



Environmental Health
& Housing Services

By Email

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Dear Ms Walker

Local decisions: a fairer future for social housing

Thank you for providing us with the opportunity to respond to the consultation on the Government's proposed reforms.

The borough of Tonbridge and Malling lies in the heart of Kent and is largely rural. Tonbridge is the largest settlement and is situated in the south of the borough with the remainder comprising smaller towns and villages. Although the borough is generally affluent, there are also pockets of significant deprivation that contrast starkly with the more affluent neighbourhoods.

The Council transferred its housing stock to Tonbridge and Malling Housing Association (now Russet Homes, part of the Circle Anglia Group) in 1991. Overall, there are currently in excess of 7,000 socially rented homes in the borough.

The consultation document has been considered in detail by elected members through the Council's Strategic Housing Advisory Board, and generally speaking we support the principles that underpin many of the reforms that are outlined. In particular the Government's recognition of the very vital role that local authorities have in ensuring that local people can access good quality housing, and the need for local discretion in how this is achieved. Nonetheless, it must be said that despite the document's status as a consultation paper, there is no suggestion that its overall direction is subject to consultation and we do therefore have some reservations and practical concerns about how and when some of these measures will be implemented.



We have particular concerns that the work we have done on the provision of affordable housing within new housing developments to build sustainable communities where families want to settle (mix of household type/socio-economic status, use of local lettings plans etc) could be undermined by the introduction of short term tenancies. This instability could result in a breakdown in community cohesion, act as a disincentive to employment and contribute to a reduction in the local economic contribution made by essential workers. It must be recognised that there is an established, ongoing, and increasing need for more affordable housing provision throughout the borough, county and beyond, regardless of any proposed reforms to social housing tenancies.

This Council will work with local registered providers in implementing the Government's programme of social housing reform. It is important that the local policy framework (i.e. strategic policy on tenancies) is recognised as providing the framework within which registered providers design their own policies on tenancies, rents and the tenancy standard.

Tenants should have the right to buy established where this is identified as a local priority within the strategic tenancy policy developed jointly in partnership with registered providers.

Registered providers should be able to use funding realised through affordable rents to support the development of low cost home ownership as well as affordable and social rent homes where a need is identified by the strategic policy on tenancies.

Our response to the individual consultation questions is set out below.

1. As a landlord, do you anticipate making changes in light of the new tenancy flexibilities being proposed? If so, how would you expect to use these flexibilities? What sort of outcomes would you hope to achieve?

▪ *Affordable Rent tenancies*

The main issue we have about affordable rent tenancies relates to the impact on Housing Benefit, itself also an area of reform and ultimate reduction; and the extent to which the 80% market rent will be affordable in higher value areas. How will the low-income households who are ineligible for Housing Benefit fare?

We would expect that the decision as to which properties are let as affordable rent tenancies would be taken in consultation with individual local authorities, and that it would reflect their strategic policy on tenancies. However, this does not appear to be borne out in the annex to the consultation document, which makes no reference for the need for registered providers to consult with local authority partners as part of the development of their bespoke delivery agreement. How can this agreement and the strategic policy on tenancies be developed independently of one another?

A major concern is the as yet unknown aspirations of registered providers (many of which are part of larger groups that operate across much wider geographical areas) in respect of the income stream generated by the increase in rents afforded by the affordable rent tenancies. We would want to be reassured that such income will be ring fenced to provide additional affordable housing within the area it has been generated as opposed to elsewhere.

We also have some concerns about the potential for variance in rent levels between different registered providers who own similar properties in the borough. Rents could vary considerably according to the registered providers individual policies on affordable rents and the percentage of market rent sought.

The rise in rents also raises concerns that new and existing tenants will not be able to afford them, which will place added pressure on households and the risk of increased instances of homelessness.

- *Flexible tenancies*

Whilst it is difficult to disagree with the broad principles that underpin the case for a new flexible tenancy (i.e. the need to make better use of existing social housing; and to empower those that can, to move on), what impact will this have on the sustainable communities that both landlords and strategic housing authorities have striven so hard to achieve? Is there an alternative to moving people on when their circumstances improve? I.e. for people who can pay more to do so without moving?

