



# **SPELTHORNE TENANCY STRATEGY**

**March 2023**

## **1. Introduction and background**

1.1. The Localism Act 2011 (the Act) requires local authorities to publish a Tenancy Strategy setting out the matters which registered providers of social housing (RPS) should have regard to when formulating their policies or their own housing stock relating to:

- (a) The types of tenancies they grant
- (b) The circumstances in which they will grant a particular type of tenancy
- (c) Where there are fixed term tenancies the length of the term granted
- (d) The circumstances in which they will or will not grant a further tenancy on the termination of an existing fixed tenancy

1.2. The Act introduced a number of new options for RPs including:

- (a) fixed term tenancies rather than secure or assured tenancies
- (b) flexible tenancies which can be for a minimum fixed term of two years
- (c) 'affordable rent' which permits rents to be set at up to 80% of market rent (inclusive of service charges). The introduction of affordable rent made building more new homes possible, allowing more people in housing need to have access to a good quality home at a reduced rent.

1.3. The Act required local authorities to keep the Tenancy Strategy under review. This strategy replaces the Council's Tenancy Strategy, published in 2012.

1.4. The strategy sets out all types of tenancies that all RPs operating in Spelthorne, must consider when they draw up their own individual policies on the types of tenancies, they will grant. The Council does not own its own housing stock and is reliant on its RP partners for properties to allocate to households on the Council's Housing Register.

1.5. All RPs operating in Spelthorne must have regard to the Council's Tenancy Strategy, when meeting their duty to state clearly what types of

tenancies they will grant and in which circumstances these different types of tenancies will be granted, also the length of any fixed-term tenancies they will grant and in what circumstances a new tenancy will be given should any fixed-term tenancy expire.

- 1.6. This strategy is the result of the review and consultation with RPs operating within Spelthorne Borough, their views have informed this strategy review. We will continue to work in partnership to ensure that this Tenancy Strategy and local RPs policies meet local housing needs.

## **2. Local Context**

2.1 Spelthorne is an attractive borough with excellent schools, attractive open spaces, and good transport links. The Borough benefits from scenic river walks along the banks of the River Thames and is in close proximity to Heathrow which offers good and varied employment opportunities for residents. As such, the demand for housing in the borough is high and like most areas in the South East, property prices are high. Levels of home ownership are high<sup>1</sup> at approximately 72.5%, 25.5% rent their home with 13.1% of these renting from the private sector. Further 2% either lives with family or has other living arrangements.

2.2 Access to the private rented sector for those on low incomes and benefits remains difficult and has become more difficult due to welfare reform changes.

2.3 The supply of affordable rented homes is limited, and it is important that the stock that is available is used to its full potential to provide homes for those in the highest housing need who require assistance from the Council.

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<sup>1</sup> Source: UK Census of 2011

### 3. Objectives of the Tenancy Strategy

3.1 The purpose of this Tenancy Strategy is to provide guidance to RPs, informing their policies and practices to ensure that they meet housing need across the whole of the Spelthorne Borough. This Strategy clarifies to housing applicants the type of tenancy they can expect.

3.2 The Strategy has the following aims:

- a) **Make best use of social housing stock** - to ensure that affordable homes are used as effectively as possible to meet the housing needs of Spelthorne residents where their needs are not met by the private sector. This can be achieved by supporting and enabling existing social housing tenants to move on from affordable housing once they are able to sustain an alternative housing option, such as home ownership or the private rented sector.
- b) **To meet local housing needs and prevent homelessness** - The use of fixed term tenancies provides an opportunity to address under-occupation. It gives affordable housing providers greater opportunity to move people into a smaller property when their current accommodation is larger than their actual housing need (i.e. occupying a three bedroom property when their need is only for a two bedroom property). This will release larger properties for those who need them, including overcrowded households or families facing homelessness. RPs will not be obliged to renew a fixed term tenancy at the end of the term and will support tenants who are under occupying an affordable property to find a more suitable alternative in this situation.
- c) **To enable a range of tenure options** - maximising the potential of existing affordable housing enables the balance of the wider housing market in the Borough. Getting a better balance between the different housing sectors ensures that residents can access the homes with a suitable tenure that they need, when they need them, at an affordable cost. RPs will prepare tenants for independence once their circumstances have improved by

making it clear from the start of their tenancy that the arrangement is not necessarily a permanent one/assured lifetime tenancy.

