

# **Scrutiny Committee**

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**Wards affected (VWHDC only): All**

## **Review of the councils' housing allocation policy**

### **Purpose of report**

- 1) Government has recently published a revised draft code of guidance for the allocation of affordable housing and has consulted on the content. This code of guidance is statutory advice as to the policies local authorities should adopt in allocating housing.
- 2) The consultation closed on the 30<sup>th</sup> March and the councils' response is attached as an appendix to this report
- 3) The draft code of guidance builds on the autonomies in the Localism Act and suggests greater freedoms and discretions for councils in deciding whom they might prioritise for affordable housing, albeit within the existing primary legislation.
- 4) This report details the new provisions in the code of guidance and proposes how, when the final code is published, they might be implemented.

### **Strategic Objectives**

- 5) The report relates to the councils' strategic objectives of meeting housing need.

## Background

6) The draft consultation focuses upon a number of key areas that government wish to review. This report however concentrates on those areas where we believe there are issues for the councils, these are:

- a) Do the councils wish to specifically exclude certain classes of persons from being able to join the housing register, as allowed in the draft code
- b) Do the councils wish to amend their current allocations policy in favour of particular groups or classes of persons, as allowed in the draft code.

Finally, do the councils wish to consider whether they will continue to operate open housing registers and for a proportion of new developments use a tighter definition of the term local connection.

### EXCLUSIONS FROM THE HOUSING REGISTER

7) The Localism Act has given councils a greater degree of discretion to exclude groups from their housing registers, the detail of this is now contained in the draft code of guidance.

8) The rationale for exclusions is twofold.

- The first is that there are certain groups of persons whom it is deemed are inappropriate for the housing register by virtue either of their status or behaviour.
- The second is that housing registers are, to some degree, populated by people who have an aspiration for affordable housing, but no great housing need or realistic prospect of being allocated housing. Therefore, to include them on the register does not assist these applicants in understanding their chances of securing housing through the register. It also inflates the numbers on the registers, overstates the degree of housing need and increases workload.

9) At present the councils exclude two groups of applicants, both as a consequence of statutory guidance:

- certain groups subject to immigration control
- people who are guilty of unacceptable behaviour whilst a tenant.

10) The draft code of guidance advises that the requirement to exclude certain groups subject to immigration control will be retained whilst the current legislation relating to unacceptable behaviour will be repealed and replaced by a wider power to exclude.

11) Officers consider that the ability to exclude certain applicants from the register because of unacceptable behaviour as a tenant, on a case by case basis, should be retained as it assists in sending a strong message that the councils will not accept either anti-social behaviour or criminal activity from local residents.

12)The councils could consider other groups it may wish to exclude from the register. Officers recommend the following:

- Owner occupiers who own the property outright, unless there are exceptional reasons to allow their application
- People who have the financial capacity to solve their own housing circumstances
- People who do not have a local connection with the districts (discussed in section 2 of this report) unless there are exceptional circumstances to allow their application.

13)Additional exclusions could also be considered. However, we should be mindful that exclusions are subject to challenge and it would be necessary to establish robust processes to determine such appeals.

14)Turning to the question of whether persons in no housing need should be excluded from the register. An examination of the housing registers shows that such exclusions would have a major impact. The table below shows the numbers on each council’s housing register, split by bands according to need. Bands 1-4 are those categories of persons in “housing need”.

	<b>SODC</b>	<b>VWHDC</b>
Band 1	17	8
Band 2	190	190
Band 3	822	714
Band 4	133	126
Band 5	1843	1744
<b>Total</b>	<b>3005</b>	<b>2782</b>

15)The above table shows that, by excluding band 5, approximately 60% of applicants on the councils’ housing registers could be excluded.

16)Whilst at first sight this seems advantageous for the councils, there are two issues to consider.

17)The first is that exclusions would deny applicants the right to build up time on the housing registers. This is important because, within bands, the allocations policy prioritises on the basis of time on the register. Although time on the register might seem a blunt method of prioritising within bands it is popular with applicants who find it easy to understand and consider it to be broadly fair. To deny some applicants the ability to build up that waiting time would undermine this central plank of our allocations policy.

