

Local Decisions: A fairer future for social housing consultation

West Berkshire Council Response

In preparing this response, the Council sought to consult with relevant stakeholders, partners and staff. The opportunity to do this was restricted by the fact that the consultation period was reduced from twelve weeks to eight weeks, and that this also included the Christmas period and the legitimate need to take the response through the Council's own decision-making processes. West Berkshire Council would like to express serious concern over the length of the consultation period that has been allowed, given that the proposals represent a fundamental change to social housing that will have far-reaching and far-lasting consequences.

West Berkshire Council would also like to express concern that an Impact Assessment does not appear to have been completed or published with the consultation document.

	Tenure
1.	<p><i>As a landlord, do you anticipate making changes in light of the tenancy flexibilities being proposed? If so, how would you expect to use these flexibilities? What sort of outcomes would you hope to achieve?</i></p> <p>West Berkshire Council is a non-stock holding authority. This question is therefore not applicable.</p>
2.	<p><i>When, as a landlord, might you begin to introduce changes?</i></p> <p>West Berkshire Council is a non-stock holding authority. This question is therefore not applicable.</p>
3.	<p><i>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?</i></p> <p>West Berkshire Council would seek the views of relevant stakeholders, including landlords, developers, registered providers, housing support providers and residents, to inform the development of a strategic tenancy policy. This would be of particular importance as the Council does not own stock of its own and is therefore heavily reliant on partners to assist in meeting local housing needs.</p> <p>The Council would also draw on available evidence and existing policies, including the Strategic Housing Market Assessment, Housing Needs Assessment, Core Strategy, Housing Strategy, Homelessness Strategy and Sustainable Communities Strategy, to ensure that the proposed approach reflected the Council's strategic priorities and contributes towards a balanced housing market. The Council would need to consider whether there were any gaps within the evidence base</p>

	<p>and whether any additional research was required to inform the development of a strategic policy on tenancies. Clarity on the content and form of the policy would be welcomed.</p> <p>Costs would include staff resources, the costs of consultation, and, if required, costs of additional research. It is expected that these costs would be incurred every 3 – 5 years, as any such policy would need to be reviewed on a regular basis to ensure that it remains current.</p> <p>The consultation paper does not specify the timeframe within which local authorities must produce and adopt a strategic policy on tenancies, although it does refer to the need for legislation to create the duty. It is understood that the Homes & Communities Agency (HCA) will be seeking to negotiate contracts with Registered Providers during the early part of 2011, to develop a four-year delivery plan. The proposals also indicate that affordable rent tenancies will be introduced from April 2011. Development of a strategic policy on tenancies will need to ensure an appropriate period of consultation with key stakeholders, as well as allow time for proper consideration through the political decision-making process. The Council would like to express concern that the HCA's intention to negotiate contracts with Registered Providers in early 2011, and the intention to allow delivery of affordable rent tenures from April 2011, pre-empt the Council's intended strategic policy-making duty in respect of tenancies.</p>
4.	<p><i>What other persons or bodies should local authorities consult with in drawing up their strategic tenancy policy?</i></p> <p>West Berkshire Council considers that, as a minimum, the following should be consulted: Local residents (including current and potential housing applicants, existing and potential private and social tenants), Registered Providers, developers, supported housing providers, private landlords, statutory agencies (e.g. Adult Social Care, Children & Young People; YOT; Health); other voluntary agencies (e.g. CAB; Berkshire Women's Aid, Turning Point).</p>
5.	<p><i>Do you agree that the Tenancy Standard should focus in key principles? If so, what should those be?</i></p> <p>West Berkshire Council considers that the current Tenancy Standard is appropriate. If it is to be revised, it should avoid prescription and focus on key principles, but the Council would wish to see the current elements retained. Any revision should require landlords to set out a clear tenancy policy, including the types of tenancy they intend to offer, eligibility for different types of tenancy, rent levels of those tenancy types, the circumstances in which the tenancy can be ended and what advice and assistance will be offered to tenants prior to and upon termination. The Tenancy Standard should also state that Registered Providers need to take full account of the local strategic policy on tenancies when formulating their own tenancy policies.</p>