People's needs may change over time and different tenure options may be more suitable subject to their circumstances, including accessing home ownership and the private rented sector. Flexible tenancies should encourage people to make flexible choices about their housing options, rather than assuming that limited social rented housing is their only effective choice.

3.3 The strategy has been drafted to support the Council's current strategic priorities of:

- Enabling the delivery of more affordable homes
- Promoting independence and wellbeing
- Preventing homelessness and rough sleeping

## **4. The Strategy**

4.1 The Strategy sets out guidance to RPs for their own individual Tenancy Policies.

4.2 The following tenancy types are recognised as being permitted:

- Probationary Tenancies
- Flexible/Fixed Term Tenancies
- Secure/Assured Tenancies
- Licences – limited use
- Assured Shorthold Tenancies – limited use

4.3 This Strategy aims to define the types of tenancies and will apply to all RPs providing social and affordable rented properties in Spelthorne Borough. In addition, it also sets out standards expected of all RPs, who have been consulted during its development. All local RPs must give due regard to the

guidelines set out in the strategy, upon completion of the review consultation.

4.4 RPs are required by Homes England and the Regulator of Social Housing, acting as their regulatory body, to let their homes in a fair, transparent and efficient way, which takes into account the housing needs and aspirations of tenants and potential tenants whom they serve. RPs are expected to demonstrate how their lettings:

- make the best use of available housing
- are compatible with the purpose of the housing
- contribute to the Local Authority's strategic housing function and sustainable communities.

4.5 RPs are also required to publish clear and accessible policies setting out the term of the tenancies, when they will be renewed and the approach to management, including interventions to sustain tenancies and to prevent unnecessary evictions and tackle tenancy fraud. The Council expects RPs to positively engage with counter-fraud initiatives to pro-actively manage any tenancy fraud.

4.6 Most RPs operate across more than one local authority boundary. Therefore, they may need to acknowledge and have regard to several tenancy strategies, which will then be tailored to suit a borough or district's particular circumstances.

4.7 The Council considers that prospective tenants should have fair access to the available social housing in the Borough and not be confused by various landlords offering different tenancies or terms. Without broad compatibility between the policies of the RPs operating in the same borough or district the choices made by housing applicants could be affected and this may affect our ability to meet their housing need. We therefore expect that RPs engage with and consult with the Council to ensure their policies are in line with the principles of this strategy.

4.8 The legal status of the Tenancy Strategy is such that it does not override existing agreements regarding tenure.

### **Probationary Tenancies**

4.9 Probationary or Trial tenancies provide an effective housing management tool, to ensure that new tenants understand their obligations under their tenancy agreement and can sustain that tenancy.

4.10 Where a RP uses a Probationary Tenancy, they should normally be entered into for a 12-month period, which may be extended to a maximum of 18 months, where reasons for extending the probationary period have been given and where the tenant has had the opportunity to request a review.

4.11 New tenants may be offered a starter tenancy, known as 'probationary tenancy'. These usually last 12 months and are a 'trial' period. The tenant becomes a fixed term tenant after 12 months, unless the RP has either:

- Started an action to evict the tenant
- extended the starter tenancy

4.12 Probationary tenancies were created by the Housing Act 1996. They are intended to allow RPs to decide if a tenancy is granted to a suitable tenant. At the end of the starter tenancy, the tenant will be offered either:

- an assured tenancy - meaning the tenant can remain in the property for the rest of their life
- a fixed-term tenancy - usually lasting for at least 5 years (the RP will decide whether it's renewed based on individual circumstances)

4.13 Upon successful completion of the probationary period, tenants should graduate to the relevant tenancy as set out within the individual RPs tenancy policy.

## **Fixed Term Tenancies**

- 4.12 The Council considers that fixed-term tenancies provide opportunities to make best use of the limited stock available, as well as opportunities at tenancy renewal to review the existing housing need. Although these tenancies do not offer lifetime security of tenure, in other respects tenants will have similar tenancy rights to assured tenants.
- 4.13 It is desirable that all new affordable tenancies across the Borough are offered on similar fixed terms, rather than there being a range of terms, which may create confusion for those households relying upon the social housing sector to meet their housing need.
- 4.14 The Council expects a fixed-term tenancy of five years to be granted to new social housing tenants, after probationary period, with few exceptions. In the authority's view, five-year tenancies give adequate security to most households, as they provide a balance between residents having stability and feeling settled in an area, with the ability to help make tenancies work and be sustainable, as well as making the best use of housing stock retained by the landlord.
- 4.15 All such tenancies will be subject to review towards the end of the fixed term and, subject to the circumstances of the tenant at that time, a decision will be made as to whether to renew the tenancy for a further fixed-term period, not to renew or to offer an assured tenancy.
- 4.16 It is essential that RPs clearly communicate renewal terms to new tenants when they are offered fixed-term tenancies, so that they understand that in most circumstances tenancies will be renewed. This will help people, particularly those who are vulnerable, feel connected and settled and contribute to their local areas and to invest in their homes.



