

SUBMISSION TO COMMUNITY HOUSING AND ENVIRONMENTAL HEALTH (OVERVIEW AND SCRUTINY) COMMITTEE

Date: 24th September 2013

Agenda Item: 5

Contact Officers: Clive Gibbins/David Whittaker

Telephone: 01543 308702 / 01543 308704

SUBMISSION BY CABINET MEMBER FOR COMMUNITY, HOUSING & ENVIRONMENTAL HEALTH

THE USE OF PRIVATE RENTED ACCOMMODATION TO DISCHARGE THE COUNCIL'S HOMELESSNESS DUTY

1. Purpose of Report

- 1.1 To advise Members about the changes contained within the Localism Act that give the Council the power to discharge its homelessness duty by an offer of accommodation in the private rented sector.
- 1.2 To ask Members to recommend to Cabinet that the Council adopt the power to discharge the Council's homelessness duty into the private sector without agreement from the applicant.
- 1.3 To invite comments from Members on the Suitability of Private Rented Accommodation Policy, attached at **APPENDIX A** and to seek agreement from Members to forward the policy to Cabinet for adoption.

2. Background and Introduction

- 2.1 Where a homeless applicant is homeless through no fault of his/her own, eligible for assistance and is in priority need, the Council has a duty to provide accommodation. This is known as the main homelessness duty. Historically, local authorities have only been able to discharge this main homeless duty via the offer of a social housing tenancy or through the use of a 'qualifying offer' of private rented accommodation. A 'qualifying offer' can only currently be made where the applicant agrees to receive an offer of private rented accommodation.
- 2.2 The Localism Act introduced a significant change to how local authorities can choose to discharge their duty to households for whom they have accepted responsibility under the homelessness legislation. The Act gives the Council the power to discharge their duty to those accepted as unintentionally homeless and in priority need by an offer of rented accommodation from a private landlord, without requiring the applicant's agreement.
- 2.3 The private tenancy must be for a minimum term of twelve months and would need to meet the other requirements of suitability currently applied to offers of social housing. If the applicant becomes unintentionally homeless again within two years of accepting a private rented sector offer, the main homelessness duty will recur regardless of priority need.
- 2.4 The Government has published the Homelessness (Suitability of Accommodation) (England) Order 2012 which sets out the circumstances in which accommodation used for the purposes of a private rented sector offer to end the main homelessness duty is to be regarded as suitable. These are:
 - (a) the local housing authority are of the view that the accommodation is in a reasonable physical condition;
 - (b) the local housing authority are of the view that the accommodation has valid gas safety, electrical safety and energy performance certificates

- (c) the local housing authority are of the view that the landlord has taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it;
- (d) the local housing authority are of the view that the landlord has taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation;
- (e) the local housing authority are of the view that the landlord is a fit and proper person to act in the capacity of landlord.
- (f) the accommodation is a house in multiple occupation and has a valid licence where appropriate
- (g) the landlord has provided to the local housing authority a written tenancy agreement, for a minimum of 12 months, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.

2.5 The current homelessness legislation already includes safeguards regarding the accommodation used to meet the main homelessness duty. The accommodation offered would need to be suitable for everyone in the applicant's household. In considering 'suitability' the Council must consider, for example, whether the accommodation is affordable for the applicant, its size, its condition, its accessibility and also its location. Applicants have the right to ask the authority to review their decision that accommodation is suitable, and if dissatisfied with that decision have the right to appeal to the county court on a point of law.

2.6 In order to enable the Council to make use of the new powers, a draft policy has been developed which sets out the policy and procedural arrangements for discharging the statutory homeless duty in the private sector. The purpose of this report is to seek approval to discharge homelessness duty through a suitable offer of private rented accommodation.

3. Consultation

- 3.1 The draft policy has been given to members of the Strategic Housing Partnership for comment.
- 3.2 The policy was also discussed at the Lichfield District Private Landlords' Forum meeting on July 18th 2013 and private landlords were invited to comment.
- 3.3 The policy has also been sent to the West Midlands representative of the National Landlords Association for comment.

