

# Brighton & Hove City Council

## Cabinet

## Agenda Item 83

**Subject:** Housing Allocations Policy

**Date of meeting:** 17 October 2024

**Report of:** Cabinet Member for Housing & New Homes

**Contact Officers:** Name: Martin Reid, Acting Corporate Director for Housing, Care and Wellbeing (Housing Lead)

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**Ward(s) affected:** (All Wards);

**Key Decision:** Yes

**Reason(s) Key:** Is significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions (wards).

**For general release**

### 1. Purpose of the report and policy context

- 1.1 The Housing Allocations Policy is the legal framework through which all social housing must be let. It sets out the conditions required to qualify for the housing register, and how applicants are prioritised.
- 1.2 Brighton & Hove City Council's existing Housing Allocation Policy was approved in 2016. Since then, there have been significant changes in legislation, such as the Homelessness Reduction Act 2017. Consequently, it does not maximise opportunities to prevent homelessness or to respond to many of the expectations of our residents.
- 1.3 Reviewing the Housing Allocations Policy is a priority in *Brighton & Hove City Council Plan 2023-2027: A better Brighton & Hove for all* within *Outcome 2: A fair and inclusive city* as part of the objective *Homes for everyone*.
- 1.4 The changes to the Housing Allocations Policy will increase opportunities to prevent homelessness, reduce reliance on temporary accommodation and ensure greater safety for social housing tenants fleeing domestic abuse.
- 1.5 Furthermore, there will new flexibilities for residents of the city who have to temporarily live outside Brighton & Hove; better transparency for applicants to view and bid on properties that meet their housing need and new options for households who are statutorily overcrowded. The new Policy will also be compliant with all current legislative requirements.

## **2. Recommendations**

That Cabinet

- 2.1 Agree to adopt the changes set out in this report, in summary:
  - 2.1.1 Change the 'local residency criteria' from 5 years to 5-out-of-7 years (para 4.1 – 4.3);
  - 2.1.2 Remove the 'allocation plan queue divisions' (para 4.4 – 4.6);
  - 2.1.3 Award 'reasonable preference' to all households with an accepted homeless duty (para 4.7 - 4.9);
  - 2.1.4 Award a 'reasonable preference' where homelessness is 'prevented' or 'relieved' (para 4.10-4.12);
  - 2.1.5 Support applications from joint social housing tenants (para 4.13-4.14);
  - 2.1.6 Amend priority awarded to current or former armed forces personnel (para 4.15 – 4.16);
  - 2.1.7 Enable 'direct offers' in exceptional circumstances (para 4.17 – 4.18);
  - 2.1.8 Remove priority Band A status for households in temporary accommodation, where the property is being returned to the landlord (para 4.19 – 4.20);
  - 2.1.9 Award priority Band A status to 'non-statutory successors' for a 6-month time limited period (para 4.21 - 4.24); and
  - 2.1.10 Permit households with a 4-bed or more need experiencing statutory overcrowding to bid for Brighton & Hove council properties which are one bedroom short of their need, where this would resolve statutory overcrowding (para 4.25 – 4.33).
- 2.2 Note these changes in the Allocations Policy (Appendix 1).
- 2.3 Note the timescales for full implementation of the revised Allocations Policy by April 2025 (as set out in para 3.5).
- 2.4 Agree commencing further consultation and analysis of the impact of a wider cohort of overcrowded households bidding on properties one bedroom less than their households need, where the result would not meet the criteria of statutory overcrowding (para 4.32).

## **3. Context and background information**

- 3.1 There are over 18,000 social rented properties in Brighton & Hove. It is important to recognise that the Housing Allocations Policy does not increase this stock. However, it does determine which households have greater priority over other households. Consequently, changes to the Policy will benefit some housing register applicants more than others and result in some households waiting a shorter time before moving to a new social housing tenancy, whereas other households will wait longer.

