

Rother District Council

Report to: Cabinet

Date: 6 November 2023

Title: Discharge of Homelessness Duty to a Suitable Private Rented Property Policy

Report of: Joe Powell - Head of Service Housing and Regeneration

Cabinet Member: Councillor McCourt

Ward(s): All

Purpose of Report: To consider the recommendations arising from the Overview and Scrutiny Committee meeting held on 16 October 2023, regarding the Council's discharge of Homelessness Duty to a Suitable Private Rented Property Policy. The report and recommendations arising are reproduced below and the Minutes of that meeting (Appendix 2) should be read in conjunction with this report.

Decision Type: Non-Key

Overview and Scrutiny

Recommendation(s): It be **RESOLVED:** That Cabinet be requested to consider that:

- 1) the Discharge of Homelessness Duty to a Suitable Private Rented Property Policy be recommended to Council for adoption; and
- 2) the Head of Service for Housing and Regeneration be granted delegated authority to make any further changes that may be required to the Discharge of Homelessness Duty to a Suitable Private Rented Property Policy in the future.

Reason for

Recommendations: To propose the implementation of the Discharge of Homelessness Duty to a Suitable Private Rented Property Policy, so that the criteria for how offers of private sector accommodation are made, when discharging the Council's homelessness duties under the Housing Act 1996 (as amended) and Homelessness Reduction Act 2017.

Introduction

1. The Council can discharge its accommodation duties owed to homeless applicants by making an offer of social housing, suitable private sector accommodation or suitable supported accommodation.
2. In November 2012, amendments to the Housing Act 1996 (as amended) were made by the Localism Act 2011. This enabled local authorities to bring the main

housing duty to an end by securing a suitable offer of a tenancy in the private rented sector. The major change being it allowed authorities to discharge the main homeless duty without requiring the applicant's consent.

3. In 2022, the Council was able to nominate 185 households to accommodation managed by registered providers of social housing properties. As we currently have more than 2,000 households on the Housing Register waiting for accommodation, we have continued to explore other opportunities in the private sector for homeless applicants. We also currently have around 170 households in temporary accommodation (TA) who need to move on to longer term accommodation. To illustrate the demand this is an increase of over 100% in terms of the number of households in TA today compared to September 2021.

Discharge Policy

4. The Council is able to discharge its homelessness duties to customers owed the Prevention duty (s195 Housing Act 1996), customers owed the Relief duty (s189B Housing Act 1996) and customers owed the Main Duty (s193 Housing Act 1996) by making an offer of accommodation in the private sector.
5. The proposed Discharge of Homelessness Duty to a Suitable Private Rented Property Policy (DSPRP Policy) can be read in full at Appendix 1. To have a formal policy in place enables the Council to transparently make an offer of a private sector tenancy to all households where a suitable property has been identified and leaves it less open to formal appeal from customers.
6. There are a range of benefits to be gained from having an effective DSPRP Policy:
 - The Council will be better able to reduce the time households spend in TA by making a formal offer of accommodation which will end the duty owed to the customer on acceptance or refusal of the offer. This will also offer a reduction in TA costs.
 - Families will be able to avoid entering TA where an offer has been made and accepted in the private sector during the prevention duty.
 - The Council will be able to forge good relationships with local landlords and letting agents.
 - To widen the choice, both in terms of accommodation and areas for homeless customers.
7. Customers will be advised of the options that the Council has available to support them with securing accommodation from the outset of their housing journey. Customers will be given a clear idea of affordability in relation to rental costs for accommodation based on their personal circumstances.
8. All offers of accommodation will be made in writing and the customer will have the opportunity to view the property prior to accepting the offer. If following the viewing the Council can consider circumstances of which the Council were not aware and that may affect the suitability of the offer for the applicant. There is also a formal right of appeal against the suitability of all offers of accommodation

made by the Council and these will be detailed in the correspondence issued to the customer.

