

Report to the Cabinet

Report reference:

C-070a-2012/13

Date of meeting:

15 April 2013



**Epping Forest
District Council**

Portfolio:	Housing
Report of	Housing Scrutiny Standing Panel (Chairman – Councillor S Murray)
Subject:	Review of the Housing Allocations Scheme
Responsible Officer:	Roger Wilson (01992 564419).
Democratic Services Officer:	Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) That, subject to the outcome of the consultation with the Tenants and Leaseholders Federation, partner agencies, Parish and Town Councils and Registered Social Landlord Partners, the proposed revised Housing Allocations Scheme (attached at Appendix 3) be adopted, which includes the proposed changes set out in Appendices 1 & 2 (except where otherwise referred in the main report);**
- (2) That, the Housing Allocations Scheme be reviewed again by the Housing Scrutiny Panel after 12 months of operation, with any resultant changes being reported to the Cabinet with the reviewed Scheme coming into effect from 1 April 2015;**
- (3) That 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; and**
- (4) To note that, at the request of the Housing Portfolio Holder, the Constitution & Member Services Standing Scrutiny Panel has been asked to review the Terms of Reference of the Housing Appeals and Reviews Panel at its meeting on 26 March 2013.**

Executive Summary:

At our meeting on 17 December 2012, we considered a report on the review of the Housing Allocations Scheme. We were advised that the Council is legally required to have a Housing Allocations Scheme and that the Scheme has not been reviewed since December 2010, due to the Council only recently receiving the new Government Guidance. Under the Guidance, authorities are given powers to decide locally how accommodation should be allocated based upon local priorities. We therefore noted that authorities are empowered to allocate their accommodation in any way they see fit, provided schemes are both legal and rational.

The Housing Portfolio Holder, who attended our meeting, reported that he had held informal discussions with Cabinet colleagues to seek their initial views, in order to give guidance to officers on how Cabinet Members felt the Scheme should be drafted, potentially saving a

great deal of officer time. The Housing Portfolio Holder advised us that he had made a formal decision that, for this review, officers draft a revised Housing Allocations Scheme on the basis of the proposed principles set out at Appendix One, and that we be asked to give detailed consideration to the revised Scheme, which we have now done. Some further changes suggested to us by officers (and agreed by us) are set out at Appendix 2.

We are therefore submitting this report and a copy of the draft Scheme to the Cabinet for consideration. The draft Housing Allocations Scheme has been considered by an external Legal Advisor being a QC specialising in housing law. Officers asked the Legal Advisor a number of questions, some of which were directly related to the drafting of the Scheme, and the advice has been incorporated. The opportunity was taken to ask some further questions to clarify some points of law. The Legal Advisor stated, following his responses "Otherwise in my opinion the Draft Housing Allocations Scheme is lawful".

We understand that, following our meeting, a consultation exercise would be undertaken on the draft Scheme; with the comments on the consultation being reported separately to the Cabinet at its meeting, to take into account when considering and adopting the final Scheme.

Reasons for Proposed Decision:

The review of the Housing Allocations Scheme was delayed to enable the Council to meet with the Government's new statutory guidance. The changes proposed to the Housing Allocations Scheme, will generally update the Scheme in accordance with the new guidance and ensure fairness to all applicants.

Other Options for Action:

To not to agree the changes to the Council's Housing Allocations Scheme.

To agree different changes to those recommended.

Report:

1. At our meeting on 17 December 2012, the Housing Scrutiny Panel considered a report on the review of the Housing Allocations Scheme. We were advised that 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, we have considered the Council's Housing Allocations Scheme and recommended any changes to the Cabinet annually. 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 we have been advised 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. We therefore noted that authorities are 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 advised us that he had held informal discussions with Cabinet colleagues to seek their initial views. He considered this 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 this review of the Housing

Allocations Scheme, officers draft a Scheme on the basis of the Cabinet's proposed principles - which are set out at Appendix 1. In addition, some further changes suggested to us by officers (and agreed by us) are set out at Appendix 2.

