

**Select Committee on the Environment – 8<sup>th</sup> March 2007**

**Report of Working Group on Choice Based Lettings and Successions.**

**Policy on Successions and Joint Tenancies**

**Purpose of Report**

1. To advise Select Committee of the findings of this Working Group, and to make recommendations in respect of policy and procedure.

**Background**

2. Full Council on 24th July 2006 resolved as follows **“This Council notes that succession of tenancy is a major and very sensitive human issue and...supports an urgent all party review of the present policy via the appropriate Select Committee with involvement of respective political housing lead members or spokespersons”**
3. The working group consisting of Cllrs Cowell, Turner, Craigie and Lowe has met on three occasions to review policy and develop proposals. Their conclusions and recommendations are as follows.

**Policy on Successions**

4. There is a set of circumstances defined in statute where a person who has been living with a secure tenant will have an absolute right of succession in the event of the tenant's death. There is a further set of circumstances where a right to succeed exists but is limited in the sense that the person will succeed but may subsequently be asked to move to more suitable property. It follows that the role of local policy is to define what will happen when the statutory right does not exist or is limited.
5. By way of context, the statutory provisions are as follows:
  - a. **The husband/wife or civil partner of the deceased tenant will always succeed (providing there has not been a previous succession)** and will be able to remain in the same property unless it is adapted or sheltered and they do not need these facilities. Where one partner survives the other in a joint tenancy, this “counts” as a first succession.
  - b. In the absence of a husband/wife/civil partner, any other family member who has been living with the tenant for at least twelve months will succeed. In this case, however, the landlord is entitled to require the successor to move to another property if this would

represent a better use of housing stock. If a move cannot be negotiated, then statute sets out that legal proceedings must commence at least six months but no more than twelve months after the death of the tenant, and also directs the court to take into account whether suitable accommodation has been offered and whether it is reasonable in all of the circumstances to require possession of the property.

6. The Working Group has also had regard to the Council's strategic responsibility to meet housing needs, including making the best use of its own housing stock.
7. Existing policy on those cases where succession cannot take place or where we have the right subsequently to require a transfer is as follows (and applies equally where the tenant has left for example to be admitted to residential care).
  - a. A permanent tenancy of the same property will be granted where:
    - The applicant would be eligible by virtue of their own age or family size for the property in question, and
    - There have been no breaches of tenancy, and
    - The applicant has been in residence for over five years, or
    - The applicant will be caring for the dependants of the deceased, or
    - The applicant gave up an equivalent property in order to care for the deceased.
  - b. Where the applicant is not eligible for the property size even after any relaxation of eligibility, which may apply if it is a low demand property, then an alternative property of average popularity will be offered. Equally, where the applicant has been resident for more than one year but less than five, an average popularity property will be offered. In both instances, up to three offers may be made.
  - c. Where the residence is of less than one year, only a low demand property will be offered (which may be the existing property if it is low demand and of an appropriate size).
8. Any applicant affected by this policy has a right to request a review, which is carried out by a more senior officer (a Principal Housing Manager at least) who has not previously been involved in the case. The options available to the reviewing officer are:

- a. To confirm that the policy has been correctly and fairly applied and that there are no exceptional circumstances meriting special consideration, or
  - b. To grant the tenancy to the applicant in specific circumstances i.e. where the property has been adapted for their physical needs or where they have learning difficulties and could not cope with a move, or
  - c. To decide that there are some exceptional circumstances, and to arrange for the case to be considered by the Special Cases Delegation Meeting. Typically, the cases referred include those where the relative left in residence has poor mental or physical health, and would have particular difficulties in adjusting to a move.
9. It is important to note that where the tenancy is granted under 8b or 8c, it will be an entirely new tenancy and carry a new right of succession.
10. In reviewing this policy, the working group was mindful of the need (and in fact the statutory duty) to balance the needs of the individual against the requirement to make the best use of the housing stock. The majority of grievances arise where a single person is left in possession of a two or three bedroomed house, which if it became vacant would be allocated to a family. The needs of the individual have therefore to be weighed against the needs of families on the waiting list. This discussion was informed by the findings of the borough housing needs survey carried out in 2006, and noted in particular that:
- a. There is a net shortfall of social rented housing in the borough of 549 units per annum.
  - b. That the average prices for first homes in the borough are £93,157 (flat) and £113,511 (terraced house), which only 43% of the new households formed in the past two years would have been able to afford.
  - c. That housing waiting lists are increasing, and the number of families with children awaiting their first tenancy has increased by 62% from 1644 in April 2001 to 2668 in April 2006.
11. Having explored the statutory provisions, the local context and the existing policy, the working group finally considered the effects in practice on existing residents. It was noted that many cases had been resolved locally without recourse to appeal, and that there were cases recorded where applicants might initially have been resistant to moving, but after a few months alone in the property were actively seeking to move and make a fresh start.
12. Where the appeals process had been used at least 10 applicants had been granted the tenancy of the property occupied, which is evidence of

the policy working as it is designed to do whilst only two cases had been recorded where it was necessary to take court action.

