

Committee Name and Date of Committee Meeting

Delegated Officer Decision – 01 September 2023

Report Title

Housing Allocation Policy

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Ian Spicer, Strategic Director of Adult Care, Housing and Public Health

Report Author(s)

Sandra Tolley, Head of Housing Options,

Ward(s) Affected

Borough-Wide

Report Summary

The purpose of this report is to approve minor changes to the Housing Allocation Policy, change the membership of the Housing Assessment Panel and introduce new controls on officer decision making.

Recommendations

1. Agrees to adopt the amended Housing Allocation Policy included at Appendix 1.
2. Agrees to amend the terms of reference for the Housing Assessment Panel to remove elected members.
3. Agrees to strengthen the controls and assurance relating to officer decisions about individual allocation decisions.

List of Appendices Included

Appendix 1 Amended Allocation Policy

Background Papers

None

Council Approval Required

No

Considered by any other Council Committees, Scrutiny or Advisory Panel

No

Exempt from the Press and Public

No

Allocation Policy Review Report

1. Background

1.1 The Housing Allocation Policy sets out the Council's approach to helping people in greatest housing need to gain access to suitable and appropriate accommodation. It is based upon a framework where housing applicants are placed on the housing register in a 'band' that is determined by their circumstances and housing need. The Allocation Policy and the operation of a choice-based lettings system aims to give applicants choice and empowerment. It also ensures that Council homes are allocated in a fair and transparent way.

1.2 Housing authorities are required by Section 166A (1) of the Housing Act 1996 to have an allocation scheme for determining priorities, and for defining the procedures to be followed in allocating housing accommodation.

2. Key Issues

2.1 The Housing Allocation Policy specifies that certain decisions about housing allocations should be made by a Housing Assessment Panel (HAP). These include decisions relating to urgent rehousing cases and appeals. The terms of reference for HAP specifies membership should include up to four elected members. One elected member must be present to achieve quoracy. This arrangement is outside the Council's normal approach as there are no delegations to individual Cabinet members and there is no proper authority for delegating such decision-making powers to members (in this case to non-Cabinet Members).

2.2 Currently members are asked to leave the HAP if cases concern their constituents or properties in their constituency. This means the arrangement complies with national regulations, which prevent an elected Member from being part of a decision-making body at the time an allocation decision is made, when either the accommodation concerned is situated in their division or electoral ward, or the person subject to the decision has their sole or main residence there. However, we have identified no other councils that facilitate the involvement of elected members in individual allocations decisions.

2.3 The Strategic Director of Adult Care, Housing and Public Health is asked to agree that the HAP terms of reference are amended so membership is restricted to officers only.

2.4 The Housing Allocation Policy delegates decision making to individual officers in recognition that not all cases can wait for the HAP to meet. The delegation is to the Head of Housing Options or the Assistant Director of Housing. In order to provide greater resilience, the Strategic Director of Adult Care, Housing and Public Health is asked to agree that the Housing Allocation Policy and the Scheme of Delegation is amended. This change is to sections 2.4, 4.1 and 5 of the amended Housing Allocation Policy in appendix 1.

- 2.5 Appropriate controls are needed to ensure individual allocations decisions are made in line with the Housing Allocation Policy. The existing controls are that a small number of elected members have oversight of the decisions through their membership of the HAP. This would end following the change to the HAP terms of reference. In future, the service will put in place monthly reporting of the number of lettings per band, the number of Band 1 HAP decisions and the reasons for the decisions, timescales to make the decision and the number of Band 1 decisions remaining over a 3-month period, and the location (by ward) of properties to which Band 1 allocations were made. This would be anonymised. The Cabinet Member will be consulted before the new controls are implemented.

Qualifications for housing allocations for applicants with unrecoverable debt from a former tenancy

- 2.6 The Allocations Policy currently excludes applicants from joining the housing register if they have debt from a former tenancy. The wording of the policy also takes into account unrecoverable debt. There is case law on a High Court decision in *Peter Murphy Joseph v The London Borough of Newham EWHC 2983* concerning statute barred debt. It was determined that a local housing authority cannot take a statute-barred debt into account when operating its housing allocation scheme.

- 2.7 Examples of unrecoverable debt includes debt that is over 6 years old and has become statute barred. The Strategic Director of Adult Care, Housing and Public Health is asked to agree to remove the reference to unrecoverable debt from Section 2.4 of the Allocation Policy.

Guidance for allocations where applicants have statute barred debt

- 2.8 In operating the Allocations Policy, it has been identified by officers that there is a lack of clarity regarding when an applicant's debt becomes statute barred. As detailed above it is unlawful to take statute barred debt into account, so clear policy on this matter is essential.

- 2.10 To remove ambiguity, the Strategic Director of Adult Care, Housing and Public Health is asked to approve insertion into the policy of examples of when a debt becomes statute barred. Section 2.4 will be updated to give clearer guidance as follows:

- Example 1 - Debt occurred in 2010 but the applicant acknowledged the debt and made some payments with the last payment made in October 2014. The debt became statute barred in October 2020 if no more payments are made.
- Example 2 - Debt occurred on 1st January 2011. No payments were made before October 2015. Then one payment was made in October 2015. No payments have been made after October 2015. The debt becomes statute barred in October 2021 if no further payment is made.

- Example 3 – Debt occurred on 1st January 2011. The applicant started to make payments, and these are continuing to this day. The debt is not statute barred as the six-year period has not yet started.

