

# **Swale Borough Council**

## **Tenancy Strategy**

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# Swale Borough Council Tenancy Strategy

## 1. Introduction

- 1.1 The Localism Act 2011 requires local authorities to develop a Tenancy Strategy to guide Registered Providers (RPs) in developing tenancy policies for their own stock and it also requires RPs to have regard to the strategy. This is in regards to the Affordable Rent tenancy which enables affordable tenancies to be granted on fixed terms with rents charged at up to 80% of local market rents.
- 1.2 Flexible tenancies are for a minimum fixed term of two years and represent a move away from life-long social housing tenancies, to tenancies for the period of need. This supports the Government's aim that social housing should be used as a vehicle for progression and mobility.
- 1.3. Swale Borough Council recognises the valuable role RPs play in helping to meet housing need. Ideally Swale would like to see a harmonised set of rent levels, tenancy terms and renewal policies across Swale, which are easy to explain to customers and best respond to local needs. It is recognised however, that RPs are independent organisations working across borough boundaries, therefore this strategy sets out broad principles it expects RPs to have regard to, rather than a detailed set of policies.

## 2. Regulatory Requirements

- 2.1 It is a regulatory requirement that RPs let their homes in a fair, transparent and efficient way, taking account of the housing needs and aspirations of tenants and potential tenants. They need to demonstrate how their lettings:
  - make the best use of available housing;
  - are compatible with the purpose of the housing; and
  - contribute to local authorities' strategic housing function and sustainable communities, including the use of local lettings plans specifically in rural parishes to meet local need.
- 2.2 The regulator also requires that RPs publish clear and accessible policies which set out how long tenancies are for, when they will be renewed, the approach to management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud.
- 2.3 In developing their policies RPs are expected to engage and consult with Swale Borough Council to ensure their policies are in line with the principles of Swale's Tenancy Strategy and to also engage with residents and stakeholders alike.

### **3. Local Context**

- 3.1 Swale is a diverse Borough with a mix of rural and urban housing markets. Private sector rental costs remain relatively low compared to some other areas within Kent, but are still significantly above Local Housing Allowance Levels and unaffordable to many residents.
- 3.2 Swale has the third largest district population in Kent, with a continually growing number of households requiring new homes, jobs and services. Population growth is forecast to continue over the coming years.
- 3.3 Levels of deprivation vary substantially across Swale. Overall, based on the 2015 Index of Multiple Deprivation, Swale is the third most deprived district in Kent.
- 3.4 The supply of affordable housing is limited and due to the economic climate delivery of new affordable housing remains low and is falling short of need.
- 3.5 The main issues that Swale faces are:
- Significant mismatch between affordable housing supply and demand
  - Difficulties in developing new affordable housing due to financial viability
  - Areas of deprivation in certain wards with high levels of unemployment
  - High level of benefit recipients in private sector and social housing
  - Increasing levels of homelessness
  - Reduced availability of affordable private rented sector homes

### **4. Affordable Housing in Swale**

- 4.1 The government defines affordable housing in the National Planning Policy Framework (March 2012) as social rented, affordable rented and intermediate housing, provided to eligible households (whose needs cannot be met through the open market at a cost low enough for them to afford) with the provision for the home to remain at an affordable price for future eligible households or include a condition for any subsidy to be recycled for the provision of supplementary affordable housing if it ceases to remain affordable.
- 4.2 In 1990 Swale Borough Council transferred all Council homes to Swale Housing Association, who are now operating as Optivo and continue to be the largest affordable housing provider in Swale with around 7000 general needs, supported and older person's homes in the Borough. There are around 8800 affordable homes in the Borough, and over 1000 'live' households on the Council's housing register. 405 households were housed from Swale's housing register in 2016/17 and 144 new affordable homes were delivered across the Borough in 2016-17.

- 4.3 The following table demonstrates Swale’s average market rent levels in the private sector, against those of Local Housing Allowance (LHA) and new affordable rent levels set at the maximum level of 80% of open market rent.