- 3.2 There are 4,843 live applications on the housing register, excluding applications which are suspended or requiring further additional information. In the last 12 months 2,200 households applied to join the housing register. On average, there are around 600 social rented homes allocated each year.
- 3.3 Major changes to the Housing Allocations Policy require statutory consultation with social landlords who let properties through the housing register. In January 2023, Housing Committee agreed ‘to commence consultation on reviewing the Allocations Policy’. The proposals for consultation were then agreed by Housing & New Homes Committee in January 2024, with the statutory 12-week consultation starting on 1 March 2024 and running until 8 June 2024.
- 3.4 The Council have carried out a consultation with social landlords and a public consultation, which included consulting with households who are already on the housing register, and households who have presented to the local authority as homeless or at threat of homelessness. The changes set out in this report take consideration of this consultation. A summary of each recommended change is set out in Section 4, with a full consultation report provided in Appendix 4.
- 3.5 An Equality Impact Assessment has been conducted in order to consider the potential impact of changes to the Housing Allocations Policy, and can be found in Appendix 2.
- 3.6 The proposed implementation timeline for the Housing Allocations Policy is set out below. Once any changes to the Housing Allocations Policy are approved, all applicants on the housing register will need to be written to, explaining how their banding and waiting time is likely to be impacted. All existing applications will then need to be re-assessed against the new criteria. The IT system for applications and nominations will also require re-writing in order to abide by the new criteria.

Action	Timescale
All applicants on the housing register written to explaining the changes to the Housing Allocations Policy	October 2024
Staff training on the new Housing Allocations Policy	November 2024
Reviewing of all housing register applications against the new criteria	November 2024 – April 2025
Workshops for members, stakeholders and applicants on the new criteria	February 2025 – April 2025
Changes to the IT platform	February 2025 – April 2025
New FAQ website for new Housing Allocations Policy	April 2025
Housing Allocations Policy to be fully implemented	April 2025

Table 1: Implementation Timetable

- 3.7 In line with good practice it is intended that a review of the impact of the changes adopted to the Housing Allocations Policy after a period of 18-months will take place.

#### 4. Proposal

4.1 **Change the 'local residency criteria' from 5 years' residency in the city to 5-out-of-seven years (Recommendation 2.1.1):**

Without this change, households who have lived in the city for 5 years, would fail to qualify for the housing register if they moved out of Brighton & Hove temporarily, for example to care for relatives elsewhere. Making this change will mean they continue to qualify, as long as they lived in the city for 5 years out of the last seven.

- 4.2 This is likely to increase the number of households on the housing register. It is not possible to state to what extent, as currently households who have not lived in Brighton & Hove for a continual 5-year period do not qualify and therefore that data isn't held. More households on the housing register are likely to increase average waiting times for all applicants.

- 4.3 However, this has the benefit of ensuring that those who have a caring role are not penalised.

4.4 **Remove of the 'allocation plan queue divisions' (Recommendation 2.1.2):**

The current policy places households into 4 different allocation plan queue divisions: homelessness, transfers, homeseekers and the council interest queue (CIQ). Properties are then pre-allocated to each queue prior to being advertised. Households are consequently restricted from the properties they can bid on, even if it does meet their need.

- 4.5 A review of housing allocations policies of other local authorities has found no other authority has this restriction in their policy. Removing the allocation plan queue divisions entirely will improve transparency and will simplify the bidding process for our residents.

- 4.6 Removal of these queues will have no impact on the number of households on the housing register. Some households will end up with shorter waiting times, while others will wait longer, but it appears there will be no adverse implications to any one cohort with a protected characteristic.

4.7 **Award 'reasonable preference' to all households with an accepted homeless duty (Recommendation 2.1.3):**

When a household has a homeless application accepted, currently they are only awarded a 'reasonable preference' on the housing register if they then go on to be owed a 'main housing duty'. This doesn't reflect changes that came into force with the Homelessness Reduction Act 2017 and recent case law including *Khayyat v Westminster City Council* [2023] EWHC 30 (Admin). Making this change will enable homeless applicants to qualify for the housing register from the outset, while also ensuring the policy is compliant with legislation.

