

Decision Taker:	Cabinet Member for Council Homes
Date:	20 May 2024
Report title:	Update of the Southwark Tenancy Strategy and Southwark Council Tenancy Policy
Ward(s) or groups affected:	All
Classification:	Open
Reason for lateness (if applicable):	Not applicable
From:	Hakeem Osinaike, Strategic Director of Housing

RECOMMENDATIONS

1. That the Cabinet Member for Council Homes note the feedback from the statutory consultation on the draft Southwark Tenancy Strategy and Southwark Council Tenancy Policy in paragraphs 24-29 of the report.
2. That the Cabinet Member for Council Homes agree the revised Southwark Tenancy Strategy in Appendix A of the report.
3. That the Cabinet Member for Council Homes agree the revised Southwark Council Tenancy Policy in Appendix B of the report.

BACKGROUND INFORMATION

The current Southwark Tenancy Strategy and Tenancy Policy

4. The Localism Act 2011 set a statutory requirement for local authorities to produce Tenancy Strategies. Housing associations and councils should have regard to this in agreeing their own tenancy policies and exercising their housing management functions. Tenancy Strategies should cover the kind of tenancies they grant (lifetime/assured tenancies or flexible fixed tenancies), the circumstances in which they will grant a tenancy of a particular kind, the circumstances in which they will grant tenancies for a fixed term, the lengths of the terms, and the circumstances in which they will grant a further tenancy at the end of the existing tenancy. Please see this link for the full legislation.

<https://www.legislation.gov.uk/ukpga/2011/20/enacted>

5. In January 2013 Southwark Council's Tenancy Strategy was agreed via IDM.
<https://moderngov.southwark.gov.uk/mglIssueHistoryHome.aspx?IId=50001343&Opt=0>. This document set out the council's continued commitment to lifetime tenancies for council stock and preference for assured (effectively lifetime) tenancies for housing association stock. It also recognised that there might be particular circumstances when a flexible fixed term might be required. It sets out guidance to maximise security of tenure in these circumstance.
6. The Tenancy Policy sets our approach to meeting the Tenancy Standard where flexible fixed term tenancies are used. It sets out the types of tenancies the landlord will offer and the length of fixed term tenancies, and the factors to be taken account of in deciding whether to renew the fixed term tenancy. Fixed term tenancies will have to be granted in accordance with the policy. In addition, there is a need for rules setting out how to challenge decisions on tenancy length and also to cover what happens at the end of a fixed term tenancy, including how to challenge decisions about its duration or continuation.
<https://www.gov.uk/government/publications/tenancy-standard>
7. To date, due to the Council's commitment to lifetime homes the Council has not used flexible fixed term tenancies. However, the council is keen to develop a number of keyworker homes, some of which will be intermediate rented homes. To protect these for use by keyworkers, the council has agreed that flexible fixed term tenancies will be used for these homes. Cabinet agreed this in April 2020. A tenancy policy is required before property can be let on flexible fixed term tenancies. This tenancy policy needs to set out how the tenancies will be used, including the lengths of the fixed terms, and the factors that will be taken into account in deciding what should happen at the end of the fixed term.

Intermediate rent and keyworker properties

8. As a combination of changes in national planning policy concerning purpose built private rent homes, and a push from the Mayor of London towards new tenures like London Living rent, the council expected a surge in the number of intermediate rented homes. Officers were tasked with setting up an intermediate rent-housing list to assist in the prioritisation and allocation of these homes.
9. In April 2020, Cabinet agreed to make use of new powers to rent homes to keyworkers at intermediate rents through the council's housing revenue account. The use of flexible fixed-term tenancies was agreed in order to ensure that units were retained for use by keyworkers.
<https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7064>

10. In March 2021, an IDM paper agreed the final design of the intermediate rent housing list. This included the Southwark Intermediate Rent Policy, including the eligibility and priority system, and the Southwark keyworker definition. Until the list is in operation registered providers (RPs) are required to let properties in accordance with the priorities in this policy. The report contained an expectation that intermediate rent lets should be for at least three year fixed terms.
<https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7323>
11. To factor in these changes, and to ensure we met any legal obligations in terms of regularly updating the Tenancy Strategy, officers produced a revised draft Southwark Tenancy Strategy (Appendix A) and an updated Southwark Council Tenancy Policy (Appendix B).
12. In line with statutory requirement, the council consulted all housing associations with stock in the borough and the Mayor of London. This ran from 10th March to the end of April 2023. A low response rate was expected as Tenancy Strategies do not bind housing associations, and the proposed changes were fairly limited. The results of this exercise are included in the following section of the report.
13. A decision is now required to agree the final Southwark Tenancy Strategy and Southwark Council Tenancy Policy.

