flexible tenancies interplay with domestic abuse:**

- In line with the Domestic Abuse Act 2021, LAs and RPs must ensure that survivors of Domestic Abuse ("DA") who have/have had a lifetime tenancy and have fled the social home to escape DA, retain their lifetime security of tenure if the landlord grants them a new tenancy for reasons connected with the abuse.
- The proposed strategy states that *SCC wish for ourselves and our partners to go further: If a survivor of domestic abuse has had to flee a lifetime tenancy to TA/refuge, and is subsequently offered another social housing tenancy, they should still be able to retain their security of tenure in the new permanent home.*

3.3. **The council's proposal on affordable rent:**

- A key reform of the Localism Act 2011 enabled local authorities to charge affordable rents of up to 80% of market rent for new housing developments and in some cases existing housing stock can be converted when vacant from social rent to affordable rent levels.
- The proposed strategy states that *in the interests of avoiding rent arrears, homelessness and/or financial hardship, it is the Council's position that affordable rent (including service charges) in Southend-on-Sea should **not** exceed Local Housing Allowance (LHA) rates. However, where a RP provides affordable homes in **excess** of the units required by the Section 106 agreement, the Council will be open to discussion with regards to the rent on the additional units.*

- The LHA 'rate' is the maximum amount of housing benefit⁴ that a private renter can claim to help pay their rent, although those subject to the benefit cap will receive less.

4. Reasons for Decisions

- 4.1. Approval of the Council's Tenancy Strategy is required as our current strategy has expired and we are legally required to have one in place, in order to set clear expectations for RPs operating in the city (including the council). Furthermore, introducing a new Tenancy Strategy is an outstanding commitment made under our Housing, Homelessness and Rough Sleeping Strategy 2018 - 2028.
- 4.2. Our approach acknowledges that, in light of the Social Housing Regulation Act 2023 (and the circumstances that led to its necessity) all RPs of social housing, including Southend-on-Sea City Council, must change how tenants are supported to remain safe and well in their homes. It also acknowledges the financial and legal resource associated with introducing and reviewing fixed term tenancies, noting others who have introduced them have since reverted back having not realised perceived benefits.
- 4.3. The strategy will be one of the key tools to supporting delivery of the council's and city's priorities especially in terms of:
 - Our corporate priority of 'a safe city with a good quality of life for all'.
 - Our Housing, Homelessness and Rough Sleeping Strategy aim of encouraging good quality housing design, management and maintenance.

5. Other Options

- 5.1. The only other options are:
 - Continue with our current strategy, but this is now out of date and is no longer fit for purpose given the changing priorities and national context we are now operating in, with new regulatory reforms.
 - Decide to not have a Tenancy Strategy, but this would mean that the council is not fulfilling its legal requirements.
 - Delay implementation and find/fund officer resource to undertake further revisions and subsequent consultation/engagement. However, it should be noted that this piece of work was scheduled to conclude year end and an extension would influence officer capacity for other workstreams, whilst also meaning the council will remain without a Tenancy Strategy for longer, despite its legal obligations to have one in place.

⁴ <https://www.gov.uk/guidance/local-housing-allowance>

6. Financial Implications

- 6.1. No financial implications to add to this report. The Tenancy Strategy as set out has no financial impact for the council.

7. Legal Implications

- 7.1. Section 150 of the Localism Act 2011 requires a local housing authority prepare and publish a tenancy strategy. Subsection (5) sets out that this tenancy strategy must be kept under review. The recommendations of this report comply with these statutory requirements.

8. Policy Context

- 8.1. A new Tenancy Strategy is a commitment made in the council's Housing, Homelessness and Rough Sleeping Strategy 2018-2028.
- 8.2. The strategy is shaped by a number of influences which include: our Housing, Homelessness and Rough Sleeping Strategy, our Allocations Scheme, the legislative and regulatory framework, and emerging best practice and guidance concerning social tenancy reform. An 8-week consultation was also held, and the feedback received was used to amend the draft strategy.

9. Carbon Impact

- 9.1. None perceived.

10. Equalities

- 10.1. A full equality analysis (appendix 2) was carried out and signed on 15/01/2024. The outcome of the full equality analysis was "*no change – the assessment is that the policy/practice/service is/will be robust*".

11. Consultation

- 11.1. Engagement with South Essex Homes (SEH) and Estuary (2 largest social landlords in Southend), our Domestic Abuse Housing Alliance (DAHA) regional lead, as well as internal teams to help develop draft positions and Strategy.
- 11.2. In accordance with S.151(1) of the Localism Act 2011, all registered providers operating in Southend have been provided with a copy of the draft tenancy strategy and given reasonable opportunity (8 weeks) to respond. An 8-week external consultation was conducted on Your Say Southend from October to December 2023, to ensure that wider RPs and current/future tenants, and the general public could have their say on the draft strategy.
- 11.3. As at March 2023⁵, there were 10,253 units of social housing in Southend-on-Sea, of which 6,028 (58.8%) are owned by the council (managed by SEH) and

⁵ [Registered provider social housing stock and rents in England 2022 to 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/registered-provider-social-housing-stock-and-rents-in-england-2022-to-2023)

4,225 (41.2%%) are managed by 36 other Registered Providers. In addition to SEH, we received consultation responses from 10 RPs, representing 79% of non-council stock in the city.

11.4. In summary:

- **89%** agreed with the tenancy strategy document overall, and a further **5%** were neutral.
- **83%** of respondents agreed that social tenants should be offered the most secure form of tenancy wherever possible, and a further **17%** were neutral - none disagreed.
- **Half** of the RPs that provided a response stated that they used to offer FTTs but **no longer do**
- **78%** agreed with our proposals around how tenancies interplay with domestic abuse (see point 3.2), a further **22%** were neutral – none disagreed.
- **67%** of respondents agreed with our proposal on affordable rent (see point 3.3), and a further **16%** were neutral.

12. Appendices

12.1. **Appendix 1**: Draft Tenancy Strategy

12.2. **Appendix 2**: Equality Analysis

13. Report Authorisation

This report has been approved for publication by:		
	Name:	Date:
S151 Officer	Joe Chesterton	22/01/2024
Monitoring Officer	Kim Sawyer	24/01/2024
Executive Director(s)	Alan Richards	22/01/2024
Relevant Cabinet Member(s)	Cllr Tony Cox	24/01/2024