



# CABINET

26 September 2012

# REPORT

<b>Subject Heading:</b>	Revised Housing Allocations Scheme and New Tenancy Strategy covering the letting and management of housing in Havering borough
<b>Cabinet Member</b>	Councillor Lesley Kelly
<b>CMT Lead:</b>	Cynthia Griffin Group Director Culture and Communities
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<b>Policy context:</b>	Housing Strategy and Housing Revenue Account (HRA) Business Plan
<b>Financial summary:</b>	The proposals will require a review of all those on the Housing Register, amended literature and other publicity, and an update of the online application form. The financial costs of this work will fall to the HRA. Provision has been made within the 2012/13 HRA budget for the retained Housing Service to deliver this work.
<b>Is this a Key Decision?</b>	Yes
<b>Is this a Strategic Decision?</b>	Yes
<b>When should this matter be reviewed?</b>	April 2014
<b>Reviewing OSC</b>	Towns and Communities

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

## SUMMARY

This report proposes to Cabinet a fully revised Allocations Scheme covering the eligibility for, and letting of, council housing in the borough. The revisions take account of the new freedoms and flexibilities afforded local authorities with regard to the letting of council homes brought in by the Localism Act 2011. The revisions have been informed by thorough and detailed consultation with residents likely to be affected and stakeholders both within and outside the Council.

The report also sets out a draft Tenancy Strategy for approval. It is a new requirement of each housing authority, brought in by the Localism Act 2011, that a Tenancy Strategy be published by no later than 15 November 2012 covering the authority's approach to the use of fixed term tenancies, rather than lifetime secure tenancies. Housing associations operating in the borough are required to have regard to the Tenancy Strategy when setting their own tenancy policies. Given this influencing role of the Strategy, it also includes details of the Council's approach to affordable rents, these being rents of up to 80% of local market rents, introduced in 2011. The draft Tenancy Strategy has been produced following thorough and detailed consultation with residents, registered providers (also known as housing associations or registered social landlords) and other stakeholders.

## RECOMMENDATIONS

1. That Cabinet approves the draft revised Allocations Scheme attached at Appendix A as the Council's new Allocations Scheme to be implemented with effect from Monday 1 April 2013 and with local lettings policy from 1 October 2012 in accordance with section 7.3 of the Allocations Scheme.
2. That Cabinet approves the draft Tenancy Strategy attached at Appendix B, with publication before 14 January 2013 and to be implemented with effect from Monday 1 April 2013.
3. That Cabinet delegates to the Lead Member for Housing authority to make any minor amendments to the revised Allocations Scheme and/or Tenancy Strategy, necessitated by any future guidance, further legal advice, national government or operational requirements, unless these would have a significant financial impact in which case a further report would be brought to Cabinet.
4. That Cabinet delegates to the Lead Member for Housing authority to approve the necessary policies and procedures for reviewing the circumstances of individual households when their fixed term tenancy comes to an end.
5. That Cabinet delegates to the Head of Housing and Public Protection authority to review the circumstances of every household on the Housing Register to enable a reassessment of their priority for housing prior to implementation of the new Allocations Scheme, and to take measures to protect those households on the Register who have bid for a property within

the last three months prior to the implementation date and their bid was in the top five by affording the Head of Housing and Public Protection the discretion to allow them to continue to bid for a period of three months after the date of the implementation of the new scheme.

6. That in advance of the full implementation of the revised Allocations Scheme on 1 April 2013, Cabinet approves from 1 October 2012 giving notification to households living outside of the borough, except serving and ex-service personnel and other exceptions as included under the revised Scheme of their removal from the Housing Register from 1 April 2013.
7. That Cabinet delegates authority to the Lead Member for Housing to approve any local lettings policies under the new Allocations Scheme, in particular Dreywood Lodge, formerly known as Snowden Court.

## REPORT DETAIL

### **1. ALLOCATIONS SCHEME**

#### **1.1 Background**

The Localism Act 2011 has afforded housing authorities greater freedom and flexibility about which households are and are not eligible for council accommodation, and thus eligible to join the Housing Register, should authorities wish to maintain one.