Unit size	LHA Weekly Level	Average Weekly Market Rent	Affordable Weekly Rent Level (at 80% of Market Rent)
1 bed	£115.06	£145.35	£116.28
2 bed	£143.66	£179.50	£143.60
3 bed	£162.16	£217.60	£174.08

Based on: Zoopla.co.uk Q2 2017/18

Average rent based on available properties across Swale.

Average LHA records Q2 2017/18

## 5. Objectives of the Tenancy Strategy

- 5.1 Swale’s Tenancy Strategy aims to:

- **Protect and provide stability for vulnerable people** – social housing is an essential and valuable resource for vulnerable people, this may be for life or for a period when needed
- **Promote economic activity and not disincentivise work** – the Council believes tenancy policies should encourage work and mobility
- **Make the best use of the stock** – social housing supply in Swale can never keep pace with demand and there are limited opportunities to develop new homes. There is a clear need to make the best use of the housing stock for those that most need it
- **Be fair and not ‘over subsidise’ households that don’t need it** – social housing should not necessarily be a life tenure and those that can afford alternatives should pay more rent, or consider other options so others can benefit
- **Be relatively simple to understand, administer and communicate** – the benefits of having greater flexibility over the stock should not be outweighed by the cost of administration. Simple policies which are not overly bureaucratic are supported
- **Ensure those in most need are housed** - the Council believes that local people prioritised through Swale’s allocations policy should benefit from affordable housing. Affordable homes should not be let to households without this defined need.

## 6. Tenancy Terms

### 6.1 Tenancy policies

- 6.1.1 Affordable housing no longer has to be let as a life-long tenancy and instead RP’s can choose to let a property on a fixed term tenancy. There are now a range of options available when issuing such tenancies in addition to the periodic (lifetime) tenancies traditionally issued. The minimum tenancy term that can be offered is 2 years but government has indicated that this should only be used in exceptional circumstances and that it would expect the normal minimum duration to be 5 years.

6.1.2 The Council expects that every landlord managing social housing within the Borough will publish a clear and transparent Tenancy Policy which should cover:

- The types of tenancies they will grant
- Where they grant tenancies for a fixed term, the length of those terms
- The circumstances under which they will grant tenancies of a particular type
- The circumstances under which a tenancy may or may not be reissued at the end of the fixed term, in the same property or in a different property
- The way in which a tenant or prospective tenant may appeal 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 expiry of the fixed term
- Their policy on taking into account the needs of those who are vulnerable, by reason of age, disability or illness, and households with children, including through tenancies which provide a reasonable degree of stability
- The advice and assistance they will give to tenants on finding alternative accommodation in the event they decide not to grant a further tenancy.

6.1.3 The Council expects that in instances whereby a property has been adapted to meet the specific needs of a household member and is no longer required, RP's will put in place the appropriate measures to facilitate a move to an alternative suitable property that meets the current needs of the household. The Council also requires RP's to re-let any properties that are adapted to households that best match the adaptations within the property.

## **7. Swale's Strategic Position**

### **7.1 Introductory/Starter tenancies**

7.1.1 Swale Borough Council supports the use of 1 year introductory or probationary tenancies followed by fixed term tenancies. Fixed term tenancies provide a way of making the best use of limited stock and linking tenancy renewal to behaviour and responsibilities.

7.1.2 It is desirable that all new social tenancies across the Borough are on similar fixed terms, rather than there being a hierarchy of tenancies which are difficult to explain to customers.

### **7.2 Fixed term tenancies**

7.2.1 Two year tenancies should only be issued in exceptional circumstances for example where there is a strong likelihood that the tenant will only require the tenancy for a short duration or where the property is only available for a short, fixed term.

7.2.2 The Council believes that the normal minimum tenancy term that should be provided by RP's in Swale is 5 years. The use of short fixed term tenancies may result in increased costs for housing providers due to additional administration related to tenancy reviews and increased voids and it therefore recognises that providers may want to minimize this by offering longer tenancies. However, this needs to be balanced against the need to make best use of the housing stock and the Council would expect the rationale for adopting a particular approach to be clearly set out in tenancy policies.

