

## **APPENDIX 3- DRAFT PLACEMENTS POLICY**

### **BARNET COUNCIL'S POLICY WITH REGARD TO THE MAKING OF PRIVATE RENTED SECTOR OFFERS TO FULLY DISCHARGE A HOMELESS DUTY**

#### **1. Background**

The introduction of the Localism Act 2011 will have a significant impact on the way in which Local Authorities can deal with applications for social housing and homelessness applications under Parts 6 and 7 of the Housing Act 1996. The Homelessness changes were enacted on 9<sup>th</sup> November 2012.

Under the previous legislation, Local Authorities were able to discharge their main homelessness duty to applicants who were homeless, eligible for assistance, in priority need and not intentionally homeless by

- securing suitable social housing accommodation under Part 6 (unless a referral to another Local Authority can be made under the local connection provisions)
- offering privately rented accommodation only with the applicants explicit agreement

From 9<sup>th</sup> November 2012, the Localism Act enables Local Authorities to fully discharge the full housing duty by a 'private rented sector offer' PRSO (s193(7AA)-(7AC) Housing Act 1996 as amended by s.148(5)-(7) Localism Act 2011.

These changes apply only to new applicants approaching local authorities as homeless or threatened with homelessness after the commencement date of 9<sup>th</sup> November.

Following enactment of the relevant parts of the Localism Act on 9<sup>th</sup> November, anyone provided with accommodation in the private rented sector as final discharge of a homelessness duty is no longer considered to have a 'Reasonable Preference' for an allocation of permanent housing by reason of homelessness.

This will end a significant link between Parts 6 and 7 of the Housing Act 1996.

On the 9<sup>th</sup> November 2012, the Government introduced new guidance for Local Authorities covering homelessness and Suitability of Accommodation for private rented sector offers. Officers are required to have regard to this guidance when seeking to discharge the full homelessness duty into the private rented sector.

It is important to note that existing guidance on suitability contained in the Homelessness Code of Guidance 2002 continues to apply.

#### **2. Policy for discharging statutory homeless duties**

##### **Policy Statement**

Barnet Council sets out its vision for responding to homelessness in the Area in the authority's Housing Strategy.

### **3. Policy overview**

This document relates to the policy and procedural arrangements for discharging the statutory homeless duties into the private rented sector following the enactment of the Localism Act. The document will be referred to as "the policy".

The policy operates in conjunction with the authority's existing Allocation Scheme and will be reviewed in parallel with any future proposed changes to that Allocation Scheme.

Any amendments to the policy will be included on the version that the authority provides on its website. This will always be the current version of the policy.

The policy complies with:

- ✓ The Housing Act 1996, as amended by the Homelessness Act 2002
- ✓ The Localism Act 2011
- ✓ Equality Act 2010
- ✓ Suitability of Accommodation Order October 2012
- ✓ The Homelessness Code of Guidance
- ✓ The Strategic Tenancy Policy 2012

### **4. The Policy aims and objectives**

The authority will adopt the following policy.

Barnet Council intends to fully discharge any full housing duty by way of a 'private rented sector offer' (PRSO) made using the power granted to it (s193(7AA)-(7AC) Housing Act 1996 as amended by s.148(5)-(7) Localism Act 2011. For all cases subject to a Part 7 Homeless Application from the 9<sup>th</sup> November 2012 and where that application has resulted in a full housing duty being owed the presumption will be that the authority intends to discharge that duty by arranging for a private landlord to make an offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months. This is not a blanket application of the new power. A decision will be taken after a full consideration of household's individual circumstances and the facts that apply to that case. Having undertaken this consideration if the council is satisfied that it is appropriate to exercise the power given to it under the Housing Act 1996 (as amended) it will discharge its duty by arranging for a private landlord to make a suitable offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months PRSO.

Each private rented sector offer will be assessed for suitability against the Homelessness (Suitability of Accommodation) (England) Order 2012 Part2 and matched to an individual household.

