

BARNSLEY METROPOLITAN BOROUGH COUNCIL



BARNSLEY
Metropolitan Borough Council

HOUSING TENANCY POLICY 2019

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2. Policy Statement

- 2.1 It is the policy of Barnsley Metropolitan Borough Council to continue to grant secure lifetime tenancies to the majority of new tenants following successful completion of an introductory period.
- 2.2 However, in order to make best use of the available housing stock and to maintain mixed tenure housing estates, with stable sustainable communities, Barnsley Council may choose to offer new tenants any of the tenancy types available.
- 2.3 Berneslai Homes is the managing agent appointed by the Council to manage and maintain the local authority housing stock on behalf of the Council.

3. Introduction

- 3.1 The Localism Act 2011 introduced changes to allow Councils and registered providers of social housing to grant fixed term tenancies known as 'flexible tenancies'. Previously social housing was let on secure or assured tenancies which were effectively for life as long as the rent was paid and other tenancy conditions were complied with.
- 3.2 The Localism Act also placed an obligation on Local Authorities to develop a Tenancy Strategy which would help shape the Tenancy Policies of all the social landlords operating in their area.
- 3.3 The Barnsley Council Housing Tenancy Strategy specifically requires social landlords to set out in their Tenancy Policies:
 - The kinds of tenancies they grant;
 - The circumstances in which they will grant a tenancy of a particular kind;
 - Where flexible tenancies are granted:
 - the length of the terms, and
 - the circumstances in which they will grant a further tenancy on the termination of the existing tenancy.
- 3.4 Barnsley Council's Tenancy Policy was first published in April 2013 alongside the publication of the Council's first Tenancy Strategy. A light touch review has been undertaken alongside the review and production of the new council Tenancy Strategy 2019 – 2024.
- 3.5 The introduction of the Localism Act and the BMBC Housing Tenancy Strategy will not affect any current secure social tenants. These tenants will continue to enjoy their existing security of tenure and other terms and conditions including the right to buy, succession rights and the right to exchange their tenancy with another secure tenant.

4. Aims and Objectives

- 4.1 This Housing Tenancy Policy fulfils the requirements of the Localism Act 2011 and the Social Housing Regulator's requirements for social landlords to have a Tenancy Policy.
- 4.2 This policy has been developed with due regard to the Housing Tenancy Strategy of Barnsley Metropolitan Borough Council.
- 4.3 Barnsley MBC will review and update its Housing Tenancy Strategy every 5 years or sooner in the event of significant changes in factors impacting on the provision of social housing. This Housing Tenancy Policy will be subject to a light touch review alongside any review and revisions to the Council's Housing Tenancy Strategy.
- 4.4 This policy aims to utilise the available tenancy types, where appropriate, in addressing service challenges as outlined in the Council's Housing Strategy, Berneslai Homes' Strategic Plan and the Council's Lettings Policy.

5. Types of Tenancies to be Granted – Definitions and Minimum Lengths

5.1 Under this policy an applicant for a Council tenancy may be granted any of the available types of tenancy. The main tenancy types are set out in the table below. In addition to these provisions there are other tenancies defined in Schedule 1 of the Housing Act 1985 which include; premises occupied in connection with BMBC/BH employment, temporary accommodation for homeless persons, temporary accommodation for people taking up employment and temporary decant accommodation which may also be used.

5.2 **This table outlines the types of tenancies offered and the rights and durations associated with them.**

Tenancy Type	Rights	Length of Term (Duration)
Secure lifetime	<p>The Tenant(s)</p> <ul style="list-style-type: none"> • Can only be evicted in certain situations • Can take in a lodger • May be able to pass on their tenancy • May be able to transfer • May be able to exchange their home • May qualify for Right to Buy at a discount • Have the right to carry out improvements • Have the right to compensation for certain improvements and • Have the right to be consulted on how their home is managed 	<ul style="list-style-type: none"> • Tenancies are usually brought to an end at the tenants request by the giving of four weeks' notice in writing <i>or</i> • On the death of the secure tenant where there is no legal right of succession; <i>or</i> • By a court order if there has been any breach of the Tenancy Agreement <p>Note: If a lifetime secure tenant transfers to another social tenancy they will continue to be a secure tenant at the new address</p>