18)The second reason for exclusion is cited in the guidance as reduced workload. However for both councils this issue has reduced with the development of self service, on line applications. This will be enhanced this year with the ability of applicants to update their applications as circumstances change. This means that there is little work involved in processing applications and no saving for the councils from such exclusions.

## CHANGES TO THE ALLOCATIONS POLICY

19) Under the new code councils will be given some flexibility over how we prioritise applicants. The draft code of guidance specifically proposes alterations in three areas. These are:

- Under-occupation/overcrowding
- The treatment of former armed services personnel
- Additional priority for those either in or looking for work or whom contribute to the community.

20) Officers believe that, for the last two of these the councils might like to consider their approach.

## ARMED FORCES PERSONNEL

21) The draft code of guidance proposes that councils consider giving enhanced priority to former Armed Forces personnel when allocating housing, if they are in “urgent housing need”. The code suggests that a former member of the forces is anyone who had served within the last five years.

22) It does not however specify what urgent housing need is, instead recognising that will be different according to local circumstances.

23) Currently the councils, as part of their commitment to the Oxfordshire Armed Forces Covenant, give priority to service personnel who are leaving the service by placing them in band 3 of the registers. This is the equivalent to the priority we give to a private sector tenant who has been served with a notice to quit. The difference is that we give this priority significantly earlier so that armed services applicants can either bid on the CBL system or look for alternative accommodation. They in effect are given a head start.

24) For former Armed Forces personnel no additional priority is provided as a result of their status, except where they have suffered serious injury as a result of their service. Otherwise, they are assessed on the basis of housing need.

25) Officers have discussed the issues and implications and have concluded that the current system of priority strikes the right balance between the rights of armed services personnel when compared to other applicants on the register. We concluded, for example, that to treat all former service personnel as being immediately in urgent need would not accurately reflect what their housing circumstances are and would potentially prejudice other applicants whose housing circumstances are urgent.

26) Government have indicated that they intend to provide a statutory instrument requiring councils to enhance priority for former armed services personnel and the councils have fed back their views on this in the consultation response attached as an appendix to this report.

27) Notwithstanding this consultation officers propose that no immediate alterations to the policy for armed services personnel are considered but that the council awaits the detailed code of guidance.

#### APPLICANTS WORKING, LOOKING FOR WORK OR CARRYING OUT SERVICE IN THE COMMUNITY

28) The draft code of guidance also suggests that councils could consider using the housing register as a tool to either encourage people into work or to reward those that are either working or take an active part in their community.

29) Our consultation response highlighted some issues which we felt to be of particular relevance to the councils. These are:

- a) First our concern that, in areas of high demand, prioritising those in or seeking work will adversely affect our homeless prevention work. This is because we, in part, use the flow of affordable housing to assist with homeless prevention via our allocations policy and any policy that rings fences part of that flow for certain classes of people leaves less for others.
- b) Second we responded that we would welcome guidance on what constitutes seeking work and contributing to the community, as these could be open to wide interpretation.
- c) Notwithstanding the above there is a need to recognise the role that housing allocations can play in promoting economic growth, for example offering priority to key workers and weighing that against existing general housing needs.

30) Officers consider that, in order for the councils to make an informed decision about this issue we need to see the detail of the final code of guidance and then carry out modelling of any new policy to assess its impact.

31) This report therefore suggests that this issue should be deferred until the new code of guidance is published and then suggested amendments be tested and assessed before being brought to cabinets for decision.

#### LOCAL CONNECTION

32) While not specifically mentioned in the new draft guidance its arrival gives both councils an opportunity to consider both the definition of local connection that we use and the weighting we give it in our policy.

33) The primary legislation already allows councils to give due recognition to local connection. This is already reflected in our allocations policy in that any person in a band with local connection gets priority over someone who has not, regardless of their position on the register.

34) Officers are proposing that the councils should consider two amendments to the policy:

- a) Excluding those without a local connection to the district from the Housing Registers.
- b) Refining its definition of local connection and prioritising those from the parish or neighbouring parishes for a proportion of new developments.

