

TENANCY POLICY

Update 2018

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1. Introduction

- 1.1. This document sets out Dartford Borough Council's Tenancy Policy. It sets out how the Council intends to make use of legislation contained within the Localism Act 2011 relating to flexible tenancies. Registered providers operating in the area must have regard to this Policy and the Council's Tenancy Strategy when formulating their policies on flexible tenure and affordable rent.
- 1.2. It should be noted that flexible tenancies will only be issued to **NEW** tenants. **EXISTING** tenants will not be subject to these proposals and will retain their secure tenancies even if they exchange their property with another Dartford Borough Council secure tenant. The exception being where a secure tenant becomes a demoted tenant, in line with our Demoted Tenancy Policy, in which case the Council will consider granting a flexible tenancy for a period of two years when the demoted tenancy ends.
- 1.3. The new flexibilities will be used to support the Council's objective of ensuring that the best use is made of our existing stock and that people have access to good quality housing for as long as they need it. Our Policy will also ensure that a person's housing circumstances do not become a barrier to home ownership aspirations or access to other suitable tenures.
- 1.4. In order to be able to respond effectively to the demands placed on a limited social housing resource, we will be offering 5 year flexible tenancies, with the possibility of renewal. This will allow tenants to have some degree of stability and enable them to invest in their home and community.
- 1.5. Our Tenancy Policy sets out:
 - Who will be given a secure or flexible tenancy
 - The rights of flexible tenants
 - What happens at the end of the flexible tenancy
 - When we will give another flexible tenancy
 - When we will end a flexible tenancy
 - How we will provide advice and assistance in finding an alternative home
 - How we will carry out income assessments
- 1.6. Homes managed by housing associations are not covered by this Policy, and they may have different policies in place. If a flexible tenant exchanges with a tenant in housing association stock, they will do so under the terms of the housing association's tenancy and policies and vice versa.
- 1.7. A glossary of key terms is included at Annex 1.
- 1.8. Criteria to decide the types of tenancies granted to disabled applicants can be found at Annex 2.

1.9. Frequently asked questions can be found at Annex 3.

2. Secure and Flexible Tenancies

- 2.1. We will give a **secure** (lifetime) tenancy to existing secure tenants transferring or succeeding to a new tenancy in Council owned stock. This includes existing secure tenants who are moving into Council owned supported housing [We will also give a secure tenancy to tenants who are moving into Council owned stock and are a tenant of the Housing Association under an existing assured tenancy].
- 2.2. For all other tenants, we will give a 12 month introductory tenancy first, in line with our existing Introductory Tenancy Policy
- 2.3. Following the successful completion of the introductory tenancy we will give a flexible tenancy of five years to all **NEW** tenants; the **exceptions** being qualifying tenants as set out in section 2.4. below
- 2.4. Qualifying households where we will continue to grant secure lifetime tenancies on the successful completion of the introductory tenancy are as follows:
- All new tenants who are eligible to enter into a council owned supported housing scheme for older people (current criteria is aged 55+ with a supported housing need.)
 - Older people who are in receipt of a state pension and who will occupy a general needs property.
 - Serving members of the regular forces who are suffering from a serious injury, illness or disability which is wholly or partly attributable to their service
 - Ex armed forces personnel who have been medically and honourably discharged unless the date of their discharge was more than 5 years before the date of their application for housing.
 - Bereaved spouses or civil partners of those serving in the regular forces where (i) the bereaved spouse or civil partner has recently ceased, or will cease to be entitled, to reside in Ministry of Defence accommodation following the death of their service spouse or civil partner, and (ii) the death was wholly or partly attributable to their service
 - Existing or former members of the reserve forces who are suffering from a serious injury, illness, or disability which is wholly or partly attributable to their service
 - Households where the applicant, their spouse or a dependent child is disabled in accordance with the criteria contained in Annex 2. This may be reviewed from time to time, depending on individual circumstances.
 - Households where the applicant or spouse is terminally ill, or where the applicant or spouse becomes terminally ill during the period of the flexible tenancy.
- 2.5. We will offer tenancies in line with our current Allocation's Policy.

2.6. It is important to note that where we offer homes by other landlords through Kent Homechoice we can only offer the tenure **specified by the landlord**.