Conclusion

9. It is a requirement to make offers of private sector accommodation to all customers for whom the Council can secure a suitable offer, and we recommend that Members approve the proposed DSPRP Policy as proposed at Appendix 1, to allow the Council to do so more effectively.
10. In addition, it is recommended that authority is delegated to the Head of Service for Housing and Regeneration to make any changes that may be required to the DSPRP Policy in future.

Implications

Equalities and Diversity

11. An equality impact assessment has been completed and is available for review upon request. This assessment also includes the consideration of the Council's Socio-Economic duty.

Finance

12. If the Council are found to be offering accommodation that is unsuitable, the Council could be subjected to an internal review which will delay the offer being made and increase the time the household potentially spends in TA while this offer is reviewed. Should this review be upheld, there is the possibility that the applicant then appeals to the County Court which will also have a financial implication on the authority. Applicants can also complain to the Local Government and Social Care Ombudsman about the suitability of accommodation offered as part of a homeless application and financial compensation can be awarded.

Legal

13. The Council has a legal duty to ensure accommodation offered in the private sector is suitable. The Localism Act 2011, Suitability of Accommodation Order 2002, Housing Act 1996 and Homeless Reduction Act 2017 all define the legal duties the Council has when making offers of suitable accommodation. The recommendation will allow the Council to fulfil these duties more effectively.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	Yes
Crime and Disorder	No	External Consultation	No
Environmental	No	Access to Information	No
Risk Management	No	Exempt from publication	No

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Appendices:	Appendix 1 Discharge of Homelessness Duty into the Private Rented Sector Appendix 2 – OSC Minutes
Relevant previous Minutes:	None
Background Papers:	None
Reference Documents:	None

Discharge of Homelessness Duty to a Suitable Private Rented Property Policy

Introduction

The Homelessness Reduction Act 2017 significantly updated homelessness legislation and placed duties on local authorities to intervene at an earlier stage to “prevent” homelessness and to provide assistance to anyone at risk of being without accommodation, not just those with a priority need as the legislation had previously worked. The amended legislation also introduced a new “Relief Duty”; under this duty a local authority must take reasonable steps to help all homeless eligible applicants to secure accommodation for at least six months. This approach gives local authorities greater opportunity to use the private rented sector to satisfy a households housing needs.

The Council has the following options available to discharge its accommodation duties:

1. Social housing
2. Supported Accommodation
3. Suitable Private Sector Accommodation

Scope

This policy applies to customers that are homeless or threatened with homelessness and provides a framework so the Council can assist them to access properties in the private rented sector.

This policy also covers the utilisation of the powers granted to local authorities by the commencement of the Localism Act 2011 and requirements of the Housing Act 1996 Part VII and the Homelessness Reduction Act 2017.

Purpose

The purpose of this policy is to set out the way in which the Council will control and manage private sector offers to homeless applicants that the Council has accepted a “Prevention”, “Relief” or “Main Duty” to under the Housing Act Part VII, as amended by the Homeless Reduction Act 2017. The latter is the duty on local housing authorities to secure accommodation for unintentionally homeless people in priority need. The duty is set out in the Housing Act 1996 Part VII Section 193.

The policy also sets out the criteria that will be used to determine suitability.

Aims and Objectives

- To make the best use of good quality private sector accommodation in the district.
- To build positive relations with private landlords.
- To widen the choice and housing options available to customers.
- To enable customers to find appropriate housing solutions more quickly by providing a more varied offer.
- To reduce reliance and pressure on temporary accommodation.
- To ensure movement and relieve pressure on the housing register.

Making a Private Sector Offer

Rother District Council will consider a “private sector offer” to prevent or relieve homelessness in all cases. If the Council considers that a private sector offer is appropriate to the needs of the applicant and if suitable accommodation can be secured, then such an offer will routinely be considered. This will usually be made as a direct offer to the applicant. The Council will advise those that are homeless or threatened with homelessness that they will be considered for properties that are either in social housing or as part of a private sector offer as part of their initial homeless interview.

