

**HOUSING AND PROPERTY SCRUTINY COMMITTEE -
20 JANUARY 2011**

**REPORT A13 - APPENDIX 2
(Circulated subsequent to the main agenda)**

**The Royal Borough of Kensington and Chelsea response to the
Local Decision: A Fairer Future For Social Housing Consultation**

The Royal Borough of Kensington and Chelsea welcome the opportunity to comment on the proposed changes to social housing, as detailed in both the Localism Bill and the paper Local Decisions: A Fairer Future for Social Housing.

We broadly agree with the changes which are proposed and fully support the freedoms the proposed changes will grant to local authorities and landlords to make the most efficient use of their social housing stock, in a way reflective of both local need and individual circumstance.

The proposed changes embed the principles of localism within social housing, by giving local and landlord control over housing issues. As the only Council in the UK with a borough-wide tenant management organisation managing the Council's housing stock, we have long recognised the importance of residents in decision making, and support the changes to enhance this role. We welcome proposed changes to allow housing decisions to be reflective of local housing need and circumstances, rather than be nationally imposed.

We support changes to promote mobility through fixed term tenancies. Mobility rates are below the national average in the Royal Borough, at just 2.2 per cent per year. Fixed term tenancies and local control over eligibility for social housing through the setting of local strategic tenancies policy will be a way to achieve not only greater mobility, but also make better use of a limited resource targeted at those most in need. In addition, changes to the homelessness duty and the granting of powers to local authorities and landlords regarding overcrowding are welcomed.

Although the local freedoms are very much supported, we believe some principles should be set nationally, which are detailed in our response to the individual questions below.

Locally there are concerns about how some of the proposed changes will interact with the earlier announced Local Housing Allowance (LHA) cap levels, the possible implications of differential terms and tenancy policies between landlords, and in particular the unsuitability of the Affordable Rent model (which could see rents charged at up to 80 per cent of 'local market rents') in a high-value borough such as the Royal Borough of Kensington and Chelsea.

We have provided responses to the specific questions that have been asked in the order that they appear in the consultation paper.

Question 1

As a landlord, do you anticipate making changes in light of the new tenancy flexibilities being proposed? If so, how would you expect to use these flexibilities? What sort of outcomes would you hope to achieve?

We anticipate making changes in light of the flexibilities proposed, by offering fixed term tenancies for different groups of tenants, for example, two year fixed term tenancies for single people or lifetime tenancies for those aged over 65. By allocating tenancies for fixed terms, we will be able to make the best use of the stock available by targeting our limited available stock to those most in need.

Flexibilities will allow us to increase mobility in our social housing stock, which is very low at 2.2 per cent, and we will be better placed to tackle antisocial behaviour, overcrowding and under occupation.

We will be discussing the concept of 'affordable rent' with our Registered Provider (RP) partners. Details released about the new Affordable Rent tenure state up to 80 per cent of local market rent can be charged. However, 80% of market rent in the Royal Borough of Kensington and Chelsea (RBKC) will take rental levels above Local Housing Allowance (LHA) levels for Housing Benefit payments (HB), and challenge the notion of affordability for anyone earning an average London income. RBKC is committed to the provision of low cost affordable rented housing, and we would not want to see a creep toward all new lettings at 80% of local market rents.

Question 2

When, as a landlord, might you begin to introduce changes?

Assuming legislative change occurs and further is guidance received, we will need to discuss the flexibilities and how we would use these with the Kensington & Chelsea Tenant Management Organisation (K&CTMO), RP partners who have stock in the borough, tenants and residents groups.

Given the fundamental reform of tenancies proposed and the consultation and policy development required, this will take time to be introduced. However we have already started to discuss with our partners what this means for them and arriving at a RBKC view, we would expect to start making changes as soon as it is legislatively possible.

Question 3

As a local authority, how would you expect to develop and publish a local strategic policy on tenancies? What costs would you expect to incur?

The local strategic tenancies policy would have to be produced in discussion with local RPs (which number nearly 50), to ensure the strategic policy does not compromise individual landlord's ability to use the freedoms granted by the proposed changes. Full consultation would need to take place with residents. There will be cost implications with these consultations.

A local strategic policy for the Royal Borough would need to be based on the specific local circumstances and needs. As a high density residential borough made up of primarily smaller units with limited turnover and high demand, the local strategic tenancies policy would need to reflect this context.

