



**REPORTS FOR DECISION BY THE
CABINET MEMBER FOR REGENERATION**

Date Issued: **08 October 2009**

	Page Nos.
1. Report of the Director for Prosperity and Regeneration - 'Fair & Flexible' Consultation	1 - 11

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MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR REGENERATION

REPORT OF THE DIRECTOR FOR PROSPERITY & REGENERATION

Report prepared by John Littlemore

Date Issued: 8 October 2009

1. 'FAIR & FLEXIBLE' CONSULTATION

1.1 Issue for Decision

- 1.1.1 To approve the response to the Communities and Local Government's consultation document on a new code of guidance for the allocation of social housing entitled 'Fair and Flexible'.

1.2 Recommendation of the Director for Prosperity and Regeneration

- 1.2.1 That the Cabinet Member approves the response to the consultation document contained in Appendix A.

1.3 Reasons for Recommendation

- 1.3.1 The consultation document covers a number of themes under various headings: these include
- Objectives and outcomes which allocation schemes must achieve
 - Objectives and outcomes the government believes should be achieved
 - Involving and consulting local communities in the development of the allocation scheme
 - Framing an allocation scheme
 - Partnership working with RSLs

The consultation deadline is 23 October 2009 and it is anticipated that the new guidance will be issued this calendar year.

1.3.2 Outcomes that must be achieved:

The guidance perpetuates the previous theme that social housing should be allocated to those who will be *likely to have most difficulty finding for themselves in the private market*. There are no plans to amend the current reasonable preference groups, however, the proposed code will now say that equal weight to each preference category is no longer a statutory requirement and this can be determined by the housing authority to reflect local housing need.

Emphasis is placed on using the allocation scheme to prevent homelessness, which Maidstone has successfully employed over the past three years.

1.3.3 Outcomes the government believes should be achieved:

These can be summarised as follows

- Greater choice and wider options for prospective tenants
 - This would include a range of housing such as rented, shared ownership and private rented
- Greater mobility
 - Assisting social housing tenants to move within the sector to promote social and economic mobility
- Making better use of housing stock
 - Such as giving greater priority to tenants under occupying homes to downsize
- Policies which are fair and considered to be fair
 - To tackle perceptions that the current system favours certain groups e.g. the unemployed or migrants
- Support for people in work or seeking work
 - To support those who are in work or seeking work; or to access training that will lead to employment

1.3.4 Involving, consulting and raising awareness with local communities:

The proposed code encourages local housing authorities to involve their communities in the development of their allocation scheme in an attempt to overcome the myths and false perceptions engendered by long waiting times, complex schemes and poorly supported or trained frontline officers. Housing authorities are encouraged to do more to help local people understand how social housing is allocated.

1.3.5 The proposed code goes onto to extol the benefits of involving local people to contribute to local policies that reflect local pressures; promotes a greater sense of fairness in how homes are allocated; and provides for stronger community cohesion. Citizen panels, voluntary and community organisations are all cited as ways in which consultation can be achieved.

1.3.6 Equal importance is given to providing information and feedback to applicants on the availability of social housing and the outcome of allocations.

1.3.7 Framing an allocation scheme:

The House of Lords judgement in the case of R (Ahmad) v London Borough of Newham was of such significance that the Communities & Local Government office has deemed it necessary to amend their codes of guidance on the allocation of social including the code recently issued in November 2008. The judgement overturned a raft of previous decisions concerning how local authorities framed their

allocation schemes, which sets out the local housing authorities' policy for determining priority between applicants.

- 1.3.8 This issue was most significant with the move towards choice based lettings systems, as a number of authorities adopted simplified bands to determine priority groups for housing as opposed to the traditional points based systems, as used in Maidstone BC. A number of the simplified banding schemes fell foul to legal challenges as it was supposed that these simple schemes could not reflect the cumulative needs expressed by the range of 'preference categories' in the housing legislation.
- 1.3.9 The Ahmad case decided that there was no requirement in law to cumulate need across the preference categories and went further to say that it was quite proper for local authorities to take account of local housing need; such as the need to have a percentage of voids available for transferring applicants because of overcrowding, or to give weight to factors such as time on the list. The judgement concluded that it could be an advantage to adopt a simple allocation scheme as this would help applicants in terms of transparency and being able to understand the allocation scheme.
- 1.3.10 The consultation therefore proposes a number of amendments to the previous codes, which attempted to square the circle under the previous statutory framework and government's ambitions to implement choice based lettings across England by 2010. In the main these are:
- The removal of the requirement for cumulative preference
 - This is useful if using simple banding schemes, Maidstone currently has points based system
 - Determining priority between households with a similar level of need
 - Will enable local prioritisation
 - Local connection
 - Maidstone's policy currently awards additional priority for applicants with a local connection
 - Waiting time
 - Currently given but can now be increased in value
 - Banding scheme
 - Simple schemes can now be used with confidence that they are legally compliant
 - Determining local priorities alongside reasonable preference
 - Existing tenants seeking a move
 - Transfer tenants are assisted within our policy
 - Quotas, targets and lettings plans
 - Local lettings policies