KEY ISSUES FOR CONSIDERATION

14. It is clear that the Southwark Tenancy Strategy and Southwark Council Tenancy Policy need to be updated to meet legislative requirements and to ensure the council can let intermediate rent fixed term tenancies for keyworkers. The proposed Southwark Tenancy Strategy is included as Appendix A, and the Southwark Council Tenancy Policy is included as Appendix B.

Summary of proposed changes to the Southwark Tenancy Strategy

15. The updated Southwark Tenancy Strategy is broadly the same for social rent properties. It still advocates the use of secure lifetime tenancies/assured tenancies after successful completion of an introductory period.
16. It still recognises that it will not always be possible for RPs to issue lifetime tenancies and on such occasions, they may issue fixed term tenancies, following the guidance in the tenancy strategy. It recommends a minimum five year fixed term but allows fixed terms of between two and five years in exceptional circumstances.

17. The strategy includes protections for tenants that are being temporarily decanted, those moving who are under occupiers and those fleeing violence, intimidation and hate crime. It also says lifetime/assured tenancies should be used for those aged over 60, where there is no prospect of under occupation. This also applies to those who permanently require an accessible property and there is no chance of under-occupation.
18. The tenancy strategy still contains wording to maximise security of tenure where a flexible fixed term tenancy is used for social rent, where there has been no significant change of circumstances. In cases where under occupation applies, or significant adaptations are no longer required, an alternative property could be offered.
19. For intermediate rented homes, the fixed term for an intermediate rent tenancy can be reduced from five to two years in exceptional circumstances. The Tenancy Strategy sets out that we would consider exceptional circumstances to include properties specifically for Southwark keyworkers. The fixed term period is to help encourage households to save up to buy an alternative property, and to ensure these properties continue to support the recruitment and retention of Southwark keyworkers.
20. The tenancy strategy sets out the procedure to follow at the end of the fixed term in deciding whether to offer another fixed term. It suggests considering if an income has risen significantly above £60k, and/or for keyworker homes whether the household still contains a Southwark keyworker.

Summary of proposed changes to the Southwark Council Tenancy Policy 2023

21. The updated Southwark Council Tenancy Policy is broadly the same for social rent properties. The policy maintains the commitment to secure lifetime tenancies for social rented lettings.
22. The key changes are that it states flexible fixed term tenancies will be used for the council's keyworker intermediate rent properties to help ensure their continued use by Southwark keyworkers, as defined in the Southwark intermediate rent policy.
23. The key points are:
 - A fixed term of two years will be offered, potentially followed by further two year fixed terms, to allow the keyworker time to save up a deposit to buy an alternative property, such as a shared ownership property.
 - The council may choose to include a 12 month introductory tenancy probationary period (which is extendable up to 18 months). This would be followed by a two year fixed term tenancy, on successful completion of the probationary period.

- Consultation responses and the views of some senior council officers was that a shorter fixed term was needed to ensure the ongoing use of these homes for Southwark keyworkers.
- There will be an expectation that the household saves towards a deposit, but this will not be a condition of tenancy.
- If an occupant has not already moved on, towards the end of the fixed term tenancy the council will discuss housing options with the household, and potentially notify occupants that a new fixed term tenancy will not be offered. However, the policy contains protections to ensure valued keyworkers do not become homeless.