- 4.8 This is likely to increase the number of households on the housing register. It is not possible to quantify the extent of any increase based on available data, but a significant number of these households already go on to be owed a main housing duty and therefore qualify for band priority in any event. The impact for these households would be positive, as they would have an earlier housing register application date by around 2-months (56 days).
- 4.9 This change is not expected to have an adverse implication to any one cohort with a protective characteristic.
- 4.10 **Award a 'reasonable preference' where homelessness is 'prevented' or 'relieved' (Recommendation 2.1.4):**  
It is recommended to change the Housing Allocations Policy to award 'reasonable preference' to households who have worked with the council to prevent or relieve homelessness. This will enable them to remain on the housing register if they accept an offer of private rented sector accommodation. Under the current policy, households whose homelessness is prevented by a securing private rented home no longer qualify, because they become adequately housed.
- 4.11 This is likely to increase the number of households on the housing register, although a significant proportion of these households would currently go on to be owed a 'main housing duty'. However, offset against this, the biggest impact will be in reducing the number of households in temporary accommodation, because they are incentivised, rather than penalised, in securing and sustaining private rented accommodation.
- 4.12 In so far as this change increases the number of households on the housing register any change to the Housing Allocations Policy will have a potentially adverse impact on some households with protective characteristics. However, the benefits of this change must be balanced against this as the changes will also increase available housing options by removing disincentives.
- 4.13 **Support applications from joint social housing tenants (Recommendation 2.1.5):**  
Currently an application from one of two joint tenants can only be considered if both tenants surrender their tenancy and become homeless. It is recommended to enable applications from a single joint social housing tenant in the city where the tenancy has ended and only one of the joint tenants is to be transferred, with the new tenancy based on need.
- 4.14 Adopting this change would support victims of domestic abuse to remain in the family home, where it is safe to do so, or to be offered an alternative social tenancy in the city. Women and LGBTQ+ people are likely to benefit from this change, as these groups are disproportionately likely to be victims of domestic abuse. Children are likely to disproportionately benefit as they will be able to remain in the family home.
- 4.15 **Amend priority awarded to current or former armed forces personnel (recommendation 2.1.6):**

Currently Band A is allocated if the household were in the armed forces within the last 5 years, and Band C if longer. It is recommended to change the Housing Allocations Policy to award Band A priority for those armed forces households who experienced injury or death during their service and Band B if they have not.

- 4.16 This is not anticipated to have an impact on the overall number of households on the housing register. It will reduce the waiting time for some households from the armed forces and increase it for others. However, this amendment better aligns with the statutory requirements and in particular ensures priority goes to those households in the greatest housing need.
- 4.17 **Enable direct offers in exceptional circumstances (Recommendation 2.1.7):**  
It is recommended to enable direct offers in exceptional circumstances only. Applying a 'direct offer' to a specific cohort, would not be exceptional and therefore would not be permissible. Other local authorities have been legally challenged for having a 'direct lets' policy. Therefore, these would be rare examples and would be subject to a panel determination. Households who receive a direct offer will be entitled to refuse one direct offer before sanctions may be applied, such as suspension from bidding. An annual Cabinet Member report on direct offers will be produced.
- 4.18 This is likely to have no or minimal impact on the number of households on the housing register, and the rarity of cases would mean there is no meaningful impact on an applicant's waiting time. Because this will only be applied in exceptional circumstances, any impact on households with a protective characteristic would be expected to be positive.
- 4.19 **Remove priority Band A status for households in temporary accommodation, where the property is being returned to the landlord (Recommendation 2.1.8):**  
It is recommended to remove priority Band A for households in a private sector leased temporary accommodation property where the landlord wants the property returned. Priority Band A for this reason can result in some households being in temporary accommodation for considerably shorter periods than other households.
- 4.20 This will not increase the number of households on the housing register, but it will ensure households are prioritised by need rather than gaining a higher banding by chance. Removing this Band A reason achieves fairness and transparency and generally be expected to have positive outcome, in terms of shorter waiting times, for households with protected characteristics.
- 4.21 **Removal of non-statutory successors (Recommendation 2.1.9):**  
This applies for existing council tenants, where the lead tenant has died. Currently 'non-statutory successors' have a higher Band A priority if there is a priority need, which is not the case if a household was not a council tenant. However, counter to this is that we may otherwise have to seek possession through the courts, often for a council home that is underoccupied, at a time of personal trauma for an applicant the Council would owe a housing duty to in any event.