It would be necessary to carry out modelling of the low turnover in the borough, the possible resources available (in terms of size, location and accessibility of the stock) and how mobility could be increased through the different flexible tenancies available to social housing landlords. This could possibly require further research which would be costly.

We would need to work out the costs of the changes needed to support the policy (for example management of tenancy termination/ re-issue, and the advice and assistance role which would accompany this). Additional costs which would need to be considered include legal costs, publishing costs, training costs and possible implications to staffing. It would necessary to assess any possible cost implications of increased void times due to the changes and particularly for the K&C TMO. The costs cannot be predicted at present due to the lack of legislation underpinning the proposed changes.

It is difficult to arrive at a figure for the costs of producing this policy, but we estimate the costs to be in the region of £25,000.

Question 4

Which other persons or bodies should local authorities consult in drawing up their strategic tenancy policy?

Central to our strategic tenancy policy would be K&C TMO, who manage the Council's housing stock. In addition, we would need to consult with the RPs in the borough, advice and support agencies, residents and existing tenants. There would be benefits of consulting with our neighbouring boroughs, the West London sub-region boroughs and London Council's.

Question 5

Do you agree that the Tenancy Standard should focus on key principles? If so, what should these be?

Focusing on key principles rather detailed prescription is a welcomed shift

in tenancy regulation. We broadly agree with the principles that have been set out in the document:

- We believe that at a minimum a tenancy period should be fixed for two years with the ability to have introductory tenancies.
- We welcome the view expressed that a maximum tenancy length would not be set by government but would be down to local discretion.
- We welcome the provision for statutory rights, around exchange, lodgers, sub-letting and consultation.
- We would like to set the Right to Buy policy locally rather than it be a nationally set tenancy principle.
- We agree with the principle of one right to succession with landlord discretion to grant additional succession rights to the existing or alternative property.
- We would like the flexibility to offer introductory tenancies even if the tenancy is for a fixed term.
- We would support the principle that tenants should enjoy the same rights as a current secure tenant enjoys for the period of their tenancy.
- We support the principle of a six months notice period for ending a tenancy. We do however have some concerns both about the internal review process and county court review process which could be costly and time consuming for the Courts, local authorities and RPs when a tenancy comes to an end and is potentially challenged.
- We will be looking at options for the extension of fixed term flexible tenancies based on income and rent levels. We welcome the opportunity for this to be a landlord decision and not one that is centrally imposed.
- We welcome the principle that RPs will have the same flexibility as local authorities on succession.
- We welcome the ability of RPs to issue assured shorthold tenancies.

Question 6

Do you have any concerns that these proposals could restrict current flexibilities enjoyed by landlords? If so, how can we best mitigate that risk?

The proposals do not restrict current flexibilities, but there are concerns

the changes could cause unintentional restrictions within social housing.

Through the proposed changes in tenancies (both flexible tenancies and the introduction of the Affordable Rent tenure), there is the possible unintended consequence of reduced on the parity between landlords. Although there will be some consistency provided by the strategic tenancies policy, within a local authority, postcode lotteries could develop as different landlords have different approaches to tenancy issue and re-issue. This could cause 'shopping' between different landlords and possibly an increase in void times (and therefore costs) as those waiting for tenancies choose not take up tenancies with certain landlords or in certain local authorities, due to the terms of the tenancy or re-issuing processes in place.

House prices and private sector rents are among the highest in the country. As a result, most private rented rent levels are above the LHA caps levels and therefore unaffordable. Although Affordable Rent would provide the opportunity to maintain or increase investment in the stock, (depending on the HRA financial settlement), charging up to 80 per cent of the 'local market value' (as assessed by individual RPs) is not going to be an affordable option in RBKC. In addition, there is the increased risk of arrears and void times.

Question 7

Should we seek to prescribe more closely the content of landlord policies on tenancies? If so, in what respects?

As a local authority with nearly 50 RPs and being a landlord as well, we would value further guidance or a set of principles upon which a standard tenancy agreement and landlord policy could be developed. Without guidance and requirements for the landlord being more clearly defined, those seeking social housing within the borough could be subject to very different terms depending on their circumstances and the landlord.