A suitable offer will only be made where the Council have fully considered

- 1) The Homelessness (Suitability of Accommodation) (England) Order 2012 and specifically all the statutory requirements in part 1 which cover the suitability of the location of accommodation

and Part 2 which sets out the circumstances in which accommodation is not to be regarded as suitable for a person.

- 2) That the property is suitable in relation to existing suitability requirements that relate to space and arrangement.
- 3) Any other subjective matters and issues that relate to an applicant's circumstances and those of any other household members obtained by the Council from our investigation of an application.
- 4) That the accommodation is affordable having fully considered the cost of the rent and any other expenditure relating to the property compared to the income available to the applicant with or without benefits and specifically the outgoings which are needed for them to feed and clothe themselves and their household; heat the property, plus any other expenditure that we are satisfied is essential to meet the ordinary necessities of life, plus all other reasonable living expenses
- 5) All existing legislation, statutory guidance and case law relating to making suitable offers of accommodation and specifically paragraphs 17.40 and 17.41 of the Homelessness Code of Guidance.

## 5. How the Policy will be applied

The level of Private Rented Sector (PRS) supply will determine the number of households that will have their full duty ended with a suitable PRSO.

For any applicant that has made a Homeless Application after November 9<sup>th</sup> and is owed a full duty that duty will remain until either the authority arrange for a private landlord to make an offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months PRSO, or one of the following actions or events occur which by law will also bring the duty to an end. These are:

- If the applicant accepts an offer of settled accommodation from the council (in accordance with Part VI of the Housing Act 1996)
- If the applicant refuses an offer of suitable temporary accommodation or a Social Housing Tenancy offered under the council's Allocation scheme which the authority are satisfied is suitable for their needs, and the authority inform the applicant that it regards itself as having discharged its duty under Section 193 of the Housing Act 1996.
- If the applicant becomes intentionally homeless from the suitable accommodation made available for his/her occupation
- If the applicant ceases to be eligible for assistance due to their immigration status.
- If the applicant otherwise voluntarily ceases to occupy as their only or principal home, the accommodation made available to them to meet the full housing duty.

Where there are more households owed the full homeless duty than properties available in the private rented sector to end the duty, applicants will be selected to be offered a PRSO using criteria set to meet the operational needs of the service and the financial impact on the authority. Criteria may change subject to operational or financial circumstances and a copy of the current criteria used will always be available for any applicant, or member of the public, who requests a copy. Criteria may include (the following are examples and are for illustrative purposes only).

**Example criteria for selecting applicants to be made a PRSO to fully discharge the homeless duty**  
Applicants owed a full housing duty that:

- ✓ Have expressed a preference to live in a particular area. Area choice will be considered when making a PRSO but cannot be guaranteed.
- ✓ Are in temporary accommodation where there is a cost to the council
- ✓ Are in temporary accommodation where due to the level of rent charged there is a cost to the applicant
- ✓ Are in temporary accommodation and require longer term accommodation as a matter of urgency.
- ✓ That have been accepted as being threatened with homelessness and owed a full housing duty and where a PRSO will avoid the need for the household to go into temporary accommodation.
- ✓ Where there no exceptional circumstances relating to the need for the provision of long term social housing to provide longer term stability for a household (this could be where a household has a child or children on the at risk register or where a household requires an adapted property to meet their long term disability needs)
- ✓ That are owed the full homeless duty and have been waiting longest
- ✓ That are owed the full homeless duty and have been waiting shortest period

One or several criteria may apply at the same time. Regardless of the fact that an applicant has met the criteria for being considered for a PRSO offer the authority will still ensure that it only makes a PRSO after a full consideration of household's individual circumstances and the facts that apply to that case. Having undertaken this consideration if the council is then satisfied that it is appropriate to exercise the power given to it under the Housing Act 1996 (as amended) it will discharge its duty by arranging for a private landlord to make a suitable offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months.