- 4.22 Although consultation feedback indicated more support to remove statutory successors than retaining them, this wasn't a majority. Instead, it is recommended that non-statutory successors will qualify for Band A for a limited 6-month period, being mindful of a grieving period in alignment with statutory provision.
- 4.23 This will enable the household to have the highest priority to bid on a property. They would qualify for a property based on their existing need, which may be a smaller size than where they currently live, without having to move into temporary accommodation.
- 4.24 After 6-months, if the household has not successfully bid for property in this time, they will be made a 'direct offer' determined by their 'housing need'.
- 4.25 **Permit households with a 4-bed/4-bed+ need experiencing statutory overcrowding to bid for Brighton & Hove council properties which are one bedroom short of their need, where this would resolve statutory overcrowding (Recommendation 2.1.10):**  
 It has been proposed that households with an assessed need for 4 or more bedrooms who are overcrowded, should be able to bid on properties one bedroom less than their household need. This is because these size properties are much rarer within our stock, and hence families with this need typically wait much longer before being re-housed. This leaves families in unsuitable over crowded conditions with a significant negative impact on their wellbeing and health, which may be improved by some improvement in the level of overcrowding being experienced even it does not meet their assessed needs.
- 4.26 As set out in the legal comments to this report, whilst there have been no reported decisions of the courts commenting on the lawfulness or otherwise of such a policy this approach does appear to be permissible within the scope of the Council's discretion under Part VI of the Housing Act 1996 provided the changes to the policy ensure that premises allocated would not be so overcrowded as to amount to statutory overcrowding under Part X of the Housing Act 1985, an offence. Letting properties subject to less severe forms of overcrowding (for example, when assessed under the "Bedroom Standard" promoted by central government in its "*Allocation of Accommodation: Guidance for Local Authorities*", has the potential to facilitate a significant improvement in a household's current living conditions within a more reasonable period of time than under the current policy.
- 4.27 Consultation with all registered providers who let social housing in Brighton & Hove through the housing register was carried out in May 2024, in accordance with statutory requirements. Only three registered providers responded to the consultation. Each indicated it would not be willing to accept nominations from the local authority for allocation of accommodation to large households, if the premises was smaller than the household's assessed needs and would be overcrowded (to any degree) as a result. They raised concerns about overcrowding leading to disrepair and health hazards and noted that underbidding would breach their internal lettings policies. It is therefore important to recognise that, if this proposed change to

the Housing Allocation Policy was adopted, it would likely apply only to the allocation of accommodation which is owned or let by the local authority itself.

- 4.28 The Social Housing Regulator has been approached but has not given a definitive position on 'underbidding' for properties which are smaller than a household's assessed needs if this would reduce the extent of overcrowding.
- 4.29 Data analysis indicates there are presently 14 households on the housing register who are statutorily overcrowded within the meaning of Part X of the Housing Act 1985. Of these 14 households, 10 are assessed as having a need for 4 or more bedrooms. This compares to 289 households in total on the housing register who are awaiting allocation of a 4-bedroom home or larger and 768 households awaiting allocation of a 3-bedroom home. Statutory overcrowding necessarily entails a particularly severe strain on a household's living conditions. Enabling these households to bid on properties with one bed less than their assessed household need would reduce the degree and severity of their overcrowding. Given the data suggests that a very limited number of households would be entitled to make use of this aspect of the Housing Allocations Policy, it is not anticipated that it would have a significant impact on other households and it is unlikely to significantly increase waiting times for allocation of 3 and 4-bed homes.
- 4.30 Enabling households who are experiencing the worst degree of overcrowding, and some of the longest waiting times, in the city would significantly reduce negative health impacts. These households almost always comprise large families with children, therefore it is likely this policy would have a particularly beneficial impact for young people.
- 4.31 Therefore, it is recommended that households with a need for 4 or more bedrooms who are experiencing statutory overcrowding should be permitted to bid for homes in Brighton & Hove City Council stock, which is one bed short of household need, where this would resolve statutory overcrowding.
- 4.32 It is also recommended that further consultation and analysis of the impact of extending 'underbidding' to all overcrowded households is undertaken. Of the 4,843 households with a 'live' application on the housing register, there are 1,735 who are lacking 1 or more separate bedroom.
- 4.33 In addition in order to address the fundamental issue of lack of stock to address overcrowding the tenancy incentive scheme, encouraging under-occupying existing social housing tenants to downsize, will be reviewed to ensure the benefits are designed to maximise the number of households willing to move. This would help to increase the supply of available accommodation for larger families.