Flexible (Fixed term)	<p>Tenants</p> <ul style="list-style-type: none"> • Are still secure but the tenancy cannot last indefinitely • Can only be evicted for certain reasons unless the fixed-term of the tenancy has ended; • Do not have a statutory right to carry out improvements; • Do not have a statutory right to be compensated for improvements 	<p>Following the successful completion of the 1 year Introductory Tenancy</p> <ul style="list-style-type: none"> • It will usually be granted for a 5 year period • However the minimum term could be as little as 2 years for households who: <ul style="list-style-type: none"> – have a serious and proven record of breaches of tenancy conditions; – are in receipt of short term support; – are offered 'affordable housing' tenancies through the Council's private sector leasing scheme
Introductory	<p>Tenants</p> <ul style="list-style-type: none"> • Have a one-year trial council tenancy • Have most of the same rights as a secure council tenancy but may require additional permissions • Can be evicted much more easily • Successfully completing the trial tenancy will automatically become either <ul style="list-style-type: none"> – a secure tenant or – a flexible tenant 	<ul style="list-style-type: none"> • For 12 months • Can be extended for a further 6 months in certain circumstances

Furnished	<ul style="list-style-type: none"> • Has no legal definition and is a term which has come about through custom and practise with no implications regarding security of tenure • Includes carpeting, curtains, cooker, fridge and a range of furniture for an extra weekly charge 	<ul style="list-style-type: none"> • Provided with goods and furnishings for extra weekly charge in accordance with the security of tenure. <p><u>Note:</u> A furnished tenancy could be:</p> <ul style="list-style-type: none"> - an Introductory tenancy or a Secure tenancy - a Flexible tenancy
Demoted	<ul style="list-style-type: none"> • Can be used to take action against tenants who have been involved in anti-social behaviour • Are 1 year probationary council tenancies • Demoted tenants can be evicted much more easily than secure council tenants 	<ul style="list-style-type: none"> • Imposed by court order for a 12 month period. <p><u>Note:</u> Can be applied to Secure or Flexible Tenancies and if at the end of the 12 month term the problems have been resolved the tenancy will revert back to the original type of tenancy held before the demotion order was put in place</p>
Licence	<ul style="list-style-type: none"> • Gives personal permission to occupy accommodation • Provides less security than a tenancy agreement 	<ul style="list-style-type: none"> • Licences can be for any length of time. The licence agreement will state the period for which permission has been granted to occupy the accommodation • Licence agreements are usually brought to an end by either party serving notice

6. Who Will Be Granted What Type of Tenancy?

- 6.1 As Barnsley Council operates an Introductory Tenancy scheme all new Council tenants will be offered an Introductory Tenancy. Following the successful completion of the introductory period this will automatically be converted into either a lifetime Secure Tenancy or a secure Flexible Tenancy.
- 6.2 It is the intention of the Council that in the majority of cases lifetime Secure Tenancies will continue to be issued.
- 6.3 With respect to the use of Flexible Tenancies the Council is of the view that these should be used but only in limited, clearly defined circumstances. The areas in which the Council believes that the use of flexible tenancies is likely to be beneficial include:

Reason for Fixed Term Tenancy	Property or Applicant affected	Length of fixed term Tenancy
To help to deal with the likelihood of under occupation as household size diminishes with the departure of children from the family home. The greater the number of bedrooms a property has, the greater the relevance of the flexible tenancy	This policy will only apply to new tenants moving into properties with 4 or more bedrooms	5 years
Where properties have been specifically designed, or significantly adapted ¹ , for use by disabled persons a flexible tenancy may be used to ensure that when these specific adaptations are no longer required the property can be re-allocated to another family that requires these adaptations	This policy will apply to only a limited number of new tenants as there are very few purpose built or significantly adapted properties available across the borough	5 years

¹ Significant adaptations will include dwellings which have been extended or have undergone other extensive structural alterations in order to provide accommodation that meets the needs of a disabled person.

Reason for Fixed Term Tenancy	Property or Applicant affected	Length of fixed term Tenancy
<p>To help prospective tenants who have a proven history of serious and/or prolonged breaches of tenancy conditions. The granting of a flexible term tenancy will provide these households with the opportunity to demonstrate a change in their behaviour, whilst providing the Council with the opportunity to bring the tenancy to an end if this change does not materialise within the fixed time period</p>	<p>This policy will apply to only a very limited number of household where their previous conduct would have otherwise justified their being excluded from the waiting list</p>	<p>Agreed on an individual basis for a minimum two years and linked with the period required to allow the applicant to demonstrate a change in their behaviour</p>
<p>To help some vulnerable households have an opportunity to develop the skills needed to manage a tenancy. Especially so in cases where housing related support is being provided on a fixed-term basis – for example, in cases where children in care are leaving care to ensure a smooth transition and to avoid homelessness being used as a route into accommodation</p>	<p>Therefore, the Council's policy is that this will apply to only a limited number of new tenants who require a level of support that is essential to them being granted and able to sustain the tenancy</p>	<p>Agreed on an individual basis for a minimum of two years and linked to any support package</p>

- 6.4 Where an applicant is to be offered a Flexible Tenancy this will be confirmed in writing at the time that the tenancy is offered. Flexible Tenancies will only be offered if the applicant or the property meets the specific circumstances as set out in this policy. The applicant will also be advised of the length of the term.
- 6.5 Applicants will be advised in writing that they have a right of appeal against the type of tenancy being offered and the length of the term if they believe that these are not in accordance with the Council's Housing Tenancy Policy.

