

Comments from the Private Sector Housing Team regarding the draft Housing Allocations Scheme

The following comments are made in respect of the draft Housing Allocations Policy

With respect to your Appendix 1 that lays down the proposed Priority Bandings for housing allocations and includes within Band A, point:

(vi) 'Home seekers occupying insanitary or overcrowded housing which poses a serious health hazard, or otherwise living in unsatisfactory conditions (in accordance with housing legislation) but not as a result of the introduction of a further household.'*

Where * Housing legislation is clarified as:

*'*Where the Permitted Number, in accordance with the provisions of S. 326 of the Housing Act 1985 is exceeded, or the property is in a serious state of disrepair, of poor internal or external arrangement, or the property has been classified as having at least one Category 1 Housing Hazard under the Housing Act 2004 or is lacking one or more of the following; kitchen facilities, inside W.C., utility supplies.'*

Typically, the Private Sector Housing team receives requests from both home seekers and Housing Options staff for assessments on particular properties/ household situations as to whether a property is overcrowded or in such poor condition as to be unsuitable for occupation.

The suggestion to include the existence of a Category 1 Hazard under the Housing Act 2004 as qualifying criteria for your priority band A is likely to have significant consequences in terms of the increased numbers of households that will move into that banding because of household size.

The Housing Act 2004 (2004 Act), which introduced the Housing Health and Safety Rating System, includes within its 29 hazards the hazard of 'Crowding and Space'. This is described in the Operating Guidance as a hazard associated with lack of space within a dwelling for living, sleeping and normal family/household life. The assessment is not just the measure of over-occupation by the existing household. A range of matters are relevant to the likelihood of an occurrence and severity of harm outcomes, including layout, amenities, location and presence of recreational space.

The most important point to note about assessing for overcrowding using the provisions of the 2004 Act instead of the 1985 Act, is that the assessment will ONLY include bedrooms as sleeping rooms in almost all cases, and will only consider another habitable room as a possible sleeping room, where for example, the dwelling contains two separate living rooms, or a large living room and a separate dining room.

The outcome is that whilst a property will meet the statutory standards for overcrowding under the Housing Act 1985, it may well fail the assessment under the Housing Act 2004.

As both pieces of legislation remain in force, the Council can choose to apply either Part 1 of the 2004 Act or Part 10 of the 1985 Act.

Whilst as Environmental Health Officers we would welcome a policy that ensured ideal living standards for all households, the draft as it stands may be promising unrealistic expectations that cannot be met. In view of the above, it may be prudent to remove the presence of category 1 hazards in your consideration for priority banding so

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In so doing, the Council will not be in breach of its statutory requirements. Whilst the ‘ideal’ may be allocation to a larger property, the Council has to balance the ‘need’ against the reality of available housing and as such meeting the Housing Act 1985 is realistic, whilst meeting the Housing Act 2004, may not be. Enquiries to other Council Private Sector Housing Officers suggest that other Councils follow this approach in respect of their Housing Allocations policies.

In terms of enforcement the Private Sector Housing Team will consider the Housing Act 2004 particularly as the Government’s HHSRS Enforcement Guidance **advises** councils to use HHSRS and enforce under Part 1 of the 2004 Act rather than Part 10 of the 1985 Act. It is further argued that councils ‘choosing’ to continue to use Part 10 provisions rather than following the HHSRS Enforcement Guidance could be subject to legal challenge by Judicial Review, for non-performance of statutory duty.

However, we are very aware that the effect of any enforcement action we may take will have important implications and therefore we intend, through the proposed Epping Forest DC Overcrowding Policy to ensure that enforcement options are considered carefully and thoroughly to ensure that in fulfilling its statutory duty, the Council does not increase the burden on other areas of its service, and most importantly of all, that its actions do not lead to the displacement of families into smaller and more cramped temporary living accommodation.

Finally, just to add the proposed Appendix 2 ‘Sizes of Properties to be Allocated’ is consistent with the guidance within the assessment for Crowding and Space under the HHSRS.