

TONBRIDGE & MALLING BOROUGH COUNCIL
COMMUNITIES and HOUSING ADVISORY BOARD

21 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 DISCHARGE OF DUTY INTO THE PRIVATE RENTED SECTOR

Summary

With the introduction of the Homelessness Reduction Act and the new duties placed on Councils to prevent and relieve homelessness combined with the increase in demand on temporary accommodation for homeless households, and growing pressures on social housing, there has been a need to review all housing options for those approaching the Council as homeless or threatened with homelessness. Legislation allows the Council to discharge its homeless duties into the private rented sector and to help maximise the opportunities for the Council to do this, prevent recourse to more expensive temporary accommodation and reduce demand on social housing, work is currently being progressed related to the Council's offer to landlords to encourage them to work with us. It is anticipated that this will increase the supply of affordable and decent housing in which to place homeless households. To ensure that the Council is complying with legislation when discharging its homelessness duties into the Private Rented Sector, there is a requirement for the Council to have in place a Discharge of Duty into the Private Rented Sector Policy which clearly sets out how we will achieve this in line with legislation. There are no immediate financial implications of adopting this policy, although in time, it is hoped that having more private rented homes into which we can discharge our duty and a wider pool of housing options will further increase our opportunities to prevent homelessness, which is a more cost effective approach.

1.1 Context – Private Rented Sector Discharge in Homelessness

1.1.1 Under the Housing Act 1996 prior to 2011, Councils were unable to discharge any statutory duties owed to a homeless household when an offer of a private rented sector accommodation was refused. As a result homeless applicants who were owed a rehousing duty by the local housing authority were able to refuse any offer of suitable accommodation in the private rented sector and request they be

rehoused in long-term social housing through the allocation of a Council or Housing Association property. The Localism Act 2011 amended the Housing Act 1996 and allowed authorities to discharge their re-housing duties where an offer of a suitable 12 month private rented sector tenancy was refused.

- 1.1.2 The Homelessness Reduction Act 2017, has further amended the Housing Act 1996 and introduced the duties to prevent and relieve homelessness, and in addition to the discharge of the main housing duty into a 12 month private rented sector tenancy, has given the Council a further option to discharge its prevention and relief duties by making an offer of a 6 month assured shorthold tenancy within the private rented sector (as a minimum). The new legislation also requires that each homeless household has a full housing assessment carried out. When the Council makes an offer of accommodation, the needs of all household members, along with accommodation standards, will be taken into account when considering the suitability of accommodation, in accordance with The Homelessness (Suitability of Accommodation)(England) Order 2012.
- 1.1.3 The new draft proposed Discharge of Duty into the Private Rented Sector Policy, attached, as **[Annex 1]** sets out how and when the Council will use the private rented sector housing to end its homeless duties, to ensure that it is complying with the legislation.

1.2 Legal Implications

- 1.2.1 Under Part VII of the Housing Act 1996, the Council has a statutory duty to provide accommodation to eligible households, who are in priority need and unintentionally homeless. The provisions under the Localism Act 2011 enabled the Council to discharge that duty by making an offer of suitable accommodation in the private rented sector.
- 1.2.2 Since the Localism Act, there has been further legislative change to the Housing Act 1996 with the implementation of the Homelessness Reduction Act 2017 which came into force on 3 April 2018. It has made significant changes to Part VII of the 1996 Act. Its main effect is to place increased duties on local authorities to assess an applicant's needs and to prevent and relieve homelessness. Prevention and relief duties can be discharged with an offer of suitable accommodation in the private rented sector. This policy allows the Council to discharge its prevention, relief and main housing duties into suitable private rented sector tenancies.
- 1.2.3 The Homelessness Code of Guidance for Local Authorities is issued by the Ministry for Housing, Communities and Local Government (MHCLG). It provides statutory guidance on how to interpret and apply the homelessness legislation and contains details of good practice that local authorities should adopt. It is not legally binding but local authorities are required to have regard to it. Failure to have regard to the current Code can be used as a basis for a judicial review challenge. The current Code came into effect on 3 April 2018.

- 1.2.4 In discharging its functions, the Council must also have due regard to the Public Sector Equality Duty in s149 Equality Act 2010. S149 (1) provides that, in exercising its functions, a public authority must have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

An Equality Impact Assessment has been completed and the results reveal that there are no adverse or negative impacts across the identified groups, as only properties considered 'suitable', in line with the Code of Guidance, for the applicant will be offered and therefore will take into account any specific individual needs. Attached as **[Annex 2]**.

- 1.2.5 The human rights of the applicants (and their households) are an overriding factor for consideration throughout any and all applications and offers which are made. It must be ensured therefore that when considering discharging the homeless duty via a private sector tenancy that the human rights of the applicant (and their household) are taken into account. There is a risk that if this policy is not applied correctly then the applicant can seek redress via either a review, a statutory appeal to the County Court or by way of judicial review.
- 1.2.6 Therefore the adoption of this policy will ensure that any offers made are done so in line with legislation, and whilst applicants will have the right to review, by having a policy which clearly sets out how the Council will discharge its duties, along with an Equalities Impact Assessment and a consideration of the applicants human rights whilst it will not prevent them, having this policy should minimise the risks of expensive legal challenges to the Council.

1.3 Financial and Value for Money Considerations

- 1.3.1 Offers of accommodation to eligible households could potentially save on the costs of more expensive temporary accommodation.
- 1.3.2 Having robust and inclusive policies which take account of legislation should minimise the risk of legal challenge, which can be costly, to the Council.

1.4 Risk Assessment

- 1.4.1 Whilst the Council already discharges its duties into the private rented sector, this is into accommodation that the applicants find themselves. Having this policy in place will allow the Council to identify and make suitable offers to homeless households in the private rented sector, and if they refuse the Council will be able to discharge its homeless duties to that household and having this policy will

minimise the risk of challenge when doing this. This policy demonstrates compliance to the legislation contained within the Housing Act 1996.

1.5 Recommendations

1.5.1 That members **APPROVE** the Discharge into the Private Rented Sector Policy.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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The Housing Act 1996 – Specifically Part VII - Homelessness

<http://www.legislation.gov.uk/ukpga/1996/52/part/VII>

The Localism Act 2011 – Specifically relating to Homelessness

<http://www.legislation.gov.uk/ukpga/2011/20/part/7/CHAPTER/1/crossheading/homelessness/enacted>

Homelessness (Suitability of Accommodation) (England) 2012

<http://www.legislation.gov.uk/uksi/2012/2601/contents/made>

The Homelessness Code of Guidance

<https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities>

The Equalities Act – specifically the Public Sector Equality Duty

<http://www.legislation.gov.uk/ukpga/2010/15/part/11/CHAPTER/1>

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