Consultation response

24. Only two responses were received during the consultation. A low response rate was expected as housing associations operate across borough boundaries and the Southwark Tenancy Strategy does not bind them. In addition, our proposed approach is broadly consistent with how most housing associations are already operating, and the changes from 2013 are fairly minor changes (in terms of overall lettings). The two responses received were from Wandle and Notting Hill Genesis.
25. Both responders offer assured tenancies for social rent properties. Notting Hill Genesis said they do use assured short hold tenancies for market rent properties and their Tenancy Policy guides the length of tenancy. They pointed out that in the main housing associations don't use secure lifetime tenancies but use assured tenancies, which are similar. Therefore, the wording in the tenancy strategy needs to include assured tenancies.
26. Both welcomed the use of fixed term tenancies for keyworkers. They both operated similar schemes. Wandle used two year fixed terms as they felt people did not stay in jobs for long in London. Notting Hill Genesis said they use periodic assured short hold tenancies with a minimum six-month term for keyworkers. Both pointed to a need to have strong protections to gain possession/end the tenancy should the person no longer be a keyworker. Both suggested that five years might be too long a period.
27. Both welcomed having protections to prevent homelessness through having the option to offer a new fixed term tenancy, to prevent the household ending up in a worse situation than when they started, and provided the accommodation remains a suitable option.
28. Both suggested they would consider the financial situation in deciding whether to offer another fixed term, with one suggesting doing so on a case-by-case basis and the other suggesting this might apply if income goes beyond the £60k threshold.

29. All housing associations and the Mayor of London have been given an opportunity to raise their concerns. The limited response received suggests that there is nothing that requires us to significantly change our proposal from that sent out with consultation, save for some amendments that were made to reflect comments about wording in relation to secure lifetime/assured tenancies.

Policy framework implications

30. Once agreed, the revised Southwark Tenancy Strategy (Appendix A) and revised Southwark Council Tenancy Policy (Appendix B) will replace the Southwark Tenancy Strategy 2013. Housing associations, will have to have regard to the Southwark Tenancy Strategy in deciding their own Tenancy Policies.
31. For social rent the revised Southwark Tenancy Strategy and revised Southwark Tenancy Policy won't result in any policy change. While the wording has been slightly updated (given the original document was agreed back in 2013) the main overriding position is a strong encouragement to use lifetime tenancies and assured tenancies for social rent.
32. For intermediate rent, under the Tenancy Strategy, housing associations were previously able to offer fixed term tenancies. The revised tenancy strategy provides additional guidance. Housing associations operating in Southwark should have regard to this in agreeing and updating their own Tenancy Policies.
33. For intermediate rent operated by the council, Cabinet agreed in March 2020 to make use of new powers to rent homes to keyworkers at intermediate rents through the council's housing revenue account. It was agreed that units could be let on flexible fixed-term tenancies, to ensure that they are retained for keyworkers.
<https://modern.gov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7064>
Therefore, the revised Southwark Tenancy Policy (Appendix B) will provide a more detailed framework in terms of the length of fixed term tenancies used, the factors that will be considered in deciding whether to offer a new fixed term and the details about challenging any decision. The council would be unable to offer fixed term tenancies without these changes.

Community, equalities (including socio-economic) and health impacts

Community impact statement

34. Given there is no proposed change for social rent, and as the council has already agreed to use fixed term tenancies for keyworker intermediate rent, there is very limited community impact of this decision.

Equalities (including socio-economic) impact statement

35. The council will only use flexible fixed term tenancies for intermediate rent lettings. The two year fixed term will be used for all lettings regardless of household circumstances. The council may choose to include a 12 month introductory tenancy probationary period (which is extendable up to 18 months). This would be followed by a two year fixed term tenancy, on successful completion of the probationary period.
36. As stated in Section F, nine months before the end of the fixed term the council will conduct a review of household circumstances. This will include whether there are any issues in relation to vulnerability, disability, illness and households containing children that need to be taken into account in deciding whether to offer a new fixed term tenancy. There will be regard to S149 of the Equality Act 2010. For these households, cases will be referred to the Strategic Director of Housing for a decision to be made, in a fair and transparent way that ensures the appropriate level of stability for the household. These cases will be closely monitored.
37. The council is not aware of any potential equalities impacts of this proposed policy. No significant concerns were raised through the consultation on the intermediate rent housing list or the consultation on the revised Southwark Tenancy Strategy and Tenancy Policy. There is very limited data in relation to protected characteristics for people from the key priority groups. Many of the likely recipients of this housing are likely to be from the private rented sector where there is again very little data. It will be important to ensure that the scheme is closely monitored to help assess if the policy is having an unintended impact on any particular protected characteristic. This will require ongoing monitoring of those joining the list, and at the letting stage.
38. As stated in the March 2021 report, the intermediate rent housing policy prioritises certain groups of residents' access to reduced-cost rented housing in Southwark. This could have the effect of indirectly discriminating against other residents with protected characteristics under the Equality Act 2010. This could apply to women and disabled people, who may be less likely to be in work. Following the equalities impact assessment the Council concluded that any potential impact on persons with protected characteristics under the Equality Act 2010 is justified as a proportionate means of achieving a legitimate aim, namely addressing identified issues with recruitment and retention of frontline key workers in the borough. This will be reviewed periodically after the list has been in operation to ensure compliance with the duties under the Act. Care will be taken to ensure that monitoring is carried out in a way that respects the principles of the Data Protection Act 2018 and the Human Rights Act 1988.