4. Community Benefits

- 4.1 Discharging duty in the private rented sector will ease the strain on social sector providers and provide more vacancies for those for whom private rented accommodation is not an option.
- 4.2 It will provide access to more housing options for applicants over a wider geographical area,

5. Recommendation

- 5.1 That Members recommend to Cabinet that the Council adopts the power to discharge its duty to those who are accepted as statutorily homeless with a suitable offer of accommodation in the private rented sector.
- 5.2 That Members recommend to Cabinet the adoption of the policy regarding the suitability of accommodation in the private sector

6. Financial Implications

- 6.1 Where applicants are unable to meet the cost of rent in advance or rent deposit, the use of the Homelessness Prevention Fund to assist applicants through loans will be considered. However, officers are currently in negotiations with the Fusion Credit Union, regarding the payment of loans by them, which will mitigate the cost to the Council.

6.2 All expenditure from the fund will be closely monitored.

7. Local Policy Context

7.1 Within the strategic theme of 'We'll support people' there is the following long term outcome relevant to the Homelessness Strategy:

- We'll help and support vulnerable adults, families and children to live independent and fulfilled lives in their own homes and communities, and prevent homelessness wherever we can

8. Risk Management Issues

Risk	Likelihood/Impact	Risk Category	Countermeasure	Responsibility
Difficulty in recruiting landlords	Medium/high	Strategic	Discharge of homelessness duty is met in the social sector	Housing Options Manager
Insufficient private rented sector accommodation is sourced to meet the need.	Medium/high	Strategic	Discharge of homelessness duty is met in the social sector	Housing Options Manager
Landlords withdraw co-operation	Medium/high	Strategic	Discharge of homelessness duty is met in the social sector	Housing Options Manager
Excess demand on the schemes	Low/high	Strategic	Discharge of homelessness duty is met in the social sector	Housing Options Manager
Reduction or loss of funding for homelessness prevention schemes	Medium/high	Financial	Limit use of scheme to where landlords do not require financial inducements	Housing Options Manager

Attachments:

Lichfield District Council Suitability of Private Rented Accommodation Policy (Appendix A)

Background Documents:

The Localism Act 2011

Homelessness (Suitability of Accommodation) (England) Order 2012

Report checked and approved:

Strategic/Corporate Director

Homeless Discharge into the Private Rented Sector Policy

Lichfield District Council

September 2013

Homeless Discharges into the Private Rented Sector

1. Introduction

The Localism Act 2011¹ has given local authorities the power to discharge its duty towards those who are statutorily homeless by making an offer of a private sector tenancy. Under the previous legislation², an offer of a private sector tenancy could only be made if the applicant agreed and were notified that it was a 'qualifying offer'.

These changes seek to give greater freedoms to local authorities to make better use of good quality private sector accommodation that is suitable for households accepted as homeless. The government considers that allowing households owed the main homeless duty to turn down offers of suitable accommodation in the private rented sector and wait for an offer of social housing, was unfair to other households on the housing register who would have to wait longer, and to the taxpayer who is funding expensive temporary accommodation. However, as with any offer made to an applicant to discharge the housing duty under the homelessness legislation, the offer must be deemed to be 'suitable'. This policy sets out the criteria by which Lichfield District Council will assess the suitability of a private sector offer.

2. Circumstances in which a Private Sector Offer will be made

The use of 'Private Sector Offers' is a new power, and local authorities are expected to develop clear policies on the use of these, and to consider the individual circumstances of each household when deciding whether to apply this option.

Lichfield District Council will *consider* a 'Private Sector Offer' to end our main homeless duty in all cases, and in determining whether an offer should be made, the Council will consider the following:

- The length of time the applicant has been owed the full homelessness duty
- The likelihood of social rented accommodation becoming available
- The availability of private rented accommodation at that time
- The needs of the applicant and their household
- The suitability of the applicant and their household
- The suitability of the accommodation
- The affordability of the accommodation

This will mean that homelessness will no longer give any guarantee that homeless households will receive an offer of social housing. This supports the current approach to prevent homelessness, wherever possible, and to encourage applicants to apply for housing through the housing register route, rather than through homelessness.

3. Terms of the Offer

In order to discharge its duty under the homelessness legislation, the Council must offer the applicant a tenancy for a minimum period of 12 months.

¹ Sections 148 and 149

² Part VII of the Housing Act 1996 (as amended by the Homelessness Act)

Where an applicant accepts an offer of accommodation, if they become homeless within two years of the tenancy start date, a new 'Reapplication Duty' applies. This duty is regardless of whether or not they have a priority need, although they must remain eligible and be homeless unintentionally. This provides more of a 'safety net' for applicants for this two year period. The Council will try to secure two year agreements with landlords, where possible.

