

Adult Social Care Policies and Procedures

MAXIMISING OCCUPANCY IN SUPPORTED HOUSING CONSULTATION DOCUMENT

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1. POLICY STATEMENT

The purpose of this consultation document is to set out the council's proposed approach to reviewing supported housing where there are vacancies, and the procedure that – if implemented – will guide decisions about non-viable supported households (a non – viable supported household may be one where the environment no longer meets the tenant(s)' needs; or where cost pressures on any of the stakeholders make the scheme financially unviable; or there are insurmountable incompatibility issues; or any other impacts).

There are in the region of 700 properties classed as 'supported tenancies' across Lancashire, with approximately 160 of those properties carrying one or more vacancies (approximately 225 vacancies in total according to 2019 figures). Vacant tenancies place a financial strain on the remaining tenants and sometimes on the housing and support provider, and on the resources of the county council.

The number of vacancies in supported housing look set to rise as some households will not meet the needs of an ageing population; tenants will pass away as they age, new tenants will move in but do not want to be there, some tenants will move out and as alternative options are developed some tenants will choose to move on to alternative solutions, leaving former co-tenants behind.

Strenuous efforts continue to be made to find suitable people to fill these vacancies. Many have been vacant for a considerable length of time with no realistic hope of ever filling the vacancy. The creation of the proposals in this consultation document provides a mechanism to review the sustainability of supported housing and decommission schemes that are no longer viable to minimise under occupancy and utilise public resources more effectively.

In 2019, the National Fire Chiefs Council (NFCC) produced new guidance "Fire Safety in Specialised Housing". This guidance is to be used as a point of reference to support decision making around the viability of supported living schemes.

Advocacy

Under the Care Act, the county council must arrange for an independent advocate to facilitate the involvement of the person with care and support needs in their assessment, care and support plan and any reviews of their care plan, as well as in safeguarding enquiries and Safeguarding Adult Reviews, if two conditions are met:

- The person has **substantial difficulty** in being involved in these processes
- There is not an **appropriate individual** willing to support them

Please be aware that further duties to arrange an advocate also apply under the Mental Health Act 1983 and Mental Capacity Act 2005. In particular, tenants who lack mental capacity to consent to a change in accommodation will be entitled to an Independent Mental Capacity Advocate under the Mental Capacity Act.

Complaints

The county council will follow relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Notwithstanding the legal rights of a tenant, if a tenant (or their representative, as appropriate) wishes to challenge or raise concerns in regard to any decision [the county council's complaints procedures will be made available](#).

Safeguarding

The county council will follow its obligation under the Care Act to safeguard adults with care and support needs (whether or not the council is meeting any of those needs) and ensure that its obligations are carried out in partnership with all agencies and organisations who may come into contact with those people.

General Principles

The Care Act allows the county council to consider its financial resources and how we spend public funds to meet people's needs.

The county council wants staff to apply their professional judgment and will support them to do so.

Social care professionals should determine the most appropriate intervention for the person's needs and desired outcomes. They should always consider what will happen to allow the person retain or regain their independence.

The council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant.

The council will make all reasonable adjustments to ensure that all disabled people have equal access to participate in the eligibility decision in line with the Equality Act 2010.

2. KEY DEFINITIONS AND PRINCIPLES

Definition of terms

- **Supported Housing (or scheme):** Rented accommodation in which an adult with support needs lives with other adults or alone but benefits from other support within the scheme, and where care and support is provided as part of the tenancy. Supported housing is often defined as "any scheme where housing, support and sometimes care services are provided with the purpose of enabling the person receiving the support to live as independently as possible in the community" (from: [Making it Real for Supported Housing, Think Local Act Personal, Sitra](#), 2016).
- **Right of tenure:** The adult's rights of occupancy under a tenancy agreement; can vary according to the type of tenancy agreement in place.
- **Non –viable supported household:** There are a number of factors that influence whether a property and support is non-viable. A non–viable supported household

may be one where the environment no longer meets the tenant(s)' needs; or where cost pressures on any of the stakeholders make the scheme financially unviable; or there are insurmountable incompatibility issues; or any other impacts.