- Maidstone currently uses the Kent Housing Group's sustainable communities protocol to allocate new developments

1.3.11 Partnership working with RSLs:

The comments and concepts within this section of the document are not new to Maidstone. Having transferred its housing stock in 2004 the council has a range of partnership agreement and nomination arrangements with its housing partners in order to meet housing need in Maidstone. To enable choice based lettings to operate in Maidstone a shared allocation scheme was agreed with our RSL partners and all those seeking social housing, including transfer applicants, in Maidstone register via the Council's housing list.

- #### 1.3.12
- There is no immediate requirement to alter Maidstone Council's allocation scheme in light of the proposed changes but the Ahmad ruling removes the concerns that your officers had with regard to moving from a points based system to a simplistic band system. This situation also provides an opportunity to develop a cross authority allocation scheme with our neighbouring Kent authorities and members of the Kent Choice Based Lettings Partnership. However, such a change would have significant financial implications and it is proposed not to make further recommendations in this respect until the final code of guidance is issued.

1.4 Alternative Action and why not Recommended

- #### 1.4.1
- The Council could choose not to respond to the consultation document but to do so would miss an opportunity to influence an important code of guidance that will impact on how Maidstone awards priority between applicants for social housing.

1.5 Impact on Corporate Objectives

- #### 1.5.1
- The Council's Strategic Plan includes a *place to love and enjoy* as one of its corporate priorities and this theme is further expressed through the Council's Housing Strategy and Homelessness Strategy. The allocation scheme is influenced through these documents and consequently will need to reflect changes in the statutory framework including a new code of guidance.

1.6 Risk Management

- #### 1.6.1
- If the Council's allocation scheme does not reflect the statutory framework it will be open to challenge through judicial review. Such a risk can be minimised by ensuring we influence future changes to the statutory framework that promote the well being and community cohesion within Maidstone.

1.7 Other Implications

1.7.1

1. Financial
2. Staffing
3. Legal
4. Equality Impact Needs Assessment
5. Environmental/Sustainable Development
6. Community Safety
7. Human Rights Act
8. Procurement
9. Asset Management

X

1.7.2 The Council's current allocation scheme remains compliant with the existing statute and code of guidance. Once the new code of guidance is issued officers will need to ensure that the allocation scheme continues to conform with statutory requirements.

1.7.3 The group required by statute to be afforded a reasonable preference within the allocations scheme are:

- People who are homeless
- People owed the full housing duty under the homelessness legislation
- People occupying unsanitary or overcrowded housing
- People who need to move on medical or welfare grounds
- People who need to move to a particular area in the district, where a failure to do so would cause hardship

Our allocation scheme is so framed to take account of these preference categories.

1.8 Background Documents

- 1.8.1 Fair and Flexible Draft statutory guidance on social housing allocations for local authorities in England – CLG
Code of Guidance on Allocations 2002 – CLG
Code of Guidance on Choice Based Lettings 2008 - CLG

Housing Strategy 2005 - MBC
Homelessness Strategy 2008 - MBC

NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED

Is this a Key Decision? Yes ☐ No ☒

If yes, when did it appear in the Forward Plan? _____

Is this an Urgent Key Decision? Yes ☐ No ☒

Reason for Urgency

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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Appendix A

Q1. Do you agree with the objectives and outcomes which local authorities should seek to achieve through their allocation policies?

Broadly agree with proposals; welcome opportunity to frame priorities at a local level.

We are providing a range of options for prospective tenants, including the breadth suggested in paragraph 25.

We have no disagreement with the notion of greater mobility; however care should be given in framing this concept so as not to conflict with the proposals for increased priority for local connection.

Also there is a danger that in following this ethos the result is that economically active people migrate from areas of deprivation further exasperating the problem in deprived areas.

With regard to making better use of existing stock we need a balanced approach that enables access to larger accommodation for both new housing applicants as well as existing social housing tenants.

This approach should be implemented with a holistic approach that tackles issues of lifestyle aspiration amongst social housing households, as in most cases the accommodation is suitable at the original point of housing.

We are generally supportive of the concept of assisting households to enable to employment or training. It would be difficult to frame the circumstances under which 'seeking work' would apply, as this is too loosely defined in the consultation document.