## **6. Actions to be taken to implement the Policy**

Once this policy is adopted the Housing Options Department within Barnet Homes will adopt a policy statement which will be summarised and communicated to all applicants where a homeless application has been made after the 9<sup>th</sup> November 2012 and where a full housing duty is owed. A copy of this full policy will be available to applicants via the Council's website.

This policy will also be sent to all relevant stakeholders in the Area along with the Housing Allocations Scheme for Barnet Council. The key messages that will be communicated to applicants and stakeholders are:

- a) Barnet Council intends to fully discharge any full housing duty by way of a PRSO made using the power granted to it under the Localism Act 2011.
- b) For all cases subject to a Part 7 Homeless Application from the 9<sup>th</sup> November 2012 and where that application has resulted in a full housing duty being owed the presumption will be that the authority intends to discharge that duty by arranging for a private landlord to make an offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months
- c) This is not a blanket application of the new power. A decision will be taken after a full consideration of household's individual circumstances and the facts that apply to that case. Having undertaken this consideration if the council is satisfied that it is appropriate to exercise the power given to it under the Housing Act 1996 (as amended) it will discharge its duty by arranging for a private landlord to make a suitable offer of an assured short-hold tenancy in the private rented sector

- d) Although cases that are owed a full homelessness duty following an application after the 9<sup>th</sup> November will still be owed reasonable preference priority because of that duty, as soon as a suitable PRSO is made and the full homeless duty discharged the applicant will have their reasonable preference priority removed at that point.
- e) The Council anticipates that the majority of households owed the full duty will have that duty ended with a PRSO.
- f) The Council's Housing Allocations Scheme gives priority for applicants in the highest housing need as well as applicants that are able to meet the community contribution criteria. This includes households who work, are in training and who volunteer.

**7. How will the Policy be applied to households who approach the authority claiming to be homeless or threatened with homelessness**

Where a household approaches the Council claiming to be homeless or at risk of homelessness they will receive a Housing Needs assessment.

Depending on their circumstances they will be given appropriate advice on how to prevent their homelessness; and advice on their housing options and housing prospects regardless of whether they have dependent children or any form of vulnerability

For those households who may meet the test of priority need and may be homeless the PRSO policy messages outlined above (a-f) will be explained to the person.

Where a homelessness application would be lawfully triggered, on the basis that the applicant is applying for accommodation or assistance in obtaining accommodation and the authority have reason to believe that the person is or may be homeless or threatened with homelessness within 28 days, the person will be given a choice of pursuing a homelessness application after the facts have been explained to the applicant that if a full duty is accepted that duty is likely to be ended with a PRSO offer. It is expected that some applicants will at this point chose not to pursue their homelessness application but this will be the clear choice of the applicant.

This action will result in either:

1. Applicants whose circumstances would have lawfully triggered a homelessness application but who have chosen to pursue help and advice from the authority to prevent their homelessness through resolving any threat of homelessness or through the provision of accommodation in the PRS to prevent them from becoming homeless. The authority intends to develop its approach to preventing homelessness properties to ensure that the standards and checks for any property or offer made through its prevention of homelessness policy are the same as would be if the applicant were to be owed a homeless duty and had that duty discharged with a PRSO offer.
2. Applicants whose circumstances have lawfully triggered a homelessness application and have chosen to pursue that application will be subject to enquiries into the statutory tests under section 184 of the Housing Act 1996 and in parallel to those enquiries actions and advice to seek to prevent their homelessness by keeping them in their existing home or through offering alternative accommodation to prevent their homelessness which the applicant can choose to accept or reject.

Applicants that choose 1 above will be treated as a prevention of homelessness case and will be offered the choice of:

- a) Remaining with relatives or friends and finding PRS accommodation themselves in their own timescale backed by any PRS landlord incentive schemes including the authority's Let2Barnet service.
- b) Remaining with relatives and friends and receiving an offer of PRS accommodation as soon as one becomes available. Private rented properties will be sourced to prevent homelessness as well as to meet and end any homeless duty.
- c) If they are physically homeless and have no relatives or friends to stay with the Council can make one offer of PRS accommodation on that day to prevent homelessness.

