



# **BARNET COUNCIL LOCAL TENANCY STRATEGY**

*Approved 29 June 2015*

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## 1. Introduction

The Government has given providers of social housing the option to use *fixed term flexible*<sup>1</sup> tenancies which in most cases will be for a minimum of 5 years. This recognises that at the moment, council and housing association tenancies are granted to meet an immediate need, such as overcrowding or homelessness, which may change over time resulting in homes being under-occupied or occupied by tenants who could afford to buy a home or rent privately.

The Council welcomes the additional local flexibility that such tenancies will provide, and this local strategy sets out our approach to granting tenancies for council housing in Barnet. Other providers of affordable rented homes in the borough, including Housing Associations, will need to take account of our policy when granting tenancies.

## 2. Overview

The Government is introducing changes which mean it will be possible for Council's and other providers of affordable rented homes to grant a flexible tenancy. This is a move away from the current situation whereby most affordable homes are let on a secure tenancy, which is effectively for life as long as the rent is paid and other tenancy conditions complied with.

Existing council and housing association tenants will not be affected by these changes, and will continue to enjoy their existing security of tenure and other terms and conditions, including the right to buy, succession rights and the right to exchange their tenancy with another secure tenant.

From 9 July 2012, all new tenants will be granted a one year introductory tenancy. In most cases, this will be followed by a flexible tenancy for a minimum of five years, although we will continue to grant secure or lifetime tenancies to people, for example, who are of pensionable age and those with a long term disability.

Tenants granted a flexible tenancy will enjoy many of the same rights as secure tenants, including the right to buy. Appendix 1 sets out the similarities and differences between flexible and secure tenancies in more detail.

It is also noted that Barnet Council lets properties on the regeneration estates and due to be demolished on a non-secure basis. Non-secure tenants are reassessed for their housing need when they need to move and depending on this reassessment they may in the future be allocated a tenancy according to this strategy.

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<sup>1</sup> The expression "flexible tenancy" is used throughout this strategy

### 3. Local Context

Barnet is an attractive borough with excellent schools, attractive open spaces and good transport links. This means that the demand for housing in the borough is high, and this is reflected in high property prices. Levels of home ownership are high at about 70%, whilst private rented accommodation makes up a further 16% and social housing 14%.

Access to the private rented sector for those on low incomes and benefits has become more difficult due to changes to housing benefits that came into effect in April 2011.

The supply of affordable rented homes is therefore limited and it is important that the stock that is available is used to its full potential to provide homes for those in housing need who need assistance from the council.

### 4. Objectives

The overarching objective of our tenancy strategy is to ensure that the Council's housing stock is used as effectively as possible to provide homes for Barnet residents in housing need who are unable to secure a home for themselves in the private sector. This can be achieved if we are able to help more people move on from council housing once they are in a position to sustain an alternative solution, such as home ownership or the private rented sector.

The use of flexible tenancies also provides an opportunity to help tackle under-occupation by giving the Council more opportunity to move people to smaller accommodation if they find themselves in a council property that is too big for them. This will release larger properties for those that need them, including overcrowded households. At present, the Council can offer incentives to encourage those under-occupying properties to move, but has no powers to require people in this situation to move to a smaller home. The Council will not be obliged to renew a flexible tenancy at the end of its term, and will support tenants who are under- occupying a council property to find a more suitable alternative in this situation.

The Council will seek to encourage tenants to take control of their lives by providing support when it is needed at the time of crisis, and by encouraging people to prepare for independence once their situation has improved by making it clear from the start of their tenancy that the arrangement is not necessarily a permanent one. This is particularly the case for young single people, who will be encouraged to undertake skills training or continue with their education to secure employment, and for this reason the Council will usually offer tenancies of less than five years to some young people, as set out in section 5 below.

More information about how the Council prioritises applicants for housing can be found in our Housing Allocations Scheme.

Whilst our tenancy strategy deals with the granting of tenancies for council housing, it is important to understand that those who seek assistance from the Council may also be offered other tenures as a solution to their housing need, including properties in the private rented sector and housing association homes and these may be subject to other tenancy arrangements.

