

Report to Housing Scrutiny Standing Panel

Date of meeting: 17 December 2012

Subject: Review of the Housing Allocations Scheme

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Committee Secretary: Mark Jenkins extension (01992 564607)



Recommendations/Decisions Required:

(1) That the Housing Scrutiny Panel considers the attached Draft Housing Allocations Scheme, prior to consultation with the Tenants and Leaseholders Federation, Registered Social Landlords operating in the District, Local Councils and partner agencies with an interest in the Scheme, and submits a report to the Cabinet on the proposed scheme for adoption;

(2) That, in considering the Draft Scheme, the Housing Scrutiny Panel has regard to the Housing Portfolio Holder's decision on the key principles for the Scheme (reproduced at Appendix 1) and the other main proposed changes (Appendix 2);

(3) That the Panel recommends to the Cabinet that (at the conclusion of the Cabinet call-in period), the right of Appeal to the Housing Appeals and Reviews Panel in cases where housing applicants have been excluded from the Housing Register be revoked, with all such statutory reviews being dealt with by officers;

(4) That the Cabinet are asked to request that the Constitution and Members Services Standing Scrutiny Panel review the Terms of Reference of the Housing Appeals and Reviews Panel to ensure that they comply with Recommendation (3) above; and

(5) That the new Housing Allocations Scheme be reviewed by the Housing Scrutiny Panel after 12 month's operation and any required changes be reported to the Cabinet.

Report:

1. The Council is legally required to have a Housing Allocations Scheme for determining priorities and the procedure to be followed in selecting a person for accommodation, or nominating a person to be a tenant for accommodation held by another Registered Provider of social housing (e.g. housing association). In the past, the Cabinet has considered the Council's Housing Allocations Scheme annually and reviewed any changes. However, the current scheme has not been reviewed since its introduction in December 2010. The reason for this delay is due to the Council awaiting the new Government guidance "The Allocation of accommodation: guidance for local housing authorities in England" (DCLG June 2012) which was not received until July 2012.

2. Under the Guidance, authorities are given powers to decide locally how accommodation should be allocated based upon local priorities. Authorities are therefore empowered to allocate their accommodation in any way they see fit, provided schemes are both legal and rational.

3. Due to these additional powers resulting in potentially the most comprehensive review ever undertaken of the Scheme, the Housing Portfolio Holder held informal discussions with

Cabinet colleagues to seek their initial views. This was considered essential as it gave guidance on how Cabinet Members felt the Scheme should be drafted, potentially saving a great deal of officer time. As a result of these informal discussions, the Housing Portfolio Holder made a formal decision that, for the next review of the Housing Allocations Scheme, officers draft a Scheme on the basis of the proposed principles set out at Appendix One, and that the Housing Scrutiny Panel be asked to give detailed consideration to the revised Draft and submit a report to the Cabinet for consideration.

4. In addition to the above, the table at Appendix Two sets out further changes suggested by officers to the current Scheme, giving the new draft Scheme's reference and the reasons.

Property Sizes

5. There is one aspect that warrants further explanation in this report, since the Draft Scheme is at variance with the Housing Portfolio Holder's decision on draft key principles, which relates to property sizes.

6. The current property sizes allocated to households under the Council's current Housing Allocations Scheme are as follows:

Studio – Single persons

1 Bedroom – Single persons or 2 people without children

2 Bedrooms – Homeseekers with 1 child or homeseekers with 2 children of the same sex

3 Bedrooms – Homeseekers with 2 children of opposite sex or homeseekers with 3 or 4 children

4 Bedrooms – Homeseekers with 4 or more children

5 Bedrooms – Homeseekers with 5 or more children

7. The changes to housing benefit under the Welfare Reforms Act 2012 for persons under-occupying accommodation in the social rented sector, is explained in the leaflet produced by the National Housing Federation (copy attached - which accords with the Local Housing Allowance criteria for under-occupation in the private rented sector). Under the changes, if a person has more bedrooms than the Government says is needed, housing benefit will be reduced. The Welfare Reforms Act 2012 specifies the criteria, which is that a separate bedroom should be occupied by:

Each adult couple

Any other person aged 16 or over

2 children of the same sex under the age of 16

2 children under the age of 10 regardless of their sex

Any other child

A carer (who does not normally live with the person) if the person or their partner needs overnight care

8. Under the Government's Code of Guidance on Housing Allocations it states that, " when framing the rules which determine the size of property to allocate to different households and in different circumstances, housing authorities are free to set their own criteria, provided they do not result in a household being statutory overcrowded. However, in setting these criteria, authorities will take account of the provision in the Welfare Reforms Act 2012 which will reduce housing benefit to under occupiers". The Guidance further states that "the Secretary of State takes the view that the Bedroom Standard is an appropriate measure of overcrowding for allocation purposes, and recommends that all housing authorities should adopt this as a minimum".