7.2.3 RP's are expected to monitor the impact of fixed term tenancies on local communities and to identify to the Council any potential situations where their use appears to be having a detrimental impact on the sustainability and cohesiveness of a particular community. The Council will be prepared to consider the implementation of an agreed localised lettings plan to address any such issues

### **7.3 Lifetime tenancies**

7.3.1 The provision of lifetime tenancies will be appropriate for some households. This includes households where the circumstances which led to them being granted a tenancy are unlikely to change over time. Examples include people with long term health conditions, a learning difficulty and older people living in specially designated housing such as sheltered housing and extra care housing.

### **7.4 Circumstances when a different type of tenancy can be granted**

7.4.1 Tenancy Policies developed by RP's should clearly set out the circumstances under which different types of tenancy are to be granted and must clearly support the strategic objectives of this Strategy. Tenancy Policies should be reviewed on a regular basis and must meet the requirements of national tenancy standards produced by the relevant regulator.

### **7.5 Tenancy renewal and advice and assistance**

7.5.1 Whether a tenant will be able to remain in social housing at the end of the fixed tenancy will depend on the landlord's tenancy policy. RP's are expected to review a fixed term tenancy six months before it is due to end to decide whether it should be renewed and must publish clear guidance on the process and assessment criteria to be used in deciding if the tenancy should be renewed.

7.5.2 The procedure for RP's who decide not to grant another tenancy at the end of the fixed term is set out in the Localism Act. A court can only refuse possession if the correct procedure has not been followed by the landlord or if the court is satisfied that the decision not to grant another tenancy was otherwise 'wrong in law'.

7.5.3 It is essential that RPs clearly communicate renewal terms to new tenants when they are offered fixed term tenancies so they understand that in most circumstances tenancies will be renewed. This will help people, particularly those that are vulnerable, feel connected and settled and also able to contribute to their local areas and to invest in their homes.

7.5.4 Social housing also comes with responsibilities and there should be a link between expected behaviour and tenancy renewal which needs to be strongly communicated at the start of the tenancy.

7.5.5 The following principles are supported for tenancy renewal:

- The tenancy renewal meeting should be timed to give enough time to consider all the issues and for appeals to be made
- It should be used as an opportunity to link the household to any necessary support including employment support
- Tenancies should not be renewed if households are under occupying and alternatives should be offered to meet needs
- Tenancies should not be renewed where there has been a serious and persistent breach of the tenancy agreement such as anti-social behaviour and criminality.
- Before making the decision not to renew, the impact on wider family members needs to be taken into account along with the impact on the community and neighbours
- Consideration should be given to not renewing tenancies where the tenant is not engaging in the review process, however any vulnerability issues need to be fully taken into account
- Income and capital should be taken into account and other appropriate housing options discussed; such as intermediate housing, exercising the Right to Buy or other private alternatives.

## **7.6 Income and capital levels and renewal**

7.6.1 Many households that have increased their incomes and levels of savings, will still need to remain in Swale for employment, family or having children at local schools, and may not be able to afford market or intermediate housing in the Borough to meet their needs. In circumstances where households with higher incomes and levels of capital are unable, or don't want to move, the Borough Council supports charging more rent (which would be reinvested back into social housing), rather than not renewing tenancies.

7.6.2 When calculating income and capital, the Borough Council supports taking all of the tenant's income into account plus that of household members, although it will need to be recognised that some young people will be saving to move on and live independently.

## **8. Succession**

- 8.1 Fixed term tenancies provide the opportunity to make the best use of social housing for those that need it most. Only one right of succession to a spouse or partner is supported. It is acknowledged that some immediate family members of a deceased tenant would not be eligible for social housing in their own right, but may not have lived anywhere else.
- 8.2 In these circumstances, where the immediate family member has been part of the household for at least five years, Swale supports a discretionary succession into a property which meets their needs, for at least a 2 year non-renewable term. This will give them an opportunity to plan for alternative housing and some short term stability following bereavement, however, this decision ultimately rests with the RP's.