The Council will consider the individual circumstances of each household when deciding whether to make a private sector offer. The Council will consider primarily whether the accommodation is affordable. The affordability assessment will give due considerations to the Housing Benefit or Universal Credit housing Element and Local Housing Allowance rates and the Benefit Cap that could be applied to the household.

The Council will attempt to secure twelve month assured shorthold tenancies (AST) with landlords for private sector offers. For applicants owed either the Prevention or Relief Duty where this is not possible the Council will secure a six month tenancy. Six months is the legal requirement under the homelessness legislation for applicants owed these (prevention or relief) duties by the Council.

The private sector offer can also be made in discharge of the Council’s accepted homeless duty. For these cases, the Council will secure an AST for a minimum of 12 months in accordance with the legalisation for applicants in this circumstance.

The Council will consider all of the applicants’ circumstances and the offer made will be reasonable and suitable to the applicants’ needs and therefore the offer will be made to discharge any accepted homeless duty. Applicants will have the right of review on the grounds of suitability of any offer made.

A Private Rented Sector Offer (PRSO) to end the prevention and relief duties is suitable if it:

1. It is an assured shorthold tenancy of at least 6 months.
2. It is made with the approval of the Council.
3. The Council considers the property to be affordable following an assessment of the household’s circumstances.
4. The suitability criteria are met (see Appendix A and also taking into account the Homeless Suitability of Accommodation Order 2012).
5. The property is not unsuitable.
6. The applicant is suitable for the accommodation.

The applicant has the right to request a review on the suitability of the accommodation

A Private Sector Offer (PRSO) is suitable for the Main duty if:

1. It is an assured shorthold tenancy of at least 12 months.
2. It is made with the approval of the Council.
3. The Council considers the property to be affordable following an assessment of the household’s circumstances, (practice guidance will help define how to assess “affordable”).
4. The suitability criteria are met (see Appendix A).
5. The property is not unsuitable (see Appendix B).
6. The applicant is suitable for the accommodation.

The applicant has the right to request a review on the suitability of the accommodation and of appeal to the county court.

If an applicant becomes homeless again and approaches the Council for assistance within two years of accepting a private rented sector offer under the Main Duty the section 193(2) duty will apply regardless of whether the applicant has a priority need if the applicant is eligible for assistance and has not become homeless intentionally.

The Council is required to assess whether accommodation is suitable for each household individually, and their case file should demonstrate that they have taken the statutory requirements into account in securing the accommodation, including general duties such as the Public-Sector Equality Duty.

The Council has a continuing obligation to keep the suitability of accommodation under review, and to respond to any relevant change in circumstances which may affect suitability, until such time as the accommodation duty is brought to an end.

Making the offer to discharge the homelessness duty

Officers will send a letter to the applicant when making an offer, setting out the following

1. The duty under which the offer is being made
2. Possible consequences of refusal or acceptance
3. The right to request a review of the suitability of accommodation
4. The Council is satisfied that the accommodation is suitable
5. That the Council regards itself as ceasing to be subject to the duty.

During the first year of a Private Rented Sector Tenancy, the Council will endeavour to provide some level of support to the applicant to help sustain the tenancy where there has been identified this would be necessary, subject to resources available and competing demand for services.

Where an offer of accommodation is made under a prevention duty and the offer is refused, this will not affect any further duties that may be owed to the applicant. However, it may be the case that the same accommodation may then be offered to an applicant under the relief duty where this is appropriate and suitable.

Where a final accommodation offer of a private sector tenancy is made (S189B) to discharge the Relief Duty, the application will close and the main duty will no longer be owed if the applicant refuses the property and a review is not requested. If necessary, the Council will provide the applicant with reasonable notice to vacate any temporary accommodation.

Where a private rented sector offer is made to discharge the Main Duty, the application will close if the applicant refuses the property, and a review is not requested. The Council will provide the applicant with reasonable notice to vacate any temporary accommodation.

The Council will look at the facts of the case, taking into account the circumstances of the applicant and their household. 28 days' notice is usually given for families and 14 days for single applicants or couples.

The Council will notify the receiving local authority where a suitable private sector offer is in another area within 14 days, as per s208 of the Housing Act 1996 of the accommodation becoming available.