- **Housing Management Agreement (HMA):** An agreement between the Housing Provider and the Local Authority or Care Provider, which sets out the legal and financial frameworks relating to the management of the property.
- **[Housing with Care and Support Strategy](#):** The county council's strategy sets out how with partners, we will develop a range of high quality Housing with Care and Support schemes across Lancashire by 2025 for both older adults and younger adults with disabilities. This will enable many more people to remain safe and independent in a suitable home environment that connects them to other people, their community and services they need or might need in the future. Supported housing models will continue to meet the needs of individuals, **which** will be responded to as far as reasonably possible within the context of the supply of suitable housing, affordability and their housing rights.
- **Nomination Rights:** The person or organisation who has the right to make a formal nomination of an individual to become the tenant of a vacant unit of accommodation.
- **Service Level Agreement (SLA):** An agreement between the Housing Provider, the Local Authority and Care Provider, which identifies the roles and responsibilities of each party.
- **Early Sales Clause (ESC):** Contained within an HMA, the ESC sets out financial liability for the respective parties in relation to the disposal of a property that is no longer required.
- **Rent void:** The financial value of the rent due on the vacant tenancy.
- **Support void:** the financial value of the background support costs that arise as the result of a vacant tenancy.
- **Reconfiguration:** The change to the agreed number of tenancies within an individual property.
- **Housing and Support Forum:** The county council's internal forum that considers proposals regarding supported housing.

What will influence the decision about whether a supported household is non-viable in the future?

There are a number of determining factors when considering the future viability of a supported housing tenancy. This list is not exhaustive:

- Modernising care services in supported housing as referred to in the county council's [Housing with Care and Support Strategy](#).
- Does the property meet the needs of its tenants or can it be adapted to meet future need?
- Is the property of a good condition to suit people's needs?
- Can the tenants afford to meet the current household expenses? What is the realistic chance of finding a suitable new tenant for the tenancy should a vacancy arise?
- Are there additional costs incurred in relation to the support or accommodation void?
- How long has any vacancy existed? It is proposed that:

- No vacancy should be more than 1 year old (please see section 3.4)
- Could the tenancy be reconfigured so that it can become financially viable?
- How is the tenancy deploying staff scarce resources?
- Location of alternative household. People have certain rights under the law to choose their accommodation, which the county council will always respect and uphold.
- Is the combined support costs of the tenants affordable to the funding authority and/ or care provider?
- Is the vacancy affordable via Housing Benefit?
- What would be the impact on the people/tenant(s) if the household were to close?
- Is there an HMA (Housing Management Agreement) in place and what are its terms in relation to void rent and ESC (Early Sale Clause)?
- Is alternative suitable accommodation available to meet the needs of any people/tenants who could potentially be affected?
- Other factors such as compliance with workforce/Code of Practice BS9991:2015 Fire Safety in the Design, Management and Use of residential buildings, which introduces the housing typology 'specialised housing'.

Because of the number of variables listed above there is no definitive formula that can be applied to support decision making. Instead, it is proposed that the following procedures are adopted to ensure that consistent and fair decision-making is applied when considering the viability of a supported living tenancy.

Principles of the proposed policy

Any decision by the council that a supported household is 'non-viable' would only be made having considered all circumstances, working closely with the individual and family (or their representative or advocate as appropriate), the relevant Housing Provider, Funding Provider and Care Provider. The county council will have regard in these circumstances to the relevant provisions of any HMA, SLA and the terms of the tenancy agreement(s).

3. PROCEDURES

Supported housing review

A supported housing review is not the same as a social care review, although individual social care reviews will form part of the proposed process. Each property and the needs of the individuals will be considered on its merits and the council would seek legal advice about how to proceed on a case-by-case basis where there are any disputes.