4.17 Social housing also comes with responsibilities and there should be a link between expected behaviour and tenancy renewal, which needs to be strongly communicated at the start of the tenancy.

### **Two-year flexible tenancies**

4.18 Although five-year flexible tenancies are recommended as the usual minimum term, two-year tenancies may be offered in certain circumstances. The Council considers that shorter fixed terms may be desirable in a number of exceptional circumstances, as follows:

- Where a short tenancy is being offered for a fixed period and there is no intention to renew
- An offer of accommodation to someone who has lived with a tenant who has died, but is not entitled to succeed to the tenancy, to provide them with some transitional protection<sup>2</sup> to overcome their bereavement where they are likely to be able to meet their own housing needs in the longer term.

4.19 Shorter tenancies may also be considered in certain circumstances, where an existing five-year tenancy is coming to an end and there is uncertainty about the future needs of the tenant, for example:

- a family where children have been taken into care, and where it is not known if those children will return home
- a family where there is a relationship breakdown and there are ongoing negotiations about residence arrangements for the children that could affect the household's future social housing requirements
- a family with adult children at university or living away from home where it is uncertain as to whether the adult children will return to live at home permanently.

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<sup>2</sup> The period of transitional protection would be for two years.

4.20 In some instances, a further shorter tenancy may be more appropriate where a tenant has a history of not keeping to the terms of their tenancy agreement.

4.21 These examples do not necessarily cover all types of exceptional circumstance that might arise. Further advice will be available to RPs in the use of discretion for shorter tenancies, if required.

### **Assured tenancies**

4.22 Assured tenancies must be retained for those tenants who held them on the day that section 132 of the Localism Act 2011 came into force.

4.23 The Localism Act requires RPs to offer Secure or Assured tenancies to applicants that were already social tenants before the provisions were enacted, and this applies to mutual exchanges reciprocal moves or moves as a result of major works or regeneration.

4.24 The Council expects that existing Secure and Assured tenants will retain their security of tenure when they choose to move to another social rented home.

4.25 In transfers between tenants with different levels of security, Secure or Assured tenants keep their security of tenure if they swap with a Fixed-term tenant or an Affordable rent tenant. However, it is not guaranteed they will keep the same rent or other tenancy conditions.

4.26 Older people who have reached state retirement age and will occupy a general needs property will always be granted assured tenancies. The terms of sheltered housing and extra care tenancies will remain the same as they are and will be let as assured tenancies.

4.27 Assured tenancies can be used in circumstances where the tenant will require long term affordable housing. This can be due to long term physical or mental ill health.

4.28 Assured tenancies are designed to provide security of tenure and stability to the household in need.

4.29 Assured tenancies for new tenants should be used after a successful probationary tenancy period.

### **Other tenancies and licences**

4.30 There are other types of tenancies and licences that may be used by RPs in appropriate circumstances. The Council supports the continued use of such tenancies, as set out here, below:

- **Non-Secure Tenancies/ licences** are used for households provided with accommodation under the Council's statutory homelessness duties. They do not offer security of tenure. They last until the Council has discharged its duty to provide temporary accommodation and may be used by the RPs if they provide temporary accommodation for this purpose at the request of the Council.

- **Assured Shorthold Tenancies (ASTs)** are generally used for private sector rented homes, but RPs may also use them in some circumstances. They are frequently used in supported housing schemes or in general needs accommodation, which is intended for short-term use, for example to help prevent immediate homelessness or where properties are leased for a fixed period and the landlord needs to be able to offer up vacant possession at the end of the term.

## **Overview**

4.31 Tenants who were awarded their assured tenancy prior to the Localism Act 2011 introduction, will not be affected by any changes brought by the Act and will continue their tenancies under their existing terms and conditions, including the right to buy/right to acquire, succession rights and the right to exchange their tenancy with another assured tenant.

4.32 Where fixed-term tenancies are awarded they should be for at least 5 years and any 'probationary' tenancies should initially be for 12 months, with a possible 6-month extension.

