



CABINET REPORT

Subject Heading:

20th October 2021

Housing Allocation Scheme (2021)

Cabinet Member:

Councillor Joshua Chapman, Lead Member for Housing

SLT Lead:

Patrick Odling-Smee, Director of Housing

Report authors and contact details:

Darren Alexander 01708 433751
Darren.Alexander@havering.gov.uk

Kwabena Obiri 01708 433158
Kwabena.obiri@havering.gov.uk

Joe Agius 01708 434046
joe.agius@havering.gov.uk

Policy context:

(a) This is a comprehensive revision of the Council's Housing Allocation Scheme (2016) to ensure that all available Council housing is allocated consistently, fairly and in compliance with all current legislative and regulatory requirements.

(b) This Scheme also takes into account the impact of COVID 19 on all affected stakeholders.

Financial summary:

It is anticipated that the implementation of this Scheme may involve minor financial implications.

Is this a Key Decision?

Yes. It will significant effect all wards in Havering.

When should this matter be reviewed? Two year from implementation.

Reviewing OSC: Towns and Communities.

The subject matter of this report deals with the following Council objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

SUMMARY

- 1.0 The Housing Act 1996 Part VI requires local authorities to publish an allocation scheme that sets out their policy for allocating affordable housing provided by the council or housing associations in the borough. Councils are required to give reasonable preference to certain categories of applicant and have due regard to statutory guidance and the law.
- 1.1 Demand for social housing in Havering significantly exceeds the number of properties available. In the financial year 2019-2020, only one in every 5 households on the Council's Housing Register had a realistic prospect of securing social housing.
- 1.2 This scheme (please see appendix 1) proposes a number of revisions to the current Scheme (dated 2016) to set out how Council housing is prioritised to ensure that it is fairly allocated to households in the greatest need.
- 1.3 It also sets out how the Council will enable access to other forms of affordable housing, such as shared ownership and intermediate rented housing.

RECOMMENDATIONS

1. To approve the Housing Allocation Scheme attached in appendix 1.

REPORT DETAIL

- 2.0 Following a review of the current housing allocation scheme, approved in 2016, the proposed Scheme, attached in appendix one was subject to statutory public consultation between January and April 2021. The outcome from the public consultation is attached as appendix 2.
- 2.1 The six year residency criteria has been retained as it has shown to ensure that social housing is allocated to local people who have made a long term commitment to living in Havering, and effectively helps us to managing the supply and demand for housing in the borough. The community contribution policy has also been retained, reflecting the desire to allocate housing to those who can demonstrate they have made a contributions to their communities through work and volunteering. The use of a banded prioritisation has been retained although the prioritising within the band has been amended to reflect current housing demand, see below.

2.2 The key changes to the Scheme are as follows:

2.2 Housing Register Qualification Criteria

- **Income cap**

The gross caps income cap for applicants has been amended, to between £36,000 and £50,000, to reflect changed affordability levels in the borough and households sizes. Applicants who come above this threshold will not qualify to join the Register. This will be reviewed annually by the Director of Housing and discretionary changes applied, where necessary.

- **Savings limit**

A savings limit of between £20,000 and £30,000 will apply depending on household size. This is because we are of the opinion that people should be able to save up for a deposit for acquiring accommodation without being penalised.

- **Residency criteria exemptions**

In order to comply with the latest legal position, a residency exemption will be granted to applicants of refugee status or from travelling community, provided they have resided in the borough for five years continuously and can demonstrate a community contribution such as paid, unpaid or voluntary work in the borough or being a recognised carer for an elderly person, or disabled adult or child. There are also exemptions for households that are members of the armed forces and those that fall within the reasonable preference categories under Part 6, Housing Act 1997.

2.3 Changes to the Housing Banding structure

- The number of applicable priority bandings offered to Housing Register applicants is to be re-configured.
- The introduction of a new band – Band 2C. This will enable those that wish to move to be allocated to the best level of banding based on eligibility. This action will reduce the size of those in the current Community Contribution level 1 band, now called Band 2A.
- Applicants previously placed under the Reduced Priority banding will no longer qualify for social housing, reducing the waiting list by around 200, unless they fall within a reasonable preference category and have access to the scheme.
- The full new banding structure is set out in the table below.