A supported housing review may be requested at any time by any interested party – the county council, provider, individual or representative. This would be discussed at the Housing and Support Forum who will ensure stakeholders will be involved in the review, should one be required. A named lead will manage and coordinate the review.

Checklist of proposed considerations

1. Is suitable alternative accommodation available?

Suitable alternative accommodation is a prerequisite to ending a non-viable household. A tenant should therefore not give notice on a tenancy until a suitable alternative has been identified and a timescale for moving agreed with all parties.

The county council has a duty to meet assessed need, but this does not have to be in a "like for like" manner to existing provision. Suitable alternative accommodation may therefore be another type of provision that is appropriate to the person's needs and desired outcomes, such as:

- Alternative supported housing
- A Shared Lives Placement.
- An apartment scheme
- Residential Care

If there is no suitable alternative accommodation available then this needs to be reported to the Housing and Support Forum who will consider all the options and explore alternatives.

2. Does the tenancy meet the environmental needs of the tenants/potential tenants or, can it be adapted to meet those needs?

Where appropriate, every effort should be made to adapt the property to meet the needs of the current or potential tenants, either via a Disabled Facilities Grant (DFG) or by the Landlord agreeing to underwrite the cost of adaptation. If this cannot be achieved then consideration must be given to finding suitable alternative accommodation.

With an ageing population and the increased complexity of people's needs there is a growing demand for care and support, which contributes to the financial challenges all councils face. The county council will review existing housing schemes that are unsuitable to meet people's needs in the longer-term and/or have long-standing vacancies, with a view to decommissioning these if appropriate and supporting people to move to good quality housing. The proposed service model for new schemes will also be based on the following:

- People will have a say about where they wish to live, which will be responded to as far as reasonably possible within the context of the supply of suitable housing, affordability and their housing rights.
- People will live in their local community, security of tenure, private space and control over their own front door.
- People will have choice and control over how their care and support is provided, which will be a separate agreement to their accommodation.

- People will receive care and support that is person-centred, promotes independent living, helps them be connected to their family, friends and community, and helps keep them safe.
- People will be enabled to maximise independent living.

3. Can the tenant(s) meet the financial housing related costs of living in the household?

If the tenant(s) cannot afford to pay all the bills that they are responsible for, then a timescale should be established in which to identify new tenant(s) and beyond that time plans should be put in place to find suitable alternative accommodation.

NB. The Personal Budget that the person receives is to meet their assessed eligible social care needs and cannot be used for household bills.

4. Is there a realistic prospect of new tenants moving in?

The county council, Housing Provider and Support Provider (if there is one) and, where appropriate, the Health Commissioners, should agree a timescale to identify potential tenants to fill the vacancy.

Based on long-standing experience, and as a guiding principle, if a tenancy has had a vacancy for more than one (1) year then the likelihood becomes remote that a suitable tenant will be found and sourcing suitable alternative accommodation must be considered for the remaining tenant(s). This timescale may be varied, based on the individual circumstances of a tenancy and its tenant(s). It is the responsibility of the county council to take action where there is a vacancy more than one (1) year old.

5. Can the county council or provider afford the support related costs?

If support costs are excessive and/or disproportionate compared to other tenancies or other available types of supported accommodation, then the tenancy may not be affordable to the county council. In these circumstances, the county council will determine an action plan with the Support Provider. This action plan may mean the tenant(s) move to new accommodation to make best use of public finances. In such circumstances, the county council will liaise with the relevant Housing Provider, Funding Provider and Care Provider, the tenant and his/her representatives (as appropriate) and have regard to the relevant provisions of any HMA, SLA and the terms of the tenancy agreement.

6. Can the Local Authority or Support Provider afford the rent costs?

In some circumstances, the county council or the Support Provider will be liable for the rent on a vacancy. The timescale for this liability will be determined by the terms

set out in the HMA for that particular tenancy. In some instances, the county council or the Support Provider will not become immediately liable, but it should not wait until it becomes liable to consider this factor.