## **9. Appeals and Complaints**

- 9.1 The regulator requires RPs to set out the way in which a tenant or prospective tenant may appeal against or complain about the length of the 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.
- 9.2 Swale Borough Council expects RP tenancy policies in this area to:
- Set out to whom appeals or reviews should be made (this is expected to be a more senior officer that wasn't involved in the original decision) and how they can be made
  - Give timescales for dealing with appeals or reviews
  - Set out how the tenant can take their appeal or review further if they are dissatisfied with the response i.e. to a tenant panel or Housing Ombudsman and where they may get independent advice
  - Be accessible and easily available i.e. published on websites/available in local offices.
  - The procedure by which a tenant may seek a review of a decision not to grant another tenancy is set out in secondary legislation (The Flexible Tenancies (Review Procedures) Regulations 2012).

## **10. Affordable Rented Housing**

- 10.1 The Shared Ownership Affordable Homes Programme 2016-21 (SOAHP) funds the development of new shared ownership homes and some affordable rent tenure (ART) homes. ART enables RP's to charge rents of up to 80% of local market rents for new homes and a proportion of re-lets, but only where this is part of their agreement with government to build new homes. The ceiling of 80% is inclusive of service charges, and in Swale these rents should be set below the LHA rate.

- 10.2 Whenever an affordable rented home is let either by granting a new tenancy or renewing an existing one, providers are required to review the rent, to ensure that the rent remains no more than 80% of the relevant market rent.
- 10.3 The government's Affordable Rent policy objectives are:
- to maximise the delivery of new social housing, making the best possible use of constrained public subsidy and the existing social housing stock over the next Spending Review period, and matching delivery of new build to areas of housing need; and
  - to provide an offer which is more diverse for the range of people accessing social housing, providing alternatives to traditional social rent and making the provision of social housing more flexible.
- 10.4 PPS 3 was revised on 9 June 2011 to include the following definition of Affordable Rent:
- “Affordable rented housing is:  
Rented housing let by RP’s of social housing to households who are eligible for social rented housing. Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.”*
- 10.5 The affordable rent model is intended to enable RP’s to secure additional financial capacity for the provision of new homes.
- 10.6 While initiatives aimed at increasing the supply of affordable homes are to be welcomed it is important that we ensure the flexibilities are used in a way that benefits our local communities.
- 10.7 It should also be noted that RP’s are free to undertake the delivery of other types of new social or market housing, funded entirely from their own resources, without entering into an agreement with the Homes England.
- 10.8 The Council expects RP’s to comply with the Homes England Tenancy Standards and use a valuation of market rent in accordance with a RICS recognised method so as to ensure a consistent and transparent approach to the valuation of market rents.

## **11. Affordable Rent Implications**

### **11.1 Affordable housing supply**

- 11.1.1 The Council recognises that RP’s who build new social homes with grant assistance provided by the Homes & Communities Agency will be expected to let these homes at an affordable rent. However, they do have discretion over

the number of existing homes that will be converted to affordable rent when they become available for re letting.

11.1.2 Affordable rented housing can have a role to play in meeting housing need within the borough but it is also important to ensure there is an adequate supply of housing for those on the lowest incomes, who are unable to access market housing and may not have the funds to be able to access affordable rented housing.

11.1.3 The additional borrowing capacity RP's will benefit from via conversions to affordable rent and shared ownership should help to maintain the general supply of affordable homes but the Council is aware that this funding is not ring fenced for use in those areas where homes are converted. There has been a relatively low level of affordable housing delivery in the Borough in recent years a problem that has been exacerbated by housing market difficulties. Consequently, in order to give strategic housing support the Council would wish to see a commitment from RP's that a reasonable level of local reinvestment would occur.

## **11.2 Affordability**

11.2.1 Evidence suggests that affordable rent levels in parts of Swale would fall at or below the Local Housing Allowance (LHA) rate and that the difference between an average Social rent and an average Affordable rent is likely to be lower than in many other local authority districts in Kent.

