



Derby City Council

COUNCIL CABINET
15th July 2015

ITEM 11

Report of the Cabinet Member Urban Renewal

Succession Policy

SUMMARY

- 1.1 Succession is a right given under the Housing Act 1985 so that a spouse, civil partner or family member of a secure tenant can succeed to the tenancy following the death of the tenant. Tenants with an introductory tenancy also have the right of succession under the Housing Act 1996, providing that the successor occupied the tenant's property as their only or principal home immediately before the death of the tenant.
- 1.2 In 2011 the Government introduced the Localism Act. It amended the legal entitlement to succession for secure or introductory tenants granted a secure tenancy after April 1 2012. The legal right to succession is now limited to a spouses, civil partners and couples living together as if they are a spouse or civil partner.
- 1.3 While this excludes other family members living with the tenant at the time of their death, the Council is able to allow discretionary successions to additional groups on a contractual basis by inserting a clause that provides that entitlement within the tenancy agreement.
- 1.4 This report outlines proposals for the adoption of a new Succession Policy to meet the new statutory obligations and powers, and replaces the existing policy which is outdated and no longer fit for purpose.
- 1.5 The report also proposes that the Council use discretionary provisions within the Allocations Policy to enable, where appropriate and applicable, tenant family members not qualifying under the new statutory succession provisions to be considered for a tenancy or to be rehoused accordingly. This means that the Council is able to provide a more flexible and sensitive approach to succession to ensure the sustainability of communities and to meet the best interests of all parties.

RECOMMENDATION

- 2.1 To approve the Succession Policy appended to this report.
- 2.2 To affirm the use of discretionary provisions within the Allocations Policy to allocate properties to resident family member's of a deceased tenant, when appropriate.

REASONS FOR RECOMMENDATION

- 3.1 To obtain a Cabinet approval of a Succession Policy that is compliant with the requirements of the Housing and Localism Acts and to affirm discretions with the Allocations Policy to enable a sustainable and consistent approach to the allocation of properties to family members that do not enjoy a statutory right of succession.



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Report of the Acting Strategic Director for Adults, Health and Housing

SUPPORTING INFORMATION

- 4.1 Succession is a right given under sections 88 and 89 of the Housing Act 1985 and provided to secure tenants to allow qualifying persons to succeed to the tenancy following the tenant's death. The Housing Act 1996 extended this right to introductory tenants. Under the original legislation for qualifying tenants there is an automatic right of succession for a spouse or civil partner of the deceased. Where there is no spouse or civil partner, family members have the right of succession provided that they had been living at the tenanted property as their principle home continuously for 12 months prior to the tenant's death.
- 4.2 A family members is defined as:
- Parent
 - Grandparent
 - Child
 - Grandchild
 - Sibling
 - Uncle or aunt
 - Adopted child or stepchild
 - Unmarried partners
- 4.3 The Localism Act 2011, with effect from 1st April 2012, amended the rights of succession for new social housing tenants. Section 160 of the Localism Act inserts a new section 86A into the Housing Act 1985 which states that statutory succession to a secure tenancy entered into after 1st April 2012 only applies to the spouse or civil partner of the deceased tenant who was living in the property as their only or principle home at the time of the tenant's death. The statutory right of succession of a family member has been removed for tenancies created after 1st April 2012. The rights of tenants (and the rights of the wider pool of potential successors) whose tenancy started before 1st April remain unaffected.
- 4.4 The Council is required to publish a Succession Policy and the proposed policy is set out at Appendix 2. This policy reflects the changes brought in by the Localism Act 2011.
- 4.5 Under the provisions of the Localism Act, statutory succession will be denied to family members of newer tenants. This will in some circumstances create uncertainty, distress and disruption for family members and their communities. As such it is proposed that additional local flexibilities be allowed to enable discretion in certain circumstances for family members to remain in the property.

