

Enfield Tenancy Policy – 2023-26

Policy Title	Enfield Tenancy Policy 2023-26
Policy Owner	Head of Housing Management
Last reviewed	February 2023
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Approved by	
Approved date	

1.0 Introduction

1.1 The Localism Act 2011 placed a statutory duty on Local Authorities to produce a Tenancy Strategy which sets out its approach for social and affordable housing landlords relating to:

- The kinds of tenancies they grant.
- The circumstances in which they will grant a tenancy of a certain kind.
- The lengths of the tenancy; and
- The circumstances in which another tenancy is granted when an existing one expires

1.2 The Tenancy strategy approved by Cabinet in February 2022 was has been drawn up following consultation with all Registered Providers of social and affordable housing its area and tenants and residents of the borough and other parties who have an interest in the outcome and implementation of the Strategy.

2.0 Tenancy Policy

2.1 The London Borough of Enfield's Tenancy Policy which will apply to Council owned housing stock. This Policy is being issued in the Council's landlord role.

3.0 Legislative framework

3.1 This Tenancy Policy is set within the legislative framework provided by:

- The Housing Act 1985, 1988, 1996 as amended
- The Landlord and Tenant Act 1985
- The Housing & Planning Act 2016
- The Localism Act 2011

- The Secure Tenancies (Victims of Domestic Abuse) Act 2018

3.2 It is also set within the regulatory framework set out by the regulator of social housing.

4.0 Equality and Diversity

4.1 This policy supports the Council's commitment to championing equality and ensuring procedures are in place so all residents are treated fairly and without unlawful discrimination in line with the Equality Act 2010.

5.0 Related Policies and Strategies

5.1 This Tenancy Policy is set within Enfield Council' policy framework provided by.

- Enfield's Homelessness and Rough Sleeping Strategy 2020 - 2025
- Enfield's Housing and Growth Strategy 2020 - 2030
- The Housing and Growth Strategy 2020 - 2030
- The Tenancy Strategy 2022
- Enfield's Housing Allocation Scheme
- Enfield's Rent Setting Policy

6.0 Proposed Approach to Flexible and Other Tenancies

6.1 The Council in its Local Housing Authority role recommended the following;

Lifetime Tenancies

6.2 Lifetime' tenancies are the Council's preference in social and affordable housing except in certain circumstances.

Introductory Tenancy

6.3 Lifetime tenancies will be preceded first by a granted a twelve-month introductory tenancy. The tenancy will convert to a lifetime tenancy as long as the tenant does not breach the tenancy terms during the introductory tenancy period for homes of 3 bedrooms or smaller. A structured review process will be implemented to confirm the passing or ending of an Introductory tenancy.

Flexible tenancy

6.4 Enfield Council will offer Flexible tenancies for homes of four or more bedrooms, specially adapted properties and on exceptional ground for leaseholders. This will provide a reasonable degree of security, for example for vulnerable people, and for people with children, while enabling the Enfield Council to make the best use of the housing stock for those in need.

6.5 Fixed term tenancies may only be offered in certain circumstances and must be for at least 10 years with discretion for 5 years in other circumstances. A longer fixed term tenancy will be encouraged for families with children aged 5

years and under; or 10 years and under if the child is affected by special educational needs or disabilities.

- 6.6 In addition to those circumstances set out at 6.4 above in exceptional circumstances, in order for the council to manage its strategic objectives, the Director of Housing and Regeneration may grant a fixed term tenancy of less than 10 years.
- 6.7 A Flexible tenancy is form of Lifetime tenancy, which is for a fixed term, and was created under the Localism Act 2011. Although it contains many features of a Lifetime tenancy, the main difference is that a Lifetime tenancy can only be ended by the landlord if a court order is granted, and the court considers that it would be reasonable to grant possession. With a Fixed Term tenancy, the court must award the landlord possession as long as the fixed term has expired, the correct notices have been served and any review request has been considered.
- 6.8 Flexible tenancies will not apply to transfer applicants from Enfield or any other areas (including 'decant' cases) who are existing secure or assured tenants. If these tenants are re-housed they should be re-housed on a secure or an assured tenancy as appropriate (i.e. Councils can offer secure tenancies and RPs can offer assured tenancies).

