

LHC Tenancy Policy



Reference: Version 2

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Scope: Loddon Home
Berry Brook Homes

Approved by:

Legislation: Localism Act 2011
Housing Act 1985
Housing Act 1988
Immigration Act 2014
Protection from Eviction Act 1977

Date of approval:

**Regulatory/
Governance:** The Regulator of Social Housing
Tenancy Standard

Date of next review:
2022

**Related
Policies:** Allocations policy
Anti-social behaviour hate crime
and harassment policy
Current arrears recovery policy
Key worker (AST) policy
Former tenant arrears policy

1. Policy Statement

1.1 This policy applies to Loddon Homes and Berry Brook Homes which collectively will be referred to as the Local Housing Companies (the LHC).

1.2 The LHC has delegated responsibility to Wokingham Borough Council (WBC) Tenancy Services for ensuring that this policy is implemented and delivered.

1.3 Although WBC has been delegated responsibility, the LHC will be consulted and sign off the following proposed actions in delivering this policy:

- The type of tenancy being offered to a nominated applicant once the starter tenancy has been successfully completed
- The affordable or social rent of the property is affordable for the applicant.
- The applicant has the right to rent under the Immigration Act 2015
- The applicant has no former tenant arrears of any social or private landlord

- Appeals against any decision made by WBC regarding the property or type of tenancy offered

1.4 The Localism Act 2011 introduced new flexibilities for private registered providers of social housing (PRPSHs) to offer social housing tenancies for a fixed-term. These new flexibilities were designed to ensure the best use of social housing stock.

1.5 From April 2012 the regulatory framework has required PRPSHs to publish clear and accessible policies which outline their approach to tenancy management and have due regard to the tenancy strategies published by the local authorities in which they operate.

1.6 This policy sets out the circumstances for when different tenancy types will be offered and how fixed-term tenancies will be reviewed. It identifies the circumstances under which they will not be renewed and the advice and assistance offered when this occurs. The aim of this policy is to ensure residents have the right home for as long as they need it.

1.6 Starter tenancies will be issued to all incoming tenants who are new to social housing. Starter tenancies are used as part of the LHC's toolkit to tackle anti-social behaviour.

1.7 The LHC will only offer a tenancy to those who can provide ID and evidence to confirm that they have i) UK or EU citizenship or ii) they have been granted indefinite leave to remain in the UK, iii) limited leave to remain in the UK; or they have applied for an extension of their leave to remain if it has expired and that they have access to public funds. WBC's Allocations policy also provides for the necessary checks to be undertaken regarding immigration status before accepting an applicant onto the waiting list for social housing.

1.8 An assured shorthold tenancy may be offered to an applicant who has been granted limited leave to remain in the UK, or who can provide evidence to confirm that they have applied for an extension of their leave to remain in the UK if it has expired.

2. Scope

The Regulator of Social Housing's framework includes the national standards which PRPSHs must meet. This policy relates to the Tenancy Standard which requires housing providers to grant tenancies which are compatible with the purpose of the accommodation, the needs of the individual household, the sustainability of the community and the efficient use of the stock.

3. Aims and objectives

3.1 The aims of this policy are:

- To establish balanced and sustainable communities.
- To maximise income that will be reinvested into the supply of new affordable housing
- To reduce levels of under occupation and overcrowding
- To increase opportunities for mobility among tenants

- To provide households with properties suitable to their needs
- To promote service choices and opportunities for tenants to enjoy greater independence in the management of their tenancies.

3.2 The objectives of this policy are:

- To establish local letting agreements with WBC where necessary to create balanced communities
- To maximise income through the allocation of affordable rent tenancies
- To assess household need and income before granting new fixed term tenancies
- To promote mutual exchange and transfers through a system of regular tenancy review
- To offer housing advice, guidance and support during each tenancy review
- To manage levels of under occupation and overcrowding through tenancy reviews
- To assess household vulnerability during review and end of term tenancy assessments

4.0 Roles and Responsibilities

4.1 Properties will be allocated in line with the Allocations policy where 100% nominations will be received from WBC's Housing Needs team.

