

Report to the Cabinet

Report reference: C-069-2014/15

Date of meeting: 9 March 2015



**Epping Forest
District Council**

Portfolio: Housing

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 the Cabinet accepts the recommendations of the Housing Scrutiny Panel in its report attached at Appendix A subject to the suggested changes at Appendices B and C and adopts the reviewed Housing Allocations Scheme;**
- (2) That, following consultation with the Tenants and Leaseholders Federation, partner agencies, Parish and Town Councils and partner Registered Providers, the Cabinet notes the outcome and agrees the suggested changes to the Housing Allocations Scheme as set out at Appendix B;**
- (3) That the Cabinet notes two changes made to the Housing Allocations Scheme (subsequent to consideration by the Housing Scrutiny Panel) in accordance with the advice received from the external legal advisor which are set out at Appendix C;**
- (4) That the target date for the revised Housing Allocations Scheme to take effect will be 1 July 2015; and**
- (5) That the Housing Allocations Scheme be reviewed again after 2 years of operation with the reviewed Scheme coming into force on 1 April 2018.**

Executive Summary:

The Cabinet is being asked by the Housing Scrutiny Panel to accept its recommendations set out in the attached report at Appendix A and adopt the Council's revised Housing Allocations Scheme. The target date for the revised Scheme to come into force is 1 July 2015.

The Council has consulted on the draft revised Scheme, and sought external legal advice. The table attached as Appendix B to the report sets out the response from each organisation. A further table at Appendix C sets out two further changes made in accordance with the advice of the external legal advisor.

Reasons for Proposed Decision:

To ask the Cabinet to accept the recommendations of the Housing Scrutiny Panel and adopt the revised Housing Allocations Scheme, subject to the suggested changes set out in Appendix B to the report in response to the consultation, and two further changes made in

accordance with the advice of the external legal advisor at Appendix C.

Other Options for Action:

To not agree the recommendations of the Housing Scrutiny Panel.

To make alternative changes to the draft Housing Allocations Scheme.

Report:

1. The Cabinet is being asked by the Housing Scrutiny Panel to accept its recommendations set out in the attached report at Appendix A and adopt the Council's revised Housing Allocations Scheme. The report and recommendations will be presented to the Cabinet by the Chairman of the Housing Scrutiny Panel at the meeting.

2. It was proposed to the Panel that the revised Scheme would come into force on around 1 July 2015, subject to any delays due to the necessary implementation arrangements which includes:

- Writing to around 1,600 home seekers on the Housing Register, explaining that they must re-register on-line giving a final deadline for re-registering after which they will be removed from the list;
- Re-designing the on-line application form to ensure it complies with the new policies;
- Working with the Council's Choice Based Lettings system administrator Locata Housing Services (LHS) to ensure the system meets with the requirements of the revised Scheme; and
- Monitoring all qualifying home seekers, contacting those who fail to re-register to ensure that the following advice/assistance is given to either vulnerable applicants or those who do not have access to a computer:
 - (a) Assistance from staff for home seekers to re-register on line; and
 - (b) Carefully monitoring all qualifying homeseekers who fail to register, with particular attention to those homeseekers on the Council's "Vulnerable List" (where staff already assist with placing bids on their behalf), to ensure they have re-registered, carrying out home visits where needed.

Consultation on the Housing Allocations Scheme

3. Nine responses were received from the consultation. The table attached as Appendix B to the report sets out the responses from each organisation and the comments and suggested changes.

4. The Housing Scrutiny Panel was advised that, following its consideration, the draft Housing Allocations Scheme will be considered by an external Legal Advisor, being a QC specialising in housing law who recommended two changes be made to the Scheme which were incorporated in the draft document, he stated that otherwise in his opinion the Housing Allocations Scheme is lawful. The two changes are set out at Appendix C.

Resource Implications:

Within existing resources.

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).

Providing Social Housing for local people (DCLG October 2013)

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

As set out in the report.

Background Papers:

As attached at the '*Background Papers*' document and includes:

Legal Advisor's report.

Equality Impact Assessment.

