

# **SPELTHORNE TENANCY STRATEGY**

**December 2012**





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## **1. Introduction and background**

1.1 As part of its package of Localism, Welfare Reform and Austerity measures, the Government is introducing changes to the way in which affordable housing is provided in England. These include changes to the way that affordable housing is funded and also far reaching welfare benefit reforms. In addition as part of the new Localism Bill 2011, the Government is proposing a set of measures, which will allow local authorities and Registered Social Landlords (RSL's) increased flexibility in the way they allocate and provide tenancies. At the heart of this are two key changes.

- The provision of fixed term tenancies for tenants of social housing
- Local authorities/RSL's to have increased flexibility on how they allocate social housing

1.2 These tenancies will in most cases be for a minimum of five years. This is in recognition that currently RSL tenancies are granted to meet an immediate need, such as homelessness or overcrowding, which might change over time resulting in homes being under-occupied or occupied by tenants who could afford to buy a home or rent a home on the open market.

1.3 The Council and its RSL partners welcome the additional flexibility that fixed term tenancies will provide. Providers of affordable housing in the borough will give due regard to our policy when granting tenancies. It should be noted that the Council does not own its own housing stock and is reliant on its RSL partners for properties to allocate to households on the Housing Register.

## **2. Overview**

2.1 The Government change to legislation that allows providers of affordable housing to grant a fixed term tenancy is a change to the current situation, whereby affordable homes are let on what is known as an assured tenancy. An assured tenancy is effectively for life, subject to full payment of rent and compliance with all tenancy conditions.

2.2 Existing tenants who remain in their current affordable homes will not be affected by these changes 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.

2.3 As of 27<sup>th</sup> February 2012, there are 1,882 households on the Spelthorne Housing Register. Within these figures, 17 households are classified as being in emergency housing need (Band A), 162 households in urgent housing need (Band B) and 1199 households with an identified housing need (Band C).

### **3. Local Context**

- 3.1 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 boroughs in the South East, property prices are high. Levels of home ownership are high at about<sup>1</sup> 77%, 22% rent their home with 9% of these renting from the private sector.
- 3.2 Access to the private rented sector for those on low incomes and benefits has become more difficult due to the changes in housing benefits that were introduced in April 2011.
- 3.3 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.

### **4. Objectives**

- 4.1 The objective of Spelthorne's Tenancy Strategy and each respective RSLs Tenancy Policy is to ensure that the affordable housing stock is used as effectively as possible, to provide homes for Spelthorne residents in housing need who are unable to secure a home that meets their housing needs for themselves in the private sector. This can be achieved if more people can be assisted in moving on from affordable housing once they are in a position to sustain an alternative housing option, such as home ownership or the private rented sector.
- 4.2 The use of fixed term tenancies also provides an opportunity to help address under-occupation by giving the affordable housing providers more opportunity to move people to smaller accommodation 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. Currently an incentive scheme is in place and a financial reward can be offered to encourage those under occupying properties to move, however neither an RSL nor the Council has the power to require people to move to a smaller home. The RSL's 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.
- 4.3 The affordable housing providers will prepare tenants for independence once their situation has improved by making it clear from the start of their tenancy that the arrangement is not necessarily a permanent one/assured lifetime

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<sup>1</sup> Figures from Housing Needs & Stock Condition survey undertaken in 2006

tenancy. The Council's Housing Options team will also be available to offer housing advice to tenants when appropriate. While our Tenancy Strategy deals with the granting of tenancies from affordable housing providers, it is important to understand that applicants for affordable housing may also be offered properties/tenancies within the private rented sector.

- 4.4 Currently the majority of affordable housing properties in Spelthorne are let under assured tenancies at target social rents (formerly council housing rents). However, a new type of rent setting regime for affordable housing, known as Affordable Rent was introduced by the Government in 2011, as a new type of tenancy, designed to help address the shortage of affordable homes in England and ensure those in the most need can be housed. Affordable Rents are calculated at up to 80% of the private market rent in the locality they are situated. Although they are more expensive than target social rents, they are more affordable than renting at the full market rent – hence the Government naming them Affordable Rents. An Affordable Rent is usually around 70-80% of the market rent. These will also be a fixed-term tenancy, which is usually a minimum of five years, but in some exceptional circumstances, can be two years. The rent for any property will not exceed the Local Housing Allowance (LHA) rate for the property type in any instance. The percentage of full market rent charged will vary, with the affordable rent for larger family homes (three, four and five bedrooms) likely to be discounted more than one and two bedroom properties to keep within the LHA rates. New affordable housing tenancies offered in Spelthorne will either be under the target social rent regime or the new affordable rent regime, and the rent regime applicable for the tenancy will be made clear to applicants on offer of the tenancy.

## **5. The Strategy**

- 5.1 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 at up to a maximum of 80% of the market rent for a comparable property within the same locality<sup>2</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 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.
- 5.2 The Government plans to introduce a universal credit system and benefit cap in April 2013 which will limit the amount of benefit available to families to £500 per week. When setting rents, affordable housing providers should also be mindful of the potential impact of the proposed benefit cap.

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<sup>2</sup> Due to introduction of the Localism Bill 2011

- 5.3 This section sets out the circumstances in which an Assured tenancy will be granted and those in which a fixed term tenancy will be used. This approach takes account of the objectives set out in this document and the continuing rights of existing Assured tenants.
- 5.4 The following will be granted assured tenancies:
- Assured tenants whose tenancy commenced before 1 April 2012 moving to another affordable/social rented property (already protected in law).
  - Older people who have reached state retirement age and will occupy a general needs property. The terms of sheltered housing and extra care tenancies will remain the same as they are and will be let as assured tenancies.
- 5.5 Fixed term tenancies should normally be offered for a minimum period of five years, including any probationary period. The Council is supportive of the use of Starter Tenancies by RSL's. The Council and its RSL partners are of the opinion that the minimum fixed term of two years should only be used in exceptional circumstances, as this is unlikely to encourage a household to invest in their home and community. The Council will require written justification in all instances of RSL's offering two-year tenancies. Two-year tenancies should only be issued where there is a short-term risk that the tenant might no longer require the property within a relatively short time of commencing occupancy, or the property has been identified as being part of a regeneration scheme or other development project. In all other circumstances a fixed term tenancy of five years will be granted for new affordable housing tenancies after April 2012.
- 5.6 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 and will be obliged to seek their own accommodation.

## **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 the landlord.

- 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, financial criteria as set out in the Choice Based Lettings Partnership Allocation policy. However the Council and its RSL partners are keen to ensure that any assessment of financial capacity is 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 RSL/Council:

## **9. Termination of a flexible tenancy**

9.1 When flexible tenancies are coming to an end, it is essential that the tenant is given sufficient notice so that they can seek advice about their options. Accordingly, notice will be served six months before the tenancy is due to end. It is the statutory duty of the affordable housing provider to provide housing advice/support to tenants in this situation. Well in advance of a tenancy being terminated, the affordable housing provider 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.

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

## **10. Advice**

10.1 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 out of the termination of their tenancies. This will include signposting to other Council departments when appropriate and to voluntary organisations that help people with their housing issues. Housing information can also be accessed on Spelthorne Council's website, use the following webpage/link –

<http://www.spelthorne.gov.uk/article/684/Housing>

## **11. Appeals**

11.1 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. For reference the majority stock holding RSL in Spelthorne, state that an appeal must be put in writing within 21 days of receiving notice that the tenancy is not to be renewed. The same RSL states, in cases that a new tenant wishes to appeal against the type of tenancy offered to them or the length of the fixed term tenancy they have five working days to do so from the time they first receive the offer.
- 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.