4. We were asked to give detailed consideration to a Draft Scheme presented to us by officers, which we have done and, as a result, submit this report to the Cabinet for consideration. A copy of our proposed (draft) Scheme is attached at Appendix 3. The current Scheme has been circulated to Cabinet Members separately for the Cabinet meeting.

5. Although we agreed with the Housing Portfolio Holder's formal decision on his proposed principles which have been incorporated into our Draft Scheme, we felt that the following amendments to the previously-agreed principles for the Scheme should be made. The first proposed change was recommended to us by officers; the second proposed change came out of our discussion at the meeting.

Property Sizes

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

- Studio – Single homeseeker;
- 1 Bedroom – Single homeseeker or 2 homeseekers 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; and
- 5 Bedrooms – Homeseekers with 5 or more children.

7. The changes to housing benefit under the Welfare Reform Act 2012, for persons under-occupying accommodation in the social rented sector, is explained in the leaflet produced by the National Housing Federation (a copy was circulated to us separately), 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 Reform 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; or
- A carer (who does not normally live with the person) if the person or their partner needs overnight care.

8. The Government's Code of Guidance on Housing Allocations 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 Reform 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. We were advised that 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, we accepted that the Council’s current criteria does need to change, 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.

12. Our attention was 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 of 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, we are recommending to the Cabinet that the sizes of properties in the new draft Housing Allocations Scheme should not be in accordance with the Housing Portfolio Holder’s initial view. We took particular account of the changes to housing benefit rules in respect of under-occupation and took the view that the sizes of properties allocated should generally be in accordance with both the “bedroom standard” and the “Local Housing Allowance”. The Housing Portfolio Holder attended our meeting and commented that he would have no objections to such a change, The draft Scheme has therefore been amended accordingly.

Incentive to Flexible Tenants to Downsize Accommodation

13. Under the Draft Scheme submitted to our Panel, it was proposed under Paragraph 9.2 that the incentive payments paid to tenants of the Council who move to any smaller property with less bedrooms than their current property, where both are owned by the Council, should also apply to flexible tenants - but only within the first 5 years of the tenancy (including the Introductory Period). However, our view was that this period should be increased to 7 years and we have amended the draft Scheme accordingly.

Proposed Housing Allocations Scheme

14. We were advised that a copy of the draft Housing Allocations Scheme had been considered by an external Legal Advisor, being a QC specialising in housing law. Officers considered this 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. Officers asked the Legal Advisor a number of questions, some of which were directly related to the drafting of the Scheme, and the advice has been incorporated. The opportunity was taken to ask some further questions to clarify some points of law. The Legal Advisor stated, following his responses “Otherwise in my opinion the Draft Housing Allocations Scheme is lawful”.

Applicant's Right to a Review

15. Officers advised us that, 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 consider cases where applicants have been excluded from the Housing Register. If the proposed Local Eligibility Criteria within the Draft Allocations Scheme is agreed by the Cabinet, it is expected that a high number of existing applicants are likely to be removed from the Housing Register and request their statutory right to a review. We are recommending 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 such statutory reviews being dealt with by officers.

16. The Housing Portfolio Holder and the Panel anticipated the need to review the Terms of Reference of the Housing Appeals and Reviews Panel so it reflects the proposed new policy. We understand that the Constitution and Member Services Standing Scrutiny Panel will be considering the changes required at its meeting on 26 March 2013 and that these will be taken forward to the April Council meeting for adoption. No doubt an update on this position can be given at the Cabinet meeting.

17. Finally, we are suggesting to the Cabinet that an item be included in our Work Programme for 2014/2015, to review 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.

Resource Implications:

None.

Legal and Governance Implications:

Housing Act 1985

Housing Act 1996

Homelessness Act 2002

Localism Act 2011

Allocation of accommodation: guidance for local housing authorities in England (DCLG June 2012).