If the households that are able to become independent and self-sufficient move on as soon as their circumstances permit, then the homes they vacate will become occupied by those who are less independent. Void costs for landlords will rise as turnover increases, and potentially housing management costs as well, reflecting the higher concentration of vulnerable households on social housing estates.

The need to ensure that publicly subsidised accommodation which is in great demand is provided as a 'safety net' for those in the greatest need, must be balanced against the potential for community instability that could be created by fixed term tenancies for more vulnerable households, and the negative impact this could have on both individual and community aspirations. It would be a retrograde step if affordable housing estates were to become a focus for a more transient population.

2. When, as a landlord, might you begin to introduce changes?

We would expect landlords to introduce changes only when they (and their local authority partners) are satisfied that the appropriate level of detail is in place, and that local residents can be assured of a service that is both consistent and responsive to their individual needs and those of the local area.

3. As a local authority, how would you expect to develop and publish a local strategic policy on tenancies? What costs would you expect to incur?

The policy will be drafted in consultation with elected members, key partners and other stakeholders (including neighbouring councils and support providers) prior to being the subject of a wider public consultation. A final draft will then be submitted to elected members for approval prior to implementation.

Clearly, the policy framework must be developed with registered providers to ensure congruence with their own tenancy standards, particularly in respect of tenancies for the more vulnerable client groups such as young people or those involved in anti-social behaviour.

It would be appropriate for local authorities that operate within similar housing markets (e.g. the SHMA sub-regions) to develop their strategic policies sub-regionally. This will make for a more consistent approach across market areas and more particularly across registered provider stock holdings, along with some efficiencies in terms of both time taken and cost.

There is an expectation that registered providers will adhere to the terms of the strategic policy. What incentives will be provided to encourage them or indeed what sanctions will be imposed if they fail to do so?

4. What other persons or bodies should local authorities consult in drawing up their strategic tenancy policy?

In addition to stock-holding registered providers, their tenants and local voluntary and community organisations, local authorities should consult:

- Households who are registered for housing
- Support providers
- Adjacent local authorities
- Adult social services
- Children's social services
- Supporting People Team
- LSP
- Local PCTs
- Homes and Communities Agency.

5. Do you agree that the Tenancy Standard should focus on key principles? If so, what should those be?

The Tenancy Standard must provide tenants and landlords with guidance that is both clear and consistent. It is accepted that it should remain brief and focus on key principles as opposed to detail, but it must set clear boundaries for the freedoms that it will permit. Failure to do so will compromise the benefits and advantages of this

increased flexibility, and consequently the wellbeing of many of the most vulnerable tenants.

The principles that the Standard should focus on should include: the length of notice that must be issued to end a flexible tenancy – we are not convinced that six months will suffice; the right to challenge the landlord's decision to end the tenancy; criteria for extending a tenancy; responsibility of the landlord to assist the tenant in finding alternative accommodation (and how this interfaces with the local authority housing options service); clear parameters for succession (the consultation document appears to offer a free reign on this); and criteria for setting the term of a tenancy.

6. Do you have any concerns that these proposals could restrict current flexibilities enjoyed by landlords? If so, how can we best mitigate that risk?

Our concerns are initially more for the tenants who may be required to move on to alternative accommodation sooner than they would otherwise choose.

There should be a rigorous and consistent assessment of tenant vulnerabilities to avoid vulnerable households being subject to inappropriate moves

7. Should we seek to prescribe more closely the content of landlord policies on tenancies? If so in what respects?

There needs to be a level of consistency between landlords and conformity with the local authority's strategic policy on tenancies. In order to achieve this, a more prescriptive approach needs to be taken.

8. What opportunities as a tenant would you expect to have to influence the landlord's policy?

Landlords will need to ensure that they fully involve current and future tenants in the development, implementation, monitoring and review of their policy.

