

## **Report to the Cabinet**

**Report reference: C-046-2021-22**

**Date of meeting: 7<sup>th</sup> March 2022**



**Portfolio: Housing Services – Cllr H Whitbread**

**Subject: Review of the Housing Allocations Scheme**

**Responsible Officer: Jennifer Gould Director of Community and Wellbeing (Tel: 07548145639)**

**Democratic Services: Adrian Hendry (01992 564246)**

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### **Recommendations/Decisions Required:**

- (1) That Cabinet considers and agrees the 5 major changes and 11 minor changes to the current Allocations Scheme contained within this report**
- (2) That Cabinet approves the publication of the proposed revised Housing Allocations Scheme for 2022 – 2027 at Appendix 1 on 4 April 2022 with an effective date of 12 September 2022**
- (3) That Cabinet considers the outcome and approves the publication of the Stage 2 Public Consultation Report on the Allocations Scheme at Appendix 2B**
- (4) That the Allocations Scheme for 2022 -2027 is reviewed no later than 5 years after the date of publication.**

### **Executive Summary:**

Cabinet is being asked to agree that the recommendations set out in this report are included in the revised Housing Allocations Scheme for 2022- 2027.

As a Local Housing Authority, Epping Forest District Council has a statutory duty to publish a Housing Allocations Scheme (the scheme) for determining priorities - and the procedure to be followed - when selecting a household to be offered a tenancy of Council owned accommodation or to be nominated for an offer of housing from another registered provider with stock in the district.

The Council is required to review the scheme at least once every five years.

The current scheme became effective in July 2018 and is due for renewal by April 2022 along with the Homelessness and Rough Sleeping Strategy, the Tenancy Policy and the overarching Housing Strategy.

A review of all four strategies and policies commenced in May 2021 including a co-ordinated 2-stage statutory consultation exercise.

The proposals for the Tenancy Policy 2022 – 2027 and the Homelessness and Rough Sleeping Strategy 2022- 2027 are also being presented to this Cabinet and the proposals for the overarching Housing Strategy are due to be presented to Cabinet in July 2022.

The issue is a key decision.

### **Reasons for Proposed Decision:**

To enable the Council to publish and implement the Allocations Scheme 2022-2027 and associated material.

### **Other Options for Action:**

- (i) Not to agree the recommended changes to the draft Housing Allocations Scheme
- (ii) To make alternative changes to the draft Housing Allocations Scheme (subject to further consultation where appropriate).

### **Report:**

1. The current Allocations Scheme was published in 2018 and offers choice-based lettings for most applicants on the housing register. Qualifying eligible applicants are placed in one of three bands A, B or C depending on their assessed need. The applicants' bands and registration dates are used to prioritise expressions of interest, or 'bids' for vacant properties that are advertised on a weekly basis. The purpose of a choice-based lettings Policy is to enable applicants to exercise some degree of choice as to where they live (albeit entirely limited by supply and demand).
2. Under the current Policy some households are unable to bid for properties that are advertised. Rather, they receive a direct offer of accommodation. These households include but are not limited to:
  - homeless single people and families to whom the Council has accepted a main housing duty under part 7 of the Housing Act 1996
  - existing social housing tenants who qualify for a priority transfer
  - applicants living in supported housing
3. The Social Housing Annual Lettings Report 2020 –2021 at Appendix 3 highlights that the demand for affordable rented housing in Epping Forest District continues to outweigh the supply of suitable accommodation.
4. The private rented sector is becoming increasingly unaffordable for many low to middle income families and single people who would have previously been able to secure their own accommodation without approaching the Council for help. This is largely in keeping with the national trend. Covid 19 has brought into sharp focus the need for key workers to ensure the local economy and local services continue to function. Many key workers have families with young children or are single people, often on low incomes, at the start of their career or are returning to work and need affordable local housing to sustain employment and deliver essential services.
5. Studies have consistently found that housing, health, wellbeing and life-chances are inextricably linked. A comprehensive, fair, transparent and flexible allocations scheme enables the Council to manage expectations, make the best use of current housing stock and plan for future housing supply across all tenures to meet the needs and aspirations of its current and future residents.
6. The full review of the scheme began in May 2021 along with simultaneous reviews of the Tenancy Policy, the Homelessness and Rough Sleeping Strategy and the overarching Housing Strategy which are all due for renewal in 2022.