The Council will ensure that an acceptable, written AST is used, clearly setting out the tenants and landlord's obligations, rent and charges, and is free from any unfair or unreasonable terms.

The Council assists households who are homeless or threatened with homelessness to access private rented accommodation. The Council, subject to the applicant's personal financial circumstances will also consider assisting with rent in advance and deposit payments. A procedure for the distribution of these funds with regards to loans and grants is currently being developed. They can also offer can include incentive payments to landlords to assist in securing the tenancy as well as rent and legal insurance and agreed support to the tenant by agreed check ins during the first year of the tenancy.

This policy will be reviewed every two years. It is not expected that there will be changes to regulation or legislation which will have an impact on the need to review this policy sooner.

Suitability of property location for a Private Sector Offer

In determining whether the property location is suitable, the Council will consider:

1. The significance of any disruption caused by the location from employment, caring responsibilities, or education of the household:
 - The location must be within a reasonable travel to work area for employed members of the household. Transport links must be frequent enough to enable this. Employment is usually taken to be at least 16 hours per week. An offer could still be suitable if it is further away from the place of work than the applicant's current location.
 - The location of the offer will need to be of sufficient proximity to enable an applicant to continue with their caring responsibilities. The Housing Needs Team will verify that the applicant is a carer for another person, who cannot readily withdraw this care without serious detriment to the well-being of the other party.
 - If any members of the household have special educational needs, i.e. as identified in an Education, Health and Care Plan or attend a special school, or are undertaking GCSEs or A levels at school (Years 10 to 13), then they should not be required to change schools.

2. The proximity to and accessibility of medical facilities and other support, which are used by, or essential to the well-being, of the household
 - If the applicant or any member of the household requires specialist medical treatment or support then the location will need to be of sufficient proximity to enable this.
 - The Council will also have regard to other medical treatment or support required by the applicant or any member of the household where it will be detrimental to change provider or location.

3. The proximity and accessibility to local services, amenities and transport
 - Regardless of location, the Council will seek to offer a home that is reasonably accessible to local services and amenities, especially for people on low incomes, and those reliant on public transport.
 - Due regard will be given to issues related to the Equality Act protected characteristics.

4. Offer outside of RDC area
The Council, where reasonably practicable, will seek to offer private sector accommodation within the local area, except:
 - When it considers it beneficial to move the household out of area, for example, to reduce the risk of domestic abuse, other violence, or harassment; or to assist persons in breaking away from detrimental situations, such as drug or alcohol abuse,
 - When the household requests to move away from the area, or
 - When the applicant consents to move away from the area,
 - When a person has a very limited / no local connection to area (for example, they may have approached having fled violence from another area).
 - When moving to a property in a neighbouring local authority will satisfy the suitability criteria set out above.

5. If a suitable home is not available within the area, a suitable private sector offer can be made in a neighbouring authority, normally an area in close proximity.
- It must be noted that in the case of most people who present to the Council that Hastings or St Leonards, for example are considerably closer than some of the other towns within Rother and therefore will be considered suitable subject points 1 to 3 above having been given consideration.
 - Any location must have reasonable facilities and transport links.
 - A record will be made of how a decision to place an applicant out of district has been reached, taking into account the household's collective and individual needs.

Accommodation unsuitable for a Private Rental Sector Offer

The Council will give due regard to Homelessness Code of Guidance 2018 Chapter 17 - Suitability of Accommodation when considering whether a property is unsuitable for a private rented sector offer.

Suitable size of a property according to the family make up is set out in the Council's Allocations Policy.

Supplementary to this, the Council will also use the following criteria to consider whether a property is unsuitable:

1. The accommodation is not in a reasonable physical condition. Council officers will either:
 - physically inspect all accommodation before it is offered; or
 - require a letting agent to physically inspect a property (usually requiring that agent to be a member of a suitable trade body); or
 - request another local authority advises if there are any concerns about the property,

The Council will also request copies of:

- Fire risk assessment for property (if required)
- Energy Performance Certificate and will not offer accommodation where the performance rating is lower than E
- Gas Safety Certificate (if required)
- Confirmation that smoke and CO alarms are in situ and have been tested recently
- Electrical Installation Condition Report issued in last 5 years

If these are not provided or are not compliant or valid then the offer would be considered unsuitable.