Demoted Tenancy

- 6.9 If a Lifetime tenant has been involved in antisocial behaviour or, is using their home unlawfully, the Council can serve a four-week notice of its intention to seek to demote the tenancy for 12 months and thereafter apply for a court order to provide for this. A demoted tenancy order reduces a tenant's rights and facilitates the eviction process if required.
- 6.10 At the end of the 12-month period, if the tenant has complied with the court order their tenancy will automatically revert to a Lifetime tenancy. If they have not complied with the order, the Council will serve a four-week notice stating that it has made a decision to seek possession of the property and obtain a possession order to evict the demoted tenant.
- 6.11 A demoted tenant will have the opportunity to appeal the decision to seek to evict and the Council will review the decision if requested. If the outcome review upholds the decision to seek possession of the property, the Council can apply to the Court for a possession order and end the demoted tenancy. If the review finds the Council should not uphold the decision to seek possession, the tenancy will revert to a Lifetime tenancy.
- 6.12 The Council will not demote a tenancy more than once. If a tenant whose tenancy has previously been demoted but reverted back to a Lifetime tenancy then engages in anti-social behaviour again, the Council will take steps to end the tenancy.

Temporary tenancy – Licence agreement

- 6.13 A small number of Council homes may require major works. A decant to a temporary accommodation will be offered if it is considered unsafe for a household to remain at home during the work.
- 6.14 The tenant(s) will be offered a licence agreement for the duration of the works. When works are completed, the tenant(s) will be served with Notice to end the Licence agreement, return to their Council home, and continue their Lifetime tenancy or Fixed term tenancy. The main tenancy/rent account should continue to avoid any break in their main tenancy (Lifetime or Flexible).

7.0 Appeal of a Flexible Tenancy

- 7.1 A process exists in which an applicant may request a review of the offer of a flexible tenancy. Applicants must be given at least 21 days from receipt of the notice stating the length of tenancy to request a review.
- 7.2 The review should consider whether the decision on the proposed length of tenancy is in accordance with the Council's Tenancy Strategy and the landlord's Tenancy Policy.
- 7.3 The Fixed Term Tenancies (Review Procedures) Regulations 2012 sets out the procedure for a review of decisions relating to Fixed Term tenancies. There are only two circumstances in which a review can take place:
- A tenant can seek a review of the length of tenancy on offer if it does not comply with the Tenancy Policy.
 - They can also apply for a review if, at the end of the Fixed Term tenancy they are refused a further tenancy.
- 7.4 Other concerns to do with the tenancy, such as repairs will be dealt with through the Council's Complaints procedure.

8.0 Tenancy Review

- 8.1 The process adopted to review tenancies including the timescales will take into account the following when considering extending the flexible tenancy.
- Employment, Education and Training activities undertaken by the tenant(s) during the period of the tenancy.
 - Community contribution by the tenant(s) to the residents of the London Borough of Enfield during the period of the tenancy.
- 8.2 The onus will be on the tenant to inform their landlord of any needs and existing contacts they have with the Council and other statutory or voluntary services to ensure their needs can be taken into account.
- 8.3 This will include the tenant authorising the landlord to share information about them for this purpose.
- The landlord should have due regard to the multiple disability needs of tenants

- should liaise with Children’s and Adults’ Services as well as other statutory or voluntary services as appropriate and
 - arrange for an advocate and any disability related reasonable adjustments to be made.
- 8.4 There may be circumstances where it would be unreasonable to expect tenants to move. These include, although other circumstances may be relevant:-
- Tenant or member of household suffering from a terminal illness
 - The tenant is a care leaver and is still receiving support from Adult Services
 - Tenant is participating in a Family Intervention Project programme.
- 8.5 The landlord should ensure that all reviews take into consideration the individual merits and changes in circumstances of tenants and their households.
- 8.6 Types of circumstances where the flexible tenancy would not be renewed:
- Applicants will not be eligible to apply if their household income is high enough to afford to rent or buy privately and they are not eligible for reasonable preference. (**The Housing Allocation Scheme provides more detail**).
 - Applicants will not be eligible if they have savings or assets over £10,500 and are not entitled to reasonable preference. This is based on the average amount needed for a deposit for a shared ownership property in Enfield. (**The Housing Allocation Scheme provides more detail**).
 - A household member has been convicted of criminal activity inside or in the vicinity of the property within the term of the tenancy being reviewed.
 - A breach of tenancy terms, for example, involving ASB or substantial rent arrears.
 - The property is under occupied by one bedroom or more.
 - The property is overcrowded in accordance with the Housing Allocation Policy.
 - The property is an adapted property allocated to (or adapted for) someone with a disability who no longer lives in the property.
 - The tenants were housed on the basis that they were/intended to be foster carers and this was their priority for being housed but they are no longer fostering.
- 8.7 Where the Council as landlord has made a decision not to renew the tenancy, the landlord will issue a notice to the tenant(s) giving at least two months’ notice stating that the landlord requires possession. This notice must be issued on or before the tenancy term expires. Where tenancies are not renewed the landlord should provide advice and support on their future housing options either directly or indirectly by signposting to other services.

