

London Borough of Enfield

Portfolio Decision of Cabinet Member for Social Housing

Subject: Draft Tenancy Strategy
Cabinet Member: Cllr. Gina Needs
Director: Joanne Drew, Director of Housing and Regeneration

Key Decision: KD 5374

Purpose of Report

1. The purpose of this report is to seek approval from the Cabinet Member for Social Housing to carry out a 12-week consultation on a new draft Tenancy Strategy for Enfield.

Proposal(s)

2. The Cabinet Member is asked to agree for the draft strategy to be published for public consultation.
3. A decision to approve the final strategy will be made by Cabinet, scheduled to take place in January 2022, after it has been further developed as a result of the public consultation.

Reason for Proposal(s)

4. The Localism Act 2011 places a duty on housing authorities to prepare and publish a Tenancy Strategy. Enfield's Tenancy Strategy must set out the matters Enfield Council and other Registered Providers of social housing in the borough are required to consider when developing or reviewing their own Tenancy Policies.
5. The draft Strategy sets out how we intend to use our formal powers and influencing role to set high standards for tenancies in the Borough so that Enfield residents live as healthily, safely, and independently as possible. It sets out requirements regarding lifetime tenancies for social housing and also recommends good practice for private landlords and letting agents in regard to the tenancy agreements they use.
6. The Localism Act (section 151) requires authorities to give private registered providers of social housing a reasonable opportunity to comment on proposals before adopting or making a major modification to a Tenancy Strategy. It also requires consultation with the Secretary of State and Mayor of London. Enfield is extending our consultation remit to include all residents (tenants and the general public) and private landlords/ letting agents. Therefore, our proposal is to commence a 12-week consultation on the current draft Tenancy Strategy.

Relevance to the Council Plan

7. Good homes in well-connected neighbourhoods

The draft Strategy stipulates that lifetime tenancies should be offered to tenants in social housing and requires all social housing providers to provide tenants with information and advice so that they know and understand their rights and responsibilities. This supports our commitment to create a place where anyone born in the borough has a home to grow up in, where they can choose to stay and benefit from living in the great city that is London.

8. Safe, healthy and confident communities

Providing tenants in social and affordable housing with lifetime tenancies and providing clear information and advice so that tenants understand their rights and responsibilities, will support Enfield residents to live safe, healthy and confident lives in settled communities across the borough.

9. An economy that works for everyone

Lifetime tenancies enable residents to settle in their community and access employment and skills opportunities.

Background

10. The Localism Act 2011 has given local authorities the power to influence how social housing is offered and managed in their respective local areas. The draft strategy sets out the matters the Council and other registered providers of social housing are required to consider when developing tenancy policies.

11. Although the Localism Act 2011 does not extend to private landlords and letting agents, the draft Tenancy Strategy also includes good practice recommendations for private landlords and lettings agents.

Main Considerations for the Council

12. The draft Strategy has been developed in accordance with the Localism Act 2011 and the Council's Housing and Good Growth Strategy (2020-2030), Preventing Homelessness and Rough Sleeping Strategy (2020 -2025), Housing Allocation Scheme, Council Plan 2020-2022 and Fairer Enfield Policy 2021 - 2025 found [here](#). Benchmarking with other boroughs has also been carried out.

13. The draft has also been informed by initial engagement on the strategy principles with registered housing providers, at the Registered Providers Housing Operations Meeting on 1 December 2020. Under Section 151 of Localism Act 2011, we must now give registered providers of social housing a reasonable opportunity to comment on proposals before adopting or making a major modification to a Tenancy Strategy. We also propose to consult with

private landlords/letting agents, existing council housing tenants, residents on our council housing waiting list, and the public.

14. The consultation on the draft Strategy will be delivered through an online survey promoted to registered providers; existing council tenants and those on our housing waiting list; and the general public. It will also include consultation activity at registered provider forums and council housing tenant and leaseholder events taking place during the 12-week consultation period. We will review response levels on a 4-weekly basis.
15. The consultation will be advertised via multiple channels. Consultees will be able to request paper versions of the survey if needed and will be given the option to submit feedback via email or by post. Existing tenants will be sent texts via their mobile phone numbers in accordance with GDPR, enabling the option to access our survey through their smart phone. All Registered Providers will be sent a copy of the draft Strategy and asked to complete the online survey.