7. The End of the Term of the Flexible Tenancy

- 7.1 At the end of the term of flexible tenancies and depending on the circumstances of the individual household, tenants could have the following options:
- To remain in social housing (either in their existing home or in another social home either:
 - on another Flexible Tenancy; or
 - as a Secure tenant.
 - To move into the private rented sector;
 - To move into home ownership, either via a low cost home ownership route or otherwise; or
 - To be evicted when the tenancy terminates.

8. Circumstances in which a Flexible Tenancy will be Renewed

Flexible tenancies will be renewed where:

- the household is occupying a larger property with 4 or more bedrooms and the size of the household is such that the number of bedrooms they have are still required;
- the household is occupying a property that was specifically designed or significantly adapted for use by disabled persons and a member of the household still has a need for this type of accommodation;
- tenants with a previous proven history of serious anti-social behaviour and/or prolonged breaches of tenancy conditions have used the opportunity to demonstrate a change in their behaviour and the current tenancy is being managed in an appropriate manner; and where
- a vulnerable household has used the opportunity to develop the necessary skills to manage a tenancy and is demonstrating the ability to maintain the tenancy with the level of support that they are receiving.

9. What Happens if a Flexible Tenancy is not Renewed?

- 9.1 If the decision is made not to re-issue a tenancy at the end of the fixed term written notice of this will be provided 6 months before the tenancy ends. This notice will state the reasons why the tenancy is not being renewed and the tenants will be given the right to request a review of this decision. This complies with the review process and allows time to review the case before an application is made to the court.
- 9.2 The tenant(s) will also be provided with advice and assistance to help them find suitable alternative accommodation.
- 9.3 The tenant will be given two months' notice that possession is required and this notice will be served before or on the day the tenancy comes to an end. A notice must be served to begin the legal process and Berneslai Homes will also notify Housing Options Team, that this notice has been served.
- 9.4 The courts must make an order where the following are met:
- A fixed term tenancy has come to an end and no other tenancy is in existence except a periodic tenancy arising from the end of the fixed term tenancy; and
 - The landlord has given the tenant six months' notice that:
 - they do not intend to renew the tenancy
 - they have stated the reasons why and
 - given the tenant a right to request a review of the decision; and
 - the landlord has given the tenant two months' notice that possession is required; (this notice can be served before or on the day the tenancy comes to an end).
- 9.5 The court can refuse to grant a possession order if the tenant has requested a review and this has not been carried out. Once the court has granted a possession order a warrant for an eviction can be requested.
- 9.6 Households in flexible tenancies that no longer require the specific type of property that they occupy, for example households that no longer require a 4 bedroom house, will benefit from being granted priority in accordance with the Council's Lettings Policy to assist them in successfully accessing suitable alternative accommodation.
- 9.7 Where the flexible tenancy is to be brought to an end as a result of Anti Social Behaviour or other serious breach of the Tenancy Agreement the overall lead for case management will be the Council's Safer Neighbourhood Service. Any subsequent appeals in these instances would be heard by an Appeal Review Panel conveyed by the Council with senior representation from Berneslai Homes.

10. Appeals and Reviews for a Flexible Tenancy

- 10.1 Where an applicant is to be offered a flexible tenancy an appeal can be made at a number of stages.
- 10.2 A housing applicant can appeal against the type of tenancy offered or the length of the term if this is not in accordance with the information contained within this policy.
- 10.3 A tenant granted a flexible tenancy can also appeal against the decision not to grant a new tenancy at the end of the fixed term.
- 10.4 All appeals will be considered by Berneslai Homes in accordance with the appeals procedure as set out in the Council's Letting's Policy and detailed below.

Stage 1 Appeals

The applicant/tenant or their nominated representative has to register an appeal within 28 days of being informed of a decision made about their offer of accommodation or from the date of the notice that their Flexible Tenancy will not be renewed.

A nominated officer in Berneslai Homes will consider the appeal. If all of the nominated officers were involved in the original decision, the Berneslai Homes Customer Services Team will conduct the review.

An applicant/tenant can register an appeal in various ways:

- By phone
- In person (or via a nominated representative)
- Over the internet
- By e-mail
- In writing

Berneslai Homes will register the appeal and conduct investigations and considerations. Berneslai Homes will advise them of the outcome of the appeal within 20 working days.

Stage 2 Appeals

Where the Stage 1 appeal cannot be resolved to the satisfaction of the appellant, they have the right to formally appeal at stage 2 of the appeals process. The appellant must register their second appeal within 28 days of them receiving written confirmation of the first stage appeal decision. Berneslai Homes Customer Services Section will arrange Stage 2 appeals.