## 5. Our Policy

**5.1** This section sets out the circumstances in which we will continue to grant secure or lifetime tenancies and those in which a flexible tenancy will be used. This approach takes account of the objectives set out above and the continuing rights of existing secure tenants.

All new tenants will be granted a 12 month introductory tenancy followed by a life-time secure tenancy in the circumstances listed below:

- Secure tenants whose tenancy commenced before 9 July 2012 moving to another council property - already protected in law<sup>2</sup>;
- Older people who are in receipt of the state pension and will occupy a general needs property. Data taken from the Housing Register at March 2011, showed that the joint second highest number of people housed in social housing were the over 60s. The terms of Sheltered Housing tenancies will remain the same as they are currently and will be let as secure (life-time) tenancies;
- Ex-armed forces personnel who have been both medically and honourably discharged and who have also seen active service; to be validated by the Royal British Legion;
- Households where the applicant, their spouse or a dependant child is disabled in accordance with the criteria contained in Appendix 2. These criteria would also be applied in the event that a household member becomes disabled during the period of a flexible tenancy and, as a result, become eligible for a life-time tenancy;
- Households where the applicant or their spouse is terminally ill; this would also apply in the event that a household member becomes terminally ill during the period of a flexible tenancy and, as a result, become eligible for a life-time tenancy;

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<sup>2</sup> The Council will also fulfil any undertakings made to secure tenants on our regeneration estates, Grahame Park, West Hendon, Stonegrove/Spur Road and Dollis Valley.

In all other circumstances, a 12 month introductory tenancy followed by a flexible tenancy of five years will be granted to new council tenants from 9 July 2012, with the following exception:

- Single people under the age of 25 (excluding care leavers), for example those who have been evicted by parents, will be granted introductory tenancies of one year followed by tenancies that will be reviewed every 2 years until they reach the age of 25. This is because the Council recognises the importance of encouraging young people to take responsibility for their lives and achieve independence. In return for providing a home, the Council expects young people to take full advantage of the opportunity that this provides and actively seek to become more independent through employment, education or training, and to engage with the Council and other agencies to achieve this. It is important that when a young person is granted a tenancy they are supported and receive advice, training and skills development to help them into employment and the Housing Service will work closely with Social Services and other agencies to ensure this is provided.

However, age is not the only criteria that will be used when establishing, as part of the housing assessment, the suitability of a young person of 25 or under for a two year tenancy. Other single people over the age of 25 could be offered two year tenancies rather than five depending on their vulnerability and the outcome of the housing assessment.

Applicants who are officially ineligible or do not qualify for housing, for example foreign nationals who are subject to immigration control and other people from abroad excluded by statute or regulation and do not, therefore, have recourse to public funds, will not be housed by the Council or other social landlords and will be obliged to seek their own accommodation.

As at present, the Council will initially grant all tenants an introductory tenancy for the first year. More information about introductory tenancies can be found on the Barnet Homes website at [www.barnethomes.org](http://www.barnethomes.org) and then by clicking on the Information for Tenants tab and following the links to types of tenancies.

## 5.2 Succession

There is an automatic right for a spouse or partner of a tenant to succeed to a secure or flexible tenancy and this is called a statutory succession. In the case of life time secure tenancies only, statutory succession also includes children, parents, siblings and most other close relatives who lived at the premises for twelve months immediately before the tenant died (see Appendix 1).

This statutory right only applies to the first time that a succession occurs, but beyond this, the Council will use its discretion to allow additional successions to take place in the following circumstances:

- The person applying for succession has lived continuously in the property as their principle home for twelve months before the death of the tenant and
- They are the spouse, civil partner, a close relative of the tenant, or someone who had to live with the tenant in order to provide them with care, without which the tenant could not have maintained their tenancy and
- They would qualify for the property they have applied to succeed to under the Council's allocations policy.

Where a property is not suitable for the person applying to succeed, for example because it is too large, the council will assist them to find alternative accommodation if they qualify for help under the allocations scheme, this could include an offer of accommodation in the private rented sector.

Where a discretionary succession is agreed, the tenancy will be treated as a new tenancy under the Council's Tenancy Strategy – this means that in most cases a flexible tenancy will be granted, unless the applicant falls within a category of people who will still be granted a lifetime tenancy, for example a former member of the armed forces.