3 Options considered and recommended proposal

- 3.1 **Option 1 – Do Nothing.** This is not recommended due to the factors outlined in section 2. Failing to update the policy risks leading to poor outcomes for residents and opens the Council up to risks around the fairness and legal basis of its policy.
- 3.2 **Option 2 – Make the changes (recommended).** This will bring the policy in line with the Council’s constitution and recent case law. Any future major changes would remain subject to Cabinet agreement following consultation.

4. Consultation on proposal

- 4.1 The proposed changes follow a light touch review to bring the policy in line with the Council’s constitution and recent case law and to improve operational effectiveness. Consultation has therefore been limited to officers who use the policy, legal services colleagues, the Cabinet Member for Housing and the Leader of the Council.

5. Timetable and Accountability for Implementing this Decision

- 5.1 The Assistant Director of Housing is accountable for implementing this decision.
- 5.2 Following the decision an amended Housing Allocation Policy will be published on the Council’s website and shared with partners.
- 5.3 Officers will amend the terms of reference for the Housing Assessment Panel and implement the new controls described in this report from October 2023.

6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)

- 6.1 There are no direct financial implications arising from the recommendations in this report. No additional resource or savings will result from the implementation of the new policy.
- 6.2 There are no direct procurement implications arising from the recommendations detailed in the report.

7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)

- 7.1 The relevant legislation and case law has been referenced within the body of the report. Legal Services have provided advice in respect of the proposed changes to the Policy and have also reviewed the Policy in order to ensure that no elements of the Policy are deemed unlawful.
- 7.2 Chapter 5 of the Allocation of Accommodation Statutory Guidance addresses Allocation Scheme Management. The relevant legislation in respect of information about allocation schemes is contained within Section 168 of the Housing Act 1996 and Section 106 of the Housing Act 1985. Housing Authorities must publish a summary of their allocation scheme and, if requested, provide a free copy of it. The full scheme must also be available for inspection.
- 7.3 When an alteration is made to an allocation scheme which reflects a major change of Policy, an Authority must ensure that those likely to be affected by the change have the effect brought to their attention within a reasonable time frame, this is usually done by way of consultation. On this occasion consultation has not been necessary due to the nature of the changes proposed and the fact that the review of the Policy has been a 'light touch' review.
- 7.4 In removing elected members from the Housing Assessment Panel, the Council is ensuring compliance with its own decision-making process and delegations. There is no legal requirement for Elected Members to be involved in allocation decisions. Paragraphs 5.12 and 5.13 of the Allocation of Accommodation Statutory Guidance addresses the involvement of Elected Members in allocation decisions.

“The Allocation of Housing (Procedure) Regulations 1997 (SI 1997/483) prevent an elected Member from being part of a decision-making body at the time an allocation decision is made, when either:

- *the accommodation concerned is situated in their division or electoral ward,*
- or*
- *the person subject to the decision has their sole or main residence there*

The regulations do not prevent an elected Member from representing their constituents in front of the decision-making body, or from participating in the decision-making body's deliberations prior to its decision. The regulations also do not prevent elected Members' involvement in policy decisions that affect the generality of housing accommodation in their division or electoral ward rather than individual allocations; for example, a decision that certain types of property should be prioritised for older people”.

- 7.5 As set out at paragraph 2.8 of the report, it has been identified that the inclusion of unrecoverable debt as a reason to exclude an applicant from the register is unlawful. The relevant case law is the High Court decision in Peter Murphy Joseph v The London Borough of Newham [2009] EWHC 2983 (Admin), this was a Judicial Review case.

- 7.6 The Court held that the Council in this case had acted irrationally in applying the property-related debt provision in the choice-based scheme to property-related debts that were no longer recoverable.
- 7.7 The Court construed “debt” in the phrase “any property-related debt” to mean **recoverable** debt.
- 7.8 In adopting the recommendation at Option 2 the Council is ensuring compliance with the law and removing the elements of the Policy which have been identified as unlawful, thus reducing the risk of legal challenge in respect of the Policy itself and any allocation decisions made in accordance with the Policy.

8. Human Resources Advice and Implications

- 8.1 There are no HR implications arising from the report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 The proposals are likely to bring indirect benefits for other directorates and partners, particularly in reducing homelessness for families with children and contributing to local targets on homelessness prevention and sustainable tenancies.
- 9.2 The recommendation to remove restrictions for unrecoverable debt will help people to secure and sustain a home. This is of paramount importance to ensuring a stable home for families, the best start in life for children, and vulnerable adults. Good quality, stable homes also help people to avoid financial hardship and can have a significant impact on people’s health and wellbeing.

10. Equalities and Human Rights Advice and Implications

- 10.1 An initial Equality Impact Assessment Screening (EIA) for the Policy review has been completed to ensure that no adverse impact and a positive impact on people with disabilities, but the outcome of the formal EIA assessment will be finalised by end the of September 2023 as the policy review is completed.

11. Implications for CO2 Emissions and Climate Change

- 11.1 This proposal has no additional impact on emissions

12. Implications for Partners

- 12.1. The Housing Allocation Policy is widely utilised by partners involved in providing advice and assistance to residents seeking housing. The changes will be publicised and the updated Policy will be shared with partners.

13. Risks and Mitigation

- 13.1 The proposed changes mitigate the risk that the current policy is not compliant with case law and the Council's constitution. Once implemented, there is a risk that the changes are not properly understood or implemented. This will be mitigated through training and publicisation of the changes. There is a risk that ending the involvement of elected members in the HAP reduces assurance that decisions about allocations are made in line with policy. New controls are proposed to mitigate this risk, and current HAP elected members will be consulted before these are introduced.

14. Accountable Officers

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