## **5. Consideration of alternative options**

- 5.1 To adopt all of the above changes, with the exception of permitting households with a 4-bed or more need experiencing statutory overcrowding to bid for Brighton & Hove council properties which is one bedroom short of



their need, where this would resolve statutory overcrowding. This is an untested policy and therefore presents some risk. However, it has not been recommended as it does not achieve the objective of reducing statutory overcrowding. The impact of affecting 10 households is perceived as low, whereas the benefit, in terms of improving the health and wellbeing of these households is perceived as high.

- 5.2 To adopt all of the above changes and extend these to enable all overcrowded households to 'underbid' on properties one bedroom less than their household need. However, this is likely to have a significant impact on other households on the housing register, has not been subject to statutory consultation, and is an untested policy. Consequently, this has not been recommended at this time. But further consultation on this has been recommended.
- 5.3 To make the minimum changes, ((a) to (c) below) to achieve statutory compliance. This option is not recommended because it does not achieve the wider benefits of the recommended option.
- a) Give reasonable preference to all people who are homeless and all people who are owed a local authority homelessness duty, such as the duty to prevent a household from becoming homeless.
  - b) Remove the allocation plan queue divisions.
  - c) Make the changes to priority for households from the armed forces referenced in paragraph 4.15 – 4.16.

## **6. Community engagement and consultation**

- 6.1 A 14-week public consultation (two extra weeks than the statutory period) was undertaken for the proposed changes set out in 4.1 – 4.24, running from 1 March 2024 to 8 June 2024 and generating 684 responses. Information on the consultation, and its results, can be found in the Consultation Report in Appendix 4.
- 6.2 Subsequent consultation to allow underbidding in the Housing Allocations Policy, was undertaken with Registered Providers who let social housing through Brighton & Hove's housing register, as advised by counsel. These social landlords indicated they would not adopt 'underbidding' (4.25 - 4.33), due to concern about the statutory health hazards of damp and mould that would likely arise if households with a 4-bed or greater were offered a smaller property through underbidding.

## **7. Financial implications**

- 7.1 The initial costs of the implementation of the new policy will be met from the Homelessness Transformation budget for 2024/25. To quantify the financial implications of the proposed changes to the allocation policy, there is a need to establish the effects these changes will have on the number of Temporary Accommodation (TA) households being allocated social housing.
- 7.2 The changes to the Allocation Policy are a complex and wide-ranging which will have a variety of effects including changes to the priority banding given

to some households in TA and changes to the incentives for bidding for social housing. Therefore, some changes may lead to fewer households remaining in TA (e.g. para 4.10-4.12), while other changes may result in less properties being specifically allocated to households in TA (e.g. para 4.4-4.6).

- 7.3 Overall, it is not possible to quantify the effects of the policy changes on the numbers of social housing lets to those in TA and hence the impact on the General Fund TA budgets at this stage. This will need to be carefully monitored as the policy is implemented. As a broad guideline, each household in temporary accommodation costs Brighton & Hove City Council approximately £12,000 pa, so a difference of just 10 more households in TA will have financial implications on housing general fund budgets of an estimated £120,000.