While housing authorities must continue to afford those with 'reasonable preference' for housing, as defined by the Housing Act 1996, as amended by the Homelessness Act 2002 and the Localism Act 2011, and the attendant Code of Guidance, a degree of priority over those without these characteristics, and while the equalities legislation should not be breached, housing authorities now have the flexibility to:

- set criteria around who may and may not be given social and affordable homes in the borough, and thus accepted onto the Register of those seeking such housing
- devise and apply different rules regarding the allocation of council housing to existing tenants, that is, transfers and to new applicants
- among those with reasonable preference, afford greater priority to those who contribute to their community, notably by working, volunteering or in other ways contributing.

The Council's current Allocations Scheme has remained largely unchanged since its approval by the Lead Member for Housing on 15 April 2005 acting under authority granted by Cabinet on 27 April 2004. Thus, even without the impetus of the Localism Act 2011, it is arguably timely to thoroughly review the existing Scheme.

The Secretary of State also issues Guidance on Allocations from time to time. The most recent Guidance was issued in June 2012, and these final proposals have taken this into account.

In developing our Allocations Scheme, we must also have regard to our own Housing Strategy, Homelessness Strategy, Tenancy Strategy and the Mayor of London's Housing Strategy. Likewise the development of the Tenancy Strategy must also have regard to the Allocations Scheme and the other documents mentioned. Clearly all these documents are refreshed from time to time, and both the Allocations Scheme and Tenancy Strategy will be amended from time to time in order to ensure that the Council has regard to these documents. The current proposals have had regard to the most recent strategies available from these sources.

## **1.2 'Reasonable Preference'**

In essence, the reasonable preference requirements and definition have not been changed by the Localism Act 2011. Thus, in framing an allocations scheme to determine allocation priorities, housing authorities are required to ensure that reasonable preference is given to the following categories of people (note: the exact wording of the Code of Guidance is simplified here for purposes of clarity):

- people who are homeless within the meaning of Part 7 of the Housing Act 1996
- people who are owed a rehousing duty under the homelessness legislation
- people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions
- people who need to move on medical or welfare grounds, including relating to a disability, and/or
- people who need to move to a particular locality in the district of the housing authority, where failure to meet that need would cause hardship (to themselves or others).

Just as previously, housing authorities are required to have regard to the following considerations:

- the Allocations Scheme must give reasonable preference to applicants with the characteristics listed above, over those who do not
- although there is no requirement to give equal weight to each of the reasonable preference categories, overall, reasonable preference must be given to all of them.

In addition, it was established through case law in 2009 that there is no requirement for housing authorities to give greater priority to applicants who fall within more than one reasonable preference category.

## **1.3 Consultation on the Allocations Scheme proposals**

The Allocations Scheme is, of necessity, a substantial document of some 50 pages or so. From the outset, it was expected that any alteration to the Council's

Scheme that reflected a major policy change would be subject to thorough consultation with members, residents likely to be affected, council services and the Council's housing association and voluntary sector partners and stakeholders.

The following consultation has been completed:

<b>Type of consultation</b>	<b>Stakeholders</b>	<b>Date(s)</b>
Initial consultation event hosted by Havering Council	Registered providers (RPs) operating in the borough	October 2011
Initial consultation	Homes and Communities Agency Registered Providers East London Housing Partnership Havering Citizens Advice Bureau Adult Social Services	November 2011
Online survey and paper questionnaire	Applicants on the Housing Register	January – February 2012
Briefing and consultation	Elected Members	(1) February 2012 (2) May 2012
Briefing	Internal Corporate Management Team	February 2012
Consultation event	RPs, residents associations and third sector organisations	April 2012
Online consultation (and paper survey questionnaire)	(1) and (2) Housing Register applicants, residents, Elected Members, residents and RPs (2) Mayor of London and local solicitors	(1) April – May 2012 (2) July 2012
Two public events	Applicants on the Housing Register, Residents and RPs	May 2012
Follow up forum following 30 April event	RPs, residents associations and third sector organisations	May 2012
Drop-in Q&A session	People on the Housing Register and residents	May 2012
Briefing and consultation	HiH Resident forum, and community forum	June – August 2012

A separate report listing the outcome of various consultation exercises has been compiled and is available as an appendix to this report.