9. Is two years an appropriate minimum fixed term for a general needs social tenancy, or should the minimum fixed term be longer? If so, how long should it be? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be? Should the minimum fixed term include any probationary period?

Whilst two years may be adequate for some households, the vast majority will require longer. A minimum of two to five years would probably be more appropriate, but landlords will need clear guidance on how to balance the ongoing needs of existing tenants against demand from those who have yet to secure accommodation.

A two year fixed term tenancy would not be sufficient for most households to establish community connections, to ‘put down roots’, and to feel that their accommodation is their home. A degree of insecurity is inevitable which could have a detrimental impact on both the individual household and the wider community.

For some households, particularly those with children, the social aspects of the ‘churn’ created by short term tenancies may have a long term impact on the educational and employment opportunities of individuals, and on schools, local businesses and community groups and events.

It is not unusual for some households to find themselves living in a chaotic state even after two years in social housing, with financial and/or social problems very much unresolved.

What will be just as critical as the term of the tenancy however is the quality and timing of the advice and support provided to tenants who are approaching the end of their tenancy. For many, this will make or break, with tenants that are ill-advised at this stage running the risk of facing homeless at some point in the future. Landlords will need to think carefully about the help and advice they provide – for example, will they offer financial help with rent deposits? Will they have a dedicated team of advisors or will this responsibility rest with generic housing staff? Either way, and for obvious reasons, we would urge that this service be developed in consultation with the local authority housing options team.

In terms of probationary tenancies, it would seem prudent for them to be included within the minimum fixed term.

10. Should we require a longer minimum fixed term for some groups? If so, who should those groups be and what minimum fixed terms would be appropriate? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be?

The consultation document notes that landlords will be expected to provide families with children with a longer tenancy (para 2.49) but it does not suggest a specific term. Whilst some families with children will undoubtedly require a longer term, others may not. The same can also be said of other groups – families without children for example, or older people and those with a long-term illness or disability. Some will need a longer period of stability than others and so it seems inappropriate to simply categorise them by reference to whichever particular group they best fit.

We would suggest that the same minimum fixed term be applied to both affordable rent and flexible tenancies.

The term of the tenancy should be assessed on the basis of the household's need and affordability, a one size fits all approach will not work. It should conform to the local authority's allocation policy and strategic policy on tenancies.

11. Do you think that older people and those with a long-term illness or disability should continue to be provided with a guarantee of a social home for life through the Tenancy Standard?

Households should be provided with a tenancy of a term that reflects their needs and individual circumstances. Some more vulnerable tenants such as those needing sheltered accommodation, or those where adaptations have been provided may benefit from the additional security of knowing that their tenancy is guaranteed.

12. Are there other types of household where we should always require a landlord to guarantee a social home for life?

It is important that registered providers retain the flexibility to be able to offer a social home for life where individual circumstances justify it.

13. Do you agree that we should require landlords to offer existing secure and assured tenants who move to another social rent property a lifetime tenancy in their new home?

Yes. Existing tenants would be disinclined to move if this were not the case, and it would make tackling the very serious problem of under occupation all but impossible. The consultation document makes clear the commitment that the rights of existing secure and assured tenants be preserved and this is supported.

14. Do you agree that landlords should have the freedom to decide whether new secure and assured tenants should continue to receive a lifetime tenancy when they move?

Yes, but within the confines of clearly identified criteria laid down in the local authority's strategic policy on tenancies.

15. Do you agree that we should require social landlords to provide advice and assistance to tenants prior to the expiry of the fixed term of the tenancy?

This is essential. The consequence of not providing adequate advice and assistance will be rising levels of homelessness as more and more households take on tenancies that they are unable to sustain and/or not suited to. The time required to deliver this service and the cost to the registered provider must not be underestimated.

16. As a landlord, what are the factors you would take into account in deciding whether to reissue a tenancy at the end of the fixed term? How often would you expect a tenancy to be reissued?

The criteria that will be applied must be transparent and understood by the tenant at the start of the fixed term. We would envisage that they would fit into three broad categories:

- The tenant's ongoing need for social housing and the extent to which this can be met elsewhere
- Conduct of tenancy to date – rent arrears, condition of property, anti-social behaviour
- Local pressures on the supply of social housing and the extent to which the private rented sector can offer an alternative.