Applicants that are dealt with under 2 above will be subject to a homelessness application, investigation and decision. They will be subject to investigations into the statutory tests under section 184 of the Housing Act 1996 and, in parallel to those enquiries; the authority will take any action and provide any advice it can to seek to prevent their homelessness by keeping them in their existing home or through offering alternative accommodation. Where enquiries are completed and at that stage actions to prevent their homelessness have not been successful a decision will be taken under section 184 Housing Act 1996 as to whether a full duty is owed to the applicant. If it is owed the presumption will be that the duty will be discharged with one suitable PRSO .

#### **8. How the Council will ensure it makes suitable offers of accommodation to discharge the full homeless duty.**

Under the Policy the Council will make suitable offers of accommodation to discharge their homeless duty following 4 core tests.

Test 1 – For PRSOs, the offer can only be suitable if it meets the requirements as laid out in the Homelessness (Suitability of Accommodation) (England) Order 2012 – Part 2 which relate to property standards and management.

Test 2 – Is the offer affordable which will require an income and expenditure assessment for each case – this is an existing requirement that applies to all offers whether of TA or a PRSO

Test 3 – Is the property suitable for that applicant considering the Homelessness (Suitability of Accommodation) (England) Order 2012 – Part 1 which requires a consideration of the suitability of the property location and in particular the significance of any impact on education, health, employment, support. This will also include an assessment of any subjective matters based on the applicant's circumstances which are relevant to whether the offer of accommodation is suitable.

Test 4 – Is the offer suitable on the facts of the property itself – space and arrangement – this is an existing requirement that applies to all offers of temporary accommodation (TA) as well as a PRSO offer

Matters contained in test 4 (space and arrangement) have been included in the section on property standards and management – test 1 below.

The Policy sets out the approach the authority will take to ensure that the offer of accommodation is suitable. This is set out against the suitability of the property regarding 1) the property standards and management; 2) the affordability of the property for the applicant and 3) the suitability of the property in regard to its location and any other subjective matters.

### **Test 1: Suitability and property standards and management.**

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 in order for the property to be suitable.

The local authority must be of the view that the accommodation is in reasonable physical condition. The authority must also satisfy itself that the property is suitable in relation to:

- ✓ Certain electrical regulations
- ✓ Fire safety
- ✓ CO poisoning – there must be adequate carbon monoxide alarm/s
- ✓ HMO licensing
- ✓ The property has a valid energy performance certificate (EPC)
- ✓ Gas safety record
- ✓ That a written tenancy agreement will be provided
- ✓ And that the landlord is a fit and proper person to act in the capacity of landlord.

To ensure suitability against these statutory standards a property will always be visited by an officer from the authority's Let2Barnet service or undertaken by the authority's agent. A standard checklist which sets out the statutory tests will be used for this purpose (attached at appendix 1).

There is no requirement in the suitability order for a technical inspection to be undertaken by qualified HHSRS officer but where an officer or the authority's agent have any concern that a Category 1 hazard may be present they will refer the property on for a technical assessment under Section 4 of 2004 housing Act.

### **Test 2: Suitability and ensuring that the property is affordable**

For the property to be suitable it must be affordable under Homelessness (Suitability of Accommodation) Order 1996 (SI 1996 No. 3204).

The following procedure will be undertaken to ensure that the property is affordable:

- Where an applicant is on benefits and qualifies for local housing allowance the rent required will be considered against the amount of benefit the applicant will receive under the local housing allowance (LHA) scheme.
- Where there is a shortfall between the rent required and the amount of benefit the applicant will receive under the LHA scheme and the rent cannot be reduced through negotiation with the landlord the authority will consider the applicant's residual income after meeting the costs of the accommodation including the shortfall and all other expenditure required for that applicant to provide the ordinary necessities of life. If following this assessment the applicant is not left

with a residual income that is less than the level of income support or income-based jobseeker's allowance the property then the property will be deemed to be suitable.