## **Defining the priority bands**

The current choice-based lettings scheme awards qualifying applications one of three priority Bands A, B and C. The proposal is to attribute a clearly defined category to each Band i.e. Band A is emergency need, Band B is urgent need and Band C moderate need with the following guiding principles:

- Band A Emergency Need – Band A will be awarded where an imminent move to alternative suitable accommodation is required to mitigate a serious and immediate risk to an applicant's life or a serious and immediate risk of a lifechanging detrimental effect on their mental or physical wellbeing or that of a member of their household.

The applicant will usually be offered a direct allocation as soon as something suitable becomes available, although the applicant can still bid for accommodation should an appropriate property be advertised in advance of the direct allocation.

It is anticipated that very few households will be awarded Band A, and those who do, will have their applications reviewed most frequently to ensure this band is only reserved for emergencies and does not become silted.

- Band B Urgent Need – Band B will be awarded where an applicant is living in unsuitable accommodation that is having or is likely to have a detrimental and long-term impact on their mental or physical wellbeing or that of a member of their household, and there are insufficient grounds to warrant an emergency move ahead of other applicants with an urgent need to move.

The applicant will usually be expected to secure an offer by bidding for advertised properties. Automated bidding or a direct allocation may be made (for homeless households) if the applicant fails to bid and/or secure an offer within a given timescale.

- Band C Moderate Need – Band C will be awarded where an applicant is living in undesirable accommodation, but they do not have an urgent need to move.

The applicant will be expected to pursue an offer by bidding for advertised properties and advised to maximise their limited prospects of securing an offer by considering the widest possible choice of suitable properties.

## **Five proposed major changes**

Major changes are considered to be those which may affect the relative priority of a large number of applicants or a significant alteration to procedures. The following five major changes are being proposed

### Medical priorities

The current scheme considers two medical priority categories; urgent medical need which places an applicant in Band A or moderate medical need which places an applicant in Band C.

These two categories do not account for those households with serious and/or progressive long-term medical conditions that are being exacerbated by their living conditions or would improve or stabilise by moving to more suitable accommodation, but do not require emergency rehousing.

The proposal is to replace the two existing medical priorities with three medical categories that accord with the three priority bands. i.e. Band A - emergency medical need, Band B - urgent medical need, Band C - moderate medical need.

With the applicant's consent the Council's medical advisor will be asked to review all live applications that have an existing medical priority. The proposal is for applicants to retain their original banding date unless they have other circumstances that have changed.

Examples of emergency, urgent and moderate medical needs for moving include, but are not limited to:

**Emergency** - life-threatening condition where the current housing circumstances are severely affecting their health e.g. home dialysis insufficient space to store dialysis equipment or unable to be discharged from hospital into current accommodation because it is unsafe and cannot be adapted.

**Urgent** - serious illness or disability where the current conditions are seriously affecting an individual's health to a marked degree and a move is recommended to improve health or slow down the deterioration of health of the individual e.g. mid-stage multiple sclerosis - applicant becoming increasingly immobile because they are effectively housebound or cannot access toilet, bathroom kitchen etc without substantial pain and property cannot be adapted, or a family with a severely autistic child with challenging behaviour who is sharing a bedroom with a sibling and has no outside space.

**Moderate** - illness or disability of a moderate nature which is adversely affected by their living condition and where a move is recommended to alleviate the condition, symptoms or the effects on the household. e.g. a person with arthritis who finds it uncomfortable to get up and down the three steps to the property during a flare-up or in and out of the bath/shower, and a wet-room cannot be fitted; or a couple in a 1 double bedroom property and one applicant has night-time incontinence.