9. The Bedroom Standard referred to in the Guidance relates to the overcrowding provisions of the Housing Act 1985, Section 325. Under this Standard, it states under Section 325 (2) (a) that "children under the age of 10 [years] shall be left out of account".

10. As can be seen, under both standards, two children aged under 10 years regardless of sex would be expected to share a bedroom, whereas the Council's current Housing Allocations Scheme allows an applicant to be allocated a separate bedroom for a child from birth who is of a different sex from its sibling. Furthermore, the Council's current Housing Allocations Scheme does not allow an applicant to be allocated a separate bedroom for an adult over a certain age, who is sharing with a sibling of the same sex.

11. The initial view of the Housing Portfolio Holder, was that neither standard should be adopted for the Council's new Housing Allocations Scheme. However, it was accepted that the Council's current criteria does need to change. It was therefore proposed that the criteria used for property sizes, in relation to:

- (i) the assessment of a need for an additional bedroom; and
- (ii) the size of property that housing applicants will be offered by the Council or a housing association;

be amended as follows:

- (iii) Children of different sex, where one is 5 years of age or over, should not be expected to share a bedroom; and
- (iv) Generally, two children of the same sex (regardless of age) will be expected to share a bedroom;

12. The Housing Scrutiny Panel's attention is drawn to the fact that should neither of the bedroom standards be adopted within the Council's Housing Allocations Scheme, as recommended under Government Guidance, all homeseekers who have two family members of opposite sex under the age 10 years will, in accordance with the changes to housing benefit for persons under-occupying accommodation in the social rented sector, have their housing benefit reduced due to under-occupation at the commencement of their new tenancy. As a result, the sizes of properties included in the new draft Housing Allocations Scheme are not in accordance with the Housing Portfolio Holder's initial view. The Panel is asked to give consideration to the sizes of properties to be allocated to homeseekers in the future, taking into account the changes to housing benefit rules in respect of under-occupation.

Proposed Housing Allocations Scheme

13. A copy of the draft Housing Allocations Scheme, which is attached as an Appendix has been considered by an external Legal Advisor, being a QC specialising in housing law. This was considered essential because, as already mentioned, this is the most comprehensive review ever undertaken of the Scheme and the Council needs to meet the requirement that it is both legal and rational. When giving his advice on a number of queries raised by officers the Legal Advisor stated generally that "the draft Housing Allocations Scheme seems legal to me". In answer to a specific question on the duration of the consultation period, the Council is advised to allow a 12 week consultation period.

14. The current scheme, which came into force on 1 December 2010, has been circulated separately to all Members of the Panel. It should be noted that, in accordance with the Housing Portfolio Holder's decision, the current Scheme was amended from September 2012, in order to meet with the Government's Statutory Instrument setting out new regulations in relation to accommodating Armed Forces Personnel.

Applicant's Right to a Review

15. In Law, every applicant has the statutory right to request a review of a decision on allocations and to be informed of the decision on review and the grounds for it. Currently, the

Housing Appeals and Reviews Panel considers cases where applicants have been excluded from the Housing Register. If the Local Eligibility Criteria is agreed by the Cabinet, it is expected that a high number of applicants are likely to request their statutory right to a review. It is therefore suggested that the Housing Scrutiny Panel be asked to consider recommending to the Cabinet that the right of appeal to the Housing Appeals and Reviews Panel to applicants who have been excluded from the Housing Register be revoked, with all statutory reviews being dealt with by officers with immediate effect at the conclusion of the Cabinet call-in period. The Constitution and Member Services Standing Scrutiny Panel will then be requested to review the Terms of Reference of the Housing Appeals and Reviews Panel to ensure they comply with the new policy.

16. The Housing Scrutiny Panel is asked to give detailed consideration to the new draft Housing Allocations Scheme, to agree to a consultation exercise being undertaken on the draft scheme, and to submit a report to the Cabinet on 15 April 2013 on its findings.

17. Furthermore, the Panel is asked to include an item in its Work Programme for 2014/2015, for a review of the Scheme after 12 months of operation, in order to consider whether or not any further changes are required, and to submit a report to the Cabinet on the outcome of its review and any recommended changes.

18. Following the Housing Scrutiny Panel's meeting, the Tenants and Leaseholders Federation, all RSLs operating within the District, all Local Councils and partner agencies with an interest in the Scheme will be consulted on the proposed changes, prior to the Panel submitting a report to the Cabinet.