3. Tenant's Rights

3.1. Our responsibilities and tenant's rights are set out in our Flexible Tenancy Agreement.

3.2. We will give flexible tenants (in line with our Flexible Tenancy Agreement), the right to:

- Assignment (see Glossary)
- Succession (see Glossary)
- Transfer or mutual exchange
- Take in lodgers
- The right to sub-let part of the property with our consent (but not to fully sublet the home)
- Have repairs carried out
- Buy their property in line with the Government's current Right to Buy Policy
- Work from home in line with our Home Enterprise Policy
- Keep pets (in line with our Flexible Tenancy Agreement)

3.3. Flexible tenants will **not** have the right to make alterations or improvements, unless these are agreed in advance in writing by the Council. Please note that the requirement to obtain prior approval is **in addition** to any other consents and approvals that may be needed to carry out the works under planning and building control laws. Application for approval under the tenancy agreement must be made separately to Housing Services.

3.4. Flexible tenants will **not** be compensated for making any agreed alterations or improvements to the property.

3.5. We will explain to tenants at the start of their tenancy:

- The terms and conditions of their flexible tenancy, including their rights and responsibilities
- The process of renewing and ending a tenancy at the end of the flexible tenancy
- Under what circumstances the tenancy could be ended
- The advice and assistance to be provided if the flexible tenancy is not renewed

4. What happens when the flexible tenancy is coming to an end?

- 4.1. We will review the tenancy at least nine months before the tenancy is due to end.
- 4.2. We will outline what we intend to do at the end of the tenancy in a written notice called a 'minded to' notice. We will serve this notice not less than six months before the tenancy is due to end.

This notice will:

- Explain whether or not we are proposing to grant another tenancy at the end of the flexible tenancy
- set out the reasons for this decision
- Provide information on the review process, how to get help and our obligation to provide advice and assistance.

- 4.3. When the flexible tenancy ends we will either:

- Give the tenant a new flexible tenancy of 5 years at the same home [However, in exceptional circumstances we will give a new 2 year flexible tenancy. (see 6.3 below)] OR
- End the tenancy and provide advice and assistance in finding an alternative home

- 4.4. During the review process, we will carry out an assessment of a household's circumstances before any decision is made. We will also carry out an income assessment taking into consideration household income and savings (see Section 9). We will assess each case individually.

- 4.5. If we decide not to grant another tenancy at the end of the flexible tenancy, for any of the reasons outlined in this policy, we will serve a Notice on the tenant giving them not less than two months' notice in writing stating that the Council requires possession of the property. The Housing Manager will authorise the serving of the Notice.

- 4.6. We will evict tenants if they do not leave their home in the timescales contained within the Notice by applying to the Court for a possession order. Unlike secure tenancies, the Council does not have to prove any grounds for possession.

- 4.7. Where we decide to end the tenancy we will give appropriate advice and assistance to help the tenant find alternative accommodation. The main purpose of this advice and assistance will be to ensure tenants are aware of the different housing options available to them, given their particular circumstances, and have appropriate support to access those different options.

This will include:

- Advice on alternative housing options, i.e. private rented or home ownership
- Debt or benefits advice or referral to an appropriate agency

The Council has no obligation to re-house tenants where a flexible tenancy has ended and it has not granted another tenancy.

- 4.8. When we review a tenancy we will consider whether the tenant is over or under-occupying their property, and whether the property is still suitable for their needs (in line with our Allocations Policy). In making our decision as to what will happen at the end of the flexible tenancy, we may propose giving the tenant another tenancy in alternative accommodation of a size suitable for their needs (as set out in Section 8).

5. Your right to appeal a decision

- 5.1. A tenant has the right to appeal any proposal by the Council not to give them another tenancy of their home, as set out in the 'minded to' notice. Any appeal must be submitted within 21 days of the service of that notice. The Officer that will hear the appeal will be a person of greater seniority than the person who made the original decision and independent from the person who made the original decision.

- 5.2. The independent Officer will consider:

- If the decision not to give another tenancy of the tenant's home is in accordance with the Council's Tenancy Policy
- If the correct procedures have been followed
- If the decision is proportionate considering the circumstances and needs of the tenant

- 5.3. The independent Officer can either:

- Confirm the original decision as set out in the 'minded to' notice
- Decide that the tenant should be given another tenancy of their home on the expiry of the flexible tenancy

6. When we may not give another flexible tenancy at the end of the fixed term

- 6.1. When a flexible tenancy comes to an end we may not give the tenant another flexible tenancy if the following applies:

- a) Serious and/or persistent breaches of tenancy conditions
- b) Serious rent arrears (at least eight weeks rent is owed by the tenant at the time the 'minded to' notice is sent)
- c) Serious or persistent anti-social behaviour
- d) Using the home for illegal or immoral purposes
- e) Letting the home fall into disrepair through neglect, waste or default
- f) Illegal occupation