An applicant can register a stage 2 appeal in various ways.

- By phone
- In person (or via a nominated representative)
- Over the internet
- By e-mail
- In writing

Any appellant who appeals at Stage 2 will have their case reviewed by an independent panel made up of Berneslai Homes Board Members and a tenant representative.

A senior designated officer will attend in an advisory role. In certain cases it may also be appropriate for representatives from Social Services or other agencies to attend in an advisory role.

Appeals panel members must declare an interest if they have had any involvement in the case or if the applicant is known to them.

Information to the Panel

Prior to the panel hearing, members of the panel and the appellant will receive a copy of the evidence to be presented at the hearing by Berneslai Homes. This evidence will be anonymous thereby removing prejudices that may occur if an individual is named.

The identity of the appellant will be made known at the panel hearing.

Appeal Format

The appellant can make their appeal to the panel in writing, in person or via a third party where they have given their permission.

The Berneslai Homes' Senior Designated Officer will attend the panel and make verbal representations based upon a written report.

It will also be necessary for any officer involved in the decision to attend the hearing to answer any questions. For example, this could be a Housing Management Team officer or Rent Officer.

Berneslai Homes Customer Services team will arrange the hearing and facilitate the panel.

Process at the Hearing

- The chair of the panel will ask the officers to present their case.
- The chair of the panel will ask the appellant to present their appeal.
- The chair of the panel will give the appellant an opportunity to ask questions of the officers.
- The chair of the panel will give the officers an opportunity to ask the appellant any questions.
- The panel will ask questions of the appellant.
- The panel will ask question of the officers.
- The appellant will be asked to summarise.
- The officers will be asked to summarise.
- All parties will be asked to leave the room for the decision to be made. This is with the exception of the panel and the advisory officer.
- All parties will be advised to return to the room for the chair of the panel to deliver the decision.
- The decision of the panel will be based upon factual documentary evidence.

Role of advisory officers

If a specialist advisory officer attends the panel, their role is to clarify issues, confirm points of law and give advice to the panel. They are not part of the decision making panel, but it would be preferable that they leave, to be recalled only to clarify points of issues. The clerk should be the only officer present remaining through during the decision making process.

Panel members can ask questions of these officers at any point during the hearing. They can also, if necessary ask questions of these officers in private after the appellant and representing officers have been asked to leave.

It is at the discretion of the chair whether the advisory officers are present during the decision making process.

Decisions

The decision of the appeals panel is final.

There are a range of decisions that can be made by the panel dependent upon the reason for the appeal.

The main decisions are:

1. Appeal Upheld
2. Appeal Not Upheld
3. Officers are asked to make further investigations and review their decision, which will come straight back to panel if requested by the appellant.
4. Appeal Upheld in Part.

The chair of the panel will deliver the decision to the appellant and make requests of the officers to take any necessary action. Berneslai Homes will confirm the decision in writing to the appellant within 5 working days of the appeal hearing. The appellant may still exercise his/her right to approach the Ombudsman.

11. Succession Rights

- 11.1 The Localism Act 2011 removes the statutory right of those other than spouses and civil partners to succeed to a secure tenancy. It also provides discretion for landlords to grant succession rights in addition to the statutory minimum of one succession to a spouse or partner. There is no right to succeed if a previous succession has occurred. The changes do not affect secure tenancies that began before April 2012.
- 11.2 As a result of these provisions succession can now only be by the spouse or civil partner of the (deceased) tenant. However where there is no right of succession Barnsley MBC may give consideration to granting a new tenancy under the following circumstances:
- a) The person occupies the dwelling as the person's only or principal home at the time of the tenant's death and the person is a spouse or civil partner; or
 - b) Where at the time of the tenant's death there is no statutory right of succession as a previous succession has occurred and the property is occupied by a family member as his/her principle home; or
 - c) Where at the time of the tenant's death the dwelling is not occupied by a spouse or a civil partner of the tenant but is occupied by a family member as his/her only or principle home:
 - i. Provided there is no under-occupation a family member (as defined by the Housing Act 1985) may be granted their own tenancy provided they meet all of the succession rules set out under the Housing Act 1985 Part IV and has been residing at the property as their only or principal home for a minimum of three years.
 - ii. Where the property is under-occupied by a family member if the family member meets all of the succession rules set out under the Housing Act 1985 Part IV and has been residing at the property as their only or principal home for a minimum of three years they may be made one offer of suitable alternative accommodation. If the family members left in occupations refuses to move legal action may be taken to seek possession of the property under Ground 16 of the Act.
 - iii. Where a family member has resided at the property for less than three years they may be required to vacate. If the occupant refuses to vacate then legal action may be taken to seek possession.