#### EXCLUDING THOSE WITH NO LOCAL CONNECTION

35) The rationale for the first of these is that, with a high local demand there is little justification for allowing persons from outside the districts to apply for housing. Whilst the current impact is small there is currently the capacity for applicants in high need to move to the district and we would suggest that this is unfair on local people who do not enjoy the same flexibility. Scrutiny should note that this would not be a blanket exclusion and particular cases, for example witness protection or domestic violence, would be exempted with the policy delegating this discretion to the Head of Health and Housing.

#### DEFINING LOCAL CONNECTION

36) Turning to the second issue, officers now believe that there is sufficient latitude, both within the draft code of guidance and case law precedent, for it to be possible to utilise a tighter definition of local connection than district wide, but that to do so for all properties would probably not be lawful.

37) One compromise, we believe acceptable in law could be to apply a new definition of local connection to a proportion of nominations on new developments, a suggested level might be up to 20%, dependant upon the size of the development.

38) If the councils are minded to agree to this the next question is how to frame this tighter definition.

39) Currently Rural Exception Sites operate using a local connection definition that prioritises those from the parish where the development takes place, then considers applicants from adjoining parishes and finally considers applicants from elsewhere in the district. This is a tried and tested methodology that has worked well in such instances.

40) An alternative could be to consider applicants from the parish, then ward and finally district, however officers are concerned that the concept of ward is not a widely understood by applicants and could lead to confusion when applying.

41) Officers believe that the advantage of adopting this new definition would be that it offers local people an incentive to allow developments in their area by showing them that there is advantage to people from their parish in allowing the development. This could assist with the councils as they plan and seek to deliver new housing developments.

42) However, it must also be recognised that this would lead to cases where people with a local connection to the wider district, but not the parish/ward concerned would lose out despite having an equivalent housing need and more time on the register, albeit only for a proportion of the properties concerned.

43) Whichever definition is applied there will need to be adjustments to the housing register databases to allow for the sifting of applicants according to these criteria and all applicants will have to be canvassed to gather this new information.

## **Options considered**

44) In this report officers are suggesting that the following options are approved:

- Exclusions - increased as listed
- Armed forces - no change subject to legislation
- Preference for those in work - no changes until final code published
- Local connection - alterations as described

45) Notwithstanding the likely requirements to revise our policy for armed forces personnel, the fact that the code provides local flexibilities mean that cabinets have a wide range of options for each of the areas. For example leave policies as is, implement now or await the final code of guidance.

46) Officers believe that where there is sufficient clarity for us to amend our policy that action is appropriate, albeit with a low degree of risk. In other areas it is appropriate to note the anticipated changes and await the final detail before altering policy.

## **Recommendations**

It is recommended that scrutiny committee:

1. Note the recommendations of the report to make no current alterations to the priority given to former Armed Forces personnel and persons in or seeking work until either the code of guidance or revised statute is published.
2. Consider whether they agree to the proposal to amend the allocations policy to allow the following exclusions from the housing register
  - Owner occupiers who own the property outright, unless there are exceptional reasons to allow their application
  - People who have the financial capacity to solve their own housing circumstances, unless there are exceptional reasons to allow their application
  - People who do not have a local connection with the districts, unless there are exceptional reasons to allow their application

- 3.. Agree to the proposal to amend the allocations policy so that, for any new developments in the districts, that up to 20% of the allocations be ring fenced, in the first instance, for persons from that parish or failing that adjoining parishes.



## Appendix One: Joint response to Consultation

Question	Vale of White Horse and South Oxfordshire Councils' response
1. Does your allocation scheme/transfer policy already provide for social tenants who are under-occupying to be given priority?	Yes, the policies of both councils state that under occupation is given high priority dependant upon the scale of under occupation, for example under-occupying by 2 or more bedrooms can get the highest priority. This reflects the scale of housing need in the districts and the need for us, where possible, to fully utilise under occupied family accommodation.
2. Do you intend to revise your allocation scheme in order to make it easier for under-occupying social tenants to downsize to more appropriately sized accommodation?	No- we consider that sufficient priority is already allocated for under occupation
3. If so, what changes to your allocation scheme will you be considering – to make it easier for under-occupying tenants to downsize?	N/a
4. Do you agree that members of the Armed Forces and former Service personnel should not be disqualified on residency grounds? Is 5 years from the date of discharge an appropriate time limit for this restriction? If not, what would be a more appropriate period?	<p>Our current residency requirements to qualify as being considered to have a local connection are 3 years out of the last 5, 6 months out of the last 12, employment or residence of family members. Residence in military accommodation does confer a local connection. This mirrors existing local connection definitions contained in housing legislation.</p> <p>We are not convinced that this requirement disproportionately disadvantages people who have left Armed Forces accommodation in our districts. Particularly since armed forces families will form a local connection via their other links with the community, for example schools , jobs etc.</p> <p>We do not therefore agree that armed forces should be exempted from the requirement to form a local connection with a district in order to apply for social housing and are concerned that the effect of this amendment would be to significantly increase demand for social housing in our districts, both of whom have large military bases.</p>
5. Does the draft guidance provide	We believe, as do the network of district