The content of the landlord policies should be prescribed to a degree to ensure a baseline parity between the different landlords on points such as termination procedure, tenancy review processes, succession, eviction, consultation, lodgers and sub-letting.

Question 8

What opportunities as a tenant would you expect to have to influence the landlord's policy?

Existing tenants would be protected from changes, so there would be some consultation with existing tenants, but consideration also needs to be given to prospective tenants (currently in temporary accommodation or on our Common Housing Register) to determine their views and to allow these households to influence the policy, as these households will be

most affected by the changes.

Question 9

Is two years an appropriate minimum fixed term for a general needs social tenancy, or should the minimum fixed term be longer? If so, how long should it be? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be? Should the minimum fixed term include any probationary period?

Two years is an appropriate minimum term for a fixed term general needs social tenancy, although we acknowledge that this is a minimum and therefore tenancies could be for longer terms, depending on individual and local circumstances. We welcome the opportunity as a landlord to make locally driven decisions about how long tenancies should be for.

Although the principle of setting two year minimum fixed term general needs social tenancy to promote mobility between tenure is welcomed, there are concerns about the manageability of such a change. Particular concerns are around the need to assess and re-assess tenants within term of the tenancy and processes such as serving notice, seeking possession, internal reviews, county court judgements and assisting the individual or family to find alternative accommodation. However, we do not anticipate this being an immediate issue.

We would support an introductory period within the award of any fixed term tenancy length, along the lines of existing policy on introductory tenancies.

Question 10

Should we require a longer minimum fixed term for some groups? If so, who should those groups be and what minimum fixed terms would be appropriate? What is the basis for proposing a minimum fixed term of that length? Should a distinction be drawn between tenancies on social and affordable rents? If so, what should this be?

We would expect to use the flexibilities to allow us to grant differential terms to different groups, depending on their circumstances. This part of the tenancy policy will require further consideration and therefore we cannot comment in detail at this stage.

With a limited number of lettings and allocations, applicants who are housed should be in priority need groups in the main. Under the proposed flexibilities, we will continue to house these groups. We would propose longer term tenancies for households whose housing need could be best suited with a social housing tenancy (such as families with young

children) or who would benefit from a stable social tenancy (such as those who are vulnerable).

Due to the strong housing market within the borough, Affordable Rent tenancies will not be an affordable option and therefore it is anticipated that those who choose to take up this tenure (if it is offered by local RPs) will be a different type of household to those who are currently waiting to be allocated a general needs social housing tenancy. We can see some merit in drawing a distinction between tenancy length based on whether the tenant is in a social housing rented home or an Affordable Rented home. We will be exploring this further through looking at tenancy length, earnings and rent levels.

Given the importance of setting appropriate tenancy terms and the impact it has on individuals, we would be grateful for further guidance regarding appropriate fixed terms for certain groups (and definitions for these groups) following on from this consultation.

Question 11

Do you think that older people and those with a long term illness or disability should continue to be provided with a guarantee of a social home for life through the Tenancy Standard?

Pending further clarification of definition, we agree that older people and those with a long term illness or disability should continue to be provided with a guarantee of a social home for life. However, we do not believe that this should translate as the property they may have originally moved into.

We have a limited number of accessible and wheelchair adapted homes, and we would want to be able to use the flexibilities granted to us to be able to move tenants who no longer require the type of property they currently occupy. Similarly, we would only want a tenant to remain in a property for life if that property is suitable for the needs of the household. We would want the freedom to move a household from a property which was not suitable for their needs to a suitable property, to prevent having to adapt existing homes through costly bespoke adaptations. This is based on the very scarce resource of accessible homes and the spiralling costs associated with adapting unsuitable housing. Granting this freedom would allow us to make best use of the limited accessible stock we have and target it at those most in need.

Question 12

Are there other types of household where we should always require landlords to guarantee a social home for life?

As local authorities will continue to have the flexibility to grant a life time tenancy where this is considered necessary, there are at present no

further groups which we consider should be guaranteed a life time tenancy. Clarification is sought in regards to the re-issue of tenancies and in particular, if a household's circumstances change, could the tenancy be re-issued as a lifetime tenancy, or would it have to be re-issued on the existing terms.