#### **1.4 Key proposed amendments to the Allocations Scheme**

The proposed new Allocations Scheme is attached at Appendix A. This section of the report summarises the key proposed policy changes and indicates how the Housing Service has responded to the findings of the various consultation exercises.

<b>Key amendment</b>	<b>Revision (if any) made as a result of feedback during consultation</b>
<p>Introduction of a residency criterion such that to be eligible to join the Housing Register, the household must have been resident in Havering for at least two years</p>	<p>Initial consultation proposed a one year residency requirement. This was extended as a result of internal and resident consultation. A 2 year residency was proposed as this is less than the average private sector lease (PSL) tenancy.</p>
<p>Replacement of the five bands A – E with:</p> <ul style="list-style-type: none"> <li>• a main band, called the Homeseeker band, with priority within this band given to those given Community Contribution Reward by the Council</li> <li>• an Emergency rehousing route for those with the most urgent need to move</li> </ul>	<p>No further amendments to this idea as it was well-supported during consultation</p>
<p>Introduction of a Community Contribution Reward for those in the Homeseeker band who:</p> <ul style="list-style-type: none"> <li>• work at least 16 hours a week</li> <li>• volunteer at least 10 hours a month (or five hours if aged 70+ years)</li> <li>• are Havering Council tenants wishing to downsize</li> <li>• are serving or ex-services personnel</li> <li>• need to move to foster / adopt where this is verified and supported by Children’s and Young Persons’ Services</li> </ul> <p>Note: those with a disability such that they could not meet any of these requirements would be given the Community Contribution Reward so as not to be disadvantaged solely because they are disabled</p>	<p>The reduction in the volunteering requirement for older people was added to the proposals in response to residents’ views that older people, though perhaps at least as likely volunteer as younger people, are less able to participate in the same amount of voluntary activity</p>
<p>Retention of choice-based lettings for those in the Homeseeker band (with or without a Community Contribution Reward)</p> <p>Replacement of choice-based lettings for those in need of Emergency rehousing with ‘assisted offers’, that is, direct offers of accommodation taking account, wherever possible, of locational requirements</p>	<p>During the consultation period, the equalities impact of not enabling those with the most urgent need to move was considered. It was felt that this could potentially disadvantage some groups, notably the very ill and disabled who had to move urgently, from exercising choice, therefore, it is proposed to enable such households to use the choice-based lettings system while also receiving assisted offers. It is anticipated that such households will be more likely to receive a suitable assisted offer than one through choice-based lettings as officers will be pro-actively matching need to vacancies as soon as they arise. Furthermore, the Council will</p>

	retain the right not to make an offer through choice-based lettings should it not be feasible to adapt the property concerned
Introduction of a 'tenant move scheme' whereby council or PSL tenants who have held a tenancy for five years but have no housing need, that is essentially that their home is large enough and accessible, will be able to join the Homeseeker band (and apply for a Community Contribution Reward). In this way, it is anticipated that council tenants with children living in a property without a garden will stand a far greater chance than now of moving to a property with a garden. Note: in order to be eligible, tenants will have a good tenancy history, that is they will have no rent arrears or have breached their tenancy in the last 12 months	No further amendments to this proposal were made as although some residents queried why those without need would be able to join the Register, the majority were in favour
Removal of the 'like-for-like' rule for those transferring between council properties for an urgent reason Note: it is envisaged that more properties without gardens will be offered to those moving from properties with gardens in an emergency, rather than vice versa	No further amendments
Removal of 'having no security of tenure' as a definition of 'unsatisfactory housing' under the reasonable preference categories, thus meaning that simply renting privately or living with other family members without any other housing need, such as overcrowding, will not give eligibility to join the Housing Register	No further amendments during consultation although this proposal arguably led to the greater number of concerns from residents, although on closer scrutiny it appears that the proposal was misunderstood to mean barring every private tenant / person living with family from the Housing Register, regardless of housing need. This is not the case