4.33 The flexible tenancy supports the government's aim to move away from the 'tenancy for life' approach and, instead, provide social housing at a time of need and throughout the time of need, rather than permanently. This approach recognises that social housing tenancies are prioritised for those with the greatest current need, such as those who are overcrowded or those facing homelessness.

4.44 The Government's intention is to assist RPs to maximise effective use of their housing stock, and to help more people move on from affordable housing, should their circumstances change, and they become in a position to sustain alternative housing, such as home ownership or accessing the private rented sector.

## **5. Affordable rent**

5.1 Affordable Rented (AR) housing is a model of social housing that can be let at up to 80% of local market rents. This is in contrast to social rented housing, which has to be let at 'target rents' which are set by the

Government and are usually between 40 % and 50 % of market rents. Any increase in rent is to be used to fund new social housing development.

5.2 AR housing is not directly linked to tenancy – it can be offered as a lifetime tenancy or a flexible tenancy. It is important that tenants and prospective tenants understand the difference between AR and social rents. The Council expects RPs to set out their intentions to use ARs in their individual tenancy policies, which may relate household income to eligibility for AR housing.

5.3 The National Planning Policy Framework (NPPF) defines AR housing as: “rented housing let by registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent (including service charges, where applicable).”

5.4 All RPs that have entered into development contracts with Homes England and receive grants are required to charge Affordable Rents. It also recommends that when setting rents, RPs take into account the local market context (including the relevant Local Housing Allowance) and wider Benefits’ policy.

5.5 Private rents are extremely high in the Borough. Therefore, the Council wants to ensure that affordable rent levels in Spelthorne remain affordable. The affordable rent model will enable affordable housing providers to set affordable rents for new build properties as well as re-let of existing properties at up to a maximum of 80% of the market rent for a comparable property within the same locality<sup>3</sup>. Spelthorne’s market rent levels vary between localities, these variations will be reflected in the affordable rents calculated for each locality. However, in no instance will the rents charged for affordable rented properties, exceed the relevant Local Housing

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<sup>3</sup> Due to introduction of the Localism Bill 2011

Allowance (LHA) rate that is applicable for that property size at the time of rent setting. This is to avoid excessively high affordable rents in high value areas.

5.6 The Council accepts that the AR model will help secure new housing supply. However, we expect developers, RPs to follow the guidance laid in the Supplementary Planning Document on S.106 sites. This indicates that we expect Affordable rents across the borough to be at a maximum of 80% of a market rent, or LHA rate, whichever is the lowest. Developments with planning permissions granted prior to the review of this Tenancy Strategy, where viability was assessed at up to 80% of market rent, will be permitted to offer AR tenancies up to 80% of market rent.

5.7 Although this guidance is for S.106 sites the Council expects RPs developing any site, or converting their rents, to abide by the principles set out in this guidance.

5.8 Given the importance of homes being affordable for tenants, the Council considers it essential that RPs develop approaches to financial inclusion and capability for tenants, ensuring that prospective tenants will be allocated a home they are able to afford in the longer term and financial issues will be addressed at an early stage. Likewise, tenants likely to be affected by welfare reform changes should be given appropriate advice and information.

5.9 Applicants who are officially ineligible for housing, for example foreign nationals who are subject to immigration control and other people from abroad excluded by statute or regulation and do not therefore, have recourse to public funds, will not be nominated for housing by the Council or local providers of affordable housing.

## **6. Succession**

6.1 In some circumstances and depending on the tenancy type, a spouse, partner or any other household member may be entitled to succeed the tenancy. The Localism Act has introduced only one statutory right of

succession, to a spouse, partner, or any other household member. Any other successions will be entirely at the discretion of the affordable housing provider in consultation with the Council. All applications to succeed a tenancy will be assessed on a case-by-case basis by RPs.

6.2 All successions to a flexible tenancy will only be for the remainder of the life of that tenancy, and subject to a full review as set out below when the end of the tenancy is due.

## **7.Tenancy Reviews**

7.1 No less than six months before a flexible tenancy is due to end, it will be subject to a review using the criteria detailed below. 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. The notice must contain the reasons for the decision and also notify the tenant of their right to appeal. Should a tenant appeal and fail to have the decision overturned, the landlord will be able to seek possession of the property. The landlord's right of possession may then be challenged in the County Court only on the grounds that the landlord has made a legal error or a material error of fact.

