

EXETER CITY COUNCIL
SCRUTINY COMMITTEE - COMMUNITY
4 SEPTEMBER 2012

EXECUTIVE
18 SEPTEMBER 2012

SUCCESSION & ASSIGNMENT POLICY

1. PURPOSE OF THE REPORT

- 1.1 To consider changes to the Council's policy on the succession and assignment of tenancies.

2. SUMMARY

- 2.1 The succession and assignment of tenancies is a difficult area of tenancy management. Generally, it happens as a result of a bereavement of a spouse, partner or parent and officers will often be working with tenants and their families who are in a highly distressed and vulnerable state. Recently, the council has received representations from some tenants and their representatives, including local members, about the decisions the council has made about where the surviving family member should live when a tenant has died. In particular, the surviving family members have found it difficult when, in line with the current Succession and Assignment Policy, officers have advised them that they will be required to move to different accommodation. This report sets out the current policy and its objectives so that Members can decide whether a review of the policy is required.

3. POLICY BACKGROUND

- 3.1 The existing policy seeks to balance the rights of existing tenants with the needs of applicants on the housing register, making best use of our stock in terms of household size and disabled adaptations.
- 3.2 The demand for social housing in Exeter, particularly for family sized accommodation of two bedrooms and above and adapted properties, has meant that the Council has traditionally adopted a fairly rigorous approach to under occupation and the suitability of accommodation when considering whether to allow surviving tenants to remain in the family home.
- 3.3 This is supported by national policy with the Government's Housing Strategy being stating that "housing is an important asset" and "social housing is not providing the right support to people who need it most". They assert that "Demand for social housing has increased significantly, and the stock that is available is not being well used: there is widespread overcrowding and under occupation, and tens of thousands of properties are occupied by people who ought not to be there." The strategy also states that the Government "do not expect social homes to be allocated to people who do not need them...while at the same time those in genuine need should be prioritised".

4. THE COUNCIL'S CURRENT POLICY ON SUCCESSION AND ASSIGNMENT

- 4.1 The Succession & Assignment Policy and Procedure is available on the intranet and is linked to the agenda. It is also available in the Members' room and on request from Member Services. The key elements of the policy are summarised below:

Succession

- 4.2 Succession is when someone takes on a tenancy after the original tenant's death. It does not require the creation of a new tenancy. For secure tenancies, the legal basis of the right of succession is contained in section 87 of the Housing Act 1985. By law, only one succession is allowed for each tenancy.
- 4.3 A secure tenant is a successor if they become the tenant by statutory succession or if the tenant was formerly a joint tenant and became a sole tenant under the same tenancy.

Tenancy

- 4.4 A tenant can hold either a joint tenancy or a sole tenancy.
- 4.5 **Joint Tenancies:** On the death of a joint tenant, the tenancy will pass to the surviving tenant (technically by the 'right of survivorship'). This will count as one succession. When the sole surviving tenant subsequently dies, there is no further right of succession. A surviving joint tenant is a successor under section 88 of the Housing Act 1985.
- 4.6 **Sole Tenancy:** When the sole tenant dies, the tenancy may be succeeded to by a "qualified successor". The law defines a qualified successor as "someone who occupied the dwelling house as his or her only or principle home at the time of the tenant's death and was the tenant's:

- Spouse
- Civil partner
- Immediate family (if they had been living with the tenant continuously for the 12 months prior to the tenants death). 'Immediate family' means partner, parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece."

Surviving family members outside these criteria would normally not be granted succession. Where it is deemed appropriate to take possession action, officers have regard to the matters that the court would take into account in determining reasonableness, which include:

- Their age
- The period of time in which they lived in the property as their only or principal home.
- Any financial or other support they gave to the deceased tenant

Discretion

- 4.8 The Policy allows officers exercise sympathetic discretion to grant succession where the surviving persons have no rights of succession but have been in residence for a

long time, or where there are special housing needs. This is done on a case by case basis and should always be dealt with sensitively and sympathetically.

Refusal to Grant a Succession

4.7 The law allows councils to refuse to grant a succession to a tenancy where the accommodation afforded by the dwelling is deemed to be more extensive than is reasonably required - e.g. if a single person succeeds to a two-bed property or larger the council can seek to move the new tenant to another suitable property. As a result, despite the fact that the surviving family member may have lived in the property for many years, local authorities will generally seek to recover repossession of under-occupied properties in order to ensure the best use of their stock. This is particularly the case in areas of high housing demand.