- 1.5 One of the most controversial changes to the Allocations Policy is the introduction of a residential qualification of two years. The reason why we are proposing to introduce this requirement is that we have currently 11,900 people on our Housing Register, and only around 700 units of homes to let each year. We therefore need to find ways of rationing this scarce resource, and letting those people who have no prospect of finding assistance, know what their realistic prospects are. We have chosen to restrict the Housing Register to those households who live in the borough, and who have connections with the borough established through some length of residence. We note that the Mayor's Housing Strategy expresses a desire to improve mobility within London, but we believe that through our participation in the Pan London Mobility Scheme, we will ensure that mobility for work or caring will continue to be supported.
- 1.6 The residential qualification will be generally applied, but there will always be exceptional cases, and ways in which we can assist some households who do

not live in the borough. Some of these are set out in the Allocations Policy, and in addition, officers do assist people who live out of the borough, but who wish to move to Havering with advice on schemes such as the Pan London Mobility Scheme, East London Housing Partnership (ELHP) reciprocal scheme and Reciprocal arrangements directly with other bodies.

- 1.7 The operation of the Homelessness legislation also takes primacy over local policies, and we will continue to comply with the requirements placed on us by the homelessness legislation to households who seek our assistance when they are homeless, whether they live within Havering or not. Local authorities generally have a mutual agreement on what constitutes a local connection, and we will continue to apply these arrangements to cases who seek our assistance in an emergency.
- 1.8 The Allocations Scheme also applies an income test to applicants.(See Appendix 1). In that Appendix we propose that households seeking assistance on the Housing Register can afford to find their own accommodation, where their household income/savings are above a certain threshold. These thresholds have been set by assuming that it would be reasonable for households to spend 30% of their disposable income on housing costs.
- 1.9 We recognise that there will be a significant impact on households currently on the Housing Register, and those who may in the future wish to register for housing. They may experience disappointment, and a feeling of frustration. But we do also feel that they will not be significantly disadvantaged in their chances of obtaining housing. Households living outside the borough for example, who sought housing in Havering were always placed in the lowest bands (Bands D & E) of the current scheme, and therefore their chances of being rehoused were always very low, and for the vast majority, non-existent. There are 2843 households in Bands D & E currently on the Housing Register. Not all of these will automatically be removed from the Register, because until we have written to them, and established whether they have, for example an Armed Services connection, we cannot say whether they have some qualification to remain on the Register. We feel however that those households who will be removed will not have lost an opportunity for rehousing, but merely the illusion that they might be successful in their bids for housing.
- 1.10 To be eligible for the Emergency Rehousing Band, applicants must meet the housing register eligibility criteria including residency criteria and meet one or more of the seven reasons in the Emergency Rehousing Band.
- 1.11 We have considered the impact of those households disadvantaged by the changes in the policy in more detail in the Equality Assessment in Appendix D.

#### **1.12 Timetable for implementation of the revised Allocations Scheme**

In order to implement the new Scheme, the following key tasks are required:

- a thorough review of the existing Housing Register to assess whether the household is still eligible and, if so, what their priority is under the revised Scheme



- letters sent to all those on the Housing Register explaining the outcome of the above exercise
- redesign of the online application form
- training of staff in applying the new Scheme
- design of a process to protect those households who bid for a property within the last three months prior to the effective date and their bid was in the top five. This should minimise complaints and challenges from those who feel particularly negatively affected by the changes.

Given the above, it is proposed to spend the six months – October 2012 to March 2013 inclusive – to carry out all the necessary preparations prior to fully implementing the new Scheme on Monday 1 April 2013.

## **1.6 Implementation of certain elements of the revised Allocations Scheme in advance of full implementation**

### ***(a) Proposal to notify those households that will be removed from the Register from 1 April 2013***

The revised Allocations Scheme will see those living outside of the borough, except serving and ex-service personnel and certain other exceptions, no longer eligible to join the register. It is proposed that notification is given from 1 October 2012 to these households of their removal from the Register from 1 April 2013.