11.2.2 However, the Council recognises that market rent levels can vary significantly across the Borough and that in higher value areas, there is the possibility that the Affordable rent for some property types could exceed the LHA rate. Given these local market variations we would expect RP's to discuss development proposals with the Council at an early stage so that full consideration can be given to the potential impact of charging affordable rents on a scheme by scheme basis.

11.2.3 The Council's view is that wherever possible Affordable rent levels should be charged at the full 80% of market rent, for all general needs relets and new homes built, but in most circumstances should not exceed LHA rates.

11.2.4 The Welfare Reform and Work Act 2016 requires registered providers of social housing in England to reduce social housing rents by 1% a year for 4 years frozen from a 2015 to 2016 baseline. For social rent properties, the reduction applies to the rent element and not to service charges, for most Affordable Rent properties; the reduction applies to the total amount, inclusive of service charges.

11.2.5 The need to provide access to affordable housing across the whole of the Borough is also an important consideration as far as the conversion of properties from social rent to affordable rent or shared ownership is concerned. each year for ten years.

11.2.6 RP's should notify the Council of their intentions of the level of rent they will charge when re-letting properties within the Borough. RP's should ensure that rent levels for properties are still accessible and can be let to those working on low wages in all areas, including rural.

### **11.3 House types**

11.3.1 Evidence shows that the difference between social rent and affordable rent levels increase in accordance with the number of bedrooms and that in higher value areas, the conversion of affordable rent will cause affordability problems for households receiving housing benefit under the £20,000 per year family benefit cap. Consequently, the Council favours 4 bed houses remaining as social rent unless it can be clearly demonstrated that it will not have a detrimental impact on the availability and affordability of such homes for people in housing need.

### **11.4 Welfare reform**

11.4.1 The Government is reforming welfare benefits through a universal credit system, housing benefit cap and reducing welfare benefits to some under occupying households. The Council therefore expects RP's to be mindful of the impact of these changes and the need to help under occupying tenants affected, move to smaller housing where they wish to do so.

### **11.5 Lettings**

11.5.1 The Council expects that affordable rent properties will be allocated in the same way that social rent properties are now, through Kent Home Choice. The existing regulatory obligation on providers to co-operate with local authorities' strategic housing function on the allocation of social rent properties will also apply to Affordable Rent. Similarly existing lettings arrangements operated by local authorities and housing associations should continue to apply and we expect that Affordable Rent properties will be made available through choice-based lettings.

### **11.6 Mobility**

11.6.1 The Council recognises that the tenancy rights protection given to tenants looking to transfer to another social rent property does not apply to affordable rent properties and that this has the potential to discourage tenant mobility. We therefore believe that landlords should offer transferring tenants the same type of tenancy they already have although at the higher affordable rent level.

## **12. Equalities**

12.1 The public sector equalities duty under the Equality Act 2010 requires public bodies in exercising their functions to have due regard to the need to:

- **Eliminate unlawful discrimination** – i.e. harassment, victimisation
- **Advance equality of opportunity** – between people that share protected characteristics and those that do not
- **Foster good relations** – between people that share protected characteristics and those that do not.

12.2 People have protected characteristics due to; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

12.3 As determined by case law the duty applies to RPs when carrying out public functions. It is likely that most RPs are carrying out public functions in rent setting, managing and terminating social housing tenancies.

12.4 Equalities Impact Assessments on tenancy policies are considered the best way of demonstrating due regard.

### **13. Monitoring and Review**

13.1 The Council will monitor and review the Tenancy Strategy as necessary to ensure that it continues to have regard to the Council's allocations policy and Housing and Homelessness Strategy

The Council will monitor:

- The number of under occupying households (those living in a property that has more bedrooms than is needed) re housed via the Housing register
- The number of homeless households re housed in the private sector via the governments annual return
- Percentage of new homes let at affordable rent

13.2 It will also consider changes in market conditions and the impact this may have on affordable rent levels and housing affordability as well as the impact of welfare benefit changes, particularly housing benefit.

13.3 This monitoring and review will inform future changes to the strategy and we will expect registered housing providers to assist with this process by providing statistical information when requested.