

Report to the Cabinet

Report reference: C-074-2011/12

Date of meeting: 23 April 2012



**Epping Forest
District Council**

Portfolio: Housing

Subject: Succession to a Secure Tenancy

Responsible Officer: Roger Wilson (01992 564419).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) That, with effect from 1 April 2012, all of the Council's secure tenants be granted the following additional succession rights in addition to those set out in the new Localism Act if at the time of the tenant's death, the dwelling-house is not occupied by a spouse or a civil partner of the tenant as his only or principal home;

(a) Provided there is no under-occupation, a family member will be allowed to succeed to the tenancy provided they meet all of the succession rules set out under the Housing Act 1985 Part 1V and have been residing at the property as their only or principal home for over three years;

(b) 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 1V and have been residing at the property as their only or principal home for over three years, they be made one offer of suitable alternative accommodation. If the successor tenant refuses to move, then the Council would take Court action to seek possession under Ground 16 of the Act; and

(c) Where the property is under-occupied by a family member who has resided at the property for less than three years then they be required to vacate. If the occupier refuses to vacate, then the Council would take Court action to seek possession in the normal way;

(2) That the Council's Standard Tenancy Agreement for all post-Localism Act tenancies be amended (and applied retrospectively to commence from 1 April 2012) to include all of the conditions set out in Recommendation (1) above; and

(3) That the Council's current discretionary succession policy also be applied (retrospectively to commence from 1 April 2012), to all post-Localism Act secure tenants.

Executive Summary:

All of the Council's existing secure tenants enjoy many rights under the Housing Act 1985 Part IV (Tenants Charter). One of these is the right to succeed a tenancy which takes place upon the death of the tenant. Any successor tenant who is either a spouse or a Civil Partner

is able to remain at the accommodation regardless of any under-occupation. Under the current legislation, in the case of a family member, if the accommodation afforded by the dwelling-house is more extensive than is reasonably required by the tenant then the Council can serve a notice of possession more than six months but less than twelve months after the tenant's death requiring them to vacate and move to smaller accommodation unless the Council's under-occupation policy applies.

Under the new Localism Act, the right to succession to family members has been repealed for all new post-Localism Act secure tenants. However, the Localism Act inserts a new provision within the Housing Act 1985 which gives powers to councils to allow family members to succeed if they choose to do so.

The Cabinet is asked to consider if this additional succession right should be granted to all new tenants following the enactment of the new Localism Act. The Council was only advised in late March that this element of the Localism Act is coming into force on 1 April 2012, it is therefore important that the Council has a policy in place and is applied retrospectively to all new tenancies from 1 April 2012.

It is suggested that all new post Localism Act secure tenants be given the right for family members to succeed (as they have currently) provided there is no under-occupation and that they have been living at the accommodation as their only or principal home for at least three years (i.e. longer than the current statutory 1 year). Where they are under-occupying they be required to move to smaller more suitable accommodation.

Reasons for Proposed Decision:

To have a local succession policy in place which applies to all new post-Localism Act secure tenants, which clearly sets-out the conditions under which a family member can succeed to a secure tenancy. The Council was only advised in late March that that this element of the Localism Act is coming into force from 1 April 2012. It is therefore important that a new policy can be applied to all new tenants retrospectively from 1 April 2012.

Other Options for Action:

Not to have a succession policy in place for post-Localism Act secure tenants, and therefore not give them the additional discretionary right for any family members to succeed to their tenancies. This would reduce the rights provided to post Localism Act tenants, compared to existing tenants.

Report:

1. All of the Council's existing secure tenants enjoy many rights under the Housing Act 1985 Part IV (Tenants Charter). One of these is the right to succeed to a tenancy (i.e. "take over") which takes place upon the death of the tenant. A person is qualified to succeed the tenancy if he occupies the property as his only or principal home at the time of the tenant's death and is the tenant's spouse, or Civil Partner. In addition, where there is no surviving spouse, another member of the tenant's family, as defined under the Act, can succeed. In the case of a family member, he must be living at the property at the time of the death and must have resided with the tenant continuously for 12 months immediately prior to the tenant's death. Where there is more than one eligible family member, under the Act, it is for those eligible family members to choose who would succeed to the tenancy. Where no agreement is reached it is up to the landlord to decide which family member succeeds. There can be no joint succession and only one succession is permitted, with the spouse taking preference.

Succession and the Council's Introductory Tenancy Scheme

2. On 1 April 2006, the Council introduced an Introductory Tenancy Scheme for all new secure tenants. Under the scheme, no new tenancies become secure until after a twelve-month "trial" period. During the twelve-month period, introductory tenants do not have the same statutory rights as secure tenants. However, spouses and, under the current legislation, family members may succeed to introductory tenancies. A successor tenant would continue with the introductory tenancy until twelve months has elapsed from the tenancy commencement date.