Safeguarding Implications

16. The draft Strategy proposes that all tenants of social housing are given lifetime tenancies to enable them to live safe, healthy and confident lives in settled communities across the borough. To ensure the Strategy does not directly or indirectly cause risk to children, young people or vulnerable adults we reiterate the need for all providers to comply with the Secure Tenancies (Victims of Domestic Abuse) Act 2018 and Homelessness Reduction Act 2017.
17. In relation to the consultation process, we have also carried out a basic risk assessment to ensure we do not put any residents at risk through participation. We will not require consultees to give personal identifying details either at events or on their survey responses.
18. The consultation provides the opportunity for residents and registered housing providers to feedback on any concerns they have on the strategy. The circulation list will also include Children's and Adult's Safeguarding reps.

Public Health Implications

19. By providing tenants in social and affordable housing with lifetime tenancies, and supporting tenants to understand their rights and responsibilities as tenants, while also seeking to drive up standards in both the public and private rented sectors, we will support Enfield residents to live safe, healthy and confident lives in settled communities across the borough.
20. All consultation activity will be delivered in accordance with current public health Covid-19 guidelines.

Equalities Impact of the Proposal

21. We have completed an Equality Impact Assessment (EqIA) on the draft Tenancy Strategy and no negative impact has been identified on any group

due to their protected characteristic or socio-economic status. The draft Strategy requires the Council and Registered Providers in Enfield to conduct an Equalities Impact Assessment (or its equivalent) on their tenancy policy as part of any policy review, to identify any groups who may be disadvantaged by its implementation and take any mitigating action as required.

22. We have provided a range of ways to respond to our consultation to ensure that no one is prevented or obstructed from taking part as a result of their protected characteristic and that we encourage all groups to take part. This includes the option to complete an online survey; to request a paper survey if required; or to provide feedback through capturing comments made during face to face events. The online survey package, SNAP, enables several user features to increase accessibility as does our website. We are also in contact with One to One and other Voluntary Community Sector groups who will proactively promote and support residents to complete the survey. To further publicise the consultation opportunity, we will utilise both council and partner newsletters.
23. We will continue to update the strategy EqIA post consultation to include any new information gained through the feedback and process.

Environmental and Climate Change Considerations

24. The proposals in the draft Strategy should not have any direct impact on carbon emissions. The proposed strategy will provide tenants in social and affordable housing with lifetime tenancies which may help prevent carbon emissions associated with house moves. For the consultation, to minimise use of paper and printing, we are primarily encouraging consultees to respond to the consultation online and only using paper surveys if requested because the consultee cannot respond digitally. We are also taking part in pre-arranged events for our face to face engagement, avoiding any carbon emissions which could result from transport to stand-alone events.

Risks that may arise if the proposed decision and related work is not taken

25. The Tenancy Strategy is a statutory requirement of the Localism Act 2011 and under section 151 requires consultation with users, providers, Secretary of State and Mayor of London. Failure to meet these requirements would increase the likelihood of legal challenge.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

26. The main risk that could arise during the consultation is from the Covid-19 pandemic. Should infection numbers rise, and further precautions be needed to address this such as new lockdown measures, face to face events would be cancelled. To mitigate this, we would rely on digital based events and consider the introduction of telephone support for consultees requiring additional help in completing the online survey.

Financial Implications

27. The Tenancy strategy is a high-level objectives document and does not detail specific budget requests.
28. This draft strategy sets out the approach Enfield Council, and other Registered Providers of social housing in the borough, need to consider when developing or reviewing their own tenancy policies.
29. The new strategy is proposing the following:
 - a. minimum term of a tenancy changes from 5 to 10 years and can only be grant in exceptional circumstances and with explicit justification based on an assessment of local housing need and best use of social housing stock
 - b. stricter criteria around the exceptional circumstances where a fixed-term tenancy could be given
 - c. it's expected that Registered Providers support tenants to sustain their tenancies, taking early action to address any concerns. The new draft strategy makes clearer the intention to work with registered providers and our expectations in regard to preventing homelessness.
 - d. introduces the expectation for Registered Providers to follow the discretionary (non-statutory) approach to succession rights
30. All Council tenancies will be charged rent in line with the Social Housing Rent Standards Policy.