Those tenants that are coming to the end of their fixed term tenancy should have the option to pay an increased rent for their current home, move into shared ownership or have the right to buy, where their financial circumstances allow this.

17. As a local authority, how would you expect to use the new flexibilities to decide who should qualify to go on the waiting list? What sort of outcomes would you hope to achieve?

Open housing registers encourage unrealistic expectations and increase dissatisfaction with the allocations process. Applicants who see waiting time as a determinant of success want to be included on the register as 'insurance' in case they need to move at a later date. We therefore support the proposal that applicants who have no housing need (and potentially those without a local connection to the borough) be denied access to the housing register.

Currently, over 50% of registered applicants are placed in the lowest priority band because they have little or no housing need, and are not included in one of the reasonable preference categories. Many of these applicants bid consistently on vacant properties with no realistic prospect of being housed. This generates frustration and a great deal of avoidable contact in respect of enquiries such as "how much longer must I wait" and "why have these properties been let to applicants who have not been waiting as long as me". It also results in a disproportionate number of requests for reviews of priority. By restricting/denying applications from those who have no housing need, (and potentially those with a housing need but without a period of residence or other local connection in the borough) the number on the waiting list would effectively be halved, which would reduce considerably the administrative burden of processing and maintaining applications from households that are unlikely to be housed.

18. In making use of the new flexibilities, what saving or other benefits would you expect to achieve?

The verification of new applications, including the collating and checking of personal ID and financial data will only be required where an applicant has a housing need. As well as the reduction in the number of applications considered, the length of time taken to verify and register on the Choice Based Lettings (CBL) system will be significantly reduced. Applicants in housing need will be able to participate in CBL much sooner than at present, and have their housing issues resolved. As fewer bids will be placed for vacant properties, the short listing and letting process will also be streamlined.

19. What opportunities as a tenant or resident would you expect to have to influence the local authority's qualification criteria?

Tenants/residents/applicants will be consulted on the proposed changes to eligibility for inclusion on the housing register. Potential applicants can receive tailored housing advice on re-housing options where an initial screening shows that they will not be included on the housing register.

20. Do you agree that the current statutory reasonable preference categories should remain unchanged? Or do you consider that there is scope to clarify the current categories?

Current reasonable preference categories encompass the greatest housing needs. However, clarification may be necessary to promote mobility and ensure that those households seeking employment in the borough but have not yet received a job offer (where there is a realistic prospect of employment) are not disadvantaged.

21. Do you think that the existing reasonable preference categories should be expanded to include other categories of people in housing need? If so, what additional categories would you include and what is the rationale for doing so?

Although under-occupation is included within the reasonable preference category of 'insanitary, overcrowded and unsatisfactory conditions' it may be preferable to include it as a stand alone category to encourage mobility and release family homes for overcrowded households. Tenants who are under occupying a property may not consider themselves to be in housing need in the traditional sense.

22. As a landlord, how would you expect to use the new flexibility created by taking social tenants seeking transfer who are not in housing need out of the allocation framework? What sort of outcomes would you hope to achieve?

Tenants, including those who are not in housing need, are already able to arrange a mutual exchange. This should be encouraged, and the process simplified, particularly between tenants with different social landlords. We do not feel that a further mechanism is necessary, particularly where tenants wish to move to a 'like for like' property in a different area. Those needing to move due to overcrowding or under

occupation, medical or disability reasons etc. will also benefit from the needs-based housing register system, providing further opportunities to move. The transparency afforded by CBL would be undermined if social landlords were permitted to ring fence certain properties for transfers outside of CBL, with a real risk that some properties be set aside for “cherry-picking”.

However, in the case of new development, it is essential that registered providers have the ability to achieve transfers within the housing stock to facilitate mobility and a balanced socio-economic mix.