Appendix 1

Draft Principles previously agreed by the Housing Portfolio Holder through the Portfolio Holder decision dated 7 September 2012

(Draft Housing Allocations Scheme Paragraph or Section in brackets for ease of reference)

Local Eligibility Criteria:

- (a) That a Local Eligibility Criteria be introduced, on the basis that all *new* applicants for the Housing Register (Section 14) :
- (i) Must have lived within the Epping Forest District for at least three years immediately prior to their date of registration (14.3);
 - (ii) Must have a housing need, as determined by at least one criterion of a priority band within the new Housing Allocations Scheme (14.5); and
 - (iii) Must not have sufficient income and/or savings/assets to enable them to purchase their own accommodation, as assessed in accordance with the current criteria defined within Section 8.5 of the current Housing Allocations Scheme (14.6 & 14.7);
- (b) That all *existing* housing applicants who meet the following criteria be removed from the Housing Register when the new Housing Allocations Scheme is introduced:
- (i) Existing applicants who have lived within the District for less than 2½ years immediately prior to the date the new Housing Allocations Scheme is introduced;
 - (ii) Existing applicants who, on the date the new Housing Allocations Scheme is introduced, are within Band 6 of the current Housing Allocations Scheme (i.e. have no housing need); and
 - (iii) Existing applicants placed within Band 5 of the current Housing Allocations Scheme by virtue of them having sufficient income and/or savings/assets to enable them to purchase their own accommodation (as assessed in accordance with the current criteria defined within Section 8.5 of the current Housing Allocations Scheme);
- (c) That housing applicants removed from the Housing Register due to them not meeting the Local Eligibility Criteria be allowed to re-register if/when they meet the new Local Eligibility Criteria, but that their Registration Date be the date of re-registration;
- (d) That if the Local Eligibility Criteria is agreed by the Cabinet, the Housing Scrutiny Panel be asked to consider recommending to the Overview and Scrutiny Panel that the Constitution and Member Services Standing Panel considers the scope of the Housing Appeals and Reviews Panel, with a view to revoking the right of appeal to the Panel to housing applicants who have been excluded from the Housing Register, with all statutory reviews being dealt with by officers;
- (e) That a separate Supplementary Waiting List be introduced, for which applicants over 60 years of age who do not meet the new Local Eligibility Criteria can register, and that such applicants be offered tenancies (in registration date order on the Supplementary Waiting List) of any Council and housing association properties for which no successful expressions of interest from eligible Housing Register applicants have been received through the HomeOptions Scheme for at least two bidding cycles (14.10);
- (f) That the criteria for applicants being ineligible to register on the Housing Register due

to them being assessed as having sufficient income and/or savings/assets to enable them to purchase their own accommodation be reviewed, once it is known;

- (i) Whether or not the Government's proposals for tenants with high incomes to be charged higher rents (the proposed "Pay and Stay Scheme") are to be introduced; and
- (ii) if the proposals are to be introduced, what the Government's income thresholds for the Pay and Stay Scheme will be;

Former Armed Forces Personnel

(g) That, in addition to the new statutory requirement for local authorities to disregard any Local Eligibility Criteria for current and former Armed Forces Personnel (and their bereaved spouses or civil partners), spouses and children (including step-children) of existing and former Armed Forces Personnel be allowed to register on the Housing Register, provided that one of their family members (as defined by Section 113 of the Housing Act 1985) has lived within the District for at least 3 years immediately prior to the date of application (Band 3 (c));

Applicants in Employment

(h) That no additional preference within the priority bands of the new Housing Allocations Scheme be given to housing applicants in employment;

Priority Bands

(i) That the number of priority bands within the Housing Allocations Scheme be reduced, and that the Housing Scrutiny Panel considers and recommends:

- (i) How many bands there should be; and
- (ii) The criteria that should apply for inclusion within each band;

Transfer List

(j) That no separate Transfer List for existing Council and housing association tenants be introduced for the time being, but that the introduction of a separate Transfer List be considered as part of a future review of the Housing Allocations Scheme;

Property Sizes

(k) That the criteria used for property sizes, in relation to:

- (i) the assessment of a need for an additional bedroom; and
- (ii) the size of property that housing applicants will be offered by the Council or a housing association;

be amended as follows:

- (iii) Children of different sex, where one is 5 years of age or over, should not be expected to share a bedroom; and
- (iv) Generally, two children of the same sex (regardless of age) will be expected to share a bedroom;

That the Housing Scrutiny Panel be asked to review the Housing Allocations Scheme again after 12 months operation, in order to consider whether or not any further changes are

required, and to submit a report to the Cabinet on the outcome of its review and any recommended changes.