- Where an applicant is working and is not in receipt of LHA or partial LHA the authority will consider whether the applicant's residual income after meeting the costs of the accommodation and all other expenditure required for that applicant to provide the ordinary necessities of life. If following this assessment the applicant is not left with a residual income that is less than the level of income support or income-based jobseeker's allowance that would be applicable if he or she was entitled to claim such benefit the property then the property will be deemed to be suitable.

In assessing affordability the authority 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.

In considering affordability the authority may consider any access to Discretionary Housing payments (DHPs) which may reduce any rent shortfall to a level where the rent is affordable.

The authority will strictly assess affordability under the suitability order 1996 and having had regard to the Homelessness Code of Guidance and existing caselaw. Under these statutory requirements any accommodation offered will not be reasonable if the cost of paying it would deprive the applicant of the means to provide the ordinary necessities of life. What constitutes the ordinary necessities of life is a question of fact that will vary according to each applicant's needs and this will be considered on an individual basis.

The authority will undertake an income and expenditure assessment on every applicant prior to making an offer in the private rented sector of accommodation whose purpose is either to meet a homeless duty or end any duty through a PRSO.

The ordinary necessities of life will always be the amount of income required for heating, eating, and clothing and may depending on the individual household also include child care costs, travel costs, and any other expenditure which when considering the individual circumstances of that household is deemed to be essential. For heating the authority will consider the Energy Performance Certificate for the property proposed and calculate the likely cost of heating that property set against the income received.

Where an applicant has debts whether credit cards, loans or other debts advice will be given on priority debts and a referral made to money advice to support the applicant in any negotiation with creditors and to ensure that they are able to access all benefits they are legally entitled to.

At the end of this assessment the authority will have considered the whole of the applicant's financial resources set against the cost of accommodation; ordinary necessities of life for that applicant and any other reasonable living expenses. Before deeming the property to be suitable the authority will consider paragraph 17.40 of the Homelessness code of guidance which states:

'In considering an applicant's residual income after meeting the costs of the accommodation, the secretary of state recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of



income support or income-based jobseeker's allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit.'

If the decision is to depart from the code because despite there being a rent gap the authority has identified income that is not required to meet the ordinary necessities and other reasonable living expenses.

### **Test 3: Suitability and property location and subjective circumstances of the applicant**

The Homelessness (Suitability of Accommodation) (England) Order 2012 – Part 1 sets out by regulations a list of statutory matters that a local authority must consider when making an offer of suitable PRSO accommodation (N.B. these also applies to offers of PRS accommodation to meet a homeless duty). These regulations are grouped under the title Location of accommodation.

In addition although the second test of suitability set by caselaw – which was whether the property is it reasonable for the applicant to accept has been repealed and redefined by the Localism Act 2011 existing caselaw and the statutory code of guidance (par 17.41 of the code of guidance) still applies and requires an authority to take into account any subjective matters in making a suitable offer of accommodation. Barnet Council consider that although suitability is primarily a matter of space and arrangement other matters may be material.

#### **The suitability Regulations relating to Location**

Extract from the Homelessness (Suitability of Accommodation) (England) Order 2012 – Part 1

*Matters to be taken into account in determining whether accommodation is suitable for a person*

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

*(a) Where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;*

*(b) 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 person's household;*

*(c) The proximity and accessibility of the accommodation to medical facilities and other support which—*

*(i) Are currently used by or provided to the person or members of the person's household; and*

*(ii) Are essential to the well-being of the person or members of the person's household; and*

*(d) The proximity and accessibility of the accommodation to local services, amenities and transport.*

Each case where a PRSO is to be made will be assessed against the location regulations using a standard checklist (an example is attached at appendix 1 to the policy but is subject to change depending on operational experience). The authority will assess on the facts and circumstances of the case the significance of any disruption caused by the location of the accommodation to the

employment, caring responsibilities or education of the person or members of the person's household and the proximity and accessibility of the accommodation to medical facilities and other support which are currently used and are essential to the wellbeing of the applicant and any member of their household.