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

In accordance with the advice of the Council's external Legal Advisor, the Council was advised to allow a 12 week consultation period, which has now been completed. The comments received are set out in the Housing Portfolio Holder's covering report.

Background Papers:

Legal Advisor's report.

Impact Assessments:

Risk Management

No risks have been identified. Should any be identified in the future, these will be taken into account as part of the review after 12 months of operation of the Scheme.

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? Yes

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

Each year the Housing Scrutiny Panel considers a report on the ethnicity of homeseekers on the Housing Register compared to those allocated accommodation. Following an Equality Impact Assessment undertaken by an external consultant some years ago, the ethnicity of homeseekers on the Housing Register applying for sheltered accommodation compared to those allocated sheltered accommodation is now monitored separately by our Panel.

Due to the proposed changes made to the Housing Allocations Scheme, if the recommendations are agreed, our Panel consider it is important to monitor both the ethnicity of those included on the new Supplementary Waiting List (under Section 14.10 & 14.11 of the Draft Scheme) compared to those housed from this list and the ethnicity of those housed in the private rented sector under the new homelessness rules (under Paragraphs 17.13 to 17.15 of the Draft Scheme).

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?

See the section above.

**APPENDIX ONE – HOUSING PORTFOLIO HOLDER’S INITIAL VIEWS
(HOUSING SCRUTINY PANEL’S SUGGESTED CHANGE IN ITALICS)**

Local Eligibility Criteria:

(a) That a Local Eligibility Criteria be introduced, on the basis that all *new* applicants for the Housing Register:

- (i) Must have lived within the Epping Forest District for at least three years immediately prior to their date of registration;
- (ii) Must have a housing need, as determined by at least one criterion of a priority band within the new Housing Allocations Scheme; 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 8.6 of the current Housing Allocations Scheme;

(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 8.6 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;

**APPENDIX ONE – HOUSING PORTFOLIO HOLDERS INITIAL VIEWS
(HOUSING SCRUTINY PANEL’S SUGGESTED CHANGE IN ITALICS)
(CONTINUED)**

(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;

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;

**APPENDIX ONE – HOUSING PORTFOLIO HOLDER’S INITIAL VIEWS
(HOUSING SCRUTINY PANEL’S SUGGESTED CHANGE IN ITALICS)
(CONTINUED)**

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;

Note: The Housing Scrutiny Panel are recommending that the sizes of properties at the point of allocation should not be in accordance with the Housing Portfolio Holder's initial view. This is due to all homeseekers who have two family members of opposite sex under the age of 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.

The Housing Portfolio Holder attended our meeting and commented that he would have no objections to such a change, Appendix Two of the draft Scheme has therefore been amended accordingly.

2. 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 TWO – HOUSING SCRUTINY PANEL’S SUGGESTED CHANGES

Draft Scheme Reference	Proposed Change	Reason for Change
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.
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 of the initial views of the Cabinet, in order to tackle the problem of under-occupation, Flexible Tenants will be able to benefit from the incentive to downsize accommodation. We suggest the incentive should apply for the first 7 years and not 5 years as originally proposed.
Paragraph 14.4	Homeseekers who move out of the District into settled accommodation for more than 3 years will be treated as homeseekers who have not lived in the District for more than 3 years	To deal with persons moving out of the District
Paragraph 17.9	Penalties for refusals will not apply to homeseekers wishing to downsize accommodation	In order to tackle under-occupation

**APPENDIX TWO - HOUSING SCRUTINY PANEL'S SUGGESTED CHANGES
(Continued)**

Draft Scheme Reference	Proposed Change	Reason for Change
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 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 tenants occupying larger accommodation to downsize to a more desirable bungalow
Band Two (d)	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
Band Two (e)	Existing sheltered housing tenants wishing to move to another sheltered property	In order to give priority to this client group
Band Three (c)	Additional priority for spouses and children of Armed Forces Personnel	Under 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.
Appendix 4 Homeless Applicants	Homeless applicants will no longer be offered choice and be made one suitable offer of accommodation in generally flatted accommodation	