Band 1 – Urgent Need

Category	Criteria Guide
Urgent medical or disability (Reasonable preference category S.166A(3)(d))	This applies to an applicant, or someone in their household: <ul style="list-style-type: none"> • who is in hospital or residential care, and who cannot return home due to the unsuitability of the property; • who has a severe mobility issue; is housebound, and is unable to leave their accommodation without assistance that will result in a high risk to the applicant, household member or their carer/s.
Hardship and Welfare Criteria (Reasonable preference category S.166A(3)(c)-(e))	This applies to an applicant, or someone in their household, whose circumstances, or a combination of circumstances, are considered to be life-threatening, and where the need to move is supported by health professionals, the Council's Housing and Social Services, a senior Police Officer and/or a MARAC ¹ assessment.
Decants - major works or demolition (Reasonable preference category S.166A(3)(c))	This applies to secure Council tenants who are required to move because their current home is due to: <ul style="list-style-type: none"> • be sold, and/or • be demolished or • have extensive works completed, or • be refurbished (which may include conversion works), meaning that they will need to move out their current accommodation while the works are taking place. <p>Please note: that this condition does not apply private sector leased properties.</p>
Domestic Abuse (Reasonable preference category S.166A(3)(a)(d))	This applies to existing secure tenants of the Council, or spouses or civil partners of existing secure tenants (including where living together as husband and wife/civil partners), where they need to permanently leave or have had to already leave their current accommodation because they or a household member have been experiencing domestic abuse and it is unreasonable to expect them to remain at/return to the Council accommodation..

Band 2a

Category	Criteria Guide
British Armed Forces/Reserve Forces personnel	This applies to: <ul style="list-style-type: none"> • A household member who is, or has been: <ul style="list-style-type: none"> - a serving (or former serving) member of the British Armed Forces/reserve forces, and who has made a Housing Register application within five years of their discharge; - a serving (or former serving) member of the regular or reserve forces, who needs to move because of a serious injury, medical condition or disability sustained as a result of their service;

¹ MARAC - A Multi Agency Risk Assessment Conference (MARAC) is a victim-focused information sharing and risk management meeting. The role of the MARAC is to facilitate, monitor and evaluate effective information sharing to enable appropriate actions to be taken to increase public safety.

	<ul style="list-style-type: none"> - a bereaved spouse/civil partner of a member of the British Armed Forces, leaving Services Family Accommodation following the death of their spouse. <p>Members of the armed forces or their spouses do not need to demonstrate a community contribution.</p>
Working households	This community contribution priority is given to an applicant who is part of a working household in paid employment of more than 16hrs per person a week for a continuous period of 12 months
Disability	<p>This applies to:</p> <ul style="list-style-type: none"> • A household member who is disabled and under retiring age, and who has been assessed as eligible for the support element of the Personal Independence Payment (PIP) scheme, due to a permanent disability which prevents them from working or volunteering and therefore not able to give a community contribution.
Care Leavers	<ul style="list-style-type: none"> • The applicant has been accommodated by Havering Council's Children and Young Adults Services, and where it has been confirmed by the service that they are now ready to move on to alternative (e.g. independent or supported) accommodation. • The applicant has been assessed as having the life skills to manage a tenancy - including managing a rent account - and has the appropriate support package in place. <p>Care leavers do not need to demonstrate a community contribution.</p>

Band 2b

Council tenants, with a fixed term tenancy coming to an end, referred to a new property	This applies to situations where the Council originally intended to grant a new tenancy for the current property, but has subsequently decided to grant a tenancy of an alternative property. For further information, please view the Council's Tenancy policy .
Council service tenants where there is a contractual obligation	<p>The applicant is a Council employee who has been living in tied accommodation (i.e. provided to them as part of their work) but needs to move out due to:</p> <ul style="list-style-type: none"> (a) retirement, or (b) redundancy, or (c) the Council is changing, or has changed, the terms of the employee's employment.
Succession rights where property is not suitable	The applicant lives in a Council property and has the right of succession following the death of the tenant, but the property is too large; has had adaptations to the property that they no longer require, and/or there is an age restriction that renders them ineligible to hold the tenancy of the property.

