

REVIEW OF THE SOCIAL HOUSING ALLOCATION POLICY

Cabinet Member	Councillor Philip Corthorne
Cabinet Portfolio	Social Services, Housing, Health and Wellbeing
Officer Contact(s)	Raj Alagh, Administration Directorate Dan Kennedy, Residents Services Directorate
Papers with report	Appendix 1: Consultation Report (incorporating Social Housing Allocation Policy Consultation Questionnaire) Appendix 2: Equality and Human Rights Impact Assessment Appendix 3: Social Housing Allocation Policy (Note: this appendix is circulated separately as printed in colour)

HEADLINE INFORMATION

Summary	Following the completion of a full consultation exercise authorised by Cabinet at its July 2016 meeting, the details of the consultation responses are set out together with an up to date Equality and Human Rights Impact Assessment. Cabinet is being asked to consider, in the light of the responses and the Assessment, implementing changes to the Council's Social Housing Allocation Policy.
Putting our Residents First	This report supports the following Council objectives of: <i>Our People; Our Built Environment;</i>
Financial Cost	There are no direct costs associated with the recommendations made in this report.
Relevant Policy Overview Committee	Social Services, Housing and Public Health
Ward(s) affected	All

RECOMMENDATIONS

That Cabinet:

- 1) Notes both the outcome of the consultation exercise undertaken in relation to the Council's Social Housing Allocation Policy and the completed Equalities and Human Rights Impact Assessment and has full regard to them in deciding whether to make changes to the Policy.
- 2) Approves a revised Social Housing Allocation Policy as appended to the Report.

Reasons for recommendation

The Council is reviewing its Social Housing Allocation Policy as a result of developments in recent case-law.

Alternative options considered / risk management

The Council could decide not to approve a revised Social Housing Allocation Policy but this is not considered to be a viable option given the changes in the law in this area. Failure to approve the revised Policy also exposes the Council to the risk of further legal challenge.

Policy Overview Committee comments

None at this stage.

INFORMATION

Supporting Information

Background

1. The Housing Act 1996 ["the Act"] introduced a new regime for the allocation of social housing by local housing authorities. The Act has been amended a number of times, most recently by the Localism Act 2011.
2. Section 166A of the Act provides that every local housing authority in England must have an allocation scheme for determining priorities and which also sets out the procedure to be followed in allocating housing accommodation.
3. The Council's Social Housing Allocation Policy ["the Policy"], which was formally approved by Cabinet in June 2013, sets out both the criteria and procedure for the allocation of social housing and nominations for housing to housing associations in the Borough. The Council will only admit those applicants for housing, who meet the necessary eligibility criteria and who qualify, on to its housing register.
4. There are only a limited number of social housing units available each year and the demand significantly outweighs the supply. The Policy facilitates the Council's overriding objective of putting residents first. The key features of the Policy can be summarised as follows. It:
 - provides a fair and transparent system by which people are prioritised for social housing;
 - helps those most in housing need;
 - rewards residents with a long attachment to the Borough;
 - encourages residents to access employment and training;
 - makes best use of the Council's housing stock;
 - promotes the development of sustainable mixed communities.
5. Section 166A[3] of the Act imposes a mandatory requirement on local housing authorities to ensure that their allocation schemes are framed so as to secure that reasonable preference is given to the following categories of persons:

- applicants who are homeless or who are owed re-housing duties under the homelessness legislation. This includes applicants who are intentionally homeless;
 - applicants occupying insanitary or overcrowded housing or who otherwise live in unsatisfactory conditions;
 - applicants who need to move on medical or welfare grounds;
 - applicants who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship to themselves or others.
6. Under the terms of the Policy, only persons with a local connection and with at least 10 years' continuous residence in the Borough will, as a general rule, qualify to join the housing register. A number of exceptions to this rule are set out in the Policy.
7. The Council's current practice is to place all applicants for housing on to its housing register who fall into one or more of the reasonable preference groups in one of the priority Bands A-C provided that they meet its 10 years continuous residence in the Borough rule. However, if applicants are unable to satisfy this rule, they are excluded altogether from the housing register.
8. The most common category of reasonable preference groups are applicants who are homeless or who are owed re-housing duties under the homelessness legislation. There have been a number of challenges from such applicants, with less than 10 years continuous residence in the Borough, who have applied to the Council for housing but have been refused access to the housing register.
9. A report, setting out details of the challenges, was considered by Cabinet at its July 2016 meeting. The report also summarised important changes in recent case-law which served as the basis for the challenges.
10. Cabinet agreed to consider proposals for changes to be made to the Policy and therefore it authorised a full consultation exercise to be undertaken in relation to them and Cabinet further agreed that it would receive a report at its November 2016 meeting for the purpose of considering the consultation responses and deciding what changes to make to the Policy.