- g) Where works are planned on a property in the next five years (which would require its redevelopment or demolition)
- h) Illegal sub-letting
- i) The property has been abandoned
- j) The property is not being used as the main home
- k) The Council has served upon the tenant a Notice of Seeking Possession for rent arrears. (A tenant will not be considered to be in breach of this condition where the rent arrears are a direct result of delays in payment of housing benefit to which the tenant is entitled, and have not been caused by the tenant's acts or failure to act, for example, delays in providing information or documentation to process the claim for housing benefit)
- l) They have a household income above certain financial thresholds
- m) They have household savings exceeding £40,000 (Based on the level of deposit required to buy an average priced property in the area)
- n) They own, or their spouse or partner owns, a residential property

6.2. We may also end the flexible tenancy at any time by serving a Notice of Seeking Possession for the reasons outlined in points **a-k** above.

6.3. We will apply to the courts for a possession order under Schedule 2, of the Housing Act 1985 as amended (Grounds for possession can be found in the Flexible Tenancy Agreement).

6.4. A tenant must end a flexible tenancy by giving the Council 4 weeks' notice in writing; in line with the conditions set out in the Flexible Tenancy Agreement.

6.5. As set out in section 4.8, if the tenant's home is too large or too small for their needs or is no longer suitable for their needs we may propose giving the tenant another tenancy but of a different property.

6.6. Where a tenant has breached their tenancy in a minor way during the period of their flexible tenancy we will still consider giving them a new flexible tenancy. Minor breaches include:

- Minor rent arrears
- Minor intentional damage, for example breaking a door, Not carrying out essential repairs that the tenant is responsible for
- Carrying out alterations or improvements, such as removing doors
- Low level anti-social behaviour (as set out in the Council's Introductory Tenancy Policy)

6.7. If we are proposing to grant a tenant a further flexible tenancy this tenancy will normally be for a period of 5 years. However, if a minor breach or breaches of the tenant's existing flexible tenancy remains unresolved or there has been a history of persistent minor breaches, for example persistent minor rent arrears, we will normally only consider giving the tenant another tenancy for a period of 2 years. The Head of Housing will make this decision.

6.8. Where a joint tenant no longer lives in the home we will consider issuing a new tenancy in the name of the remaining tenant in line with our Allocations Policy.

6.9. Where we propose giving a tenant another flexible tenancy, we will tell the tenant in the 'minded to' notice at least six months before the end of the flexible tenancy and we will give the tenant a new tenancy agreement on the expiry of the old one.

7. Ending a Flexible Tenancy early

7.1. We may end the flexible tenancy at any time by serving appropriate Notices on you and applying to the court for a Possession Order. Some of the reasons we may use to recover possession include, but are not limited to, the following:

- Serious and/or persistent breaches of tenancy conditions
- Serious rent arrears (at least 8 weeks rent is owed by the tenant at the time the 'minded to' notice is sent)
- Using the home for illegal or immoral purposes
- Letting the home fall into disrepair through neglect, waste or default
- Illegal occupation
- Where works are planned on a property in the next five years (which would require its redevelopment or demolition)
- Illegal subletting
- The property has been abandoned
- The property is not being used as the main home

7.2. We will apply to the courts for a Possession Order under Schedule 2 of the Housing Act 1985 as amended (grounds for possession can be found in the Flexible Tenancy Agreement).

7.3. A tenant must end a flexible tenancy by giving the Council 4 weeks' notice in writing, in line with the conditions set out in the Flexible Tenancy Agreement.

8. When we will help tenants in priority need to find a suitable alternative home

8.1. We will help tenants in priority need (as defined by the Homelessness Act 1996, as amended by the Homelessness Act 2002) and in need of social housing to find an alternative home where:

- The home is under-occupied (it is too big for the tenant's needs)
- The home is over-occupied (it is too small for the tenant's needs)
- The home is unsuitable for the tenant's needs and we are unable to reasonably adapt it
- The home is designed for disabled households and the tenant does not need or no longer needs the facilities

- 8.2. We will assist eligible tenants (as defined in 8.1.) to find a new home through Kent Homechoice. Tenants will be placed in a priority band and will be expected to bid for a property of their choice that meets their needs.
- 8.3. If a tenant does not actively bid for a property within six months after the receipt of the 'minded to' notice setting out the Council's proposal not to grant them a new flexible tenancy of their home, a direct offer of suitable accommodation to the tenant will be made. If a tenant refuses the direct offer of suitable alternative accommodation we will apply to the court for a possession order
- 8.4. If we are unable to find a suitable home before the end of the flexible tenancy we may allow the tenant to remain in occupation by implementing a weekly periodic tenancy which arises automatically at the end of the flexible tenancy, as specified under Section 86 of the Housing Act 1985, until suitable alternative accommodation can be found.