Where an applicant refuses an offer of accommodation, the Council shall regard its duty under the homelessness legislation as met and no further duty to provide accommodation will exist. The applicant has a right to request a review of this decision (see section 6 Right to Request a Review on page 5).

4. Suitability of Accommodation

The Homelessness (Suitability of Accommodation) (England) Order 2012 states that an offer of private rented accommodation made under this policy should fulfill the following criteria to be considered suitable:

1) Reasonable Physical Condition

- The property will be inspected by a member of the Housing Options Team to identify any potential items of disrepair, such as:
 - i) Missing internal doors
 - ii) Lack of restrictors on upstairs windows
 - iii) Lack of handrails on the stairs
 - iv) Damp
 - v) Mould
 - vi) Cold (eg cracked windows)

2) Gas Safety Certificate

- The property should have a valid gas safety certificate. (These are valid for 12months)

3) Electrical Safety Certificate

- The property should have a valid electrical safety certificate (These are valid for 5 years)

4) Fire Safety Regulations

- Working, suitably located, smoke detectors are expected to be provided (battery or mains).
- All furniture and furnishings supplied by the Landlord must also be shown to comply with the Furniture and Furnishings (Fire Safety) Regulations 1988 (as amended).

5) Carbon Monoxide Alarm

- The landlord must provide a carbon monoxide detector, suitably located. (BS EN 50291 with British or European Approval Mark eg Kite Mark).

6) The Landlord Must Be A 'Fit And Proper Person'

- The landlord will be required to self certify, unless he/she is part of a recognised accreditation scheme, such as the Midland Landlord Accreditation Scheme (MLAS).
- Checks will be made with the Private Sector Housing Team to establish whether the landlord has already self certified.

7) Houses In Multiple Occupation

- Where HMO properties are used, the Private Sector Housing Team will be contacted to ensure that the property is compliant with relevant standards and legislation, including being licensed where appropriate.

8) Energy Performance Certificate

- The property should have a valid energy performance certificate with a rating of at least E or above.

9) Written Tenancy Agreement

- The landlord must supply a written tenancy agreement. The tenancy agreement will set out in a clear and comprehensible way:
 - i) The tenant's obligations
 - ii) A clear statement of the rent and other charges, which will remain fixed for the minimum period
 - iii) The responsibilities of the landlord
- The tenancy agreement should not contain unreasonable terms, such as call out charges for repairs or professional cleaning at the end of the tenancy.
- The landlord must protect their tenants' deposits using a Tenancy Deposit Scheme.

10) Suitable Location

- Within Lichfield District, except where:
 - i) Disruption would be caused by the location to employment, caring responsibilities or education of the household.
 - ii) The applicant will find it difficult to access medical facilities and other support which are used by, or essential to the well-being, of the household
 - iii) The proximity and accessibility to local services, amenities & transport, such as places of worship and shops.
- Outside Lichfield District where:
 - i) It considers it beneficial to move an applicant/household out of area, for example, to reduce the risk of domestic violence, other violence, or harassment or to assist persons in breaking away from detrimental situations, such as drug or alcohol abuse,
 - ii) The applicant consents to move away from Lichfield District, or

- iii) A person has very limited/ no local connection to Lichfield (for example, they may have approached having fled violence).

5. Suitability of the Applicant

When deciding whether to make a private sector offer, the individual circumstances of each household will be considered, as set out below:

- Whether the applicant is vulnerable, requiring supported accommodation, or is considered unlikely to be able to adequately sustain a private rented tenancy
- Whether the applicant or a member of their household requires significant disabled adaptations to make the property suitable
- Whether the accommodation is affordable, having regard to the applicant's income, expenditure and savings, as well as Housing Benefit/ Local Housing Allowance rates. To assist in the determination as to affordability an applicant will be required to receive money advice.
- Whether the applicant needs assistance with advance payments such as rent in advance or rent deposit. If the Money Advisor determines that a loan is affordable, the Council could assist with these via the Homelessness Prevention Fund. (The Rent Guarantee Scheme also offers a no cost option for rent in advance/rent deposit)

6. Right to Request a Review

Applicants have the right to request a review on the council's decision that an offer of accommodation is suitable. A review will be heard by the council's Homelessness Review Panel, which will consist of officers who are senior to the officer who made the original decision and who were not involved in the making of the original decision.

If a request for review is unsuccessful, applicants also have the right to request a judicial review, at the County Court, on a point of law.