### ***(b) Proposed implementation, prior to April 2013, of the ability to put in place local letting policies***

Local lettings policies are a mechanism for applying different criteria, though still consistent with the relevant legislation, to certain properties. Such policies could apply to certain districts of the borough, certain developments, for example the new build schemes in Harold Hill, or certain 'classes' of properties, for example extra care housing.

In order to use local letting policies, a housing authority must state in its Allocations Scheme that it will use such an approach, and must publish the specific local lettings policies as they are drawn up. The current Allocations Scheme does not include a provision for the use of local lettings policies; the revised Scheme does in section 7.3.

It is anticipated that the letting of the new extra care scheme on the site of the former Snowdon Court sheltered scheme in Gidea Park would be aided by having a local lettings policy in place. As the lettings need to take place before implementation of the new Allocations Scheme in April 2013, it is proposed to introduce the provision to delegate authority to approve any such policies to the Lead Member for Housing.

## **2. TENANCY STRATEGY**

### **2.1 Background**

The Localism Act 2011 introduced a new duty on housing authorities to publish a Tenancy Strategy by no later than 14 January 2013. The legislation dictates that the Strategy should give details of:

- the kinds of tenancies the Council will provide
- the circumstances when the Council will provide a tenancy of a particular kind
- the length of the tenancy
- when the Council will and will not give a further tenancy when it comes to an end.

Housing associations operating in the area are required to have regard to the Tenancy Strategy when setting their own policies.

Given the linkage to housing associations' work, the Housing Service is also taking the opportunity to consolidate into one document advice previously provided to housing associations regarding the letting of properties at affordable rents, that is, a rent level set at up to 80% of the local market rent.

### **2.2 Guidance to housing associations on affordable rents**

The proposed Tenancy Strategy outlines the Council's stance on affordable rents:

- the Council supports 80% Market Rents for new Registered Provider development of 1,2 and 3 bed properties and will consider 80% market rents for 4-bed homes
- an Affordable Rent calculator has been provided on the Choice based lettings website for households to use prior to bidding for Affordable Rent properties
- a symbol has been provided on the Choice based lettings magazine and website to help households identify affordable rent properties
- housing associations should have regard to the Council's Borough Investment Plan and, in future, Tenancy Strategy when framing development proposals in the Borough
- the Council accepts the need for housing associations to convert a proportion of existing housing let at social rents to affordable rent at the re-let stage in order to generate funding for more homes. It is vital that homes remain affordable and, importantly, that the supply of larger family homes at social rents is not unduly diminished. Therefore, the Council's position is that we expect that housing associations will convert more 1 and 2 bed units than 3 and 4 bed units at re-let stage to Affordable Rents but no more than 50% of all re-lets in Havering borough.

- the Council will seek to keep individual housing associations' conversion rates under review through the choice-based lettings / nominations procedures and one-to-one meetings with them.

### 2.3 Proposed types of tenancy to be used by Havering Council

The Localism Act 2011 has, for the first time, given local authorities and housing associations the freedom to let their properties on secure tenancies with less than a lifetime term. This allows landlords to adopt a tenancy policy that sets out the types of tenancies they will provide, the length and terms of the tenancy, the arrangements in place to review and assess the tenant's circumstances towards the end of the fixed term and the circumstances when tenancies will and will not be renewed.

The Housing Service has consulted widely on its proposals and further details can be found in the table below.