9. Income Assessment

- 9.1. All tenants will be required to supply evidence of their financial income and resources on an **annual** basis (as set out in the Flexible Tenancy Agreement). Where applicants are not able to show current entitlement to Income Support, verification of income and savings will be required before the Council can consider whether to offer another flexible tenancy. Where a household has an income above the level set by the Council, as detailed in Table 1, **or has £40,000 or more in savings, or has acquired a residential property**, the applicant/s will normally only be offered advice or assistance in finding alternative accommodation.
- 9.2. Income will be assessed using the formula set out in the table below which will be updated on a regular basis or as necessary, for example upon application to join the housing register, where an offer of housing is made, or at review stage. When a flexible tenancy is to come to an end and the household's income exceeds that required for number of bedrooms, alternative housing options may need to be sought in the private sector.
- 9.3. The formula is based on the cost of private renting in Dartford against income and the assumption that no more than 30% of net income should be spent on housing costs for it to remain affordable. This criterion also applies to people wishing to join the Council's Housing Register.

Table 1. Income thresholds by bedroom size – 2018

PROPERTY TYPE	Average monthly rent £	Average weekly rent £	Average yearly rent	Average net salary required assuming no more than 30% of net salary is spent on housing costs (rounded to nearest £)	Average Net weekly Salary	Gross Salary Threshold (assuming a standard rate of income tax)	LHA 2018
STUDIO FLAT	550	137.50	6600	£ 21,978	£ 423	£ 28,571	72.97 (shared accommodation. rate)
1 BED	769	192.25	9228	£ 30,729	£ 591	£ 39,948	£124.69
2 BED	996	249.00	11952	£ 39,800	£ 765	£ 51,740	£157.61
3 BED	1275	318.75	15300	£ 50,949	£ 980	£ 66,234	£174.43
4 BED	1510	377.50	18120	£ 60,340	£ 1,160	£ 78,441	£257.16

9.4.A household is defined as lead tenant and spouse or joint tenants and any non-dependents who are working, including lodgers and sub-letters. The following table shows the level of contribution counted towards household income for non-dependents. These are based on current Housing Benefit non-dependent deductions which are reviewed annually.

£ Weekly income of:	£ Gross annual contribution
408.00 or more	4877
Between 328.00 - 407.99	4440
Between 246.00 - 327.99	3902
Between 189.00 - 245.99	2384
Between 129.00 - 188.99	1736
Less than £129.00	756

For example, a household requiring a two bedroom property, where gross salary meets or exceeds £51,740 **will not** normally be given another flexible tenancy; however, average income levels will be considered over the **last three years** of the flexible tenancy. Households over the income threshold at the point of application will not be eligible to join the Council’s Housing Register.

In this case and in all the cases highlighted above, including the threshold for savings, accommodation will need to be sought within the private housing sector.

10. Review

We will review our policy every three years or earlier to address legislative, regulatory, best practice or operational issues.

Annex 1. Glossary of key terms

Key Terms	Description
Assignment	Tenants have a right to transfer the tenancy of the property to their husband, wife, partner or civil partner who is living at the property as their only or principal home
Succession	On the death of a tenant, one person has a right to succeed to the tenancy, provided the tenant was not themselves a successor where: <ul style="list-style-type: none"> a) The tenant has a joint tenancy. The successor is the surviving joint tenant b) The husband, wife, civil partner or partner was living at the property as their only or principal home at the time of tenant's death.
Flexible Tenancy Agreement	This is a legal agreement setting out the rights and responsibilities of the tenant and the landlord. It sets out the terms and conditions of the rental arrangements.
Introductory Tenancies	This is a legal agreement setting out to protect the rights and responsibilities of the tenant and the landlord. It sets out the terms and conditions of the rental arrangements. We issue introductory tenancies to all new tenants for the first year.
Flexible Tenancy	This is a legal agreement setting out to protect the rights and responsibilities of the tenant and the landlord. It sets out the terms and conditions of the rental arrangements. The tenancy is given for a fixed period of time.
Minded to Notice	This is the notice to inform tenants of what the Council intends to do at the end of the Flexible Tenancy.
Notice of Seeking Possession	A notice served on a tenant to advise them that their landlord is applying to the Court for a possession order.