Release of adapted property (Reasonable preference category S.166A(3)(e))	The applicant is a Council tenant who is willing to transfer to a suitable, non-adapted property and is releasing an adapted house or designated older persons property.
Under-occupation (Reasonable preference category S.166A(3)(e))	<ul style="list-style-type: none"> • The applicant is a Havering assured² or secure³ tenant who wishes to downsize. • Please note that this excludes tenants living in privately leased accommodation.
Foster carers referred by the Council's Children's Service (Reasonable preference category S166A(3)(d) or (e))	The applicant is a registered Havering Council foster carer where their current housing situation prevents them from being able to start, or continue to provide foster care or adopt.

Band 2c

Category	Criteria Guide
Volunteer (Reasonable Preference category s166A(3)(c) and (d))	A member of the household has been a volunteer or an unpaid worker for more than 16 hours a week and has been continuously for the last 6 months.
Carer (Reasonable Preference category s166A(3)(c) and (d))	The applicant gives care to a Havering resident that is substantial and ongoing.
(b) Move on from specialist accommodation (Reasonable Preference category s166A(3)(c))	<ul style="list-style-type: none"> • The applicant is moving on from specialist accommodation provided by either; Havering Council's Social Services Team, North East London Foundation Trust (NELFT,) or another registered supported housing provider in line with an agreement with Havering Council's Housing Service. • The applicant has been nominated as part of an agreement with a single homeless accommodation provider in Havering, where they are in need of settled accommodation and unable to secure it. • The applicant has been assessed as having the life skills to manage a tenancy, including managing a rent account and the necessary support package in place.
Homeless households owed a full homeless duty under section 193(2) or 195(2).	<ul style="list-style-type: none"> • Where it is in the overriding interest of the Council to prioritise an allocated place, in order to make best use of Havering's resources. • Where the landlord wants the temporary accommodation property back and where; a) the tenant has been in

² An *assured tenancy* is for a fixed period , for example; one year

³ A secure tenancy is for a lifetime period.

(Reasonable Preference categories s166A(3)(a)(b))	temporary accommodation for 7 years, b) the Council has been unable to find alternative suitable temporary accommodation (i.e. end of lease agreement).
Unsanitary conditions where the conditions pose an ongoing and serious threat to health (Reasonable preference category S.166A(3)(c))	<p>The applicant is the owner-occupier/private tenant and the Council's Environmental Health Team has determined that:</p> <ul style="list-style-type: none"> • the property poses a category 1 hazard under the Housing Health and Safety Rating System (e.g. crowding and space, excessive cold or risk of falls) and the Council is satisfied that the problem cannot be resolved by the landlord within six months, and • as a result, continuing to occupy the accommodation will pose a considerable risk to the health of the household (this would include properties that have severe damp and major structural defects such as subsidence, flooding, collapse of roof) or • the household is living conditions which are represent a statutory nuisance, and there is no prospect of the problems being remedied within a 6 month time period, or that; • as an owner-occupier/private tenant, the applicant has been issued with statutory notice by the Environmental Health Team, stating it is an unfit property to be demolished under the Housing Act 2004.
Reciprocal arrangement	The Council will only agree to reciprocal requests from other authorities and Registered Providers where they can demonstrate that there is imminent personal risk to the tenant or their family, and the accommodation is required in Havering, and that the reciprocal property being offered will be beneficial to Havering residents with high priority to move.

Band 3

People who have a need to move but do not qualify for Community contribution priority.

Category	Criteria Guide
Homeless households owed a full homeless duty under section 193(2) or 195(2). (Reasonable Preference categories s166A(3)(a)(b))	The Council has accepted a duty to accommodate within the meaning of the Housing Act 1996, Part 7.