4.2 WBC Tenancy Services is responsible for delivering this policy.

4.3 The Housing Officer with the support of the housing managers will be responsible for delivering this policy operationally.

4.4 The Tenancy Sustainment Officer will assist in supporting starter tenants to ensure that they successfully complete their probationary period.

5.0 Tenancies used by the LHC:

5.1 A starter tenancy: This is a periodic assured shorthold tenancy agreement. The LHC will issue starter tenancies to all new general needs tenants for the first 12 months of their tenancy. Providing the tenant manages their starter tenancy well, they will be offered a more secure form of tenancy at the end of the 12 months' period. If there have been any issues with the conduct of the starter tenancy, the LHC may extend the starter period of six months.

Starter tenancies will be offered to applicants who are aged over 55 and moving into extra care accommodation.

Assured shorthold tenancies (ASTs) will be offered to successful applicants for key worker accommodation that is available as an alternative affordable housing product offered by the LHC.

- 5.2 A 'lifetime' tenancy is a periodic assured tenancy agreement that runs from week to week (or month to month) with no end date and is a secure type of tenancy. The LHC can only end this type of tenancy with a court order and cannot attempt to do so unless the tenant is in breach of their agreement. The court must deem it reasonable to grant a possession order for the LHC to take possession of the property.
- 5.3 A fixed term tenancy is an assured shorthold tenancy agreement offered for a specified period of time. The tenancy will come to an end at the end of the fixed term by the service of a Month to Notice and a section 21 Notice Requiring Possession. As long as both notices have been served correctly, the LHC will have an unqualified right to possession. The LHC cannot end the tenancy before the end of the fixed term unless the tenant is in breach of their agreement. If the tenant is in breach before the end of the fixed term, the LHC will apply to the county court for a possession order if grounds for possession can be proved.
- 5.4 Affordable rents are determined by current rent values in the open market. Open market rents are dependent on rents for similar properties in the same area and the number of properties available in the area. This is averaged out to give the open market rent. The LHC will set its affordable rents at a level of 80 percent of the open market rent or at the Local Housing Allowance whichever is lower, inclusive of service charge. Fixed term tenancies will be offered for properties attracting an affordable rent.
- 5.5 A successful starter tenant will be offered a lifetime assured tenancy to those residents who have previously held an assured or secure tenancy that started on or before 1st April 2012 and have remained social housing tenants since that date, or existing Loddon Homes assured tenants moved under the terms of the Allocations Policy or by agreement with WBC.
- 5.6 A fixed-term tenancy will be granted to those tenants who have successfully completed the starter tenancy period and did not previously hold a social tenancy (assured/secure) dated on or before 1st April 2012. This is a new tenancy type introduced through the Localism Act and has similar terms and conditions to an assured tenancy. The fixed term will usually be for a period of 5 years.
- 5.7 Berry Brook Homes is an unregistered social provider and therefore the provisions of the Housing Act 1988 and Localism Act 2011 do not apply. However, all applicants will be offered a starter and then a fixed term tenancy of usually 5 years.
- 5.8 Assured shorthold tenancies (ASTs) will be offered to supported young people in unshared accommodation and this will be for a period of a minimum of 6 months and typically for 12 months.
ASTs will be offered to key workers for a period of 12 months with a break clause at 6 months. Further 12 months' AST will be considered by the LHC and WBC if a key worker wishes to remain in the accommodation.
- 5.9 Excluded licence for supported young people in shared accommodation. The LHC may

grant excluded licenses where a licensee occupies a room within a hostel. A Hostel has a specific definition (Housing Act 1985 Section 622) and the licensee must share facilities (such as bathroom, toilet, cooking facilities). If the licensee has an excluded licence they do not have the protection of the Protection from Eviction Act 1977 and can be excluded without a court order.