Appendix 2

Summary of the main changes proposed to the Scheme (in addition to those stated in Appendix 1)

Reference	Change to the Scheme	Reason
Section 2	Information on the West Essex Tenancy Strategy and the Council's Tenancy Policy.	In order to meet with the requirement that these documents are referred to.
Paragraph 7.5 (d)	Additional clause to cover transfers involving Flexible Tenants.	Under the Localism Act 2011, should any mutual exchange involve at least one Flexible Tenant, then new tenancies are granted to the parties outside of the Scheme.
Section 9	Reference is made to the Council's policy on granting Flexible Tenancies.	To explain the Council's policy on offering Flexible Tenancies in accordance with the Tenancy Policy and West Essex Tenancy Strategy.
Paragraph 9.2	Flexible Tenants wishing to transfer to smaller accommodation will be able to benefit from the incentive payment but only within the first 5 years of the fixed term.	In accordance with the Housing Portfolio Holder decision on the key principles for the Tenancy Policy, in order to tackle the problem of under-occupation, Flexible Tenants will be able to benefit from the incentive to downsize accommodation, in the same way as for other tenants
Paragraph 14.4	Homeseekers who move out of the District into settled accommodation for more than 3 years will be treated in the same way as homeseekers who have not lived in the District for more than 3 years	To deal with persons moving out of the District

Reference	Change to the Scheme	Reason
Paragraph 14.8	Any homeseeker who has been guilty of unacceptable behaviour within the previous 3 years will not qualify to join the Housing Register	Under the current scheme homeseekers in this category are moved to the lowest Band. The Council can now exclude such applicants
Paragraph 17.9	Penalties for refusals will not apply to homeseekers wishing to downsize accommodation	In order to tackle under-occupation and to encourage downsizing
Paragraphs 17.13 to 17.15	Sets out the proposed policy for discharging the Council's homelessness duty in the private rented sector	In accordance with the Localism Act 2011 and the Government's Suitability of Accommodation Order, authorities are now able to discharge their homelessness duty in the private rented sector with or without the applicant's consent
Paragraph 20.3	Where a tenant of the Council is downsizing accommodation they will be considered for a bungalow if they are over the age of 50 years rather than 60 years	This will encourage more existing Council tenants occupying larger accommodation to downsize to a more desirable bungalow

Changes to Bandings		
Reference	Banding Change	Reason
Band One (d) (Current Scheme)	Deleted from current Scheme and moved to Appendix 4 and amended. Homeless applicants will no longer be offered choice and be made one suitable offer of accommodation in generally flatted accommodation (or be made a private rented sector offer under Paragraph 17.13). It should be noted that the “Fresh start” scheme has ceased.	This will enable non-homeless homeseekers on the Housing Register to have better access to, and opportunity for, houses and more popular Council properties.
Band One (f) & (g) (Current Scheme)	Both deleted from current Scheme and moved to Appendix 4. Applicants living in Supported Housing are generally not statutory homeless they are placed in the accommodation under Homelessness Prevention. They will no longer be offered choice and be made one suitable offer of accommodation in generally flatted accommodation (or be made a private rented sector offer under Paragraph 17.13)	As above
Band One (h) (Current Scheme)	Provision for successor tenants who are under-occupying accommodation to be re-housed is deleted	Included at Appendix 4 “Other Allocations Outside of the HomeOptions Scheme” as there is no need to give priority due to this being either a legal right or a right under the Council’s discretionary policy.
Band Four (f) (Current Scheme)	Households with a child under the age of 5 with no access to a garden is deleted	Considered that priority should no longer be given for this need

Changes to Bandings		
Reference	Banding Change	Reason
Band Four (g) (Current Scheme)	Households with a child under the age of 5 living in a flat or maisonette	As above
Band 5 (e) (Current Scheme)	Single people accommodated in B&B who would benefit from a Support Scheme is deleted	This refers generally to young single people who need support who are placed in B&B by the Homelessness Prevention Team. These people would be referred to Support Schemes and be captured by the provisions under Appendix 4
Band 5 (k) (Current Scheme)	Homeseekers who have sufficient income or assets to enable them to purchase accommodation is deleted	No longer qualify under the new Scheme's Local Eligibility Criteria
Band One (g) (New Scheme)	Homeseekers in need of two or more additional bedrooms	To give high priority to households who are overcrowded who may not meet the statutory limit.
Band Two (d) (New Scheme)	Existing tenants living in flatted accommodation can bid for houses	To give priority for houses to existing tenants living in flatted accommodation in order to free up flats for homeless households

Changes to Bandings		
Reference	Banding Change	Reason
Band Two (e) (New Scheme)	Existing sheltered housing tenants wishing to move to another sheltered property	In order to give priority to this client group
Band Three (c) (New Scheme)	Additional priority for spouses and children of Armed Forces Personnel	Under the Localism Act 2011 and the Allocation of Housing (Qualification Criteria for Armed Forces) Regulations 2012, local housing authorities are “strongly encouraged” to give “sympathetic consideration” to the housing needs of family members of serving or former Service personnel who may themselves have been disadvantaged by the requirements of military service.