9.0 Tenancy Renewal

- 9.1 The Council expects a large proportion of flexible tenancies to be renewed where tenancy conditions have been met and the tenant's (or tenants') circumstances have not substantially changed. However, there should not be a presumption that a tenancy will be renewed.
- 9.2 The Council wishes social and affordable housing landlords to create incentives for tenants and household members to keep their homes in good condition, pay their rent on time and avoid anti-social behaviour.

10.0 Length of Tenancy Renewals.

- 10.1 Where the Council renews a tenancy, these should generally be for the same period that they were originally granted.

11.0 Review of a Renewal Decision

- 11.1 The Council will put in place a process for reviewing a renewal decision. Tenants will have 21 days from receipt of the renewal decision notice to request a review. The review will consider whether the decision is in accordance with the Council's Tenancy Strategy and Tenancy Policy.

12.0 Tenancy Succession

- 12.1 In the unfortunate event of a death of a tenant, the tenancy can be transferred to an eligible family member. This is known as succession. When a tenant dies, another family member may be entitled to inherit the tenancy. This is known in legal terms as a Succession. If there is no eligible family member wishing to succeed the tenancy the Council will end the tenancy by serving a Notice to Quit.
- 12.2 The Localism Act changed the law on succession, although it should be noted that this applies only to tenancies issued after 1st April 2012. For existing tenants with tenancies which commenced prior to that date, the succession rules are unchanged.
- 12.3 On the death of a joint tenant, the surviving joint tenant will become the sole tenant and is the successor for the purposes of legislation. Where there is no tenancy succession, the landlord should seek possession of the home within a reasonable period but not more than six months.
- 12.4 All new lifetime and flexible tenancies now have a legal requirement to allow for one succession, limited to a spouse, civil partners or partner which will not entail the creation of a new tenancy.
- 12.5 Successions to flexible tenancy will only be for the remainder of the life of that tenancy, and subject to a full review when the end of the tenancy is due.

Eligibility for Succession

12.6 Under s.87 of the Housing Act 1985, a tenancy that started before April 2012 can be succeeded by the deceased tenant's:

- husband/wife
- civil partner
- unmarried heterosexual partner
- same-sex partner
- grandfather/grandmother
- father/mother
- brother/sister
- uncle/aunt
- nephew/niece
- son/daughter
- stepson/stepdaughter
- adopted child
- grandson/granddaughter

12.7. Under s.86A of the Housing Act 1985 and s.160 of the Localism Act 2011, the following can succeed a tenancy that started on or after April 2012:

- husband/wife
- civil partner (registered under the Civil Partnership Act 2004)
- Family members under the age of 18 can succeed to a tenancy. In such cases, a trustee would need to be agreed to hold the tenancy in trust for the child.

12.8 To succeed a tenancy, the individual must be one of the persons listed above. The deceased must also have been using the home as their main or principle home up until the date of death for at least 12 consecutive months. The successor must also have been living at the home during this period whilst married or in a civil partnership.

12.9 A succession will be refused if the applicant is unable to prove that they are a family member or that they live/had lived at the address.

12.10 If the tenancy has already been succeeded once, it cannot be succeeded again. This also applies if there has been an assignment of the tenancy, which includes assignment by mutual exchange or a property adjustment order under the Family Law Act.

12.11 If the deceased was admitted to hospital or a residential home for long-term care or treatment, then a succession cannot take place.