Homeless Households (Reasonable Preference category s166A(3)(a))	People who are homeless or threatened with homelessness (within the meaning of Part 7, as amended by the Homelessness Reduction Act 2017).
Overcrowding (Reasonable Preference category s166A(3)(c))	The applicant is living in a property that has one or more bedrooms less than required under the Havering Council housing bedroom standard.
Applicants living in unsatisfactory housing lacking basic facilities (Reasonable Preference category s166A(3)(c))	<ul style="list-style-type: none"> • The applicant is living in a property without access to one or more of the following facilities:- <ul style="list-style-type: none"> - a bathroom or kitchen; - an inside WC, or - hot or cold water supplies, electricity, gas or adequate heating • The applicant lives in private property which is in disrepair and is unfit for occupation. <p>Please note that:</p> <ul style="list-style-type: none"> • Applicants who only have access to shared facilities do not qualify under these criteria. • The above applies to private tenants living in a property that has a Category 1 risk as defined by the HHSRS.
Moderate medical grounds (Reasonable Preference category s166A(3)(d))	<ul style="list-style-type: none"> • The applicant's housing is unsuitable for severe medical reasons or due to their disability, but they are not housebound or their life is not at risk due to their current housing. However, the housing conditions directly contribute to causing serious ill-health.
Need to move for care or support (Reasonable Preference category s166A(3) (c) and (d))	<ul style="list-style-type: none"> • The applicant needs to move to receive care that is substantial and ongoing; • The applicant needs to move in order to access Social Services facilities, and is unable to travel across the Borough; • The applicant wishes to move to a certain locality, where not doing so would cause hardship (which includes those approved under Right to Move Scheme).
Housing for older people (Reasonable Preference category s166A(3)(d))	<ul style="list-style-type: none"> • Older, or disabled residents, seeking sheltered or extra care housing who are unable to meet their housing needs from their own resources (i.e. asset rich but cash poor), but agree to lease their property to the Council to use as temporary accommodation.

2.4 Outcomes from the new bands

Increase priority has been awarded:

- to care leavers, as part of the council's commitment as a corporate parent,

- disabled households and those with medical conditions affected by their housing
- Working households, volunteers and carers
- tenants currently occupying their current homes, in order to enable them to move to smaller homes, thereby freeing up their homes for another family on the housing register.

Opportunities Register

The new scheme proposes the establishment of a new Opportunities Register that on which a member of the public can record their preference for housing options other than social housing. Applicants who are found not to qualify for the Housing Register will be referred to the Housing Opportunities Register. The Opportunities Register will also be used to market low cost home ownership products to local people.

REASONS AND OPTIONS

- 3.0 The recommendations throughout this report have been made so that the Council's Housing Register more accurately reflects the level of housing need in the borough, ensuring that those with the greatest need continue to be prioritised.
- 3.1 The table below shows the number of successful allocations for each band, under the current scheme, for the last four years:

Financial Year	ER	CC1	CC2	H	RP	Total
17/18	260	133	9	24	2	428
18/19	280	131	13	9	2	435
19/20	203	171	30	48	3	455
20/21	103	242	71	130	15	561
Average	211	169	31	53	6	470
Total	846	677	123	211	22	1879

3.2 Reasons for the decision:

- 3.3 The above table shows applicants in the Community Contribution bands make up the most allocations, accounting for 56% of allocations in the last financial year.
- 3.4 Home seekers make up the second highest proportion of allocations with 130 lets.
- 3.5 Interestingly, 26% of properties allocated to Home seekers were of family size (2 bed plus) with the highest proportion of successful applicants being 4 beds. Greater access to properties has presented better chances for applicants in the Home seeker bands to be successful in getting larger accommodation.
- 3.6 The Housing Act 1996 Part VI requires significant changes to the Housing Allocation Scheme to be consulted on with stakeholders and housing applicants.
- 3.7 Consultation with affected parties is essential to good practice. In terms of administrative law, 'consultation' has a specific meaning and should be proportionate, fair, and inclusive.
- 3.8 Following the authorisation of this draft Scheme, a formal consultation was conducted in the spring of 2021. The consultation was based on a proposed 10-year residency criteria and income thresholds, both of which have subsequently changed. The consultation consisted of:
- The draft Scheme and public consultation questionnaire published on the Council's consultation portal;
 - The questionnaire being sent to all key stakeholders, including housing associations, neighbouring boroughs and voluntary sector organisations.
- 3.9 129 people responded to the Public Consultation. Their feedback is detailed in appendix 2, with recommendations for the adoption of the Housing Allocation Scheme (2021).
- 3.10 The key issues raised in the consultation were:
- The concern that increasing the threshold will mean that poorer households will be excluded from the housing register. This is based on a misunderstanding that the threshold is the minimum that people can earn rather than the maximum, however in response to these concerns the thresholds have been amended to reflect different household sizes.
 - Concern was also raised about the impact of the continuous residency criteria on households who move out of the borough for a short time but return. There are exemptions in the Scheme that will enable some households, who have had to move for reasons beyond their control, e.g. domestic abuse, to still access the housing register.
 - There was also concern raised regarding the impact of the move from a residency criteria of 6 years to 10 on exiting households on the