6.0 Legislation

6.1 This policy has been drafted having due regard to the following legislation:

Localism Act 2011
Housing Act 1985
Housing Act 1988
Immigration Act 2014
Protection from Eviction Act 1977

5.2 The requirements of the Regulator of Social Housing Tenancy Standard have been taken into account.

7.0 Starter tenancies

7.1 The LHC will monitor tenancies during their probationary period, with a home visit to conduct a settling-in visit, usually held after 4 weeks unless vulnerabilities require an earlier visit, followed by a visit at 4 months and the full tenancy review after 9 months, to decide whether to terminate the tenancy, extend the probationary period or to offer a more secure form of tenancy.

7.2 The LHC will assist tenants in their probationary period to sustain their tenancies through a programme of early interventions and clear communication of remedies for tenancy breaches. Tenants will be signposted as necessary to local services which may assist them, including: employment and training services; community safety; tenant and family support; and welfare benefits advice.

7.3 The LHC may extend the probationary period starter tenancy from 12 months to 18 months where there are concerns regarding how the tenancy is being managed. This may include where a breach of tenancy has occurred but the breach is not serious enough to warrant possession action, or where the tenant's behaviour is still being monitored. A full tenancy review will be undertaken after 15 months to decide whether to end the starter tenancy or offer a more secure form of tenancy.

7.4 The LHC will notify a tenant in writing of any decision that is made to extend the probationary period or end the tenancy and will explain the reasons for this decision in writing.

8.0 Fixed term tenancies

8.1 LHC will issue fixed term assured shorthold tenancies to general needs tenants for a period of five years, after the successful completion of the starter tenancy 12 months' probationary period, with the exception of the following individuals or groups:

- Those residents that held a social tenancy dated on or before 1 April 2012 prior to accepting a LHC property where an affordable rent is not being charged.
- Older people – those already claiming or are within five years of claiming the state pension and where there is no prospect of under-occupation in the future.
- Those with a substantial, long-term, illness or disability who are unable to work (as evidenced by receipt of Employment and Support Allowance or Personal Independence Payment) or where their property requires significant adaptation.
- Internal transfers from existing, assured or secure tenancies where the tenancy commenced on or before 1 April 2012.

In exceptional circumstances, the LHC may grant a fixed term tenancy for a period of less than five years, where approved at senior level.

9.0 Requests for a Review of Tenancy Type and length of fixed term tenancy

9.1 The Regulator of Social Housing's Tenancy Standard requires registered providers to have an appeals process covering the length of the fixed term tenancy offered and the type of tenancy being offered.

9.2 If a resident believes that they have not been offered or granted the correct type or length of tenancy as outlined in this Tenancy Policy, they can request the decision to be reviewed. Where a tenancy has started, any request to review the type of tenancy awarded should be made within 3 months of the tenancy start date.

9.3 The request must be in writing and will be considered by the Senior Specialist Housing Manager with input from the relevant officer of the LHC (unless they were involved in the original decision when it will be reviewed by an Assistant Director) who will respond within 14 days. The review will consider the customer's representations, the application documentation, the applicable nomination agreement and a written submission from the Housing Manager detailing why that type of tenancy was offered or granted.

This is the final stage of the appeal process.

10.0 Requests for a review of decision to extend a starter tenancy or to end the tenancy during the probationary period

10.1 The LHC's starter tenancies will usually run for twelve months, but it can be continued for up to 18 months. See 5.1 above.

- 10.2 If a resident believes that they have not breached their tenancy terms and conditions and the starter tenancy should not be continued beyond twelve months, they have the right to ask for the decision to be reviewed. They must make the request within 10 days of being informed of the decision.
- 10.3 Should a Section 21 notice (Notice Requiring Possession) be served for a breach of tenancy, the resident can ask for the decision to end the tenancy to be reviewed as the notice provides mandatory possession. They must make the request in writing within 10 days of the Section 21 notice being served on them.
- 10.4 The review will be conducted by the Senior Specialist Housing Manager and Localities Manager with input from the relevant officer of the LHC if not previously involved in managing the tenancy, who will respond within 14 days.