### 5.3 Tenancy Reviews

No less than 8 months before a flexible tenancy is due to end, it will be subject to a review using the criteria detailed below. If it is decided, as a result of the tenancy review, that a tenancy will not be renewed, written notice advising the tenant of such will be served. The notice will contain the reasons for the decision and, at the same time, notify the tenant of their right to appeal. Should a tenant appeal and fail to have the decision overturned, the Council will be able to seek possession of the property. Our right to possession may then be challenged on the limited grounds that the landlord has made a legal error, a material error of fact, or that possession is not proportionate in all the circumstances.

### 5.4 Review Criteria

The tenancy review criteria will reflect the continuing needs of tenants, any assets they might have accrued or inherited, attitude to work / training opportunities that might have presented themselves and pressures on social housing.

Tenancies will not normally be extended where one or more the following apply:

- Households with children with a gross income that is equivalent to the median earnings in Barnet<sup>3</sup>;
- A household with no children that has a gross income that is equivalent to the median earnings in Barnet minus 15%;<sup>4</sup>
- A tenant or a member of their household who has been convicted of a of an act of civil disturbance or other criminal activity;
- The tenant has breached the terms of their tenancy and has failed to reach or maintain an agreement with the Council to remedy this breach. For example, there are rent arrears and the tenant has not agreed or maintained an agreement to clear these;
- The property is under- occupied by one bedroom or more;
- The property has been extensively adapted but for someone with a disability who no longer lives with the tenant ( this allows the property to be released for someone who will benefit from the adaptations);
- Assets – the tenant or their spouse has assets or savings greater than the amount<sup>5</sup> stipulated in the Council’s Housing Allocations Scheme which would normally exclude someone from being granted a council tenancy.
- The tenant is a young, single person on a flexible two year tenancy who has not worked or undertaken any training or education for a period of 6 months prior to the tenancy end date.

The Council recognises that there may be circumstances in which it would be unreasonable to expect someone to move even if the above criteria applied, and may allow a tenancy to continue if:

- The tenant or a member of their household is suffering from a terminal illness;
- The tenant or a member of their household has a disability in accordance with the criteria contained in Appendix 2.
- The tenant has children attending a local school.

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<sup>3</sup> Earnings are determined and updated annually by “CACI Paycheck Unequalised” Median Earnings data. Latest figure is i£40,550 (2014)

<sup>4</sup> Currently median earnings in Barnet minus 15% = £34,468

<sup>5</sup> Currently £30,000



- The tenant is a foster carer and the tenancy needs to continue to enable them to fulfil this role.
- The tenant is a care leaver and still receiving support from social services because of this.
- The tenant is participating in the Intensive Family Focus programme or where children are subject to child protection plans or care proceedings

## 5.5 Termination of a flexible tenancy

When flexible tenancies are coming to an end, it is essential that the tenant is given sufficient notice so that they can seek advice about their options. Accordingly, notice will be served 6 months before the tenancy is due to end. Well in advance of a tenancy being terminated, the Council will work proactively with the tenant who is in this situation, to assist them to explore their options for alternative housing, which could include home ownership, a privately rented home or a more suitable affordable rented home.

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

## 5.6 Advice

The Housing Officers in the Housing Needs Department of the Housing Service will be able to assist tenants with a wide range of advice to help them resolve the issues arising out the termination of their tenancies. This will include signposting to other departments within the Council and to voluntary organisations that help people with their housing issues.

## 5.7 Appeals

If a flexible tenant disagrees with the decision reached by their landlord to terminate their tenancy, they may use the appeal process as follows:

- Tenants have the right to request general information about their tenancy review, including the facts that have been taken into account and the reasons for terminating their tenancies
- Tenants who disagree with a decision made under this policy should in the first instance contact their area housing officer to explain why they think that the decision is unreasonable