Type of consultation	Stakeholders	Date(s)
Initial consultation event hosted by Havering Council	Registered providers (RPs) operating in the borough	October 2011
Initial consultation	Homes and Communities Agency Registered Providers East London Housing Partnership Havering Citizens Advice Bureau Adult Social Services	November 2011
Consultation event	RPs, residents associations and third sector organisations	April 2012
Online consultation (and paper survey questionnaire)	(1) and (2) Housing Register applicants, residents, Elected Members, residents and RPs (2) Mayor of London and local solicitors	(1) April – May 2012 (2) July 2012
Two public events	People on the Housing Register, Residents and RPs	May 2012
Follow up forum following 30 April event	RPs, residents associations and third sector organisations	May 2012
Briefing and consultation	Elected Members	May 2012
Drop-in Q&A session	People on the Housing Register and residents	May 2012
Briefing and consultation	HiH Resident steering groups and community groups	June – August 2012

The proposed Tenancy Strategy is attached at Appendix B. This section of the report summarises the key proposals regarding tenancy length.

<b>Proposals</b>	
<b><i>Existing tenants</i></b>	
	<ul style="list-style-type: none"> <li>• All those holding a secure lifetime tenancy issued by Havering Council on the date on which the Tenancy Strategy comes into effect (recommended as 1 April 2013 in this Cabinet Report) will retain their secure lifetime tenancy.</li> <li>• All those holding a secure lifetime tenancy issued by Havering Council on the date on which the Tenancy Strategy comes into effect (recommended as 1 April 2013 in this Cabinet Report) who transfer to another Havering Council property at some point in the future will be given another secure lifetime tenancy for that new property, and to any property(ies) they subsequently move to within Havering Council's stock. These provisions would also apply to a move to a property owned by a housing association when a request is made by the Council for the transferring tenant to retain their existing tenancy term.</li> </ul>
<b><i>New tenants</i></b>	
	<p>First time tenants renting from Havering Council will be given a five year fixed term tenancy after successfully completing their Introductory Tenancy (which will not be less than one year), except:</p> <ul style="list-style-type: none"> <li>• where a property specifically designated for those aged 60+ is being let, most typically this refers to supported (also known as sheltered) housing, in which case a secure lifetime tenancy will be provided</li> <li>• where the youngest child in the property is at least 15 years old, in which case a three year fixed term tenancy will be issued after completion of the Introductory Tenancy – this is because as children reach their late teens they become likely to move home and the Council wishes to obtain the opportunity as soon as reasonably possible to move the remaining occupants to a smaller property, if they are under-occupying as a result of a child moving out</li> <li>• where someone has limited leave to remain in the country and so is subject to immigration control – this is because we wish to obtain the opportunity as soon as reasonably possible to review whether the household (or certain household members) are still eligible to council housing.</li> </ul>
<b><i>Tenants with a fixed term tenancy that is coming to an end</i></b>	
	<ul style="list-style-type: none"> <li>• If the tenant is eligible for council housing (notably, if they do not have sufficient earnings / savings to afford other options) and the property is suitable, another five year tenancy will be issued for the same property, except if the rules for issuing a three tenancy, as outlined above, pertain</li> </ul>
	<ul style="list-style-type: none"> <li>• If the tenant is eligible for council housing but the property is not suitable, another five year tenancy will be issued for a different property, except if the rules for issuing a three tenancy, as outline above, pertain – this will most typically apply if the household is now under-occupying or no longer requires the adaptations at the property</li> </ul>
	<ul style="list-style-type: none"> <li>• If the tenant is eligible for council housing, a three year tenancy – whether at the same or different property – will be issued if there have been breaches of tenancy, typically rent arrears or anti-social</li> </ul>

	behaviour. Note: activity to recover the property through other legal means will not be precluded simply because someone holds a fixed term tenancy
	<ul style="list-style-type: none"> <li>• If the tenant is no longer eligible, no further tenancy will be issued – typically this will apply if the household has sufficient means to rent or buy privately given the options available in Havering at the time the tenancy ends</li> </ul>

## IMPLICATIONS AND RISKS

### 3. Financial implications and risks:

Work will be required to review all those on the Housing Register, amended literature and other publicity, and update the online application form. The financial costs of this work will fall to the HRA. Provision has been made within the 2012/13 HRA budget for the retained Housing Service to deliver this work.