11.0 **Fixed Term Tenancy Reviews**

- 11.1 Fixed term tenancy reviews will be conducted after 2 years and then in the final year of the fixed term. (Usually at least 9 months before the tenant is due to end).
- 11.2 The LHC intends that the fixed term tenancy reviews are an opportunity for residents' current housing needs and aspirations to be explored and to tailor any housing options advice, assistance and support offered, to enable customers to live in the right home at the right time.
- 11.3 These reviews will involve an interview and assessment to establish the resident's current personal circumstances (refer to Appendix 1) and review the need for the current home they occupy. Following the final review one of the following options will be considered:
- The offer of a further 5 year fixed term tenancy at the same property
 - The offer of a further fixed term tenancy, usually 5 years, but in alternative accommodation where the current home is no longer suitable e.g. the customer is under occupying.
 - The offer of a shorter fixed term tenancy of 2 years because there are particular reasons why a five year offer is not appropriate. For example, alternative accommodation is to be offered which is not available or there are other support needs or issues (such as financial problems) which make it likely the tenancy will not be sustained for a further 5 years; or the property is due for redevelopment/substantial working within the next 5 years.
 - The Fixed term tenancy is not to be renewed and a "minded to notice" to end the fixed term tenancy is issued together with a prescribed form section 21 notice to bring the tenancy to an end.
 - Alternative housing options will be explored where the residents' household income has increased so potentially enabling them to purchase a shared ownership property or other home ownership opportunities.

- Alternative housing options will be explored for residents of a property with an affordable rent who are experiencing financial hardship.

11.4 Exceptions to this policy may include where:

- Care and support needs can only be met if the customer remains in the property.
- The tenancy falls within an area operating a local lettings policy and ending the fixed term tenancy will conflict with the regeneration objectives of the area. Examples of this would include:
 - Activity to create mixed income neighbourhoods in a single-tenure area
 - Activity to increase levels of people in work in a particular neighbourhood.

12.0 Ending Fixed Term Tenancies (refer to Appendix 1)

12.1 A further 5 year fixed term tenancy will be granted unless:

- The property has significant adaptations and no one residing at the property requires those adaptations
- The property is under-occupied¹ or over crowded.
- The customer's financial circumstances have changed so that other housing options are available, such as home ownership, shared ownership, renting at full market value and/or other tenures based on a financial assessment which deems their income too high to qualify for this type of social housing
- Any breaches of tenancy or tenancy fraud are identified during the fixed term tenancy review process which would result in enforcement under tenancy management or anti-social behaviour policies and procedures. If such events occur during the term it is likely that the LHC will have already taken steps to recover possession. However, such proceedings may not have concluded by the end of the fixed term or the breaches may not have been discovered until the latter part of the term and in such circumstances a further Fixed Term tenancy will not be offered
- The customer and or their advocate do not engage in the fixed term tenancy review

¹ For the purposes of this policy the definitions concerning household occupancy are as follows:

- **Under occupation** occurs where a tenant has more bedrooms than required to adequately accommodate their household
- **Overcrowding** occurs where a tenant has fewer bedrooms than required to reasonably accommodate their household
- **Statutory overcrowding** occurs where there are more occupants than the law says there is room for in the property (Housing Act 1985)
- **Intentional overcrowding** occurs where a tenant allows non-dependents to join their household causing it to become overcrowded or for existing overcrowding to worsen

Whilst child birth may contribute to overcrowding, the addition of new-borns to the household is not in itself considered intentional overcrowding

- The customer is found to have made a false statement in relation their housing application, their tenancy review and the type of tenancy agreement they are subsequently offered
- The property is one for which redevelopment or demolition is planned during the next five years
- The customer's health or other circumstances would mean they can no longer sustain or manage a tenancy and supported housing may be more appropriate
- The property is for some other reason no longer suitable for the customer needs or the customers continued occupation is not compatible with our regulatory aim to make the most efficient use of our housing stock
- Where care and support needs can only be met if the customer remains in the property, even if one or more of the factors outlined above applies, The LHC will consider granting a further tenancy, but it may be for a shorter period.