#### Under occupiers

Under the current policy under-occupiers who wish to downsize can only be considered for properties of the right size and type based on their needs, and only qualify for the incentivised payment of £1,000 per room if they have a lifetime tenancy or in the case of fixed term tenants, have five or more years remaining on their tenancy.

It is recommended that:

- Under-occupiers wishing to downsize from a house with four or more bedrooms who are giving up two or more bedrooms can be considered for a flat or a house with a spare bedroom with or without a garden (i.e. a couple or single person can move from a 4-bed house to a 2-bed house or flat or a 1-bed house or flat with or without a garden).
- Under-occupiers wishing to downsize from a house to a flat where they are giving up one or more bedrooms, can be considered for a flat with a spare bedroom (i.e. a couple or single person can move from a 3-bed house to a 2-bed flat or a 1-bed flat) with or without a garden.
- Incentive payments are made to downsizers with fixed term tenancies with at least 6 months remaining on their tenancy (rather than 5 years) given the relative value of releasing a family-sized home to another household in need and the limited number of households whose fixed term tenancies this concession is likely to apply to 11 properties in 2023 and 22 properties in 2024.
- Incentive payments reflect the benefit to the Council of the size and type of property being surrendered relative to the size and type of property that the under-occupier is seeking to move to.

- The standard payment of £1,000 per room released will be adjusted to account for the relative demand for 2-bedroom properties and the surplus of sheltered housing units.
- Downsizers will typically be offered £1,000 per room they release . This will be reduced to £500 for those moving from a 3-bed if they opt for a 2- bed and only have a 1-bed need.
- Applicants aged 60+ who move from general needs accommodation into sheltered accommodation will receive an additional £1,000 top-up incentive payment regardless of whether they are downsizing.

### Homeless households

Where the Council has accepted a duty to provide settled accommodation to a homeless household under part 7 of the Housing Act 1996 it is required to give reasonable preference to their application for housing.

Appendix 4 point 1.2 of the current scheme sets out the policy for housing homeless applicants. However, it is silent on the reasonable preference that the Council gives to homeless households and this cohort is not listed under any of the priority bands. They receive a direct offer of accommodation (this is usually flatted accommodation unless they have been waiting for more than 2 years for an offer) and cannot currently bid for properties that are advertised.

The absence of banding and therefore lack of clarity over the reasonable preference given to part 7 homeless households puts the Council at risk of challenge. Solely relying on the Council to make a direct offer may inadvertently promote dependence whereas enabling homeless households to bid for houses and flats encourages them to proactively maximise opportunities to move out of temporary accommodation.

In addition, this reasonably allows for the removal of the option for applicants living in flats to re-join the housing register after a qualifying period, and be awarded priority band B to bid for houses

It is recommended that homeless households to whom the Council has accepted a duty to rehouse under part 7 of the Housing Act 1996 are :

- awarded Band B under the scheme; and
- able to bid for suitable properties in accordance with their priority banding (on the understanding that if they fail to secure an offer via choice-based lettings within a reasonable timescale then they will also be considered for auto bidding and/or made a direct offer - which may be into the private sector - to enable the Council to discharge its duty).

### Local lettings plans

The Housing Act 1996 enables housing authorities to agree local plans – allocating particular accommodation to people of a particular description - which may differ from the overall allocations policy. This is specifically to promote mixed communities and address crime hot-spots, economic regeneration and local skills shortages.

Examples may include:

- prioritising medical staff, blue light emergency officers or teachers on low incomes for affordable housing that is close to new or understaffed medical centres, stations or schools etc. ;or
- not allocating properties to vulnerable applicants in areas where there is a significant risk of being targeted by drug dealers seeking to take over their flat to supply drugs, otherwise known as cuckooing.