There are concerns held that by guaranteeing life time tenancies to several groups, certain types of individual circumstance (such as medical issues) would be 'chased'. We request a clear definition of the groups which would be granted life time tenancies further than that detailed in the consultation document.

The flexibilities proposed changes will allow social landlords to review tenancies and therefore make more efficient use of their stock to reflect local need and circumstance. We see advantage in issuing tenancies for shorter periods and then re-issuing as necessary, as this would allow best use of the housing resources we have available.

Question 13

Do you agree that we should require landlords to offer existing secure and assured tenants who move to another social rent property a lifetime tenancy in their new home?

We believe this decision should be lie with government. We agree that existing secure and assure tenants (tenants before legislative change) should be given lifetime tenancies when the move, although we acknowledge that as a result, it will take time for an increase in mobility within the socially rented sector to be identified.

Question 14

Do you agree that landlords should have the freedom to decide whether new secure and assured tenants should continue to receive a lifetime tenancy when they move?

Given the national impact of such a decision, it is considered this decision should lie with central government. This will ensure parity between the different local authorities and social landlords and reduce the possibility of abuse nationally.

By not offering lifetime tenancies to secure and assured tenants who are moving, mobility will be impacted as tenants remain in a property with a lifetime term (and possibly live in unsuitable housing conditions) rather than move and no longer have security of tenure for life. This would impact on the mobility nationally and the social housing resources available at a local and national level.

A further concern is in the individual management of this issue. Should a life time tenant want to carry out a mutual exchange, there is the

possibility of abuse of lifetime tenancies through the assignment process. The system would be open to less abuse if tenants carrying out mutual exchanges signed new tenancies for the same term as their current tenancy rather than assigning their tenancy terms to each other.

Question 15

Do you agree that we should require social landlords to provide advice and assistance to tenants prior to the expiry of the fixed term of a tenancy?

Responsibility for advice and assistance prior to the end of a fixed term tenancy should lie with the landlord.

We would like to see this requirement for advice to take into account homelessness legislation, and in particular to address concerns that by ending the tenancy, the tenant would fall under the priority need groups and therefore apply as homeless.

We recognise there would be a role for the local authority to provide advice which is independent. We understand the changes which are being proposed will require a re-assessment of our advice and assistance functions to ensure we are able to offer suitable services. We will need to develop this service area as the impact of the proposed changes become clearer.

Question 16

As a landlord, what are the factors you would take into account in deciding whether to reissue a tenancy at the end of the fixed term? How often would you expect a tenancy to be reissued?

Need should be the primary basis of a re-issue of tenancy at the end of a fixed term. The basis of a decision should be the priority need categories and a tenant's ability to access housing in other tenures, therefore assuming that at the end of the tenancy the tenant might make a homeless application. By using the priority need categories, the possibility of a revolving door between homeless application and short fixed term tenancies would not be created. We would expect that terms granted for fixed term tenancies would reflect need and therefore not all tenancies would be re-issued. In addition to need, we would expect behaviour during the tenancy to be taken into consideration, such as arrears and antisocial behaviour.

Consideration should also be given to any connections the tenant has with statutory services in the area and the impact of ending the tenancy would have on the future provision of these services.

However, we will want to encourage tenants to work, we will use the flexibilities available to us to do this. We will be looking at developing our

policy on work, income levels, rent levels and tenancy reissue, for example if the tenant is now working could a greater rent level be charged.

The amount of times a tenancy should be re-issued must take into account the term of the tenancy which has been given and the local housing need and turnover, as well as the individual tenant's circumstances.

Question 17

As a local authority, how would you expect to use the new flexibilities to decide who should qualify to go on the waiting list? What sort of outcomes would you hope to achieve?

Under RBKC's draft Allocations Policy, we have used the flexibilities granted under the Fair and Flexible guidance to set point levels reflective of our local circumstances as well as housing need. Certain groups of applicants (such as those with no need to move to the borough, those with financial resources above a certain threshold, those with existing property interests and those with arrears) are set at zero points. The proposed flexibilities would mean that some of these groups would no longer qualify to go on the waiting list, and we could widen this list if we believe this to be necessary. We would hope to be able to reduce the number of households on our housing waiting list through this flexibility, making the list more manageable and more reflective of housing need.

Question 18

In making use of the new waiting list flexibilities, what savings or other benefits would you expect to achieve?