13. As a result of considering all of this evidence, the Working Group concluded as follows:
  - a. It would not be appropriate to adopt a blanket approach whereby residents over a certain age or having lived in a property for a particular length of time should be granted the tenancy.
  - b. The existing framework for granting tenancies where the property is of an appropriate size etc., is the best approach in principle, and rightly includes an appeals process and a proper mechanism for considering cases of hardship.
  - c. Notwithstanding the above, there are some areas of weakness in existing provision and practices, which must be addressed. In particular, applicants need to receive high quality offers of accommodation and to be given financial and/or practical assistance to move. Additionally, there should be more information about the policy tailored to the requirements of elected members and the public, and a comprehensive monitoring system should be put in place to identify the total numbers of people affected by the policy and outcomes achieved.

#### **Policy on Joint Tenancies**

14. This policy needs to be considered in conjunction with successions because joint tenancies may be requested by tenants who are seeking to protect their families from adverse effects of the law on successions.
15. Local policy on the creation of joint tenancies is as follows:
  - a. A husband/wife or civil partner may usually become a joint tenant straight away.
  - b. A partner, carer or relative may become a joint tenant after twelve months residence, but if the property is a house, or is adapted or sheltered, they would have to be eligible for such a property in their own right.
16. Reasons for requesting a joint tenancy tend to include protecting the partner/carers/relative in the event of the tenant's death, and/or improving the financial position of the household. In practice, however, housing benefit regulations do not permit an increase in benefit as a result of the creation of a joint tenancy.
17. Similarly a partner/carers/relative would not necessarily receive any additional protection from the creation of a joint tenancy, for example where the property was adapted or in a sheltered scheme.

18. The statutory Code of Guidance on Allocations suggests that “where household members have long term commitments to the home (e.g. partners, friends, unpaid live-in carers) housing authorities should normally grant a joint tenancy (but) should ensure that there are no adverse implications from the joint tenancy for the good use of their housing stock and for their ability to continue to provide for housing need.” The particular pressure on family houses makes it reasonable for our policy to restrict these tenancies to families with children.

### **Potential Improvements to Policy and Procedure**

19. The existing policy on successions could be amended as follows:
- a. Any person who has always lived with the deceased tenant and is required to move should be offered a property of an appropriate size for their needs, which is in the same area or an area of equivalent popularity. They should also be offered a disturbance package equivalent to that offered in clearance cases, together with a fixed incentive payment.
  - b. Any person who has not always lived with the deceased tenant but has at some point joined the household of the deceased tenant and is now required to move, should be assessed for rehousing purposes so that their position will be the same as if they had remained in their previous home, ie.
    - If they were council tenants they will be offered a property equivalent to the one they gave up (subject to clearing any debts or other outstanding liabilities on the former tenancy).
    - If they were not council tenants, they will be given the degree of priority on the waiting list appropriate to their previous housing circumstances.

They will also be offered basic removal expenses if they have been in residence for more than twelve months and move out prior to the issue of court proceedings.
  - c. The grounds for the Principal Housing Manager to approve the granting of a tenancy should be extended to include severe and enduring mental health needs where a change of accommodation would be detrimental.
20. The existing policy on joint tenancies was considered adequate.
21. Information explaining these policies and the reasons for them could be produced in clear and simple terms (sample to be provided at Working Group Meeting), and promoted through Home Affairs.

22. Information on these policies and the reasons for them could be made available for elected members and specifically included in new members induction briefings.
23. The consistent and equitable operation of these policies should be monitored so that information on numbers and outcomes is presented to the Director and Cabinet Member for Housing on a quarterly basis and is available for all elected members upon request.

### **Recommendation**

24. That a report is submitted to the Cabinet Member for Housing to review and take appropriate action, and that staff should receive training and procedural guidance following this revision.

### **Finance**

25. There is a financial implication in offering incentives to displaced persons, and provision will be made for this within the Housing Revenue Account.

### **Law**

26. The powers and duties of housing authorities in relation to the allocation and management of council housing are set out in the Housing Acts 1985 and 1996 and the Homelessness Act 2002.

### **Equality Impact**

27. The policy has no disproportionate effect on any particular group, and in fact preserves the ability of the Council to allocate accommodation to those in the most need.



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### **List of Background Papers**

DMBC Lettings Policy  
Housing Statutes and Codes of Guidance  
DMBC Housing Needs Survey 2006