23. What are the reasons why a landlord may currently choose not to subscribe to a mutual exchange service?

Cost would be the obvious reason. Services vary according to cost, with those that offer national coverage and a higher number of registered participants generally costing more than those with less coverage and functionality.

Additionally some landlords may feel there is little to be gained from a national service, as the majority of tenants that register generally require a relatively local move. Over and above the direct cost of the scheme, landlords will need to support and assist those tenants who wish to make use of it, as well as back office tasks such as the verification of the advertisements that their tenants place.

24. As a tenant, this national scheme will increase the number of possible matches you might find through your web-based provider, but what other services might you find helpful in arranging your mutual exchange as well as IT-based access?

- Feedback reports regarding successful exchanges, waiting times etc
- Signposting to other agencies for assistance with applying for grants, benefits, GPs, schools etc
- The facility to advise multiple agencies of a change in address
- Information on local schools, crime statistics, health services etc based on a postcode search
- Free to access
- Access via mobile devices, digital TV and consoles.

25. As a local authority, how would you expect to use the new flexibility provided by this change to the homelessness legislation?

Although homeless acceptances have reduced significantly in the last three years we are now seeing an increase. The ability to discharge duty with an offer of private sector accommodation should help to dispel the belief that social housing is a “right” for homeless families, and reinforce the prevention work currently undertaken.

The process of securing alternative accommodation within the private sector where there is a threat of homelessness will streamline the housing options approach, provide positive outcomes and less upheaval for families by reducing the need for interim accommodation. The social housing 'safety net' can be offered where there is an identified need for longer term accommodation.

26. As a local authority, do you think there will be private rented sector housing available in your area that could provide suitable and affordable accommodation for people owed the main homelessness duty?

In common with the rest of West Kent, Tonbridge and Malling's housing profile is characterised by higher than average levels of owner-occupation and lower than average levels of both social and private rented accommodation. The Council works closely with local private landlords both collectively through the West Kent Landlord's Forum and at an individual level as well. Rent deposits and deposit bonds are provided to eligible households who take accommodation in the private sector and we are acutely aware of the need to develop and maintain this as a viable alternative to the social sector.

Whilst there is less in the way of private rented accommodation in this borough than in some, of greater concern is the ongoing reluctance of many private landlords to take tenants who are facing homelessness and who are in receipt of local housing allowance. If we are to secure accommodation that is both suitable and affordable to the households that need it most, then we will need the support of local landlords. We are currently reviewing our approach to rent deposits and deposit bonds but we urgently need to identify other incentives that are both practical and affordable.

27. Do you consider that 12 months is the right period to provide as a minimum fixed term where the duty is ended with an offer of an assured shorthold tenancy? If you consider the period should be longer, do you consider that private landlords would be prepared to provide fixed term assured shorthold tenancies for that longer period to new tenants?

Ideally it should be for a longer period and some landlords may be willing to provide these tenancies. The majority however will need some form of incentive and some will be reluctant to accept tenants who are in receipt of local housing allowance.

28. What powers do local authorities and landlords need to address overcrowding?

Local authorities already have adequate enforcement powers using the Housing Health and Safety Rating System (HHSRS) under the Housing Act 2004.

However, landlords need to review their existing stock to re-determine the maximum number of occupants the accommodation is suitable for, in accordance with the HHSRS and based on the available space for living, sleeping and normal

family/household life. This could then form the basis of any allocation decision and prevent overcrowding at the start of a tenancy.

29. Is the framework set out in the 1985 Housing Act fit for purpose? Are any detailed changes needed to the enforcement provisions in the 1985 Act?

The framework set out in the 1985 Housing Act is an outdated legislative system, which does not reflect modern day standards and is therefore not fit for purpose. The enforcement provisions in the 1985 Act could be rescinded as they have been superseded by the Housing Act 2004.

30. Should the Housing Health and Safety Rating System provide the foundation for measures to tackle overcrowding across all tenures and landlords?

Yes. It should also be remembered that the licensing of houses in multiple occupation (HMOs) using licence conditions can be used to control over occupation in licensable HMOs.

Yours sincerely



Janet Walton
Chief Housing Officer