### 4. Legal implications and risks:

The Localism Act 2011 affords housing authorities greater freedom over who they can consider should be eligible for housing in their area, so long as the 'reasonable preference' categories provided for by the Housing Act 1996 and in subsequent guidance are still eligible and have reasonable priority for housing over those outside of these categories.

The requirement under the Housing Act 1996 for housing authorities to publish an Allocations Scheme detailing how and to whom the authority allocates its properties / make nominations to other landlords' properties remains unaffected by the Localism Act 2011.

No obligation has been placed on the Council by the Localism Act 2011, or any other legislation, to amend the current Allocations Scheme. This is being done as a matter of good practice given that the current Scheme has been in place for seven years.

This Cabinet report proposes amending the current Allocations Scheme in a number of significant ways. All the amendments are lawful under the Localism Act. Notably:

- only those with a reasonable preference to housing will be eligible for an allocation, therefore the Council is adhering to the 'reasonable preference' requirement
- serving and ex-services personnel's eligibility is not fettered by the proposed new residency criterion
- affording greater priority for those with a reasonable preference for housing who are contributing the community is encouraged under the latest Code of Guidance, and

- the different prioritisation within the group of applicants with a reasonable preference for housing remains a matter for local discretion.

The Guidance urges Local Authorities to consider how they can use their allocation policies to support those households who want to work, as well as those who- while unable to engage in paid employment- are contributing to their community in other ways, for example through voluntary work. (Para 4.27)

The new provisions in the Housing Act 1996 require the Local Authority when preparing or modifying their allocation scheme, to have regard to—

- (a) their current homelessness strategy under section 1 of the Homelessness Act 2002,
- (b) their current tenancy strategy under section 150 of the Localism Act 2011, and
- (c) in the case of an authority that is a London borough council, the London housing strategy. Cabinet must therefore consider and have regard to these documents. The homelessness strategy and the draft London housing strategy are listed as background papers.

The Localism Act 2011 also placed a new duty on housing authorities to publish a Tenancy Strategy by no later than 14 January 2013. The legislation requires that the Strategy details which types of tenancy the Council will issue in which situations.

The Council's proposed Tenancy Strategy meets this minimum requirement and in addition, the Council is using its discretion to reiterate its position with regard to the use of 'affordable rents' in the borough by other social landlords.

#### Consultation

Both the Proposed Allocation Scheme and the Tenancy Strategy have been subject to extensive consultation. The requirement of lawful consultation is that the consultees must have been given sufficient time and information to respond meaningfully and that the responses are conscientiously considered by the decision maker before a decision is taken. Accordingly Cabinet must carefully consider all of the consultation responses highlighted within the Report and the background papers before taking its decisions to minimise the risks of a successful legal challenge to the process.

Furthermore, Housing officers have sought external counsel's comments in order to minimise any risk of legal challenge from anyone believing the Council's Scheme is unfair. It is proposed that the Lead Member for Housing is given the authority to make minor amendments in light of counsel's advice.

#### Equalities

Cabinet Members are reminded that, when considering what decision to make, they are under a personal duty to have due regard to s149 Equality Act 2010 namely that the Local Authority when exercising its functions must

have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Relevant protected characteristics include age, disability, and sex.

Cabinet must pay particular attention to the Equality Analyses which are at Appendix D and E. Within those documents particular attention is drawn to section 5 (Likely Impact).

Having had careful regard to the Equality Analyses, and also the Consultation responses, Cabinet members are under a personal duty to have due (that is, proportionate) regard to the matters set out above and (i) to consider and analyse how the decision is likely to affect those with protected characteristics, in practical terms, (ii) to remove any unlawful discrimination, harassment, victimisation and other prohibited conduct, (iii) to consider whether practical steps should be taken to mitigate or avoid any adverse consequences that the decision is likely to have, for persons with protected characteristics, and, indeed, to consider whether the decision should not be taken at all, in the interests of persons with protected characteristics, (iv) to consider whether steps should be taken to advance equality, foster good relations and generally promote the interests of persons with protected characteristics, either by varying the recommended decision or by taking some other decision.