The full terms of the HMA must be considered – including any liability to pay an ESC, and a timeframe in which to find a new tenant must be established by the county council or the Support Provider. If a tenant is not found within this timeframe, plans must be drawn up in partnership with the support provider to find suitable alternative accommodation for the remaining tenant(s).

7. What would be the impact on the tenant if the household were to close?

The potential impact of a move to suitable alternative accommodation must be assessed on an individual basis, considering all the circumstances surrounding the move. It should not be assumed that it is always best for a person to remain put, as an under-occupied tenancy can leave the remaining tenant(s) more restricted, more isolated, and with an increased burden of household bills, thus reducing disposable income and access to activities. Therefore, the impact on the individual's health and well-being of remaining in a non-viable tenancy will also need to be assessed.

In the event of any move, the county council will strive to ensure a smooth transition for an individual from their current accommodation into suitable alternate accommodation. Should a tenant not consent to such a move then it may be necessary to work with the relevant landlord to seek a possession order through the courts. This will include a demonstration by the county council that suitable alternative accommodation is available and that the relevant legal test is met.

8. Legal implications in relation to HMA's or support contracts

In some circumstances, there may be legally binding obligations within an HMA or a support contract that prevent the county council or the Support Provider from ending the HMA early (or which mandate a specific notice period before an HMA can end). This however should not prevent consideration being given to the suitability of an individual to remain in a tenancy if it does not meet their needs. The terms of each HMA will be subject to review and where possible an HMA will be renegotiated with the Housing Provider to ensure that it is fit for purpose. The county council will strive to work closely with relevant parties to ensure there is a clear process to follow in the event that the council wishes to give notice to terminate a HMA and seek to move tenants. Separate consideration will need to be made on the future use of the property by county council senior managers.

Summary of proposed considerations

The Housing and Support Forum will consider the supported living tenancy review and the above points. If on balance of all the considerations, the county council (as

commissioner) determines that a tenancy is not viable then this will be communicated in writing by the county council, along with a proposed action plan including details of suitable alternatives to the:

- Individual tenant(s)
- Representative(s)/Advocates
- Support Provider (if there is one)
- Housing Provider

This communication will clearly set out the rationale for the decision.

Notwithstanding the legal rights of the tenant, if a tenant/advocate wishes to challenge any decision then they may do so via the [county council's complaints procedures](#) and the council will seek legal advice about how to proceed on a case-by-case basis.

The Landlord and/or the support provider may only challenge this decision if it considers it has legal grounds to do so and this challenge must be notified in writing to the county council's Legal Department.

4. RELATED DOCUMENTS

OTHER RELATED DOCUMENTS	Housing with Care and Support Strategy
LEGISLATION OR OTHER STATUTORY REGULATIONS	Care Act 2014 Mental Capacity Act 2005 Housing Act 1988 Housing Act 1996

5. EQUALITY IMPACT ASSESSMENT

The Equality Act 2010 requires the county council to have "due regard" to the needs of groups with protected characteristics when carrying out all its functions, as a service provider and an employer. The protected characteristics are: age, disability, gender identity/gender reassignment, gender, race/ethnicity/nationality, religion or belief, pregnancy or maternity, sexual orientation and marriage or civil partnership status.

The main aims of the Public Sector Equality Duty are:

- To eliminate discrimination, harassment or victimisation of a person because of protected characteristics;
- To advance equality of opportunity between groups who share protected characteristics and those who do not share them. This includes encouraging participation in public life of those with protected characteristics and taking steps to ensure that disabled people in particular can participate in activities/processes;

- Fostering good relations between groups who share protected characteristics and those who do not share them/community cohesion.

It is anticipated that the proposed guidance on **Maximising Occupancy in Supported Housing** in this consultation document will support the county council in meeting the above aims when applied in a person- centred, objective and fair way which includes, where appropriate, ensuring that relevant factors relating to a person's protected characteristics are included as part of the process.

[More information can be found on the Equality and Cohesion website](#)