Currently there is limited mobility within the social housing stock in the borough and with a waiting list of over 7,200 applicants, we would hope by removing certain groups who do not have a realistic chance of being housed in the borough or are not in housing need, we would be able to reduce the list and manage expectations of those seeking social housing in the borough.

By removing households from our waiting list and reducing the total number of applicants, the administration of the list would become easier and we would be able to use our resources in a different way and to support some of the other proposed changes.

Question 19

What opportunities as a tenant or resident would you expect to have to influence the local authority's qualification criteria?

Previous consultations have involved extensive work with tenants (both K&C TMO and RP stock), those on the waiting list, those residing in

temporary accommodation, voluntary groups, advice agencies and Members, and policies have been influenced by this process.

For example, the current and proposed Allocations Policies contain local residency points this has been introduced following consultation with residents and tenants, who all believe this to be an important feature of the policy. In using the flexibilities granted and our tried and tested consultation process, tenants and residents would have opportunities to influence our qualification criteria.

Question 20

Do you agree that current statutory reasonable preference categories should remain unchanged? Or do you consider that there is scope to clarify the current categories?

We agree with the current reasonable preference criteria.

Question 21

Do you think that the existing reasonable preference categories should be expanded to include other categories of people in housing need? If so, what additional categories would you include and what is the rationale for doing so?

N/A

Question 22

As a landlord, how would you expect to use the new flexibility created by taking social tenants seeking a transfer who are not in housing need out of the allocation framework? What sort of outcomes would you hope to achieve?

The flexibility to be able to take social tenants who are not in housing need out of the allocation framework is welcomed, although at present we have not decided if we would use this freedom. A similar system was previously used and this was difficult to administer, less transparent as one list and not as fair as setting points for priority in the same way for all registered.

It is not clear how this proposed freedom interacts with the Mayor's plans for a pan-London mobility scheme and it is at odds with our desire to build a strategic Common Housing Register which would register all those in the borough who want social housing (regardless of current tenancy status or landlord).

Existing tenants (in our experience and as evidenced in our Strategic Housing Market Assessment) are very specific about the type of property they are seeking and where they want to move to, with most applicants (regardless of whether they are in housing need or not) wanting to

remain in the borough. As it is not stated if the separate list of tenants not in need would receive a portion of new lettings or if mobility would be expected within the stock they hold as a list, an increase in mobility cannot be assumed. In addition, given the nature of the stock in the borough being made up predominantly of smaller units (2 bedrooms or smaller), chain lettings within this group could be more difficult under the proposed changes.

Question 23

What are the reasons why a landlord may currently choose not to subscribe to a mutual exchange service?

The mutual exchange service we offer is a bespoke service we set up, manage and administer. It is available to all tenants in the borough and out of borough wanting to exchange either within, into or out of the borough. By running and managing our own mutual exchange site, we are able to identify possible chain lettings and tackle overcrowding within the borough. The K&CTMO are part of Homeswapper and this is a scheme we work with as well.

Possible reasons why landlords are not subscribed to a mutual exchange service could include the lack of requirement to do so from central government, the cost of subscribing to a service and nationally the low mobility generated by such schemes. Through mutual exchange, no new lettings are made available to the landlord and as a result there is no gain to a landlord (in terms of units) for subscribing to mutual exchange services.

Question 24

As a tenant, this national scheme will increase the number of possible matches you might find through your web-based provider but what other services might you find helpful in arranging your mutual exchange as well as IT-based access?

We operate a mutual exchange system which encourages tenants to exchange both inside and outside the borough, but the service might be stronger if there was a role for the social housing providers to get involved in mutual exchanges. An increased role for the landlord (such as a requirement to subscribe to a service for all tenants) could increase the number of properties available for exchange and therefore possible matches a tenant might find.

Current changes to tenure could make mutual exchange more difficult (as stated in the response to question 14), as new tenants with life time tenancies would be less likely to move given the risk to their security of tenure. An advice and assistance role for landlords in mutual exchange might prevent this abuse and help to facilitate mutual exchanges. This could also be a role for an independent organisation.

Question 25

As a local authority, how would you expect to use the new flexibility provided by this change to the homelessness legislation?