Risk Management:

No risks have been identified. Should any be identified in the future, these will be reported to the Housing Portfolio Holder or the Cabinet depending on their importance or will be taken into account as part of the review after 2 years of operation of the Scheme.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

Each year the Housing Scrutiny Panel considers a report on the Protected Characteristics of home seekers on the Housing Register compared to the Protected Characteristics of those allocated accommodation. It also monitors a range of information on the activity of the Choice Based Lettings Scheme, including the number of lets and property types let in each priority band, the numbers and methods of bids on vacant properties etc. This is to ensure that there is no disparity between those on the Housing Register and those housed. Should there be any concerns the Panel would consider if any amendments needed to be made to the Scheme, which to date has not proven to be necessary.

The Council's policy on Equal Opportunities is set out under Section 24 of the Scheme.

As a result of the consultation exercise it is proposed to make two changes which will ensure that two groups will not be affected and have access to services and are as follows:

- That the proposed increased incentive payments made to Council tenants downsizing accommodation applies to all those downsizing regardless of whether they are affected by the Spare Room Subsidy for housing benefit purposes. This is providing; both properties are owned by the Council, the tenant is under-occupying and is either transferring or entering into a mutual exchange and has a housing need for the smaller property; and
- That if the Residency Criteria is increased to 5 years, those leaving care (mainly those who are leaving foster care having reached 18 years of age), would not be able to re-housed on leaving the Single Accommodation for Epping Forest (SAFE) Scheme. By suggesting a lesser residency period of 3 years, this will enable the Council to continue to provide valuable support to this client group and meet with its duties under Corporate Parenting responsibilities. It is further suggested that a lesser 3 year Residency Criteria should also be applied to all applicants leaving the Supported Housing Schemes set out at Appendix 4 Paragraph 1.4 of the Scheme for the same reason.

Equality Impact Assessment

An Equality Impact Assessment has been undertaken on the Draft revised Housing Allocations Scheme. The Assessment has found that the Scheme does not discriminate against any group who qualify for inclusion on the Council's Housing Register. It sets out arrangements that are in place to assist vulnerable people to participate.

Appendix B

Consultation Responses to the Draft Housing Allocations Scheme and Suggested Changes

Organisation	Consultation Response	Comments/Suggested Changes
Tenants and Leaseholders Federation	The Tenants and Leaseholders Federation Considers that the amount paid for those downsizing Council accommodation should apply to all, including those affected by the Spare Room Subsidy for housing benefit purposes. It was considered that those captured by the Spare Room Subsidy may need the increased payment the most	That the proposed increased incentive payments made to Council tenants downsizing accommodation applies to <u>all</u> those downsizing regardless of whether they are affected by the Spare Room Subsidy for housing benefit purposes. This is providing; both properties are owned by the Council, the tenant is under-occupying and is either transferring or entering into a mutual exchange and has a housing need for the smaller property
Buckhurst Hill Parish Council	No comments from Councillors, but grateful for being consulted	None

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The Council's Private Sector Housing Team	The Section on page 17 "Insanitary, Overcrowded Housing or Unsatisfactory Conditions" refers to two space standards under two Housing Acts. It should be clarified which standards will be taken into account when assessing whether Band A priority will be awarded under this Section. Both pieces of legislation remain in force and the Council is able to choose which to apply.	<p>The Council has always applied the assessment of permitted numbers in accordance with the Housing Act 1985 (Part X), and it is suggested this continues. The assessment under the Housing Act 2004 is far more generous and would not maximise the use of the Council's housing stock. Four other authorities in Essex have been consulted on this issue; all apply the assessment under the Housing Act Part X. Therefore it is suggested that this section be amended to:</p> <p>"Where the permitted number, in accordance with the provisions of S 326 of the Housing Act 1985 is exceeded, or in accordance with the Act, the property is in a serious state of disrepair, of poor internal or external arrangement, or is lacking one or more of the following: kitchen facilities, inside WC or utility supplies".</p>

Appendix B

Consultation Responses to the Draft Housing Allocations Scheme and Suggested Changes (continued)