## **8. Review Criteria**

8.1 The tenancy review criteria could include the continuing needs of tenants, any assets they might have accrued or inherited during the period of the tenancy, attitude to work/training opportunities that might have presented themselves during the period of the tenancy and pressures on social housing.

8.2 Tenancies will not normally be extended where one or more the following apply:

- The financial capacity of the tenant/s to secure alternative market accommodation or affordable tenures, under the financial criteria as

set out in the Allocation Policy. However, any assessment of financial capacity must be managed in such a manner that ensures it does not act as a disincentive to work.

- The conduct of the tenant throughout the fixed term. This includes any anti-social behaviour issues, rent arrears, or property management issues. In instances that the affordable housing provider wants to refuse a further tenancy due to the conduct of the tenant, they will be expected to provide a detailed record of support and engagement with the tenant to assist them in maintaining their tenancy.

- The property is under-occupied by one bedroom or more.

- The property has been extensively adapted for someone with a disability who no longer lives with the tenant (this allows the property to be released for someone who will benefit from the adaptations).

8.3 The Council recognises that there may be circumstances in which it would be unreasonable to expect someone to move even if the above criteria applied, and would want a tenancy to continue if:

- The tenant is a care leaver and still receiving support from social services because of this.

- The tenant is participating in a family intervention programme or an equivalent programme.

- Other circumstances as deemed appropriate by the RP

## **9. Termination of a flexible/fixed term tenancy**

9.1 Once the tenancy review is completed, if it is decided that the tenancy will not be renewed, the RP must serve a written notice advising the tenant of



their decision. The notice will contain the reasons for the decision and formally notify the tenant of their right to appeal and the appeal process. It is a legal requirement for the notice to be issued at least six months before the expiry of the tenancy so that the tenant has time to seek advice about their options.

9.2 The RPs have the statutory duty to provide housing advice/support to tenants in this situation. Before a tenancy being terminated, the RP will assist the tenant to explore their options for alternative housing. Such options could include home ownership, a privately rented home or a more suitable affordable rented home. The Council's Housing Options team will also offer housing advice to tenants in this situation if requested.

9.3 The housing officers in the Council Housing Options team will assist tenants with a wide range of advice to help them resolve the issues arising from the termination of their tenancies. This will include signposting to other Council departments where appropriate and to voluntary organisations that may help support people with resolving their housing issues.

9.4 RPs are asked to notify the Council without delay about tenancies that will not be renewed, subject to the consent of the tenant, as this will help any offer of further assistance if necessary.

9.5 If the tenant refuses to move when the notice period expires, the normal possession procedure will take effect.

## **10. Appeals**

10.1 If a tenant disagrees with the decision reached by their affordable housing provider to terminate their tenancy, they may use the appeal process as follows.

- All applicants have the right to request general information about their tenancy review, including the facts that have been taken into account and the reasons for terminating their tenancies.

- An applicant who is unhappy with a decision made under this policy should in the first instance contact their affordable housing provider, area housing officer to explain why they think that the decision is unreasonable.
- If an applicant wishes to pursue the matter further, they should obtain a copy of their affordable housing provider's appeal process and ensure that they submit an appeal within the stated time limit.
- Where an applicant wishes to appeal the termination of a tenancy and the notice period expires during the period of the appeal, the tenant will be permitted to stay in the property where this is not likely to lead to an unreasonable delay in the property being vacated.
- If the appeal review upholds the decision, the tenant then has recourse to the County Court.
- Should the County Court uphold the decision, the tenant will be obliged to leave the property.

## **11. Strategy review & monitoring**

11.1 The Tenancy Strategy has been developed and reviewed through consultation with RPs operating within the Borough.

11.2 This strategy may be updated from time-to-time to ensure that any information and links remain relevant and will be further reviewed as circumstances require at regular intervals of not less than every five years. Any material revision to the strategy will be considered in consultation with all relevant parties, who will be given a reasonable timescale to respond and comment as appropriate.

11.3 The responsibility for monitoring the implementation of this strategy is delegated to the Council's Strategic Housing Group (SHG), with periodic updates provided to the Community Wellbeing and Housing Committee. SHG exists to ensure that Spelthorne Borough Council has a focussed strategic approach on housing matters, in order that Spelthorne's housing need is identified and met.

## **12. Equalities and diversity**

12.1 The Tenancy Strategy will be subject to an Equality and Diversity Assessment and the Council expects RPs to carry out their own Equality and Diversity Assessment for their individual tenancy policies.