Annex 2 – Criteria to decide type of tenancy granted to disabled applicants

		Lifetime tenancy
Disability Living Allowance		
Care Component	Middle rate plus at least two from table 1 below	Yes
	Highest rate plus at least one from table 1 below	Yes
Mobility Component	Higher rate plus highest rate care component	Yes

Table 1. Additional qualification criteria (see above)

Severe disability premium
Enhanced disability premium
Disabled parking badge
Employment and Support Allowance
Incapacity Benefit (being replaced by ESA)
National Insurance credits
Registered disabled with LBB
Direct payments for an assessed period

Table 2 – 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 components
Disability Premium
Disabled parking badge
Employment and Support Allowance
Incapacity Benefit (being replaced by ESA)
National Insurance credits

Annex 3 - Frequently Asked Questions

<p>What is a tenancy policy?</p>	<p>Under the Localism Act 2011 all housing providers with stock must publish a policy on how they issue different types of tenancies. This is called a tenancy policy.</p> <p>Other social housing providers (housing associations) in Dartford are expected to take account of this policy when making their own decisions on tenancies.</p>
<p>Why is the Council operating flexible tenancies?</p>	<p>There is a very limited supply of council housing and strong demand for it.</p> <p>Flexible tenancies mean that council homes will become available more regularly as people move into alternative accommodation.</p> <p>This will help the Council ensure that council homes are available for people in the greatest housing need.</p>
<p>What is a tenancy?</p>	<p>A tenancy is a legal document that sets out the terms under which you are allowed to live in your home and explains your rights and responsibilities and that of the Council as your landlord,</p> <p>The Council provides introductory tenancies, flexible tenancies, 'and secure tenancies.</p> <p>Tenancies may become demoted tenancies following the granting of a demotion order by the Court.</p> <p>If you are a new tenant you will be given an introductory tenancy for the first year.</p>
<p>What is an introductory tenancy?</p>	<p>All new tenants are given a 12-month introductory tenancy.</p>
<p>What is a flexible tenancy?</p>	<p>This is a fixed term form of tenancy that is limited to two or five years</p> <p>The length of the tenancy depends on the tenant's circumstances. We will review flexible tenancies at least nine months before the end of the term.</p>
<p>What rights to flexible tenants have?</p>	<p>Flexible tenants will have the same rights as secure tenants except the right to be compensated for alterations and improvements.</p>
<p>What is a 'lifelong' secure tenancy?</p>	<p>This tenancy lasts as long as the tenant wants it. The tenant can continue to live there as long as they pay their rent and observe the tenancy conditions.</p> <p>Housing association tenants with the same type of tenancy have what is called an 'assured' tenancy</p>

Who will be given a 'lifelong' secure tenancy?	We will only consider giving a 'lifelong' secure tenancy to applicants listed in section 2.4 of this policy.
I am an existing secure or assured tenant, what happens to my tenancy?	The rights of existing secure tenants are protected by law. You will not be affected by the introduction of flexible tenancies unless you become a demoted tenant, in which case your tenancy may become flexible after the demotion period. If you move to another Council property you will remain a secure tenant.
Who is given a flexible tenancy?	All new tenants who do not meet the criteria for 'lifelong' secure tenancies will be given a flexible tenancy following the successful completion of their 12 month introductory tenancy.
Who will decide what kind of tenancy I will be offered?	The member of staff responsible for deciding this will be a housing officer having regard to this Policy.
How will you review flexible tenancies?	We will carry out a final review of your housing needs and circumstances nine months before your tenancy is due to come to an end. Tenants will also need to complete an annual review of their household circumstances.
What are the possible outcomes of a tenancy review?	There are several possible outcomes: <ul style="list-style-type: none"> • You may be given a new flexible tenancy and remain in your home • You may be given a new flexible tenancy and move to a different home (if your home is too small or large or no longer suitable for your needs) • You may be given a 'lifelong' secure tenancy and stay in your current home (for example if a household member becomes terminally ill) • You may be given notice that the Council will not grant you another flexible tenancy and you will have to find alternative accommodation
What will happen if it is decided that I no longer require a flexible tenancy?	You will be given at least 6 months' notice of the Council's intention not to grant you another tenancy. We will offer you advice and assistance to explore other housing options. If you refuse to move the Council will start eviction proceedings by applying to the Court for a possession order.
Can I appeal a decision to terminate a tenancy?	Yes, there is an appeal process set out in the tenancy policy. Details of the appeal process and the deadline for lodging your appeal will be supplied with the Council's decision

How does this affect applicants who are offered housing association properties?	Tenants of housing associations will be given a tenancy according to the practice of the housing association.
What if I want to mutually exchange my property with a tenant living in another borough?	Tenants who move to another borough through mutual exchange will have to accept the tenancy conditions offered by the borough they are moving to.