

CAB2475
FOR DECISION
WARD(S): ALL

CABINET (HOUSING) COMMITTEE

27 MARCH 2013

PRIVATE RENTED SECTOR OFFER (PRSO) POLICY

REPORT OF HEAD OF HOUSING SERVICES

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Amendments made by the Localism Act 2011 to the homelessness legislation have recently been enacted to allow local authorities to meet their main housing duty by securing suitable accommodation in the private rented sector. This report recommends that the Council adopt a Private Rented Sector Offer (PRSO) Policy which will enable this power to be used.

RECOMMENDATIONS:

- 1 That Cabinet (Housing) Committee adopt a Private Rented Sector Offer Policy as detailed in this report to enable the Council to discharge its homelessness responsibilities where appropriate to do so, by arranging accommodation in the private rented sector.
- 2 That the option of a Private Rented Sector Offer should exist equally for all applicants as set out in paragraphs 4.2.3 and 4.4, subject in each case to it being deemed appropriate and suitable.

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REPORT OF HEAD OF HOUSING SERVICES

1. INTRODUCTION

- 1.1. On 9 November 2012, amendments to the homelessness legislation (Housing Act 1996 – Part VII) came into force. These changes were brought about by the introduction of the Localism Act 2011, in particular sections 148 & 149, and permit local housing authorities to discharge their duty to homeless applicants by making an offer of suitable accommodation in the private rented sector.
- 1.2. The ability to exercise this option to offer private rented accommodation to homeless households is dependent upon the Council adopting a policy which sets out its approach to housing those to whom a ‘full duty’ is owed under homelessness provisions.
- 1.3. This policy sets out the Council’s approach to its Private Rented Sector Offer (PRSO) and describes the circumstances in which it will operate.
- 1.4. It is important to note that the Council must ensure that the case of each homeless applicant is considered on its own merits, with a measure of discretion afforded to officers, since any blanket policy which doesn’t allow for flexibility would be open to legal challenge.

2. REVISIONS TO THE HOMELESSNESS LEGISLATION

- 2.1. Under previous provisions, the Council was able to discharge its full homelessness duty to applicants who were homeless, eligible for assistance, in priority need and not intentionally homeless by one of two means:
 - securing suitable social housing accommodation under HA 1996 Part VI (unless referring to another authority under local connection provisions) or
 - making an offer of suitable privately rented accommodation with the express agreement of the applicant.
- 2.2. Two statutory instruments and new statutory guidance came into force on 9 November 2012, which amended the homelessness legislation so

that the express agreement of the applicant to accept private rented accommodation is no longer required:

- The Homelessness (Suitability of Accommodation) (England) Order 2012 sets out what constitutes suitable private rented accommodation;
- The Localism Act 2011 (Commencement No 2 and Transitional Provisions) (England) Order 2012 enacted sections 148 & 149 of the Localism Act 2011;
- Supplementary guidance on the homelessness changes contained in the both the Localism Act 2011 and the Homelessness (Suitability of Accommodation) (England) Order 2012. Issued under S182(1) of the 1996 Housing Act by the Secretary of State for Communities and Local Government, this is statutory guidance to which local authorities must have regard.

2.3. A number of key themes emerge from these measures:

- Whilst local authorities are empowered to end homelessness duties through PRSO, there is no duty on them to do so. That is to say that adoption of this approach is voluntary
- Since this is a discretionary provision, there needs to be some flexibility in its implementation
- Authorities should adopt a policy on the use of PRSOs to ensure clarity of the rules for officers and fairness for applicants
- In the context of Winchester, the availability of affordable private rented accommodation is restricted, and opportunities for rehousing applicants into this sector are expected to be limited. However, in some circumstances, placements outside the District may be appropriate.
- The suitability of accommodation offered via PRSO is a matter of judgement in each case. As well as space and layout, other factors such as location should be considered. There is no absolute requirement that accommodation offered should be within the same District, although access to schooling, employment, medical treatment, family networks etc should all be taken into consideration.
- Suitability also needs to take account of the fitness of the property itself, especially in relation to fire precautions, gas and electrical safety provisions.
- The opportunity to discharge duty via a PRSO is not retrospective and can apply only to those applicants who applied as homeless after 9 November 2012.