4.8 The Housing Act 1985 sets out the grounds on which a council can seek to evict a secure tenant, which are under-occupation and disabled adaptations. We are required to serve a notice of seeking possession no earlier than six months and no later than twelve months after the previous tenant's death. The court may only order possession if suitable alternative accommodation is available and it is reasonable to require the resident to give up the property. The council's current policy, based on the legal provision, is as follows:

1) Under Occupation

If the property is larger than is reasonably required by the successor (and the successor is not the deceased tenant's spouse or civil partner – who will be allowed to remain whatever size the accommodation) we will arrange for them to move to more suitable alternative property in consultation with Devon Home Choice. The downsizing policy will apply. Should we regard a property to be under occupied as a result of a succession and the tenant refuses to move then we can seek possession of the property under schedule 2, part 111, ground 16 of the Housing Act 1985.

Ground 16 states that “the accommodation afforded by the dwelling house is more extensive than is reasonably required by the tenant.” More extensive is currently defined in our policy as having one extra bedroom in excess of requirements.

2) Disabled Adaptations

Ground 13 of the Housing Act 1985 states that succession of a tenancy can be refused if the dwelling-house has features which are substantially different from those of ordinary dwelling-houses which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of a kind provided by the dwelling house and:

- a) There is no longer such a person living in the dwelling house and
- b) The landlord requires it for occupation (whether alone or with members of his family) by such a person.

Assignment

4.9 Assignment is where a tenant passes on their tenancy to some one else. This does not create a new tenancy; it passes the existing tenancy to the assignee.

Our current policy is to only grant permission to assign those people who would have succeeded to the tenancy had the tenant died immediately before the proposed assignment, this means

- A spouse
- A partner, or civil partner
- Immediate family (if they had been living with the tenant continually for the 12 months prior to the tenants death)

We would, however, treat any partner (other than a married partner or civil partner) in the same way as an immediate family member, and expect them to have lived with the tenant continuously for twelve months before agreeing to the assignment.

Under Occupation after Assignment

- 4.10 An assignment in these circumstances is a statutory right; it **can not** be restricted by the terms of the tenancy agreement. There are no grounds for possession and our only option is to offer alternative accommodation. The downsizing policy will apply in these cases.

In the case of an assignment made to a person who would have been a successor it may be that the property will be under occupied.

5. POLICY MATTERS FOR CONSIDERATION

5.1 Under-Occupation

The Council currently defines “more extensive” as having one bedroom in excess of requirements. The justification for this stance has been the high demand for social housing property in Exeter.

Although the demand for Housing in Exeter is extremely high, Members may wish to reconsider this element of the policy. Elderly residents often appreciate an extra bedroom as a safeguard should they become ill and require over night assistance or to accommodate visiting family members.

5.2 Disabled Adaptations

Due to the demand and cost of disabled adaptations we have consistently administered the policy robustly with regards the housing needs of the surviving tenant who has no need for adaptations; although at the same time we have always tried to find them acceptable alternative accommodation. We have not as yet been subject to legal challenge.

The Housing Act 1985 Ground 13 states that we can seek possession of a property in succession or assignment circumstances if “the dwelling-house has features substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person”

There is no definition or case law to help us interpret the term ‘substantially different’. This can lead to inconsistencies in the application of the policy and is currently being applied to disabled adaptations of any sort, however minor. Members may feel that a more specific definition is required, such as an assessment of the equivalent monetary value of the existing adaptations. For example, a minimum equivalent

value of £1000 might be a more sensitive interpretation of the law. Alternatively, Members may feel that the involvement of the court in the possession provides sufficient protection for the tenant.

5.3 Appeals Procedure

The policies and procedures of many social landlords contain the same clauses and references to government legislation as our own. Many also refer to the high demand for property in their areas and make reference to an appeals procedure.

We currently have in place an appeals procedure for issues concerning mutual exchanges (assignments) but no formal appeals procedure for issues relating to successions. An appeals procedure for successions may be something that we would like to consider as part of any policy review.

5.4 Members may find the case studies set out in Appendix 1 and data in Appendix 2 helpful in reaching a view.

6. RECOMMENDATIONS

6.1 That the current Succession and Assignment Policy is revised to:

6.1.1 Define properties as “more extensive” when there is more than one bedroom in excess of requirements;

6.1.2 Define properties which have had disabled adaptations as “substantially different” where the value of the adaption exceeds £1000;

6.1.3 Introduce an appeals procedure.

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S:PA/LP/ Committee/912SCC3
21.8.12

Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report:

None