6.	<p><i>Do you have any concerns that these proposals could restrict current flexibilities enjoyed by landlords? If so, how can we best mitigate that risk?</i></p> <p>If the Tenancy Standard is based upon key principles rather than prescriptive elements, restrictions to current flexibilities should be minimal.</p>
7.	<p><i>Should we seek to prescribe more closely the content of landlord policies on tenancies? If so, in what respects?</i></p> <p>Yes, landlord policies should be required to take full account of the local strategic policy on tenancies. If this is not a requirement, there is a risk that landlord will ignore key aspects of a strategic policy, particularly where they operate across more than one local authority area.</p> <p>West Berkshire Council recognises that some landlords operate across a number of different local authority areas, which could result in conflict arising between the strategic policies on tenancies and the landlords own policy. The Government should produce guidance on the formulation of landlord tenancy policies that addresses this issue, and which requires a number of other key issues to be addressed, including the types of tenancy they intend to offer, eligibility for different types of tenancy, rent levels of those tenancy types, the circumstances in which the tenancy can be ended and what advice and assistance will be offered to tenants prior to and upon termination. The guidance should also require landlords to consult on their proposed tenancy policy.</p>
8.	<p><i>What opportunities as a tenant would you expect to have to influence the landlord's policy?</i></p> <p>West Berkshire Council would expect that all existing tenants should be consulted and that their views are taken into account in the formulation of their landlord's policy. Landlords should be expected to demonstrate how they consulted and tenants should receive feedback on how their views influenced the resulting policy.</p>
9.	<p><i>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 this 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?</i></p> <p>West Berkshire Council recognises the need for reform within social housing sector and is supportive of the proposal for fixed term tenancies. The Council considers that two years is too short a period for fixed term and would like to see the minimum fixed term set at five years.</p>

One of the central tenets of social housing has been security of tenure, which arguably contributes towards mixed, balanced and sustainable communities. If residents are required to move on after the minimum period of two years, this is likely to result in considerable 'churn' and cause instability both to the households affected and within the local community.

Tenants whose circumstances change are most likely to be asked to move on after the fixed term period. This could act as a disincentive for tenants to better their circumstances, for example, through taking up work, whilst also having the potential to further residualise and stigmatise social housing. Insecurity and instability in respect of accommodation can also result in negative educational and health outcomes, which can affect the life opportunities of individuals. The proposal risks sending a message that social housing is a tenure of last resort rather than a tenure of choice and could result in significant concentrations of deprivation on social housing estates.

If fixed term tenancies are to be pursued, the Council considers that the minimum fixed term should be five years. This would allow tenants to become established within and contribute towards their local community, and make longer term plans for their future, including employment opportunities. A longer fixed term would provide more security and stability, allowing households to plan for their future, for example, saving for a deposit (to purchase or rent privately), and may provide greater incentive for tenants to invest in their homes (e.g. decorating, maintain their garden etc).

The Council believes that social and affordable rent tenancies should be offered on the same terms, although tenants who pay more for their home may have increased expectations of the service that they receive from their landlord.

The Council believes that fixed term tenancies should include a probationary period of up to one year, in line with current social rent tenancies.

The Council believes that the local strategic policy on tenancies should set out the key criteria upon which a fixed term tenancy should end. Social landlords should be required to have regard to, and reflect, the local strategic policy on tenancies when setting the criteria within their own policies for ending a fixed term tenancy.

The Council is also concerned that the introduction of fixed term tenancies could create an increased administrative and management burden both for the landlord and local authority housing options teams. Fixed term tenancies are likely to lead to increased void times and costs. The proposal indicates that "*where a landlord decides not to reissue a tenancy at the end of the fixed term, and the tenant is unable*