It is important not to under estimate the influence that the priority need groups within Part VII HA 1996 (as amended) will continue to exert when social housing is allocated. Parts VI and VII of the HA 1996 were originally introduced with the intention of providing a level playing field for applicants on the housing register, however, this has been amended and added to over the years and is now incapable of performing its original function. A fundamental review of the primary legislation will be required in order to achieve a sustainable balance between locally defined priorities and the duties imposed by the statute. This will then help deliver many of the aspirations contained in the consultation document.

Q2. What can local authorities do to raises awareness and understanding of social housing allocation among local communities?

Raising awareness and understanding of social housing allocations is difficult as the parts of the media have captured the public's imagination through sensationalising and misinformation. Local housing authorities do not have access to such audience and the message is not easily captured in headline sound bites.

Agree that framing allocation schemes in conjunction with local population might assist but this will be limited in its scope to those people that are interested and may not be truly reflective of the community or hard to reach groups.

Q3. How can local authorities engage most effectively with local communities in order to shape local allocation policies?

The suggested approach to involving local communities and stakeholders as outlined in paragraphs 41 – 43 are currently used. However, due to the need to provide some form of stability and to allow understanding of a given scheme the opportunity to review allocation schemes on a regular basis is limited. Given the high level of turnover on a housing register there will always be a significant number of applicants who would not have been involved in setting the allocation scheme and may therefore feel disenfranchised.

Q4. What is the best way for local authorities to provide information and facts about how the allocation process is working in their area?

Our experience suggests that applicants do not require vast arrays of data in order to feel informed. The choice based lettings approach has provided an opportunity to feed back regular information to applicants about the availability of accommodation; the relative priority of successful bidders; and how long the successful applicant has been on the housing list.

This information is provided in free-sheets and the internet; and the approach has been welcomed by applicants. As CBL roll out is at different stages across the country time should be given to allow this information exchange to become embedded with applicants before a proper analysis can be concluded.

Q5. Does the draft guidance provide sufficient clarity on the extent of flexibilities available to local authorities when formulating allocation policies?

Generally the proposed code of guidance is much clearer than the current versions. The judgement in Ahmad has not only clarified this area of law concerning simple banding schemes etc but the judgement itself is well written and explained. However, the code should make it clear that a local authority can retain a points system and make allowance for cumulative need if this reflects housing need in its area.

Q6. How effective, currently, is cooperation between RSL's and local authorities over the allocation of social housing? What further measures could help?

In the main our experience of partnership working with RSLs is very good, which it needs to be in a stock transferred authority.

We remained concerned that some housing associations despite agreeing a joint allocation scheme want to retain their own allocation policies, which can result in confusing situations for applicants who are accepted onto housing registers but are refused an offer of accommodation because they fall foul of a housing association's policy.

We await the outcome of the London & Quadrant case to see whether housing associations are viewed as public bodies and therefore open to judicial review of their decisions. If housing associations are not viewed in this way applicants have no right to redress in the circumstances outlined above and this is inequitable.

Q7. How have you involved your local community in putting together your response to this consultation document?

The document was discussed with stakeholders through the Council's Housing Sounding Board

Q8 & 9. Do you intend to revise your allocation in light of the new statutory guidance? If so, what changes will you be considering, and how might you engage local people and organisations in the process?

We will wait for the code of guidance to be issued before making a decision to amend our current allocation scheme. The Ahmad case removes some important principles that had been a barrier to a sub-regional allocation scheme. This outcome of this case has enabled discussion to commence again.

Specifically the judgement and new code provides the confidence to frame a simple band system that can reflect the main issues of housing need concerns.

Q10. Do you agree with the estimate in the impact assessment on the one-off familiarisation cost associated with this policy?

There is a significant cost implication where a change in allocation scheme e.g. moving from points to bands, requires an alteration in the software used to hold, assess and calculate housing applications.

Q11 & 14. Is there any further evidence or analysis relating to the initial assessment in the impact assessment of the wider costs and benefits of this new guidance which we should consider for the final impact assessment? What impacts, costs and benefits do you think might be associated with any changes to your policy which you will be considering in the light of this guidance?

Taking into consideration Question 10 above, it has been the governments desire to see more sub-regional allocation schemes particularly delivering CBL. However, the funding that was originally made available actually penalised the larger partnerships as the funds made available was the same irrespective of the size of the partnership. If a move towards a sub-regional allocation scheme results as a consequence of the new code government should provide assistance towards the cost of implementing sub-regional allocation schemes.

Q12. Is there any further evidence or analysis relating to the initial assessment in the impact assessment of the impact on race, disability and gender equality which we should consider for the final impact assessment?

Financial assistance to undertake robust equality impact assessments should be provided before conclusions can be drawn. We should not rely on anecdotal evidence, particularly where time on list or local connection priorities could negatively impact on certain minority groups.