Health impact statement

39. Maximising security of tenure for social rent has positive health impacts in terms of providing additional security to become settled in a community, to maintain links with health services, and potentially reduce stress in terms of not having to worry about having to move.
40. Protecting homes for keyworkers through flexible fixed term tenancies will help provide a continued supply of homes for people like doctors, nurses, and social workers etc. helping to recruit and retain better quality workers in these sectors, which will have positive health impacts for the wider community.

Climate change implications

41. There are very limited impacts in term of climate change from these proposals. Maximising security of tenure could result in fewer households physically having to move their belongings from home to home. Allowing fixed terms for keyworkers helps protect any council intermediate rent homes for keyworkers helping to ensure keyworkers can live more locally. This is not a decision which is likely to lead to significant impacts on climate change.

Resource implications

42. There are no resource implications from agreeing the revised Southwark Tenancy Strategy. This will be updated on the Southwark website.
43. There will be some resource implications from the Southwark Council Tenancy Policy. The council has already agreed to introduce fixed term flexible lets for keyworkers, and this is an additional step in that direction. It will result in having to train staff in how to setup these fixed term tenancies, and how to review them towards the end of the fixed term. This will include needing to provide advice, and formal notifications of decisions. It could also increase churn in the sector and potentially lead to slightly more void time, as properties are re-let, with the slight loss in rental income. These costs will be met from existing resources.
44. The changes will make better use of these intermediate rent properties as they come forward, to ensure that they are let to, and protected for keyworkers, with potential savings linked to the recruitment and retention of keyworkers.

Legal implications

43. Legal implications are included below in the supplementary advice from the Assistant Chief Executive for Governance and Assurance.

Financial implications

44. For social rent tenancies there are no financial implications from the revised Southwark Tenancy Strategy and Southwark Council Tenancy Policy. These reaffirm the commitment to lifetime tenancies. There is probably a lower void income loss as a result of this continued decision, but also potentially a reduced churn in the stock. But the council holds the position that the benefits of lifetime tenancies outweighs this.
45. Cabinet has already agreed to offer flexible fixed term tenancies in keyworker rented properties. There are potential costs involved if legal challenges are received concerning the fixed term being applied. Care has been taken to keep to a uniform period for fixed terms to reduce this potential risk. There may additional costs of administering these schemes as well as some loss of rental income between lets, however these properties will be let at 50% of market rent, slightly higher than social rent. This is expected to be outweighed by the benefits associated with the recruitment and retention of keyworkers.

Consultation

46. There was statutory consultation on the Southwark Tenancy Strategy and Southwark Council Tenancy Policy. This is set out in paragraph 12 and the feedback in paragraphs 24-29. There was previously public consultation on the intermediate housing list, which has helped to inform the overall approach to intermediate rent tenancies. More information is available in the Cabinet Report titled "Intermediate rent housing list - feedback on the consultation and agreeing the next steps." <https://modern.gov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=54064>

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance REF: [KM 26/2/24]

47. The matters that the council must address in modifying or replacing its tenancy strategy and outlining its approach to tenancy management are set out below.
48. Section 150(1) of the Localism Act 2011, requires a local housing authority to prepare and publish a tenancy strategy setting out matters that registered providers of social housing are to have regard in formulating policies relating to the following:
 - (i) The kinds of tenancies they grant;
 - (ii) The circumstances in which they will grant a tenancy of a particular kind;
 - (iii) Where they grant tenancies for a term certain and the lengths of the terms;
 - (iv) The circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