It is recommended that the scheme makes provision for introducing local lettings plans (LLPs) in exceptional circumstances where :

- there is an identified need to promote cohesion
- it is generated by the community
- is politically led rather than based solely on officer recommendation
- is approved by Cabinet
- is reviewed periodically; and
- the allocations do not affect overall compliance the scheme.

#### Serious unacceptable behaviour including rent arrears

Point 14.12 of the current Policy states that “any person or member of their household who within the past 7 years has been guilty of serious unacceptable behaviour...that would give sufficient grounds to issue possession proceedings if they were a secure, assured or fixed term tenant” will not qualify.

The 7-year disqualification rule also applies to serious rent arrears (including housing benefit and court cost arrears).

Point 18.4 of the current scheme states that an offer of accommodation will not be made to (anyone) who has rent arrears in excess of four weeks.

The 7-year rule does not take account of the cause of the arrears or behaviour ( which may have been an isolated incident, and/or through no fault of the individual and/or triggered by a mental or physical health condition and/or has since been or is being resolved). The rule may also be counterproductive relative to the negative consequences of preventing a household in need access to the housing register.

The 7-year rule has largely been subsumed by recent legislation to protect vulnerable individuals from homelessness. Examples include but are not limited to the recognition of economic abuse as defined in the Domestic Abuse Act 2021; and mental or physical ill health, redundancy and addiction which could potentially trigger a Mental Health Crisis Breathing Space or Standard Breathing Space introduced by the Debt Respite Scheme Regulations 2020.

It is recommended that the 7-year rule for all unacceptable behaviour including rent arrears is replaced with a prescribed risk-based approach to determining whether a history of unacceptable behaviour is serious enough to warrant exclusion from the Housing Register.

The risk- based approach will look at patterns and severity of behaviour, cause and effect, recent history and support mechanisms that the applicant has or will engage with to prevent reoccurrence, including but not limited to income maximisation, debt management and payment plans and clinical and or social support.

### **Eleven recommended minor changes**

The following minor changes are recommended which either relate to the above major changes or are standalone proposals which may not ordinarily warrant widescale public consultation but have been included for completeness.

#### Priority Date

Under the current scheme when applicants bid for advertised properties, whoever is in the highest band and has been on the housing register the longest will be considered first - regardless of how long they have been in that priority band.

This means that they will be housed ahead of other households that may have been waiting in the higher band (due to having a greater need to move) for longer.

It is recommended that the applicant's priority date will be the date that they join the housing register - unless or until they move up a band - in which case their priority date will be the date they join that band. If, however the applicant then moves down a band their priority date will revert to the date they originally joined the housing register (or previously joined that lower band as appropriate).

#### Direct offers and auto-bidding for priority Band A

Given the emergency nature of Band A it is recommended that where applicants have not been submitting bids for suitable properties, or the properties they need rarely become available the options should be made available to make a direct offer and/or set up auto-bidding

#### Downsizers and the refusal of offers

At present downsizers in Band A who bid for and then subsequently refuse 4 offers of accommodation are prevented from bidding for 12 months in order to reduce the burden of processing arbitrary bids.

This penalty may well be counterproductive as it is in the Council's interest to promote and support downsizing, and reasonable to expect a tenant who is downsizing through choice to be selective about where they decide to move to.

It is recommended that the policy is amended to stipulate that applicants who repeatedly bid for and then refuse offers of suitable properties will have their application suspended for six months - to allow for discretion based on individual circumstances, and act as a deterrent for casual bidders.

#### Domestic Abuse

The Domestic Abuse Act 2021 places a duty on the Local Authority to provide support to victims and children in safe accommodation and award all eligible homeless victims of domestic abuse a priority need for housing. The current scheme already makes provision for victims of domestic abuse that are conducive to the requirements of the Domestic Abuse Act 2021 and the pursuit of Domestic Abuse Housing Alliance (DAHA) accreditation is being proposed as part of the overarching Housing Strategy for 2022-2027.

It is recommended that the scheme makes explicit reference to the Council's compliance with the requirements of the Domestic Abuse Act 2021.