	<p><i>to obtain alternative accommodation and becomes homeless, the tenant would be considered to have become homeless unintentionally (unless the decision not to reissue the tenancy is a direct consequence of the tenant's behaviour)".</i> The proposal goes onto suggest social landlord, through the Tenancy Standard, may be required to provide advice and assistance to help the tenant find suitable alternative accommodation. The Council is concerned that social landlords are not necessarily resourced with appropriate skills and expertise to offer a full housing options service, and that the statutory duty for homelessness sits with the Council. The introduction of fixed term tenancies may therefore result in an increased number of households approaching the Council for housing options advice, or as homelessness, with significant resource implications for local authorities.</p> <p>The Council would also like to draw attention to the specialist nature of providing affordable housing in rural areas. In many cases, it is only possible to meet identified housing needs in rural settlements through the development of rural exception sites. Occupancy of such sites is restricted, through the S106 Agreement, to households who meet specified local connections. Options for households to move on at the end of a fixed term tenancy, whilst also remaining in the local community, will be extremely limited. Many households who qualify for affordable housing on rural exception sites will also be on very low incomes and the Council would welcome provision that requires Registered Providers to demonstrate that the Affordable Rent tenancies are set at a rental level that is affordable, based on the outcomes of the Local Housing needs Survey. It is possible that, on rural exception sites, social rented accommodation may be a more suitable option and that grant funding may be necessary to ensure delivery of such developments.</p>
10.	<p><i>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?</i></p> <p>No, the minimum fixed term should be consistent across all groups. If different terms are applied, this could be seen to discriminate against certain groups.</p>
11.	<p><i>Do you think 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?</i></p> <p>In principle, it would appear reasonable to offer older people a lifetime tenancy if they are accepting a tenancy to older persons accommodation, or to people with a disability who require adaptations. However, circumstances can still change and may mean that family members remain in the property who may not be entitled to continue</p>

	<p>with a guaranteed home for life. It is suggested that it may be more appropriate to make decisions such as this on a case by case basis, and the Tenancy Standard should require landlord policies to set out the basis for such decisions.</p>
12.	<p><i>Are there other types of household where we should always require landlords to guarantee a social home for life?</i></p> <p>No</p>
13.	<p><i>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?</i></p> <p>No. If the intention is to end lifetime tenancies, this should include existing tenants who move to a new home, otherwise a two-tier system is being created. If the rights of existing tenants are protected when moving to a new home, two households of the same make-up and same income, may end up having different security of tenure and differential rent, despite having the same circumstances, purely because one household is an existing tenant and the other is a new applicant. This is inequitable.</p>
14.	<p><i>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?</i></p> <p>No. See Q13 above.</p>
15.	<p><i>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?</i></p> <p>West Berkshire Council is concerned that social landlords are not necessarily resourced with appropriate skills and expertise to offer a full housing options service, and that the statutory duty for homelessness sits with the Council. The introduction of fixed term tenancies may therefore result in an increased number of households approaching the Council for housing options advice, or as homelessness, with significant resource implications for local authorities. The Council would suggest that there may need to be a rebalancing of funding to the LA from RPs to support the provision of specialist advice and support to enable informed choices when tenants move on.</p> <p>Tenants should be able to access independent advice and support to ensure that they are able to make informed decisions.</p>
16.	<p><i>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?</i></p>

	<p>West Berkshire Council is not a landlord, however, we would expect landlords to have regard to the tenants financial, social, medical and other circumstances, (for example, schooling, support networks, ability to travel to work) as appropriate. A change in the household's financial circumstances should not automatically result in the termination of a tenancy, as this would act as a disincentive to households bettering their circumstances and may result in residualised and stigmatised neighbourhoods.</p> <p>Landlords should be required to have robust policies and procedures that set out the circumstances in which a tenancy will be terminated or reissued and tenants should have the right to request a review of the decision taken. There should be performance monitoring, with key performance indicators set, to ensure that policies are implemented consistently and to ensure that decisions are not left to the discretion of individual officers. Tenants should also have access to independent advice and information on their legal rights.</p> <p>The frequency of reissuing a tenancy should not be limited and will be dependent upon the individual circumstances of the household.</p>
	<p>Allocating Social Housing</p>
<p>17.</p>	<p><i>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?</i></p> <p>West Berkshire Council intends to reviews its Allocation Policy during 2011 and will explore how the flexibilities may be used as part of the consultation with stakeholders and residents. The most likely area that will be considered is restricting access to the housing register to households with a local connection. Another area for consideration could include only accepting households with a housing need onto the list and/or removing households who have not actively bid since applying to the housing register (within a specified time frame).</p> <p>The likely outcomes, both positive and negative, associated with a review of the Allocation Policy will be considered as part of the review.</p>
<p>18.</p>	<p><i>In making use of the new flexibilities, what savings or other benefits would you expect to achieve?</i></p> <p>The review of the Allocation Policy would need to consider the potential savings and benefits. Likely benefits would be to better direct extremely limited resources to those in greatest need, better reflecting actual housing need within the District and managing expectations and aspirations for housing.</p>
<p>19.</p>	<p><i>What opportunities as a tenant or resident would you expect to have to</i></p>