Properties are let unfurnished however if there are any furniture and furnishings supplied by the landlord they will be advised that they must comply with the Furniture and Furnishings (Fire Safety) Regulations 1988 (as amended).

2. Where the local housing authority are of the view that the landlord is not a fit and proper person to be a landlord the council will check their records for evidence that could indicate whether a landlord or agent is not a 'fit and proper' person.

When placing applicants outside of the Rother District area officers will liaise with the receiving district to check whether that authority has taken any enforcement activity against the landlord.

3. That the accommodation is a House in Multiple Occupation or HMO and is not licensed. HMO properties will not usually be used for private sector offers. Where they are checks will be carried out by the council to confirm that the property is properly licensed and compliant, particularly in respect of fire safety and management.

4. That the landlord has not provided a written Assured Shorthold tenancy agreement
5. The tenant's and landlord's obligations, rent and charges, and is free from any unfair or unreasonable terms. If this is not the case then the offer will not be considered suitable

Officers will also inform landlords of the requirements to use Tenancy Deposit Schemes prior to sign-ups.

Minutes of the Overview and Scrutiny Meeting – 16 October 2023**OSC23/29. DISCHARGE OF HOMELESSNESS DUTY TO A SUITABLE
(6) PRIVATE RENTED PROPERTY POLICY**

Members received the report of the Head of Housing and Regeneration which gave details of the proposed Discharge of Homelessness Duty to a Suitable Private Rented Property Policy. The policy outlined the criteria for how offers of private sector accommodation were made when discharging the Council's homelessness duties under the Housing Act 1996 (as amended) and Homelessness Reduction Act 2017.

Following amendments to the Housing Act 1996 (as amended) in November 2012 by the Localism Act 2011, the Council could discharge its accommodation duties owed to homeless applicants by making an offer of social housing, suitable private sector accommodation or suitable supported accommodation.

The proposed Discharge of Homelessness Duty to a Suitable Private Rented Property Policy (DSPRP Policy) was attached to the report at Appendix 1. To have a formal policy in place would enable the Council to transparently make an offer of a private sector tenancy inside or outside of the Rother District Council area to all households where a suitable property had been identified and leave it less open to formal appeal from customers.

Customers would be advised of the options that the Council had available to support them with securing accommodation from the outset of their housing journey and would be given a clear idea of affordability in relation to rental costs for accommodation based on their personal circumstances. All offers of accommodation would be made in writing and the customer would have the opportunity to view the property prior to accepting the offer.

The Committee was asked to recommend the proposed DSPRP Policy and to recommend that authority was delegated to the Head of Housing and Regeneration to make any changes that might be required to the DSPRP Policy in future.

Members were advised that any property offered to the Council for private rental was either inspected by officers or the landlord was verified as 'fit and proper' and confirmation received that all necessary safety certificates were in place.

Councillor McCourt, the Cabinet Portfolio Holder for Housing who was in attendance, explained that the Policy amalgamated and simplified the processes that were already in place. The numbers currently in temporary accommodation (TA) were continuing to increase, so the flexibility to discharge the Council's duty was welcomed. As a result, waiting times would be decreased, it would be more cost effective for the Council and reduce the cost of TA, which currently accounted for 11%

of the Council's budget. Councillor McCourt commended the Housing Needs Operations Manager and the rest of the team.

RESOLVED: That Cabinet be requested to consider that:

- 1) the Discharge of Homelessness Duty to a Suitable Private Rented Property Policy be recommended to Council for adoption; and
- 2) the Head of Housing and Regeneration be granted delegated authority to make any further changes that may be required to the Discharge of Homelessness Duty to a Suitable Private Rented Property Policy in the future.