- Tenants will be notified whether the decision still stands and the reasons for this, usually within 48 hours
- Tenants who wish to pursue the matter further, can make a request for a formal review of the decision within 21 days. In these cases the tenant will be invited to make a written submission stating the reasons for their request for a review and the Council will seek any further information it requires, including advice from other specialist advisers. Formal reviews will be conducted by a team leader or a manager within the Council's Housing Service who has had no previous involvement in the case. The manager or team leader will notify the tenant of the outcome of the review including the reasons for their decision within 56 days
- Where a tenant wishes to appeal the termination of a tenancy and the notice period expires during the period of the appeal, the tenant will be permitted to stay in the property where this is not likely to lead to an unreasonable delay in the property being vacated.
- If the formal review upholds the decision, the tenant then has recourse to the county court
- Should the county court uphold the decision, the tenant will be obliged to leave the property

## Appendix 1 - similarities and differences between secure and flexible tenancies

	Secure	Flexible
Term	For life of tenant	Minimum term 2 years; could be longer at discretion of the Council/Landlord
Right to exchange	Secure tenants have a statutory right to exchange their tenancy with another secure tenant, which can only be refused by the landlord on certain grounds, such as rent arrears.	Same rights as secure tenants
Right to take in lodgers and to sub-let part of the property.	Secure tenants have the right to take in a lodger or sub-let part of the property, provided that they continue to use the property as their only or principle home. Sub-letting part of the property requires permission from the Council and failure to obtain this would be a breach of tenancy.	Same rights as secure tenants
Right to Repair	Secure tenants have certain rights to ensure that their landlord deals with repairs within a reasonable timescale with a right to compensation in some circumstances	Same rights as secure tenants
Rights to consultation /information	Tenants have the right to be consulted about matters affecting their rights and tenancy conditions, and information about their tenancy	Same rights as secure tenants
The Right to Buy	Secure tenants are entitled to buy their council home after they have been a social housing tenant for five years	Legislation will extend the Right to Buy to flexible tenancies on the same basis as secure tenants
Statutory Succession	There can be only be one succession of tenancy to a spouse or partner, or close relative <sup>6</sup> if that close relative has lived at the property for a continuous period of 12 months immediately before the death of the tenant	Only a spouse or partner living at the property at the time of the tenant's death may succeed

<sup>6</sup> this includes cohabiting partners, children, parents, siblings and most other close relatives, but not foster children

	Secure	Flexible
	The Government is proposing to restrict the statutory succession to spouse or partner in future, although councils will be able to extend this to other people living with the tenant if they wish to.	
Rents	Council rents will continue to be controlled through housing benefit subsidy limits, and the Government has stated that it expects to continue with the current regime of RPI + 1%.	Affordable rents (up to 80% of market rents) could be used on relets where the additional income is used to support the development of new homes, which themselves can be let at affordable rents.
Moves	<p>The Government is proposing that where an existing social tenant moves to another social rented property, they will be granted a secure tenancy.</p> <p>For new secure tenants it will be entirely at the discretion of the Council as to the form or tenure offered.</p>	The type of tenure offered where a flexible tenant is re-housed by a council will be at the local authority's discretion.

## Appendix 2

Table 1.0. Criteria to Decide Type of Tenancy Granted to Disabled Applicants		
		Lifetime tenancy
Disability Living Allowance:		
Care Component:	Middle rate <b>plus at least two from table 2.0 below</b>	Yes
	Highest rate <b>plus at least one from table 2.0 below</b>	Yes
Mobility Component:	Higher rate <b>plus highest rate care component</b>	Yes
Personal independence payment- Daily Living Component	Enhanced <b>rate plus at least one from the additional criteria table (in table 2)</b>	Yes
Personal independence payment- Mobility Component	Enhanced rate <b>plus enhanced rate Daily Living Component</b>	Yes
Personal independence payment-	Standard rate only across Daily Living and/or Mobility Components	No

Table 2.0 Additional qualification criteria (see table 1.0 above)
Severe Disability Premium
Enhanced Disability Premium
Disabled parking badge
Employment & Support Allowance
Incapacity Benefit_ (being replaced by ESA)
Severe Disablement Allowance (being replaced by ESA)
National Insurance credits
Registered disabled with LBB
Direct Payments for an assessed period

Table 3.0 Applicants with the following will usually qualify for a Flexible Tenancy
Disability Living Allowance on its own or without any of the middle or higher rate components
Disability Premium

Disabled parking badge
Employment & Support Allowance
Incapacity Benefit_(being replaced by ESA)
National Insurance credits