Organisation	Consultation Response	Comments/Suggested Changes
Loughton Town Council	<p>The Town Council welcomed the increase in local residency to 5 years</p> <p>The Town Council considers that the new financial criteria threshold of £76,000 is too low</p> <p>The Town Council supports the deferral period of 12 months for those who refuse the stipulated number of offers of accommodation</p>	<p>None</p> <p>The proposed reduced threshold was considered by the Panel and the Housing Portfolio Holder to reflect an amount that would be fair to expect a person to be able to secure private rented accommodation. The threshold is higher than 2 other neighbouring Councils and the same as one other neighbouring Council. Therefore, it is suggested that the threshold is agreed as proposed.</p> <p>None</p>

Appendix B

Consultation Responses to the Draft Housing Allocations Scheme and Suggested Changes (continued)

Organisation	Consultation Response	Comments/Suggested Changes
Hastoe Housing Association	Appendix 4 Paragraph 2.4 This clause needs expanding to confirm that applicants will still be accepted onto the Housing Register where the residency criteria is not met but do meet the exception site criteria as set out in the S 106 agreement.	It is suggested that Paragraph 2.3 is amended as follows: “Where vacancies arise in properties that have been built in rural localities under exceptional planning arrangements (Section 106 Agreement), the Residency Criteria will not apply. However, such home seekers must comply with the locality connection in accordance with the Section 106 Agreement and will not be eligible to bid on other vacancies. Such requirements only apply for specific development sites that have such exceptional planning arrangements.

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Consultation Responses to the Draft Housing Allocations Scheme and Suggested Changes (continued)

Organisation	Consultation Response	Comments/Suggested Changes
Ongar Town Council	<p>Paragraphs 9.1 and 9.2 could be confusing what is the thinking behind stating 9 years?</p> <p>Paragraph 11.1 All home seekers should be given the opportunity of viewing the property offered</p> <p>Paragraph 14.3 Increasing the residency criteria is proportionate in view of the pressure on the housing stock.</p> <p>Removing existing home seekers from the list who do not meet with the Residency Criteria is unfair retrospectively, and likely to cause unwarranted distress and uncertainty. Is there any provision for difficult cases or flexibility?</p>	<p>This clause explains that Flexible (fixed-term) Tenancies are granted for a term of 9 years but when taking into account the Introductory Tenancy term of 12 months this makes the full term 10 years. If the Introductory period is extended by a further 6 months, then the fixed-term will be 8 ½ years which makes a full term of again 10 years. It is considered this is clear and should remain as written.</p> <p>It is suggested this paragraph be amended to say “All home seekers....”</p> <p>None</p> <p>The Council is giving recognition to home seekers already on the Housing Register by reducing the residency requirement by 6 months, which was the case under the last review. Under the proposed Scheme, it is suggested that there is no discretion for “difficult” cases; discretion would only apply to qualifying persons in exceptional circumstances (Paragraph 7.2 refers).</p>

	<p>Paragraph 14.7 An additional bullet point suggested:</p> <p>“Applicants will be required to produce relevant evidence of income and savings”</p> <p>Paragraph 16.4 Requirements under the current Scheme are more robust but this is not so with the draft Scheme. The latter should be more comprehensive</p> <p>Paragraph 16.8 Remove the words “from time-to-time”</p>	<p>Add at the end of Paragraph 14.7:</p> <p>“Applicants will be required to produce evidence of income and savings”</p> <p>Under the current Scheme there is an extensive list of documents that may be required depending on the circumstances of each case. It is suggested that a broader statement is made giving the Housing Options Manager the ability to make decisions based upon the applicant’s own circumstances. Examples of the types of documents required are set out at Paragraph 16.5</p> <p>It is suggested that the words “from time-to-time” are removed from Paragraph 16.8</p>
North Weald Bassett Parish Council	The Parish Council supports the proposed changes to the Housing Allocations Scheme	None
Stapleford Abbots Parish Council	The Parish Council noted the revised Scheme at its meeting on 3 February 2015	No comments were received from Stapleford Abbots Parish Council

Appendix B

Consultation Responses to the Draft Housing Allocations Scheme and Suggested Changes (continued)