#### Offer Policy

Existing tenants living in sheltered housing wishing to move to alternative sheltered accommodation within their own scheme and existing council tenants living in 1- bedroom general needs accommodation afforded Band B priority should be considered for bungalows on the scheme as well as flats.

Homeless applicants will be considered for all dwelling types in accordance with their need and priority banding (including houses where applicable) whether their suitable offer is made by way of choice based letting, auto bidding or a direct offer.

#### Applications from staff or Members of the Council or their relatives

The current scheme does not require applicants to disclose whether they are staff or Members of the Council or related to, partner of or living with staff or Members of the Council. It is recommended that this requirement be introduced to protect the Council's interest and that of its employees and elected Members. Their status will be flagged on the Council's computer system, and failure to disclose this information may result in the application being suspended or cancelled as determined by the designated manager

#### Definition of Household

The current definition of household is 'either one person or two persons or more who are intending to live together at the same property offered. Applicants should only include dependants as part of their household or persons who have been part of their household for at least a two-year period and shall occupy the accommodation offered as their only or principal home'. It is proposed that the definition of household for the purposes of the scheme is aligned to that which is used when assessing a homelessness application as set out on the homelessness legislation which reads: An applicant or any other person who usually lives with the applicant as a member of their family or someone who might reasonably be expected to reside with them.

#### Priority transfers and management transfers

Appendix 3 to the current Policy refers to 'Priority Transfers' as an umbrella term to capture a range of unrelated reasons that a household may need to move from one Council property to another although there is limited detail about the offer policy that applies to each ground for transfer (i.e. like-for like, direct offer or bidding, single or multiple offers etc.)

It is recommended that Appendix 3 of the current scheme is deleted and replaced with relevant sections in the main body of the scheme that define the offer policy for management transfers, overcrowding and welfare grounds. And that the policy on temporary and permanent decants are addressed in a separate policy document regarding asset management.

#### Priority Bands

The reclassification of the Bands including all proposed major and minor changes are highlighted in the table at Appendix 5

#### Data Protection and Sharing of Information

The sharing of information shall be updated to reflect the amendments in the Department for Levelling Up Housing and Communities Allocation of Accommodation: Guidance for Local Authorities 2012 (as amended) following the introduction of the Domestic Abuse Act 2021, and the guidance that was issued on 26 January 2022.

#### Improving access to Social Housing for victims of Domestic Abuse

The wording of the Allocations Policy will be amended slightly to make clearer the obligations placed on local authorities and housing associations by section 79 of the Domestic Abuse Act 2021 on secure tenancies following the guidance that was issued on 26 January 2022.

#### **Resource Implications:**

The implementation of the revised scheme shall be managed within existing staff resources and is anticipated to result in short term additional burden on officer time in the Housing Needs team which may impact on other administrative functions during this period.

The proposed changes to the medical priority shall require a review of all applicants with medical priority (currently 30 applicants in Band A and 141 in Band C ).The additional fee for the medical advisor is anticipated to be 171 cases at £15 = £2,565

The changes shall require modifications to the software applications for the allocations scheme and an indicative charge is being sought

Finance have provided the following comments:

The report is fundamentally concerned with process changes to allocations and therefore the Financial consequences are limited. There are just a few comments to make:

1. The process change will be absorbed by current staffing levels and therefore there are no pressures on staffing costs.
2. The changes to Medical Priority will result in an increase of £2,565. There is a budget for this expenditure and it is felt that this could be absorbed within the service.
3. The changes to the computer system – the budget for Locata equates to the current quarterly charge of £5,250 so if there is an increase to this or a change to the system used, then there may be a budget pressure. Further information is required to determine the budget position when the cost have been received.
4. The change to the 7-year rule may have an effect on rent/benefit /court cost arrears and this is mentioned in the report. Unfortunately, I am not able to project what that might be and therefore whether this will have an impact on arrears levels. Hopefully it will be minor and only applicable to a minority of cases under the new risk-based assessment methodology.