Succession to a Family Member – Under-occupation Policy

3. Under the current legislation (for all pre-Localism Act tenants), in the case of a family member, if the accommodation afforded by the property is more extensive than is reasonably required by the tenant then the Council can serve a notice of possession more than six months but less than twelve months after the tenant's death. In these circumstances, the Council's under-occupation policy relating to successor tenants applies which is based upon law, and is as follows:

- (a) That under-occupying successor tenants be encouraged to move to smaller accommodation;
- (b) That where only one bedroom is unoccupied, successor tenants be allowed to remain if:
 - (i) they have resided in the property for more than 10 years prior to the date of the former tenant's death; or
 - (ii) they provided significant financial or other support to the previous tenant; or
 - (iii) they are over 60 years of age; and
- (c) That other cases be decided on their merits, but where there are no exceptional circumstances they be required to transfer to smaller accommodation and that legal action be taken if necessary.

4. Successor tenants have the right to appeal to the Housing Appeals and Reviews Panel. Should the successor tenant be under-occupying, then usually one offer of suitable alternative accommodation is made, and the successor tenant will usually be required to move. If the successor tenant refuses to move, then the Council would take Court action to seek possession under Ground 16 of the Act.

The Localism Act 2011 – Succession by a Family Member

5. Under the new Localism Act, the right of succession to family members has been repealed for all new post-Act secure tenants. However, the Localism Act inserts a new provision within the Housing Act 1985 Part 1V (Section 87 (2 b)) as follows:

“ an express term of the tenancy makes provision for a person other than such a spouse or civil partner of the tenant to succeed to the tenancy.”

6. Therefore, although all existing pre-Localism Act secure tenants' rights will be protected, councils do have the power to grant additional succession rights to post-Localism Act secure tenants if they choose in their tenancy terms.

7. The Cabinet is asked to consider if such additional succession rights should be granted to all new tenants following the enactment of this provision under the new Localism

Act. The Council was only advised in late March that this element of the Localism Act is coming into force on 1 April 2012, it is therefore important that the Council has a policy in place. It is being suggested that the policy applies retrospectively to all new tenancies from 1 April 2012. If the policy was not applied retrospectively, then all new tenants in accordance with the new legislation would not be granted any succession rights to family members during the interim period.

8. It is suggested that appropriate express terms be included in the Council's Standard Tenancy Agreement for all new post Localism Act secure tenants to reflect the following. It should be noted that for all post Localism Act tenants, the Council's Under-Occupation Policy will not apply to all family members who qualify to succeed and who are under-occupying. They therefore, will be required to move to smaller accommodation. In addition, the length of time family members have to have lived at the property prior to the tenant's death will be extended from the current statutory period of 1 year to 3 years.

Succession

- *Persons qualified to succeed tenant*

9. A person is qualified to succeed the tenant under the secure tenancy if:

(a) the person occupies the dwelling-house 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 the dwelling-house is not occupied by a spouse or a civil partner of the tenant as his only or principal home;

(i) Provided there is no under-occupation, a family member (as defined by the Housing Act 1985) will be allowed to succeed to the 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 over 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 over three years, they be made one offer of suitable alternative accommodation. If the successor tenant refuses to move, the Council may take legal action 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 will be required to vacate. If the occupant refuses to vacate, then the Council will take legal action to seek possession in the normal way.

- *The Council's Discretionary Succession Rule*

10. In accordance with the Housing Act 1985 Part IV, there can only be one succession to a secure tenancy. However, at its meeting on 12 September 2000 (minute 44 refers) the former Housing Committee agreed that, generally, where there is no right to succeed following one succession to a tenancy and the remaining occupant would otherwise have been a successor tenant, the Council treats such cases in the same way as if he had the right of succession. In these circumstances, where an occupant remains in occupation, a new tenancy is granted.

11. Under the Localism Act, all of the Council's post-Act secure tenants would be able to enjoy this same discretionary right, provided there is an express term in the Standard

Tenancy Agreement. It is therefore also suggested that, in the future, the following express term be included in the Council's Standard Tenancy Agreement for all new post Localism Act secure tenants (in addition to the conditions set out in paragraph 9), to reflect the following:

(a) that where there has already been one succession to a secure tenancy the person will be allowed to succeed the successor tenant.

12. The Cabinet is asked to agree the additional discretionary rights to new post-Localism Act secure tenants (to commence retrospectively from 1 April 2012), and the new express terms to reflect these rights be included in the Council's Standard Tenancy Agreement for these tenants.

Resource Implications:

Within existing resources.

Legal and Governance Implications:

Housing Act 1985 Part 1V
Localism Act 2011

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

The Tenants and Leaseholder's Federation were consulted on the matter at their meeting on 28 March 2012 and agreed with the proposals.

Background Papers:

Localism Act Consultation Documents

Impact Assessments:

Risk Management

No risks have been identified.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A