Name of finance officer consulted: Monica Brooks      Date consulted  
(27/08/2024):

## **8. Legal implications**

- 8.1 Section 166A of the Housing Act 1996 places a duty on local authorities to have an allocation policy for determining priorities, and the procedures to be followed, in allocating social housing accommodation. All allocations of social housing by the local authority must be made in accordance with a publicly published Housing Allocations Policy. The Housing Allocations Policy must include all aspects of the allocation process, including the people by whom decisions are taken.
- 8.2 The council's existing policy only awards priority to homeless households if they are owed the main housing duty by Brighton & Hove City Council. In July 2023, the Local Government Ombudsman noted that section 166A (3) of the Housing Act 1996 states that a reasonable level of priority must be awarded to all people who are homeless and all people who are owed a local authority homelessness duty, such as the duty to prevent a household from becoming homeless. The Local Government Ombudsman has determined that the council must change its policy to reflect legal requirements. The amendment proposed in para 4.7 – 4.9 addresses this.
- 8.3 It is a statutory requirement of section 166A(3) of the Housing Act 1996 for certain classes of current or former armed forces personnel or their bereaved spouses to have additional preference on the housing register. The proposal recommended in para 4.15 – 4.16 continue to comply with this requirement.
- 8.4 The allowance for underbidding within the Allocations Policy as set out in the report is considered to be permissible within the scope of the Council's discretion under Part VI of the Housing Act 1996, notwithstanding there have been no reported decisions of the courts commenting on the lawfulness or otherwise of such a policy.
- 8.5 It is essential that any policy which allows for underbidding to alleviate overcrowding does not allow for premises to be allocated if they would be so

overcrowded as to amount to statutory overcrowding under Part X of the Housing Act 1985. Letting properties subject to less severe forms of overcrowding (for example, when assessed under the “Bedroom Standard” promoted by central government in its “Allocation of Accommodation: Guidance for Local Authorities”, or the definition adopted by the Council in its Allocation Policy which is slightly more generous than the Bedroom Standard) is an available option. Where it can be shown that this facilitates a significant improvement in a household’s current living conditions within a reasonable period of time then this should fall within the legal discretion of the Council if such a policy is adopted.

- 8.6. Further analysis and consultation is recommended as to the impact of any further changes before provision for a more extensive level of underbidding is made.
- 8.7 Taking into account the impact of the proposed changes in relation to people with protected characteristics under the Equality Act 2010 is a critical part of adopting any changes to the Allocations Policy. The report proposes the impact of any changes adopted is kept under review.

Name of lawyer consulted: Natasha Watson    Date consulted: 06/10/2024

## **9. Equalities implications**

- 9.1 An Equality Impact Assessment relating to the proposed changes to the Housing Allocations Policy set out in para 4.1 to 4.24 is set out in Appendix 2.
- 9.2 An additional Equality Impact Assessment relating to ‘underbidding’ is set out in Appendix 3. If this policy is implemented, households with a 3-bed need will experience the negative impact of greater waiting times for rehousing, while households with a 4-bed need will experience the positive impact of a larger pool of properties to bid on.
- 9.3 However, the impact of enabling statutorily overcrowded households with a 4-bed or more housing need, to bid for properties one bedroom short of household need is not deemed significant as the total quantum of households in this category is low (10). As statutory overcrowding already qualifies for a Band A rating, households in this cohort would not be awarded any additional priority to what they already qualify for. Hence, priority would be determined by waiting time alone.
- 9.4 Furthermore, there would be consequential benefits in terms of health and wellbeing in reducing the impact caused through statutory overcrowding.

## **10 Conclusion**

- 10.1 Making the changes recommended in Section 4 will achieve the council’s objectives in the Council Plan and ensure compliance with the council’s statutory duties.

## **Supporting Documentation**

### **Appendices**

1. Draft Housing Allocations Policy (with proposed changes marked)
2. Main Equality Impact Assessment
3. Underbidding Equality Impact Assessment
4. Consultation Report