2.4. As a result of these amendments local authorities may, subject to a policy decision, offer private rented accommodation to homeless households in full discharge of their re-housing obligations.

3. HOW DOES A PRIVATE RENTED SECTOR OFFER WORK?

- 3.1. A PRSO can be made to a household to whom a full homelessness duty is owed and bring that duty to an end where:
- the tenancy offered is an Assured Shorthold Tenancy for a minimum term of 12 months and
 - the authority is of the view that it is suitable for the household, having regard to the considerations outlined in the suitability order.
- 3.2. As with many other parts of the homelessness service, arrangements have to be put in place to allow an applicant to challenge the Council's decision to make a PRSO.

As stated above, the location of the accommodation is a relevant factor in determining its suitability. However, there are no 'absolutes', and each case should be judged on its own merits. It is permissible in principle however for an authority to offer accommodation under these provisions in another district after having regard to S208 Housing Act 1996 that states –

“So far as is reasonably practicable, an authority shall, in discharging their housing functions, secure that accommodation is available for the occupation of an applicant in their district.”

- 3.3. Once an authority's duty has been ended through a PRSO, a reapplication will be permitted in the event of further homelessness arising within a two year period. If such an application is received, the normal investigation into homelessness should take place to determine whether or not the authority owes a duty to accommodate, but this is not to be treated as a fresh application, but a reconsideration of whether the duty previously accepted re-arises. However, in this instance, no consideration should be given to whether the household remains in priority need. Therefore a family who would otherwise no longer be in priority need are not penalised providing they reapply within the two year 'window'. This provision has been put in place to recognise the fact that an Assured Shorthold Tenancy may be lawfully brought to an end by a landlord at the expiry of the fixed term without needing to demonstrate any fault on the part of the tenant.

3.4. ALTERNATIVE APPROACHES

- 3.5. The Council needs to decide whether to adopt a PRSO Policy, and if so, the circumstances in which the policy will apply.
- 3.6. Local authorities effectively have four options:

- I. Do not adopt the power. This would mean that all households to whom a rehousing duty is owed would continue to be offered social rented property.
- II. End the duty for some applicants through a targeted approach. This would require that certain specific categories of applicant would be specifically identified as being subject to a discharge of duty into private rented accommodation (for example, single people or households with no dependents)
- III. End the duty for some through a less targeted approach. This allows the authority to offer private rented accommodation where possible and appropriate
- IV. Adopt the power to end the duty for all accepted cases. This would mean that all homeless applicants would automatically receive a PRSO

3.7. In considering the relative merits of these options, the authority needs to have regard to the availability of suitable private rented accommodation in the District and the levels of demand on its stock of social rented properties from those in housing need. The Council may also want to take account of its position in relation its sub regional partners in homelessness and choice based lettings. It is further proposed that vacancies which occur in the private rented sector should be advertised through Hampshire Home Choice to show a clear and transparent approach to all properties offered as a discharge of duty.

3.8. Taking account of these considerations it is recommended that Option III above offers the most appropriate approach for the Council. It allows officers to utilise the private rented sector for any homeless applicant where an appropriate opportunity exists, without becoming unduly reliant on the sector to meet the most pressing housing needs in the District.

4. STATEMENT OF POLICY

4.1. This policy statement sets out the circumstances under which the Council may exercise its discretion to use a Private Rented Sector Offer to discharge the duty owed to an applicant under the homelessness legislation.

4.2. Homelessness legislation has been amended by the Localism Act 2011 to allow local authorities to secure accommodation for homeless households in the private rented sector and treat this as a discharge of the full homelessness duty. Previously, private rented accommodation could only be used to bring an end to homelessness duty with the express agreement of the applicant.