Housing Register. As a result of the consultation and the updated EQHIA the decision was taken to keep the existing requirement at 6 years, with a 5 year mitigation for refugees and travellers.

3.11 Implementation of the new scheme

The implementation of the new scheme requires formal notification to be sent to all the applicants currently on the housing register, the housing computer system changed to reflect the new scheme, and the on-line application form to be amended to reflect the changes.

A project team has been established to implement these changes and it is anticipated that three months will be required from the date of decision before the new scheme “goes live”.

3.10 Other options considered:

No changes to the Scheme.

In this case, the Scheme would not comply with the relevant case law and would be subject to challenge through the courts and the Judicial Review process, ultimately at the expense of the local authority.

IMPLICATIONS AND RISKS

Financial implications and risks:

The implementation of this Scheme has minimal financial implications. However, there could be legal fees incurred in defending challenges against this Scheme. These costs would be met from Housing budgets.

Legal implications and risks:

- i. Pursuant to Section 166A of the Housing Act 1996, every local authority must have an allocation scheme and must not allocate housing accommodation except on accordance with the allocation scheme. The allocation scheme must include the procedure for allocation of accommodation as well as the persons or description of persons by whom decisions are made.
- ii. Public Sector Equalities Duty
The proposed changes relating to the mitigation to residency requirements, income threshold and savings limit are changes that are open to the Council to make. In deciding whether to implement the proposed changes, the Council must have regard to an Equality Impact Assessment and consider the impact each of the proposed changes would have on persons with protected characteristics with a view to eliminating any potential unlawful

discrimination. Where potentially negative consequences of the Scheme change have been identified, effective mitigation should be put in place to reduce the impact. Travellers and refugees have a protected characteristic of race, and who by the nature of their status will be less likely to satisfy a residency criteria. In the circumstances of these groups the residency requirement has been amended and is 5 years rather than the 6 year residency requirement for other applicants to the scheme. A failure to include an effective mitigation to the residency requirement for these groups could lead to the risk of successful challenge of the scheme by an applicant within this group. It is noted in the EQHIA that the impact on those with this protected characteristic is neutral/positive depending on the accommodation size required. Further the scheme is now including those who have a reasonable preference as being exempt from residency requirements and being able to access the scheme has been stated in the EQHIA to likely include those within the traveller/ refugee cohort. In particular with reference to refugees, the EQHIA notes that all of the data from previous years is that those who are refugees also had an accepted homelessness duty, and under the changes as set out in the new Scheme would therefore have access to the Scheme even if the residency requirement was not satisfied. This is due to the reasonable preference category exemptions to the residency requirement. As such, this appears on information from previous years to provide an effective mitigation to any discrimination that may be suffered as a result of the residency requirement for this cohort. The impact of the new Scheme should of course be kept under review as it is implemented.

The relevant legal framework for this exercise is set out in Section 149 of the Equality Act 2010 and known as the Public Sector Equality Duty (PSED).

iii. Reasonable preference groups and reduced priority banding.

It is a legal requirement under Section 166 A (3) of the Housing Act 1996 to ensure that 'reasonable preference' is given to persons falling within that section.