Legal Implications

31. The Localism Act 2011 received Royal Assent in November 2011. Chapter 2 of Part 7 of the 2011 Act is relevant to social housing, tenure reform and specifically relates to Tenancy Strategies. Sections 150, 151 and 152 of the 2011 Act came into force on 15th January 2012.
32. Section 150 (1) of the 2011 Act obliges local housing authorities in England to prepare and publish a "tenancy strategy" setting out "...the 6 matters to which the registered providers of social housing for its district are to have regard in formulating policies relating to — (a) the kinds of tenancies they grant, (b) the circumstances in which they will grant a tenancy of a particular kind, (c) where they grant tenancies for a term certain, the lengths of the terms, and (d) the circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy. " (b) Section 105(2) of the 2011 act provides that a Tenancy Strategy must summarise those policies or explain where they may be found.
33. In accordance with the provisions of Section 105 (4) "A local housing authority must publish its tenancy strategy by no later than the 14th January 2013.
34. Then, by virtue of s. 105(5) A local housing authority must keep its Tenancy Strategy under review,"... and may modify or replace it from time to time". If

however a local housing authority does modify its Tenancy Strategy, “ it must publish the modifications or the strategy as modified (as it considers appropriate)...” (s. 105 (6)).

35. Procedurally, s. 105 (7) provides that “... a local housing authority must— (a) make a copy of everything published under this section available at its principal office for inspection at all reasonable hours, without charge, by members of the public, and (b) provide (on payment if required by the authority of a reasonable charge) a copy of anything so published to any member of the public who asks for one.
36. Consultation requirements before adopting a Tenancy Strategy are expressly provided for within section 151 of the 2011 Act as follows: “the Authority must “1(a) send a copy of the draft strategy, ..., to every private registered provider of social housing for its district, and (b) give the private registered provider a reasonable opportunity to comment on those proposals...[s. 151(2)(b)], and ... consult the Mayor of London.
37. Section 151(3) further provides that “the authority must, in preparing [or modifying] a Tenancy strategy, have regard to— (a)its current allocation scheme under section 166A of the Housing Act 1996, (b)its current homelessness strategy under section 1 of the Homelessness Act 2002, and (c)... the London Housing strategy.
38. The European Convention on Human Rights states in Article 8 that “Everyone has the right to respect for his private and family life, his home and correspondence”. The Human Rights Act 1998 incorporates the 7 Convention. Whilst it does not, however, necessarily mean that everyone has an immediate right to a home, (because Article 8 is a “qualified” right and therefore is capable in certain circumstances, of being lawfully and legitimately interfered with,) the provision by an Authority of a relevant Tenancy Strategy and proactive Allocations Policy does assist to reinforce the Article 8 principles.
39. The Equality Act 2010 brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. The new duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
40. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
41. As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the

Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

42. The Equality and Human Rights Commission issued guides during January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty, However, that Code is not due to be published until April 2012. The guides can be found at: <http://www.equalityhumanrights.com/advice-andguidance/public-sector-duties/new-public-sector-equality-duty-guidance/>

43. The Localism Act 2011 requires all Local Authorities to provide information that registered providers will have 'regard' to in relation to a) the type of tenancies registered providers grant, b) the circumstances in which they will grant a tenancy of a particular kind, c) where they grant tenancies for a fixed term the duration of the term and d) the circumstances in which they will grant a further tenancy on the expiry of a fixed term tenancy.

44. The Localism Act requires a local authority to consult with registered providers with properties in the Borough in developing a Tenancy Strategy as well as the GLA. There is a legal requirement to send a draft copy of the strategy to all registered providers in the Borough and the GLA. This can take place as part of the consultation process if the draft Strategy is approved by this Cabinet.

Workforce Implications

45. There are no workforce implications arising from this report.

Property Implications

46. HRA property implications: these are found throughout this report

47. Corporate property implications: none.

Options Considered

48. The alternative option considered was to reduce the scale of the consultation to meet the minimum requirement detailed in Section 151 of Localism Act 2011. This is to give registered providers of social housing a reasonable opportunity to comment on proposals. However, given this strategy also recommends good practice for private landlords, letting agents and has a direct impact on residents, failure to consult with these groups could cost the council time, money and have a negative impact on its reputation including residents trust.

Conclusions

49. The draft Strategy sets out how we intend to use our formal powers and influencing role to set high standards for tenancies in the Borough so that Enfield residents live as healthily, safely, and independently as possible. A full and comprehensive consultation programme, including all affected groups, will provide differing perspectives, new insights and lead to more effective decision-making and focus when producing and delivering the final strategy.

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Background Papers

The following documents have been relied on in the preparation of this report:

- Draft Enfield Tenancy Strategy 2021- 2025
- Tenancy Strategy Consultation Proposal