	<p><i>influence the local authority's qualification criteria?</i></p> <p>West Berkshire Council would anticipate undertaking extensive consultation with residents and providing feedback on how their views had been taken into account when reviewing the Allocation Policy.</p>
20.	<p><i>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?</i></p> <p>The current statutory reasonable preference categories should remain unchanged.</p>
21.	<p><i>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?</i></p> <p>There is no need to expand the current reasonable preference categories to include other categories of people in housing need.</p>
22.	<p><i>As a landlord, how would you expect to use the new flexibility created by taking social tenants seeking a transfer who are not in housing need out of the allocation framework? What sort of outcomes would you hope to achieve?</i></p> <p>West Berkshire Council is not a landlord but does administer the Choice Based Lettings System and has had discussion with one of our Registered Provider partners about taking on transfers. The Council believes that it can make either framework work (i.e. via the Allocation Policy or outside of it) for transfer tenants.</p> <p>The Council already works with Registered Provider partners to create chain vacancies and does not consider that taking transfers outside of the allocation framework is necessary to achieve this.</p>
	<p>Mobility</p>
23.	<p><i>What are the reasons why a landlord may currently choose not to subscribe to a mutual exchange service?</i></p> <p>West Berkshire Council is not a landlord but assumes that reasons landlords may not sign up would include cost. In addition, the Council offers a mutual exchange options through its Choice Based Lettings system and it may be that landlords sign up to smaller local systems, or run their own systems, rather than using one of the commercially provided schemes.</p>
24.	<p><i>As a tenant, this national scheme will increase the number of possible matches you might find through your web-based provider, but what</i></p>

	<p><i>other services might you find helpful in arranging your mutual exchange as well as IT-based access?</i></p> <p>Mutual exchange services should not be wholly reliant on IT-based systems as some tenants will not have access to the internet. More vulnerable tenants may not be able to access web-based systems without support.</p>
	<p>Homelessness</p>
<p>25.</p>	<p><i>As a local authority, how would you expect to use the new flexibility provided by this change to homelessness legislation?</i></p> <p>West Berkshire Council already works closely with the private sector landlords to facilitate access to private rented accommodation as a means of preventing homelessness and will use private rented accommodation to end a homelessness duty where the household is in agreement.</p> <p>The Council would use the new flexibility to end a homelessness duty, in appropriate circumstances and consider that this would allow us to make best use of existing resources.</p>
<p>26.</p>	<p><i>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?</i></p> <p>Facilitating access into private rented accommodation is difficult within West Berkshire, where landlords are able to easily secure tenants. The Council is very concerned that the proposed changes to Local Housing Allowance will reduce the availability of private rented accommodation to people whom the Council is seeking to assist. Initial estimates suggest that availability of private rented accommodation for households in receipt of Local Housing Allowance will reduce from 51% currently to 32% in the future. This will be compounded even further by the extension of the age limit to 35 for people who will be subject to a single room restriction.</p> <p>Access to private rented accommodation could be improved if it were easier to make direct payments of Local Housing Allowance to landlords on behalf of tenants and the Council would request that the Government give serious consideration to the issue of direct payments, both at the current time and through future universal credit proposals.</p>
<p>27.</p>	<p><i>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?</i></p>