### **Suitability and the consideration of any other subjective matters**

All matters relating to employment, caring responsibilities or education and accessibility of the accommodation to medical facilities and other support will be considered specifically under the suitability order regulation requirements.

In addition any other subjective matters which on the facts and circumstances relating to the applicant or a member of their household may affect the suitability of the property offered will also be considered at the point the property is matched to the applicant and where any subjective matters are raised by an applicant as the reason that they wish to reject the offer as being unsuitable. The list below contains examples of the type of subjective matters that may be relevant and will be taken into account. It is to illustrate matters that the authority will consider and is not an exhaustive list of all subjective matters the authority will take into account.

- ✓ Any safety issues relating to possible harassment or domestic abuse that relate to the location of the accommodation offered.
- ✓ Any medical issues which do not relate proximity and accessibility of the accommodation to medical facilities
- ✓ Any issues of support which do not relate proximity and accessibility of the accommodation to medical facilities
- ✓ The size of the accommodation offered in respect of bedroom eligibility under the Local Housing Allowance rules.
- ✓ Any physical, mental health, or addiction issues and the impact of the accommodation on any of these issues.
- ✓ Any claim that the property is too far away from a church or mosque
- ✓ Any claim that the property is a flat and has no access to a garden which is essential.
- ✓ Any claim that the property location will impact on the ability of the applicant to access childcare which is essential for an applicant to continue in education or training.

### **Where suitable accommodation has to be provided outside the authority's district**

Accommodation has to be provided in district as far as reasonably practicable (Section 208 Housing Act 1996). There may be some occasions where an offer of accommodation needs to be made in a neighbouring Borough or the sub region or beyond and this may be due to a lack of PRS supply or the rental level make it unaffordable for a particular household to receive an offer of accommodation within the authorities district. In such cases the shortage of accommodation and cost of accommodation are issues that an authority can take into account in deciding to make a suitable offer of accommodation outside of its area. Accommodation that is not affordable cannot be suitable and due to welfare reform and overall benefit cap which is to be fully enacted by October 2013. There may be cases where a PRSO property is not affordable in the Area and where the authority can only meet or discharge its legal duty to an applicant by providing accommodation out of the area where it may be affordable and there are no reasons why the provision of a suitable offer

of accommodation for any other reason other than affordability can only be provided in the Area boundaries.

Where this is the case the authority should record that there was no other suitable accommodation 1 – within its district and 2 geographically closer to the authority than where the offer was made.

#### **9. Action following acceptance of a PRSO.**

Homeless services will ensure that all households who have accepted a PRSO are kept under review for the length of the tenancy period in order to actively manage those cases approaching expiry of 12 month Assured Shorthold Tenancy.

#### **10. Dealing with Fresh applications**

If within 2 years of accepting the offer an applicant re-apply for accommodation, or for assistance in obtaining accommodation, and the authority is satisfied that they are homeless, or threatened with homelessness, and eligible for assistance, and not satisfied that they became homeless intentionally, then a new duty to secure that accommodation will fall to the authority. An applicant who reapplies will be considered to be homeless, or threatened with homelessness, if they have been served with a valid notice under s.21 Housing Act 1988 by the landlord of the private rented sector property.

#### **11. Reviewing the Policy**

The Policy will be monitored and reviewed formally within the first 12 months of implementation to ensure effectiveness. If changes are required these will be made as and when required.

The Policy may also be reviewed at any time, in line with any relevant changes in legislation or Guidance issued by relevant Government Departments.