We anticipate using the flexibilities in changes to homelessness legislation:

- We will be seeking to discharge our duty to homeless households with a 12 month tenancy in the private rented sector without the applicant's tactic agreement.
- We welcome the opportunity to decide on a case by case basis whether a homelessness duty should be in the private rented sector or other forms of accommodation.
- We support the continuation of the established priority need groups.

We currently offer the majority of homeless applicants temporary accommodation outside of the borough. We will continue to do this following the proposed changes, and we will consider whether an offer is suitable and reasonable for the applicant to accept. Assuming the proposed changes, we expect to discharge duty toward applicants into private rented accommodation outside of the borough, due to the LHA caps and the supply of affordable accommodation in the borough.

Question 26

As a local authority, do you think there will be private rented sector housing available in your area that could provide suitable and affordable accommodation for people owed the main homelessness duty?

We will not be able to use private rented sector accommodation within our borough boundary due to the strong local housing market and the LHA caps making the accommodation unaffordable for those on HB. Use of the private rented sector to discharge our homelessness duty will be in areas that are within LHA cap levels, both inside and outside London. Although this reflects to a large extent our existing policy for placing families in temporary accommodation out of borough, we expect to be challenged on this.

We will have a limited supply of temporary accommodation in borough but we will not discharge our duty through this accommodation as we will want to maintain this for families who need to reside in RBKC pending a move into social housing.

We would welcome some further guidance for government to support

boroughs such as ours who are unable to offer temporary accommodation and private rented accommodation within our boundaries.

Question 27

Do you consider that 12 months is the right period to provide as a minimum fixed term where the homelessness duty is ended with an offer of an assured shorthold tenancy? If you consider the period should be longer, do you consider that private landlords would be prepared to provide fixed term assured shorthold tenancies for that longer period to new tenants?

A 12 month tenancy in the private rented sector is an acceptable minimum fixed term, and is consistent with the frequency at which LHA rent levels are re-assessed. We will try and place people in the same accommodation for two years, as far as is possible, taking into account LHA rate annual reviews and availability of tenancies.

By trying to find two year tenancies, we will provide accommodation for the duration of our duty period and also provide some parity between a minimum term general needs social housing tenancy and it will run for the duration of the period of duty owed. It will also provide more stability for the tenants and help them maintain their tenancy, to then help them once the tenancy has ended to find their own accommodation.

We would like it clarified that this change will not be retrospectively applied to those currently in temporary accommodation who, once the changes have taken place, we do not believe necessary to grant a general needs social housing tenancy, thus enabling our duty to be discharged through an offer in the private rented sector.

Question 28

What powers do local authorities and landlords need to address overcrowding?

RBKC has severe levels of overcrowding and we welcome changes in the powers to local authorities and landlords to be able to tackle this issue. We would welcome some parity between the different tenures in powers to ensure fairness and a clearer framework to work within.

Landlords should be granted powers to tackle overcrowding. This could include: greater powers to pursue a tenancy in breach if the household has made themselves intentionally overcrowded (through moving in non-dependent adults); not recognising non-dependent adults (which could include children of the tenant) on applications for re-housing; and powers to make changes to existing homes to alleviate the problems of overcrowding.

A common definition of household and overcrowding for local authorities

and landlords would be helpful to ensure fair treatment of households, particularly given the proposed flexibilities for local authorities and landlords regarding tenancies.

Question 29

Is the framework set out in the 1985 Housing Act fit for purpose? Are any detailed changes needed to the enforcement provisions in the 1985 Act?

The framework set out in the 1985 Act is no longer fit for purpose. The bedroom standard it uses does not favour children and makes habitable rooms of areas which were designed for other purposes, such as dining rooms.

Given the use of the Housing Health and Safety Rating System (HHSRS) as well and for different tenures, the use of the two can become confusing. We believe the HHSRS should be the foundation of the measures and enforcement of overcrowding going forward.

Question 30

Should the Housing Health and Safety Rating System provide the foundation for measures to tackle overcrowding across all tenures and landlords?

We would welcome changes to have one set of measures to tackle overcrowding across all tenures and landlords. We believe the system would be fairer if there was one definition of overcrowding used and HHSRS offers this. We believe the HHSRS is a suitable foundation to build upon, although we would ask that future measures are stronger with a clearer distinction that overcrowding can be the choice of the household and the powers the landlord can have in this situation, particularly regarding identified risks.