	<p>12 months is a reasonable minimum fixed term period and some landlords would be willing to offer a longer period, particularly if they receive support to ensure a successful tenancy. Allowing direct payments to landlords who are working closely with the Council, for example, by offering longer fixed term periods or by accepting tenants through the rent deposit guarantee scheme, would significantly increase the likelihood of landlords offering longer fixed term tenancies.</p> <p>West Berkshire Council does not consider it necessary to introduce a recurring homelessness duty if the applicant becomes homeless again through no fault of their own within a two year period, as a new homelessness application could be made.</p>
	<p>Overcrowding</p>
<p>28.</p>	<p><i>What powers do local authorities and landlords need to address overcrowding?</i></p> <p>The definition of overcrowding is outdated and not fit for purpose. The definition requires review to ensure that it meets modern standards and is easy to assess.</p> <p>Local authorities can use Allocation Policies to reduce overcrowding. Most households who are under-occupied, want support to make a suitable move The Tenancy Standard could require landlords to publish details of the advice, support and assistance that they will offer to under-occupying households.</p>
<p>29.</p>	<p><i>Is the framework set out in the 1985 Housing Act fit for purpose? Are any details changes needed to enforcement provisions in the 1985 Act?</i></p> <p>No, the Housing Act 1985 definition is outdated and not fit for purpose. This statutory definition is used to determine whether is reasonable for a household to continue to occupy, however, would not stand up to the reasonable expectations of modern living. For example, in some circumstances, the statutory definition allows for a living room or kitchen to be counted as a room in which it is acceptable to sleep.</p> <p>The definition needs to be updated and easy to apply for the purposes of housing need assessments.</p>
<p>30.</p>	<p><i>Should the Housing Health & Safety Rating System provide the foundation for measures to tackle overcrowding across all tenures and landlords?</i></p> <p>Whilst the HHSRS provides an appropriate standard by which to assess overcrowding, it is a complex calculation and requires officers to be trained to undertake the assessment. The HHSRS has been primarily used by Environmental Health Officers and most Housing Options Officers, and those assessing housing need on housing applications,</p>

	<p>will not be trained to use HHSRS. West Berkshire Council considers that the bedroom standard would be the most straightforward assessment tool, that could be used without significant training requirements and that would allow quick and easy assessment of housing need applications.</p>
	<p>Additional Comments</p>
	<p>Affordable Rent – The consultation paper indicates that the introduction of affordable rents, will generate additional resources to build more homes. Since the publication of the paper, experience is showing that developers and land owners have increased aspirations around the price that they can seek from Registered Providers for affordable housing on the basis that Registered Providers will be able to raise additional private finance based upon the increased rents. Unless such aspirations can be controlled, any additional funds are likely to end up in the pockets of developers and land owners, rather than as investment into new affordable housing.</p> <p>Affordable Rent – The proposals suggest that conversion of social rent to affordable rent tenures for vacant properties will commence from April 2011. In many cases, the social rent properties will have been delivered via a S106 Agreement which will require them to be let as social rented properties. It is suggested that prior to conversion, the landlord should seek the consent of the local authority, which should ensure that there is no breach in legal agreements around tenure.</p> <p>Reform of Social Housing Regulation – Members welcome the prospect of an enhanced role in resolving tenants’ problems. This needs to be supported with sufficient power that enables elected Councillors to hold landlords to account on behalf of tenants.</p> <p>West Berkshire Council welcomes the Government shifting power from Westminster to councils and communities, in particular many of the reforms proposed in the Government’s Consultation Paper "Local Decisions: a Fairer Future for Social Housing". However the Council notes that the proposed reform of the Housing Revenue Account, ending central government control of rents from council housing, leaves Councils like West Berkshire (where social housing is owned and operated by housing associations) at a disadvantage, allowing associations that operate across local authority boundaries to sell assets in one area to invest in another, unlike Councils with their own housing stock. The Council therefore calls on Government to require housing associations to:-</p> <ol style="list-style-type: none"> a. publish their accounts in such a way that there is transparency as regards asset management of social housing, on a local authority area basis; and b. Be obliged to re-invest the proceeds of any Asset Sales made

	<p>in a Local Authority Area, within the same Local Authority Area, within a 5 year period.</p> <p>c. be allowed to borrow on the same favourable terms as public bodies such as local authorities.</p>
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