12.12 Where more than one person applies for succession and there is no remaining joint tenant, priority goes to the tenant's spouse or civil partner. If there is no spouse or civil partner who qualifies, the family members must decide between them who will succeed. If they are unable to agree, the Council will decide and this will be assessed on housing need.

Applying for a succession

- 12.13 If eligible to succeed a tenancy, a tenant must complete a 'request for succession' application form and provide evidence of eligibility. This includes providing proof of the relationship to the deceased and living at the home.
- 12.14 The Council will write to the applicant to confirm the outcome of their application to succeed a tenancy. If successful, the applicant will be contacted to make arrangements to grant a new tenancy and set up their rent account. If unsuccessful, the Council will serve a Notice to Quit and remaining household members will be required to leave the property.

Discretionary (Non-Statutory) Succession Rights

- 12.15 Where there is no statutory right to succeed to an Enfield Council Housing tenancy in exceptional circumstances the London Borough of Enfield Housing Team will submit a request for a new tenancy to be granted by way of discretion, to the appropriate Housing Panel or officer with delegated authority, where the person requesting the discretionary tenancy is eligible to join the housing register.
- 12.16 This is called a discretionary or non-statutory succession. Where there are children within a household, who have no statutory succession rights, council officers will work with Children's Services to ensure the best possible outcome for the children involved.
- 12.17 The Council's Housing Allocation scheme – Appendix D part 5 sets out the three circumstances under which discretion may be applied to enable the council to agree that a discretionary tenancy may be agreed.
- 12.18 This will not apply if the applicant will under occupy or the home is adapted and the adaptations are no longer required. Under these circumstances, the Council may offer an alternative property, which matches their housing need. The Housing Options Transfer panel will review all discretionary tenancies and determine whether a discretionary tenancy should be offered.

No Right to Succeed.

- 12.19 Where there is no right to succeed, and no eligibility for a new tenancy under Council policy (a non-statutory succession), the occupants would be treated as unauthorised occupants. In this situation, within 10 working days of the notification of the tenant's death, a Notice to Quit (NTQ) will be served on the Public Trustee and the property.

13.0 Delegated Authority

- 13.1 Delegated authority is reserved to the Head of Housing Management to authorise changes on a discretionary and exceptional basis in the circumstances set out below.
- 13.2 Changing a sole tenancy to a joint tenancy

13.2.1 Where assignment is not possible or practical, the Council can consider granting a new joint tenancy to replace the previous sole tenancy on a discretionary basis. The principle will apply that the council will not take on additional housing responsibilities as a consequence.

13.3 Changing a joint tenancy to a sole tenancy

13.3.1 In exceptional circumstances discretion can be applied in the following circumstances. When one of the joint tenants moves out of the home, the remaining tenant should notify the Council. After 24 months, if both joint tenants have been unable to resolve their tenancy situation, or the absent tenant has not made contact, the remaining tenant can apply to the Council for a new replacement sole tenancy to be granted.

13.3.2 The remaining tenant will be asked to serve a Notice to Quit. This will end the tenancy for both/all tenants. The Council will then issue a replacement tenancy at its discretion. Allowing for no breaches of the conditions of tenancy and no anti-social behaviour or domestic abuse being involved.

13.4. Supporting victims of domestic abuse

13.4.1 The Secure Tenancies (Victims of Domestic Abuse) Act 2018 ensures that when the mandatory fixed term tenancies provisions in the Housing and Planning Act 2016 were implemented, lifetime tenants who suffer domestic abuse would retain lifetime security, when granted a new tenancy by a local authority for reasons connected with the domestic abuse.

13.4.2 If a victim of domestic abuse in a joint tenancy wishes to remain in their home the council has the power to seek a court order to bring the tenancy to an end and evict the perpetrator.

13.4.3 The council could then grant a new tenancy to the victim in their home. Where the victim had a joint lifetime tenancy with the perpetrator, the new sole tenancy will also be on a lifetime basis.

14.0 Right to Appeal

14.1 All decisions including the type of tenancy offered by the Council and the length the tenancy is offered for can be appealed. Appeals should be made within 28 days of being notified of our decision. The Officer who made the decision will present the appeal to the Exceptional Housing Panel.