The Consultation

11. The consultation period was 10 weeks and it ran from Wednesday 3 August 2016 to Friday 14 October 2016. The proposals, which are cumulative in nature, and which were the subject of the consultation exercise, are summarised as follows:
- Proposal 1 - retain the requirement for 10 years continuous residency in the Borough to qualify for the housing register but include a further exception to this rule for statutory reasonable preference groups.
 - Proposal 2 - place statutory homeless applicants that do not have 10 years continuous residency in the Borough in a new Band D.
 - Proposal 3a - continue to make an exception to the 10 year residency rule for people aged over 60 who would benefit from sheltered housing, but include a requirement that they are currently resident in the Borough.
 - Proposal 3b - continue to make an exception from the 10 year residency rule for people who are under-occupying their current social housing, but include a requirement that they are currently resident in the Borough.

- Proposal 4 - extend the definition of local connection to include people placed in housing in the Borough in one of the following set of circumstances:
 - a. they are intentionally homeless but have a priority need;
 - b. they are unintentionally homeless and have a priority need;
 - c. they are threatened with homelessness unintentionally and have a priority need;
 - d. they are unintentionally homeless but do not have a priority need.

12. An inclusive consultation programme was devised which included the following elements:

- A letter explaining the changes, together with a consultation questionnaire, was sent by post to:
 - all applicants currently on the housing register;
 - all applicants accepted as homeless and awaiting rehousing;
 - all applicants with a homelessness decision pending; and
- E-mails were sent to:
 - all Registered Providers of social housing operating in the Borough of Hillingdon;
 - relevant voluntary sector organisations operating in Hillingdon;
 - neighbouring local authorities.
- An on-line questionnaire, together with the consultation documents, was placed on the 'Have Your Say' say page of the Council's website.
- A total of 17 drop in sessions were arranged at 5 different locations in the Borough.
- A link to the consultation was placed on the Locata website, which is the on-line portal for applications to join the housing register.
- Attention was drawn to the consultation through Council publications, including social media, and by posters placed in the Housing Reception at the Civic Centre, the one-stop shop, Libraries and the Citizens Advice Bureau, and by providing information regarding the survey to existing groups such as Residents Associations.
- Named telephone and email contacts for any queries and assistance regarding the consultation process were provided.
- The questionnaire was available on-line and in paper form.
- Options for the documentation to be made available in large type, braille, on audio tape or in a different language were provided.

13. The initial mail sent out to individual households was completed by 4 August 2016 and sent to 2,703 people. Subsequent to this, an additional 620 clients, who have since registered on the Locata website, were also sent the consultation letter and questionnaire.

14. The headline responses to each of the proposals are shown in table 1 below and additional detail is included in the consultation report which is attached as Appendix 1 to the Report.

Table 1

Proposal	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
1	35.0%	32.3%	16.4%	6.7%	9.4%
2	30.7%	31.3%	15.9%	10.5%	11.6%
3a	38.0%	35.3%	12.4%	8.9%	5.4%
3b	28.0%	34.5%	22.0%	10.3%	5.2%
4	28.5%	33.3%	24.7%	9.2%	4.3%

15. The response rate of approximately 11% is broadly in line with what is normally expected from consultation exercises of this nature. However, importantly the 372 responses were drawn from a good cross section of the main groups targeted. In broad terms, the findings from the consultation demonstrate that the majority of respondents are in favour of all the proposed changes to the Policy.

The Equalities and Human Rights Impact Assessment

16. The assessment has concluded that there is no clear and discernible impact which through, the implementation of any of the proposals, would see a negative and disproportionate impact on any individual group. The proposals will create a firmer basis upon which decisions on housing allocations can be made and will directly benefit residents who are often considered to be the most vulnerable. Each proposal for change alters the composition of the housing register so that the distribution of groups changes. However, the changes are unlikely to disproportionately and negatively impact the groups concerned. A copy of the assessment is attached as Appendix 2 to the Report.

The Revised Policy

17. A copy of the proposed changes to the Policy, following the consultation exercise, is attached as Appendix 3 for Cabinet's consideration.

Financial Implications

There are no direct costs associated with the implementation of the new Social Housing Allocation Policy as it is primarily concerned with the maintenance and management of the Housing Waiting list.

The risk of legal challenge and associated expenses has been reduced by bringing the Allocations Policy in line with new developments in case law.

An Allocation policy can impact on the value obtained from the Social Housing stock through its influence on access and therefore the value obtained by the Housing Revenue Account. This in turn may impact on the general fund costs relating to temporary accommodation through changes to levels in demand.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

Adoption of a revised Social Housing Allocation Policy will ensure that residents who apply to the Council for housing will continue to be treated fairly and in accordance with the law. The proposals provide clarity that applicants falling within the statutory reasonable preference groups will have access to the housing register, whilst continuing to recognise local priorities.