Organisation	Consultation Response	Comments/Suggested Changes
East Thames Housing Association	East Thames manages the young parents' supported housing scheme Railway Meadow in Ongar. The Council shares nomination rights with two other Councils. Those nominated must meet the Residency requirements of their host Council. They have concerns about the Residency Criteria increasing from 3 to 5 years and feel that young people may be excluded from their service which would result in a lot of young people not being supported.	The comments are accepted. The Housing Scrutiny Panel report refers to representations made by Essex County Council, that if the Residency Criteria is increased to 5 years, those leaving care (mainly those who are leaving foster care having reached 18 years of age), would not be able to be re-housed on leaving the Single Accommodation for Epping Forest (SAFE) Scheme. By having a lesser residency period of 3 years, this will enable the Council to continue to provide valuable support to this client group and meet with its duties under Corporate Parenting responsibilities. It is suggested that the lesser 3 year Residency Criteria should be applied to all applicants leaving the Supported Housing Schemes set out at Appendix 4 Paragraph 1.4 of the Scheme for the same reason.

Appendix B

Consultation Responses to the Draft Housing Allocations Scheme and Suggested Changes (continued)

Organisation	Consultation Response	Comments/Suggested Changes
Essex County Council's Director of Local Delivery West	Noted the changes regarding the residency criteria and that care leavers are exempted from the new 5 year criteria which remains at 3 years for this client group. This is welcomed except we would ask that care leavers are entirely exempt from the residency criteria, and are excluded from the anti-social behaviour requirement. Also that consideration is given to the issue of a specific quota of tenancies being made available for care leavers	<p>It is suggested that the residency criteria remains at 3 years for those leaving care. Care leavers are mainly young people leaving foster care who, when appropriate, would be provided accommodation through the Single Accommodation for Epping Forest Project (SAFE) a registered housing association and charity which offers supported accommodation for single people in partnership with a number of agencies. The Project prevents young people becoming homeless.</p> <p>The reason for the suggested lesser residency criteria of 3 years is to enable young people, at the end of their stay at the Project, to be housed by the Council when they would be more likely to be able to sustain a tenancy. If care leavers were entirely exempt from the residency criteria, or a quota of properties was set aside, then this may be unfair and difficult to justify to other non-qualifying applicants, many of whom have differing levels of need.</p> <p>Furthermore, excluding care leavers from the anti-social behaviour rules has the potential of creating management issues on estates.</p>

Appendix C

Changes made to the draft Housing Allocations Scheme in accordance with the advice of the external Legal Advisor

Advice in summary	Officer comments	Change to the Scheme
<p>Due to the judgment in <i>Jakimaviciute v Hammersmith & Fulham</i> [2014], the Council will be at less risk of legal challenge if it accords all homelessness persons to which it owes a full duty a reasonable preference by making them one suitable offer of Council accommodation. If the Council provided private sector accommodation to those who are non-qualifying persons under the Local Eligibility Criteria, it is doubted that if challenged such a person would have a winning case based on different treatment. However, such an eventuality would be quite likely to result in litigation.</p>	<p>Under Paragraphs 18.13 to 18.15 of the current scheme, the Council may provide private rented sector accommodation to homeless persons to whom it owes a full duty. However, due to the number of requirements private landlords have to meet they are not prepared to accept homeless applicants unless they receive a cash incentive in the region of £2,500 per applicant housed. As the Council could house around 30 applicants each year in this way, it would place a huge financial burden on the General Fund. In addition, there is the risk of challenge in the Courts which could result in high legal costs.</p>	<p>That Paragraphs 18.13 to 18.15 be removed from the Housing Allocations Scheme</p>
<p>The Housing Allocations Scheme should be amended very slightly to incorporate reference to all homeless persons, including those who have not been accepted as homeless as the statute requires <i>all</i> homeless persons in the area to be accorded a reasonable preference</p>	<p>Officers sought further advice from the external legal advisor who framed the wording of the additional banding criterion at Band C (vii).</p>	<p>Additional criterion at Band C (vii): All home seekers to whom the Council does not owe a full homelessness duty, where there is a requirement under the Housing Act 1996 as amended to afford reasonable preference <u>on the ground of homelessness</u></p>