12.2 The LHC may not grant another tenancy on the expiry of the fixed term in the same property, for breaches of tenancy that will include (but are not limited too):

- Anti-social behaviour (e.g. noise, graffiti, abusive behaviour)
- Criminal activity at the property (e.g. drug offences, prostitution)
- Damage to the property (e.g. broken windows)
- Disrepair issues (e.g. not keeping the property in good order) including lack of access for gas safety checks
- Keeping pets if the tenancy agreement expressly forbids this
- Keeping uncontrolled animals such as dogs
- Harassment
- Lack of cleanliness (e.g. refuse, fly tipping, dirty conditions inside the property)
- Rent arrears
- Sub-letting if the tenancy agreement expressly prohibits this
- Not moving out even after expiry of the tenancy.

12.3 In the event that another tenancy is not being offered the LHC will provide offers of advice and support as outlined in section 14.

12.4 For any breach of tenancy during the fixed term period, the LHC will service a Notice of Seeking Possession. An application for a possession order at the county court will be made if the breach is not regularised.

12.5 The decision to end a tenancy can be reviewed at the request of the customer within 21 days of service of the first notice and the customer is entitled to request an oral hearing. See section 14 for further information.

13.0 Vulnerable Customers

- 13.1 For vulnerable customers such as older and disabled people in general needs housing, the LHC will offer a fixed term tenancy.
- 13.2 The LHC are committed to ensuring that they can remain as the LHC residents providing there are not serious breaches of tenancy.
- 13.3 If at the tenancy review the property is too large or adapted and they no longer have a need for such a property, the LHC may rehouse the resident depending on the level of any unmet demand for that type of property; the age and vulnerability of the customer and the availability of suitable alternative accommodation.

14.0 Housing Options Advice and Assistance

- 14.1 During fixed term tenancy reviews the LHC will provide residents with advice about the different housing options and how these may assist in achieving personal aspirations.
- 14.2 Where it is decided not to renew a tenancy, the resident will be given appropriate housing options advice and assistance.
- 14.3 The LHC will make a referral to WBC's Housing Options team at this stage and ensure that the resident is aware of the package of housing alternatives depending on their particular circumstances and have appropriate support to access the different options.

15.0 Appeals against Ending Fixed Term Tenancies

- 15.1 Any residents who has been informed that their fixed term tenancy is to be terminated following a Tenancy Review in the final year of their tenancy and a further tenancy is not being offered, can appeal against that decision. The customer should be advised of the right of appeal when the minded to notice is served.
- 15.2 The resident has 21 days to submit their appeal in writing upon receipt of the minded to notice which should identify the reasons why the tenancy should not be terminated. Where necessary, support will be offered to produce the appeal in writing
- 15.3 The Appeal will be heard by an independent senior manager not previously involved in managing the tenancy. The appeals process will be a review of the tenancy file, facilitating an oral hearing where requested by the resident and/ or reviewing the resident's appeal letter and will consider:
- If the decision to end the fixed-term tenancy is in accordance with this policy
 - If the procedure for ending the fixed term tenancy has been correctly followed
 - If it is proportionate not to renew the fixed-term tenancy considering the change in circumstances or needs of the customer.

15.4 The reviewing officer will record and communicate the reason for their decision to the resident and the Tenancy teams with their recommendations within 21 days from the date of the resident's appeal. This is the final stage of the process.

15.4 1 If the original decision is overturned, then the LHC will arrange for a new fixed term tenancy agreement to be offered.