- 4.3. The Council will continue to meet its legal duties to homeless households, but acceptance of a duty under homelessness will no longer guarantee an offer of social housing.
- 4.4. Under this policy the Council may consider the possibility of a Private Rented Sector Offer for every homeless applicant to whom a full duty is owed, but must take account of the household circumstances in every case to consider whether this is appropriate. By using private rented sector accommodation to meet the needs of homeless households, the Council will further develop the Housing Options culture with applicants. Officers will use a checklist that includes a breakdown of the factors that need to be addressed. By using this checklist, the Council will be able to demonstrate that all households are being treated equitably under this policy.
- 4.5. Access to social housing is limited but will remain available to applicants with appropriate priority, being aligned to the Council's approved Scheme of Allocation; Tenancy Strategy and Homelessness Strategy. This may include the Council making a direct offer of accommodation as permitted within the Scheme of Allocation, irrespective of the tenure type.
- 4.6. A Private Rented Sector Offer will only be made if it meets the following conditions:
- It must be an Assured Shorthold Tenancy for a minimum period of twelve months.
 - The accommodation must be suitable [as defined by The Homelessness (Suitability of Accommodation) Order 2012]
 - It must offer suitable accommodation in terms of space and layout
 - It should take account of the outcome of the authority's investigation into the circumstances of the household
 - It must be determined by the authority to be affordable
 - The offer must comply with, and be considered suitable within the terms set out in legislation and the statutory guidance contained in the Homelessness Code of Guidance. With this in mind it is proposed that properties which become available in the private rented sector should be offered to applicants in priority order i.e. firstly to anyone in Bed & Breakfast accommodation; then to applicants in temporary accommodation; and thereafter to those threatened with homelessness
- 4.7. In the event that accommodation provided under a Private Rented Sector Offer is lost unintentionally within two years of tenancy commencement, the Council will owe a 're-application' duty which will require that alternative accommodation is secured for the applicant. This duty will apply regardless of whether there has been any change to the priority need status of the household. It should also be noted the

household should be treated as threatened with homelessness from the date the notice is issued, and treated as homeless from the date the notice expires.

- 4.8. The suitability of accommodation made available under a Private Rented Sector Offer is subject to a right to review, and applicants also have a right of appeal to the County Court on a point of law if they remain dissatisfied with the outcome

5. CHALLENGES

- 5.1. In the first instance, an applicant who disagrees with the Council's view that the offered accommodation is suitable should discuss their concerns with the Housing Options Officer dealing with their case. The offer may be withdrawn or amended at that stage if deemed appropriate.
- 5.2. Once the Housing Options Officer has reviewed the decision, the applicant will receive a written decision letter setting out the Council's explanation of why it feels the accommodation to be suitable and why, therefore, it considers that its duty is ended. The letter will advise the applicant of their right to seek a further review, their right to take up the offer of accommodation even if they are seeking a review of the suitability of the accommodation and how to do so. It will need to be pointed out to applicants who seek a review that they should take up the accommodation whilst their review is considered to avoid being left with nowhere to live.
- 5.3. A further review, if requested, will be undertaken by a more senior officer who has not had any previous dealings with the case. The applicant will be advised that they may submit the grounds for their review in writing or by way of personal representation, and that they may seek assistance in presenting their case if they wish. Again, the applicant will be provided with a decision letter which will set out the conclusions of the reviewing officer and the reasoning behind those conclusions. The letter will also notify the applicant of their right to appeal on a point of law to the County Court. The Court has the powers to confirm the Council's decision, to quash it or to vary it. Should this situation arise, the Council will need to work closely with the landlord and the tenant(s) to bring the tenancy to an amicable conclusion.
- 5.4. If an applicant is not satisfied with a review decision, they can complain to the Local Government Ombudsman (Housing Ombudsman).

6. SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 6.1. The Sustainable Community Strategy Active Communities outcome contains a commitment to 'support local people in accessing high quality and affordable housing which meets their needs'.

7. RESOURCE IMPLICATIONS:

- 7.1. The ability to discharge homelessness duties by offering rehousing into the private rented sector will make a wider range of housing options available to homeless people and will alleviate some of the growing pressure on the limited supply of housing for social rent across the district.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. There is a risk that households placed into private rented accommodation through the exercise of the PRSO may re-approach the Council for further assistance if they face homelessness again within two years. Discharge of duty through this approach means that priority need is not considered as part of the re-application, therefore subject to the other tests a further duty to secure suitable accommodation would be owed by the authority.
- 8.2. The use of this power will be closely monitored, through the private rented sector team, to ensure that private rented sector tenancies can be sustained over a medium to long term and do not result in repeat homelessness or a breakdown of the current relationship with landlords.
- 8.3. Reviewing the Policy and Eligibility. This Policy will be reviewed in line with any significant change in legislation, guidance issued by the DCLG or significant case law. Separate to this it should be reviewed every year to include any recommendations from the monitoring arrangements above.

APPENDICES:

None