### **Legal and Governance Implications:**

The Scheme enables the Council to fulfil its duties under the Housing Act 1996 as amended ('the 1996 Act') specifically Part 6 of the 1996 Act ('Part 6'); and complies with associated legislative requirements.

The review of the Scheme pays regard to The Allocation of Accommodation: Guidance for Local Housing Authorities in England 2012, and additional statutory guidance where appropriate.

The modifications to the scheme are consistent with the proposals being submitted to Cabinet in respect of the draft Tenancy Strategy 2022-2027 and draft Homelessness and Rough Sleeping Strategy 2022-2027 (s.166A (12)).

A copy of the draft scheme and proposed alteration has been sent to every Private Registered Provider with which the Council has a nomination agreement along with an invitation to a workshop to provide a reasonable opportunity to comment on the proposed major changes and minor changes to the policy before altering the scheme (s.116A (13)).

All applicants on the Housing Register shall receive a letter giving 6 weeks advanced notice of the modifications and what this means for them. The information shall also be published on the established digital channels and emailed to partner organisations to ensure those likely to be affected by the changes have the affect brought to their attention within a reasonable time (s.168(3))

Legal Services considered the report and confirmed that they had no further comment.

### **Safer, Cleaner and Greener Implications:**

Climate change is expected to disproportionately affect those in more vulnerable positions such as those in urgent need of affordable housing. This is because they are generally less able to protect themselves from the effects of climate change expected in the area, which are more extreme temperatures, flooding and drought.

Climate change is also likely to have a greater effect on those on low incomes and who have existing health conditions again as they will be less able to mitigate against the effects of climate change

### **Consultation Undertaken:**

The recommendations within this review have all been subject to a comprehensive 2-stage public consultation exercise which included; bite-size briefings, webinars, workshops, surveys, on-line questionnaires, small meetings and one to one conversation.

In total 325 people were directly invited to participate in both stages of the consultation including:

- Council tenants, leaseholders and residents
- Partner agencies and community groups with an interest in housing
- Private registered providers of social housing
- EFDC staff and other statutory services
- Members of the Council
- Clerks of parish and town councils to forward to their respective elected members
- District, borough and city councils in the county

A full report on the outcome of the consultation can be found at Appendix 2A and 2B

### **Risk Management:**

A number of significant risks are associated with the review of an allocations scheme :

The Council has a statutory duty to review the scheme within the timescales and parameters set out in the Allocation of Accommodation : guidance for local housing authorities in England 2012 as amended. Failure to pay due regard to this statutory guidance risks reputational damage and regulatory penalties.

A fair robust transparent and up to date allocations scheme enables the Council to make the best use of available housing stock for the benefit of applicants in need of affordable housing and mitigates the risk of judicial review and intervention by the Social Housing Ombudsman and other regulatory bodies for non-compliance with statute and regulation.

The provision of an efficient cost-effective scheme mitigates the financial pressure that inadequate housing can have on other statutory services, for the benefit of all residents. (particularly temporary accommodation, adult and children's social care, health and community safety).

Responding to stakeholder consultation feedback mitigates the risks of dissatisfaction and failure demand.

Failing to make the best use of available housing stock through assessed need and pre-determined priorities risks the immediate health and wellbeing of applicants in housing need and the wider community.

Disregarding the requirements to undertake and respond to a robust equalities impact assessment risks the provision of an unequitable housing service which may disproportionately affect vulnerable residents and those with protected characteristics.

**Background Papers:**

- Appendix 1 - Draft Housing Allocations Scheme 2022 – 2027
- Appendix 2A –Stage 1 Consultation and Feedback Report October 2021
- Appendix 2B - Stage 2 Consultation and Feedback Report February 2022
- Appendix 3 - Social Housing Lettings Annual Report 2020-2021
- Appendix 4 – Reclassification of Bands
- Appendix 5 – Schedule of under- occupation incentive rates
- Appendix 6 - Equality Impact Assessment February 2022