



## **Policy to enable the discharge of the homelessness duty into the private sector**

### **1. Background**

- 1.1. Provisions in the Localism Act 2011 give Local Authorities more scope to place homeless households in private rented homes. These powers also provide an opportunity to build stronger links with local landlords and raise the general standards of rented homes in the Borough.
- 1.2. The DCLG issued supplementary guidance relating to this power in November 2012 (1) and a Homelessness (Suitability of accommodation) (England) Order relating to the quality of accommodation to be provided. Officers are required to have regard to these requirements when seeking to discharge the full homelessness duty into the private rented sector. The powers came into effect from 9<sup>th</sup> November 2012.

### **2. The legal position**

- 2.1. The Localism Act allows local authorities to fully discharge the main housing duty by a 'private rented sector offer' (s193 (7AA)-(7AC) Housing Act 1996 as amended by 2.148(5)-(7) Localism Act 2011). This must be an offer of assured shorthold tenancy with a minimum fixed term of 12 months.
- 2.2. Brentwood Borough Council should assess each statutory homeless household to establish whether an offer of a tenancy in the private rented sector may be suitable for the purpose of discharge of the duty.

### **3. Brentwood Borough Council policy statement**

- 3.1 Brentwood Borough Council will consider a 'private sector offer' (PSO) to end the homelessness duty in all cases. If an options officer considers that a PSO is appropriate to the needs of the applicant, and if suitable accommodation can be secured, then such an offer will routinely be made.
- 3.2 This will be considered the household's one offer of suitable accommodation and whether the household accepts or refuse this offer, it will discharge the Council's statutory homelessness duty.
- 3.3 This policy sends a clear message that homelessness will no longer give a guarantee that homeless households will receive an offer of social housing. This supports the current approach to preventing homelessness wherever possible, and to encourage applicants to apply for housing through the housing register route, rather than the homelessness route.
- 3.4 This policy fits with the Council's Housing Strategy objectives.
- 3.5 This policy fits with the Homelessness and Rough Sleepers strategy.

**3.6 This policy will comply with:**

- Part 7 of the Housing Act 1996, as amended by the Homelessness Act 2002.
- The Localism Act 2011.
- Homelessness (Suitability of accommodation) (England) Order 2012.
- Homelessness Code of Guidance for local authorities 2006.
- Equality Act 2010.

**4. Applying the policy**

- 4.1. Each case will be considered on its own merits. This policy seeks to ensure that both a comprehensive needs assessment and risk assessment are carried out for each household. All households will be assessed based on their individual housing needs. This policy will ensure that there is no discrimination on the grounds of: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; gender; sexual orientation. In considering the individual circumstances of each household, housing options officers will consider the following guidance:
- We will not usually make a PSO if the applicant is vulnerable, requiring sheltered accommodation, or who is considered unlikely to be able to sustain a private rented tenancy.
  - We would not usually make a PSO if the applicant or a member of their household requires significant disabled adaptations to make the property suitable.
  - We would not usually make a PSO if the applicant was previously a social housing tenant within the Borough and who has fled domestic violence; other violence; or harassment.
  - We will also consider the affordability of the accommodation, having regard to Housing benefit/Local housing allowance rates and the overall benefit cap that could be applied to the household. This is likely to have an implication for larger families where a PSO may be inappropriate on the grounds of cost.
- 4.2. Length of the tenancy, the guidance requires that PSO should secure assured shorthold tenancies for 12 months, but the Council will try to secure longer agreements with landlords wherever possible.
- 4.3. If accommodation provided under a PSO 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.

**5. Suitability of private sector offers**

- 5.1. Under this policy the Council will make 'suitable' offers of private rented accommodation to discharge the homelessness duty. In assessing the suitability of the accommodation the Council will comply with the relevant legislation, associated case law and the Code of Guidance as it relates to location, conditions and affordability.

### **Location**

- 5.2. Securing affordable private rented accommodation in the borough is a challenge. The Localism Act does allow authorities to discharge their duty to PSO outside the borough without the express agreement of applicants but is under an obligation to take account of the 'suitability' of the accommodation as set out in the Homelessness (Suitability of accommodation) (England) Order 2012-Part 1.

*'In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation including:*

- *Where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority*
- *The significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the persons household*
- *The proximity and accessibility of the accommodation to medical facilities and other support which:*
  - a. *Are currently used by or provided to the person or members of the person's household and*
  - b. *The proximity and accessibility of the accommodation to local services, amenities, and transport.*

### **Property Condition and Management**

- 5.3. The Homelessness (Suitability of accommodation) (England) Order 2012 Part 2 sets out a list of requirements relating to the property and its management that must be met for the property to be suitable.
- 5.4. Accommodation offered should be in a 'reasonable physical condition' and suitable in relation to:
- Electrical regulations.
  - Fire safety.
  - Carbon Monoxide poisoning, with Carbon monoxide alarms fitted.
  - Houses of Multiple occupation (HMO) licensing.
  - Valid Energy performance certification and to be level C or above.
  - Gas safety record and a valid Landlord's Gas Safety Record (LGSR) certificate.
  - That a written tenancy agreement will be provided.

- And that the landlord is a “fit and proper person” to act in the capacity of a landlord.
- 5.5. There is no requirement in the suitability order for a technical inspection to be undertaken by a qualified officer but it is recommended that all properties are visited by a Council officer or by an agent authorised by the Council. Where a concern is identified that a Category 1 hazard may be present the matter will be referred to the Senior environmental officer for a technical assessment under Section 4 of the Housing Act 2004.

### **Affordability**

- 5.6. For the property to be suitable it must be affordable under the terms set out in the Homelessness (Suitability of Accommodation) Order 1996 (SI 1996 No 3204). In assessing affordability the Council will consider not only if it is affordable now but whether it will be affordable in the next 12 months if it is known that the household based on their known circumstances is likely to receive a reduction in income due to changes in benefit entitlement due to welfare reform.
- 5.7. An individual affordability assessment will be undertaken for each applicant to be certain they can afford the housing without being deprived of basic essentials such as food, clothing, heating, transport, and other essentials and in so doing will take account of cost resulting from the location of the accommodation.
- 5.8. In considering affordability the Council will need to consider access to Discretionary Housing Payments which may reduce any rent shortfall to a level where the rent is affordable.

### **6. Refusal or failure to respond to an offer of suitable accommodation**

- 6.1. Where a duty has been formally accepted under s.193 of the Act if you fail to respond, reject, or subsequently lose the accommodation provided as described above then the Local Authority will discharge its full re-housing duty. In this event the Local Authority would have no further legal duty to you and you would be required to leave the temporary accommodation and make your own provision forthwith.
- 6.2. You have a right to request a review of the suitability of the accommodation offered. Section 202(1A) of the Act allows you to request a review of the suitability of the accommodation offered whether or not you accept the offer. This means that you can move into the property and still request a review of its suitability. If you decide not to move into the property and you request a review of the suitability of the accommodation, and the review is found against you the Council will discharge its homeless duty towards you. If you are in temporary accommodation at the time this means that your tenancy or license to occupy will be terminated.
- 6.3. The suitability of accommodation made available under a PSO 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.