- 4.6 Under the powers of the new section 86A of the Housing Act 1985, for tenants affected by the changes to succession rights introduced by the Localism Act, the Council may at its discretion introduce contractual rights to extend rights of succession to other classes of person by inserting a clause in new tenancy agreements to that effect.
- 4.7 It is proposed, rather than seeking to amend the Tenancy Agreement to introduce additional contractual rights, that existing discretions within the Derby Homefinder Allocation Policy be utilised. This will allow the Council to allocate properties to resident family members where doing so meets the threshold of the discretionary allocation provisions contained in the Succession Policy.
- 4.8 The proposed Succession Policy states: "Where the death of a sole tenant leaves someone in the property without an automatic right to succeed to the tenancy, we will consider granting a new tenancy in certain circumstances at that, or an alternative property (if the current property would be under-occupied by *more than one bedroom* or not be suitable to meet their current need). This accords with principles set out in the Council's Allocations Scheme which was adopted in March 2013."

OTHER OPTIONS CONSIDERED

- 5.1 The Council could consider not providing any housing allocation options for non-statutory successors. However this would have a detrimental impact on families and communities.
- 5.2 The Council could consider granting contractual rights within the Tenancy Agreement. However this would not necessarily the same flexibility in responding to specific circumstances across the whole of the Council stock.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Olu Idowu, Head of Legal Services Toni Nash Liz Moore Alistair Burg Pervuez Sadiq Ian Fullagar, Clare Mehrbani, Richard Burton.
For more information contact: Background papers: List of appendices:	James Beale, Housing Development Team Leader 01332 640316; james.beale@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Succession Policy (Discretionary Allocations Policy)

IMPLICATIONS

Financial and Value for Money

- 1.1 None arising from this report.

Legal

- 2.1 In relation to secure tenancies that have been granted before 1 April 2012, or introductory tenancies (whenever they have been granted), the statutory right to succeed is as follows:

"a person is qualified to succeed the tenant under a secure tenancy if he occupies the dwelling-house as his only or principal home at the time of the tenant's death and either—

(a) he is the tenant's spouse or civil partner, or

(b) he is another member of the tenant's family and has resided with the tenant throughout the period of twelve months ending with the tenant's death;

unless, in either case, the tenant was himself a successor."

- 2.2 In relation to secure tenancies granted on or after April 1 2012 the statutory right to succeed is as follows:

"A person ("P") is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—

(a) P occupies the dwelling-house as P's only or principal home at the time of the tenant's death, and

(b) P is the tenant's spouse or civil partner"

That is the case unless the tenant was himself a successor. (NB a person who was living with the tenant as the tenant's wife or husband, or civil partner, is to be treated as the tenant's spouse or civil partner).

- 2.3 In addition, local authorities have the power to grant a contractual right of succession by inserting express terms in the tenancy agreement. Such express terms may permit:

(a) successions to persons other than just spouses or civil partners, regardless of how long they have lived in the property (if at all);

(b) more than one succession to a tenancy.

The Localism Act recognises this fact and so where a succession takes place in

accordance with a contractual term of the tenancy agreement the tenancy will now vest automatically in the successor. However, where a succession to a person other than a spouse or civil partner results in under-occupation of the property, the local authority may claim possession through the County Court, providing that suitable alternative accommodation is available for the successor on the date of the possession hearing

- 2.4 In relation to discretionary allocations, these are permitted under paragraph 12.1 of the Council's Allocation's policy which states that:

Sometimes, we need to make offers to applicants not appearing on shortlists. For example:

1) if a property does not receive any bids from applicants, or is rejected by everyone who bid for it, we may offer the property directly to an applicant on the Housing Register. Or we may re-advertise it with different criteria. We will base the decision to make a direct offer or to re-advertise on demand for the particular property.

2) we may hold back some properties from the Derby Homefinder scheme to make allocations that are at our discretion to support 'sustainable communities' and other Council initiatives.

This gives the Council a wide discretion and so would cover allocations to persons occupying accommodation which they are not entitled to succeed to. Any decision made in this regard would be amenable to judicial review and so must be reasonable and in accordance with the principles set out in the proposed succession policy.

Personnel

- 3.1 None arising from this report

IT

- 4.1 None arising from this report

Equalities Impact

- 5.1 An Equality Impact Assessment has already been undertaken in relation to the Allocations Policy and this has been reviewed to take account of the equality implications of this Succession Policy. The discretionary policy allows for particular circumstances affecting people in equality groups, so they do not face any additional barriers.

Health and Safety

- 6.1 None arising from this report

Environmental Sustainability

7.1 None arising from this report

Property and Asset Management

8.1 None arising from this report

Risk Management

9.1 None arising from this report

Corporate objectives and priorities for change

10.1 A strong community