16.0 Equality & Diversity

16 .1 The LHC recognise the needs of a diverse population and always acts within the scope of its own Equality and Diversity Policy, the Human Rights Act 1998, and Equalities Act 2010. The LHC work closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. The LHC will record, analyse and monitor information on ethnicity, vulnerability and disability.

17.0. Confidentiality

17.1 Under the Data Protection Act 2018, and the Human Rights Act 1998, all personal and sensitive organisational information, however received, is treated as confidential. This includes:

- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or board member
- sensitive organisational information.

17.2 The LHC employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

18.0 Review

18.1 This policy will be reviewed on a three yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or changes in other relevant LHC policies.

19. Performance

19.1 Our performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms to our associated boards.

3.0 Appendices

Appendix 1: Criteria for renewing a fixed-term tenancy

APPENDIX 1: CRITERIA FOR RENEWING A FIXED-TERM TENANCY

A new 5 year fixed-term must be offered as standard except in the following circumstances:

A: Reasons to not offer a new tenancy for the same property:

- Under occupation (as defined by the LHC's Allocation's Procedure)
- No further requirement for adaptations (which cannot be easily removed)
- A need to redevelop or sell the property as part of the asset management programme.

The above tenants must be advised to apply and bid for an internal transfer and given high priority. If they have not found a new home within 5 months of the Minded to Notice, the LHC must make one direct offer. However, if no alternative accommodation is available, the tenant must be offered a new 2 year fixed-term tenancy.

B: Reasons to offer a 2 year tenancy

- Single tenants under the age of 25 (single = no dependents)
- Under occupation and no alternative accommodation available through internal transfer
- Where it is known that the property is to be regenerated or sold within a five year period
- A minor breach of tenancy:
 - Minor rent arrears or other debts owed to the LHC (charge to be added to new tenancy)
 - Outstanding repairs / past issues with access for gas or electrical safety checks
 - Low level antisocial behaviour (behaviour agreement should be in place).

C: Reasons to not offer a new tenancy for any LHC property:

1. Statutory overcrowding (tenant must apply with for a transfer with WBC)
2. Tenant did not attend the final review meeting or sign up appointment after 2 attempts were made
3. Serious and/or persistent breaches of tenancy conditions
 - serious rent arrears or persistent failure to pay on time
 - serious or persistent antisocial behaviour / using the home for illegal purposes
 - allowing the property to fall into serious disrepair through neglect or wilful damage
 - unlawful occupation / subletting / abandonment / not only or principal home
4. The household's income exceeds £60k² and the tenant can secure accommodation in

² This is subject to annual review by WBC

the private sector e.g. private renting, shared ownership, and purchase of a property

D: Considering Vulnerability

Staff must recognise that there will be circumstances in which it would be unreasonable to expect a tenant to move even if the above criteria applied. The LHC must consider offering a new tenancy if:

- the tenant or a member of their household is suffering from a terminal illness
- the tenant or a member of their household has a disability, verified by occupational therapy / community care assessments
- the tenant has children attending a local school
- the tenant is a foster carer and the tenancy needs to continue to enable them to fulfil this role
- the tenant is a care leaver and still receiving support from social services because of this
- the tenant is participating in a Family Intervention Project programme

Always take a multi-agency approach to reduce the risk of serious detriment to any tenant or a member of their household.

E: Statutory Overcrowding

Where a household is statutorily overcrowded, the LHC should not offer a new tenancy and the tenant should be advised to complete an application for WBC's housing register. Where the tenant is overcrowded according to the LHC policy, the tenant should be offered a new 2 year fixed-term tenancy but encouraged to continuously search for a more suitable home and to surrender their tenancy when they have found one.

F: Allowing the Tenancy to run on

In the event that a fixed-term tenancy is not ended in time by the service of a Month to Month Notice and Section 21 Notice Requiring Possession, the tenancy will automatically become a Periodic Assured Shorthold at the end of the fixed-term (like a Starter Tenancy). The tenant will have limited security and rights so this situation must be rectified at the earliest opportunity.