However, whilst Cabinet Members are under a duty to have serious regard to the need to protect and promote the interests of persons with protected characteristics, in the ways just described, in reaching their decision, they may also take into account other considerations, such as the desirability of providing fair strategies based on local priorities.

## **5 Human Resources implications and risks:**

It is expected that the transition phase (between formal adoption of the policy and the effective date 1 April 2013) will be managed within existing staff resources in the Housing and Public Protection Service, including staff transferring in from Homes in Havering.

It is expected that the Council's fixed-term tenancies policy will impact on staff resources when initial reviews of 3-year fixed term tenancies commence (9 months before the tenancy comes to an end) in July 2016. Provision to carry out these new duties will be taken into account in the service planning of the combined Housing Service following reintegration of Homes in Havering staff and functions.

## **6 Equalities implications and risks:**

Equalities analyses have been carried out and are available as background papers to this report. Of note, both the Housing Allocations Scheme and

Tenancy Strategy have been developed with due regard to Housing legislation, the Localism Act 2011 and CLG Guidance.

The Council's Housing Allocations Scheme will affect both new and existing applicants on the Housing Register for social and affordable housing in Havering Borough and will impact on people across all protected characteristics.

### **Housing Allocations Scheme**

There are criteria in the Scheme that are specifically aimed at supporting:

- low income households that have a housing need with priority to those who contribute to their community
- homeless people
- vulnerable people who have an emergency need to move
- older people, particularly those wanting to downsize to a smaller home
- young people, especially those leaving care
- people with physical disabilities or long-term health conditions
- pregnant and nursing mothers
- people with caring responsibilities for a disabled child or close relative.

People living with parents or in private rented housing who are adequately housed or have no housing need will be negatively affected under the proposals. To mitigate and manage this negative effect, the Council will consider homeless enquiries under Housing Act 1996. In the first instance, people should contact the Council's Housing Advice and Options Team. However, if they have meet the residency criteria and have a housing need under the Homeseeker Band they will be eligible to apply to join the Housing Register.

### **Tenancy Strategy**

#### ***Affordable Rents***

In developing the Tenancy Strategy, we carried out assessments to determine the affordability of Affordable Rents set at 80% of market rents for local people earning median and on lower incomes. In addition, we do not want to restrict Affordable Rent properties to specific groups and for this reason, have provided an Affordable Rent Calculator on the East London Choice based lettings website so that people can assess whether they can afford the higher rent before bidding for properties.

#### ***Fixed-term Tenancy proposals***

The Council's fixed-term tenancy proposals will not affect existing Havering Council tenants with secure lifetime tenancies if they remain in the Council's housing stock.

We will continue to provide lifetime tenancies for people who move into accommodation designated for 60 years+ thereby giving stability of tenure to more vulnerable groups.

In addition, the Council expects Registered Providers to continue to grant secure lifetime tenancies to people with severe disabilities or learning



difficulties with support needs living in specialist supported housing or living in general needs housing who receives long-term care and/or support services. However, it is recognised that in some circumstances, offering a lifetime secure tenancy would not be appropriate, for example, for tenant(s) living in move-on accommodation with floating support.

We have included a property suitability assessment as part of our policy so that properties can be provided to those in greatest need, including high priority disabled people who need an adapted property to meet their needs.

Furthermore, we will take account of the following exceptional circumstances when deciding whether to renew a tenancy, on a case by case basis:

- the household contains someone with a disability, when moving to another property will not meet their current needs
- when someone in the household is terminally ill
- where children in the household attend a school and a move would have a significant detrimental impact on the educational development of the children
- when the Council's Adult Social Care or other colleagues believe the tenant is a vulnerable adult
- when the tenant(s) is employed and a move would have a significant impact on their employment.

## **APPENDICES:**

Appendix A – Draft Housing Allocations Scheme

Appendix B – Draft Tenancy Strategy

Appendix C – Consultation event summary

Appendix D – Equalities Analysis: Draft Housing Allocations Scheme

Appendix E – Equalities Analysis: Draft Tenancy Strategy

## **BACKGROUND PAPERS**

Consultation responses