This section includes those who are homeless within the meaning of Part 7 of the Housing Act 1996, and not just those who are owed the full housing duty. Established case law supports the position that an allocation scheme should not seek to exclude groups of people within the reasonable preference categories.

The revised Scheme exempts those within reasonable preference groups from the 6 year continuous residency period, allowing these individuals to access the housing register. Recent case law in the Administrative Court has also confirmed that "the legislation does not prohibit a disqualification criterion that affects some persons falling within a reasonable preference category, provided that as a whole the scheme does give reasonable preference to that category of persons". As such the Scheme as proposed meets the statutory requirements around reasonable preference criteria, and

the latest line of case law. It is noted that this is a fruitful area of legal challenge and so decisions in the Courts will need to be monitored to ensure that the Council's Scheme remains in line. This can be done through the periodic review of the Scheme.

iv. Consultation, legitimate expectation and due regard to existing policies.

When considering the proposed changes, the Council is required to have regard to its internal policies, including the Homelessness Strategy and Tenancy Strategy. The Council is also required to have regard to the London Housing Strategy. The legal framework for this requirement is outlined below.

Section 166 A (12) for the Housing Act 1996 provides that:-

A local housing authority in England must, in preparing or modifying their allocation scheme, 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.

Prior to making the proposed changes, the council should consult with stakeholder and those who could be affected by the proposed changes. Additionally, the Council has a statutory duty to consult with every private registered provider of social housing and registered social landlord as well as its secure tenants. The form of consultation should be inclusive and robust to ensure that the duty to consult is satisfied.

The relevant statutory framework is outlined below:

Section 166 A (13) of the Housing Act 1996.

Before adopting an allocation scheme, or making an alteration to their scheme reflecting a major change of Scheme, a local housing authority in England must—

- (a) send a copy of the draft scheme, or proposed alteration, to every private registered provider of social housing and registered social landlord with which they have nomination arrangements (see section 159(4)), and
- (b) afford those persons a reasonable opportunity to comment on the proposals.

(14) A local housing authority in England shall not allocate housing accommodation except in accordance with their allocation scheme.

Section 105 of the Housing Act 1985

Consultation on matters of housing management.

(1) A landlord authority shall maintain such arrangements as it considers appropriate to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to which this section applies—

(a) to be informed of the authority's proposals in respect of the matter, and

(b) to make their views known to the authority within a specified period; and the authority shall, before making any decision on the matter, consider any representations made to it in accordance with those arrangements

In addition to the above, the Council required to consult with those who would reasonably expect to be consulted. The Council should check and ensure that all those who were consulted when the 2016 allocation scheme was implemented (or when any previous amendments to the council's allocation scheme were made) are consulted also.

Prior to presenting this Scheme, extensive consultation in accordance with the statutory requirements has been carried out and the results of this exercise are set out in Appendix 2. The Council is required to take into consideration all of the information received from the consultation exercise when deciding whether to implement the proposed changes and in this case the result of the consultation have led to the proposed 10-year residency requirement having been kept at 6 years per the existing policy, with the relevant statutory and required exemptions to that residency requirement.

v. Part 6 Final Offer to Part 7 homeless applicants

Where an offer of accommodation under the Council's allocation scheme is made on the basis that a refusal would end the duties under homelessness legislation, the council must comply with the requirements of section 193 of the Housing Act 1996 which outlines the format for such an offer. The process regarding making an offer of accommodation is appropriately dealt with in Part 4 of the proposed Scheme, with the appeals process also detailed at Part 5.

Human Resources implications and risks:

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

Equalities Health and Wellbeing implications and Risks

It is anticipated that the implementation of this Scheme will generate positive health and wellbeing benefits to directly affected residents. Significant decisions entailed in implementing aspects of the Scheme will be informed by the accompanying Equality and Health Impact Assessment (EqHIA - please see appendix 3) which will serve to identify opportunities to maximise health benefits and mitigate potential harms arising from the specific actions proposed.

BACKGROUND PAPERS

APPENDIX 1: Housing Allocation Scheme (2021)

APPENDIX 2: Public Consultation report

APPENDIX 3: Equalities and Health Impact Assessment (EqHIA)