49. A housing authority must have regard to its tenancy strategy in exercising its housing management functions (section 150(3) of the Localism Act 2011). A local housing authority must keep its tenancy strategy under review and may modify or replace it from time to time (section 150(5) of the Localism Act 2011).
50. Under section 151 of the Localism Act 2011, before adopting a tenancy strategy (and before making a modification to it reflecting a major change of policy), the local housing authority must do the following:
 - (i) Send a copy of the draft tenancy strategy (or proposed modification) to every private registered provider of social housing for its district and give the private registered provider a reasonable opportunity to comment on those proposals;
 - (ii) Consult other such persons as the Secretary of State may proscribe by regulations (to date, no such regulations have been made);
 - (iii) For a London borough Council, consult the Mayor of London.
51. Consultation must be undertaken when proposals are at a formative stage and include sufficient reasons for the proposals and time for interested parties to respond. The outcome of the consultation must be taken into account when making a decision on the report's recommendations and is referred to the consultation section at paragraph 46 of this report.
52. When preparing or modifying its tenancy strategy, a local housing authority must have regard to the following:
 - (i) Its current allocation scheme under section 166A of the Housing Act 1996;
 - (ii) Its current homelessness strategy under section 1 of the Homelessness Act 2002; and
 - (iii) In the case of a London borough Council, the London housing strategy which is prepared by the Mayor of London.
53. Under the Tenancy Standard provided by the Social Housing Regulator, registered providers of social housing shall publish clear and accessible policies, which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackle tenancy fraud.
54. Providers should set out the following:
 - (i) The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered

and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term;

- (ii) Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and the needs of households with children, including through the provision of tenancies which provide a reasonable degree of stability.
55. Advice and assistance should be made available to assist tenants with finding alternative accommodation in the event that they decide not to grant another tenancy and their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.
56. Under section 3D of the Council's Constitution, the individual cabinet member is entitled to agree significant policy issues in relation to their area of responsibility.

Strategic Director of Finance

56. The Strategic Director of Finance notes the recommendations within the report. There is no financial implications for the revised tenancy strategy and tenancy policy for social rented tenancies, however, there may be potential costs associated with implementing and administering the intermediate rent housing list, however, rent will be at 50% of market rent, slightly higher than social tenancy rent and should cover the possible additional costs. At this stage, the full cost, income and scale of these schemes is not known but expected to be contained within the Housing Revenue Account.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark's Tenancy Strategy IDM Report – January 2013	Resident Services, Housing Directorate, 3 rd Floor, Hub 3, 160 Tooley Street, London, SE1 2QH	Robert Weallans 07800 656 250
https://moderngov.southwark.gov.uk/mglIssueHistoryHome.aspx?IIId=50001343&Opt=0		
Intermediate rent housing list - feedback on the consultation and agreeing the next steps – July 2019	Resident Services, Housing Directorate, 3 rd Floor, Hub 3, 160 Tooley Street, London, SE1 2QH	Robert Weallans 07800 656 250
https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=54064		
New Key Worker Housing Powers (Churchyard Row) Cabinet Report April 2020	Resident Services, Housing Directorate, 3 rd Floor, Hub 3, 160 Tooley Street, London, SE1 2QH	Robert Weallans 07800 656 250
https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?Id=7064		
Final design of the intermediate rent housing list – IDM March 2021	Resident Services, Housing Directorate, 3 rd Floor, Hub 3, 160 Tooley Street, London, SE1 2QH	Robert Weallans 07800 656 250
https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7323		

APPENDICES

No.	Title
Appendix A	The Southwark Tenancy Strategy May 2024
Appendix B	Southwark Council Tenancy Policy May 2024

AUDIT TRAIL

Lead Officer	Hakeem Osinaike Strategic Director of Housing	
Report Author	Robert Weallans Housing Strategy Manager	
Version	Final	
Dated	20 May 2024	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Assistant Chief Executive, Governance and Assurance	Yes	Yes
Strategic Director, Finance	Yes	Yes
List other officers here	N/A	N/A
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	20 May 2024	