Consultation Carried Out or Required

The proposed changes to the Policy have been subject to a wide ranging consultation process which is the subject of the Report.

CORPORATE IMPLICATIONS

Corporate Finance

Corporate Finance has reviewed this report and associated Social Housing Allocation Policy, confirming that there are no direct financial implications arising from the recommendation that Cabinet adopt the updated policy. As noted above, the revised policy brings the Council into line with case law in a number of areas, reducing the risk of legal challenge and associated costs.

Legal

Although the Borough Solicitor is the joint author of the report, he nevertheless wishes to draw Cabinet's attention to the following specific legal implications.

Consultation

It is important to note that consultation exercises undertaken by public bodies have been subject to ever increasing judicial scrutiny. The case of **Moseley v London Borough of Haringey LBC** was determined by the highest Court in the land, the Supreme Court, in 2014. The Supreme Court unanimously approved the case of **R v Brent LBC ex parte Gunning** which sets out the key features of a lawful consultation process. The Gunning principles, as they are known, require that consultation should:

- a) be undertaken at a time when the relevant proposals are still at a formative stage;
- b) give sufficient reasons for particular proposals to permit intelligent consideration and an intelligent response;
- c) give consultees adequate time for consideration and response;
- d) ensure that the product of consultation must be conscientiously taken into account by the decision maker.

The Borough Solicitor confirms that the first three principles, as set out above, have been fully met by the Council in this case. A robust, full and fair consultation exercise has been undertaken by the Council over a period of ten weeks.

It is therefore imperative that Cabinet, in making its decision as to whether it should agree to adopt a revised Policy, must conscientiously take into account the consultation responses which are fully set out in the Report. In this respect, it should be noted that there is majority support for the proposals which were subject to consultation, with over 60% of consultees in favour of each individual proposal.

The main proposal is to place statutory homeless applicants that do not have 10 years continuous residency in the Borough in a new Band D. 62% of consultees have either strongly agreed or agreed with this proposal.

Furthermore, there is a proper legal basis for placing statutory homeless applicants into a new Band D. The Court of Appeal has ruled that if local housing authorities are of the view that there is a lesser need for housing for people, who fall within one of the reasonable preference groups, than those people who fall within the other reasonable preference groups, then it is for the authorities to consider whether to reflect that banding in an appropriate banding structure within their Social Housing Allocation Policies. In this respect, it should be noted that although statutory homeless applicants may not have a lesser need for housing as such, they

nevertheless have greater protection than applicants who fall within the other statutory reasonable preference groups by virtue of Part 7 of the Housing Act 1996 and therefore it is lawful to place them in a lower Band to reflect the protection they enjoy.

The Equalities and Human Rights Impact Assessment

The Council, as a public body, is subject to the Human Rights Act and also to the Public Sector Equality Duty ["PSED"] which is contained in the Equality Act 2010. The Council must therefore have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and those without it. The protected characteristics, in summary, are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be fulfilled before, and at the time when the decision is made. Carrying out an Equality Impact Assessment is an invaluable tool in demonstrating that the Council has complied with the PSED, but only if it is done properly.

An Equalities and Human Rights Impact Assessment has been prepared and is attached as Appendix 2 to the report. It is a comprehensive document which fully takes account of the consultation responses which the Council received.

Cabinet is required to have due regard to the Equality and Human Rights Impact Assessment before making its decision to agree the second recommendation contained in the Report.

In this respect, Cabinet will note that the Assessment has concluded that the potential for the Policy to improve the outcomes for local residents is significant. Through clarification of the ten year continuous residency in the Borough rule, the proposals which were the subject of consultation not only create a firmer basis upon which decisions on housing allocations can be made but also directly benefit those residents considered to be amongst the most vulnerable. Furthermore, the analysis set out in the Assessment shows that that there is no clear and discernible impact which, through the application of any of the proposals to revise the Policy, would see a negative and disproportionate impact on any individual group.

However, this is not to underestimate the impact of the proposals on the Policy. Each of the proposals do in some way alter the composition of the housing register so that the distribution of some of the groups varies but the end result is that the relative ranking of the groups remains as it would be before the proposals are implemented.

The consultation responses, from an equalities and access perspective, were relatively balanced with the only caveats applying to the percentage of Indian and Black African respondents which was slightly lower than their respective profiles in the housing register.

The Assessment states that the Policy actually seeks to advance equality of access and improved outcomes for local residents and in the circumstances, there is no need for any mitigating actions.

Finally, there is no suggestion in the Assessment that any human rights would be violated.

6. BACKGROUND PAPERS

Review of Social Housing Allocation Policy, Cabinet Report dated 21 July 2016.