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<p>sufficient clarity on how to implement the new power for housing authorities to set their own allocations qualification criteria? If not, in what areas would more guidance be useful?</p>	<p>councils, this is an area where there is potential for significant challenge from applicants and would appreciate more guidance from government.</p> <p>Looking at the issue of exclusion due to low housing need. Whilst this would exclude approximately 60% of applicants for either council the councils are not in favour of this for two reasons. Currently the councils use time on the register as a determinant of need within bands. It's not perfect but it is clear for applicants to understand and popular with them and to exclude people in no housing need would warp this cornerstone of ours and many other council's policies.</p> <p>Secondly both councils are moving to a system of self service for applicants to the housing register which means that the workload for processing new applications is minimal.</p> <p>We do not therefore propose at this stage to implement this new power</p>
<p>6. Do you agree that the bedroom standard is an appropriate measure of overcrowding for the purpose of according reasonable preference? If not, what measure do you consider would be more appropriate?</p>	<p>We believe that measuring overcrowding by bedroom requirement as currently defined is suitable, workable and can be understood by applicants. A move to a more complicated scientific method would not aid transparency of decisions .</p>
<p>7. Should this guidance provide advice on how to define 'overcrowding' for the purpose of according additional preference? If so, would an appropriate measure be two bedrooms or more short of the bedroom standard?</p>	<p>No, whilst the councils agree that the bedroom standard is the appropriate method of giving an applicant reasonable preference, to do the same for any additional preference on top of this would be to ignore the local circumstances. Councils should, we believe, be allowed to take prevailing housing circumstances in their districts into account when awarding additional any additional priority for overcrowding</p>
<p>8. How does your allocation scheme currently define 'overcrowding' for allocation purposes? Does it, for example, use the bedroom standard, the statutory overcrowding standards in Part 10 of the Housing Act 1985, or another definition? If the last of these, please provide brief</p>	<p>Our current policy uses both. We use bedroom standard to determine what would be the appropriate number of bedrooms an applicant would qualify for and then uses Part 10 to define whether the room is of an appropriate size, eg habitable or large enough to be shared. We believe that this</p>

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details.	system defines applicants bedroom requirements effectively
9. The Government proposes to regulate to require housing authorities to frame their allocation scheme to provide for former Service personnel with urgent housing needs to be given additional preference for social housing. Do you agree with this proposal?	In principle the councils agree with this approach. However it needs to be recognised that for the vast majority of armed forces personnel the lead in time to them requiring housing upon discharge is quite long. The councils have invested heavily in engaging the local military bases so we can work at an early stage with army leavers to help them secure accommodation. To merely provide a high priority once their situation becomes urgent could remove the impetus of army leavers to engage with us at an early stage and could lead to us having to deal with a greater number of armed forces personnel in housing crisis, forcing us to treat the armed forces personnel as potentially homeless or disproportionately using affordable housing for services personnel leading to problems with community relations.
10. Does your allocation scheme already make use of the flexibilities within the allocation legislation to provide for those who have served in the Armed Forces to be given greater priority for social housing? If so, how does your scheme provide for this?	Yes. Both councils have signed the Oxfordshire military covenant which means that priority is given to armed forces households who have to leave their current military home. However, this does not cover former Army personnel who have already left the service.
11. If not, do you intend to take advantage of the flexibilities in the allocation legislation to provide for former members of the Armed Forces to be given greater priority for social housing? If so, what changes might you be considering?	Not at this stage for the reasons given above. We believe that housing should be allocated primarily on the basis of need.  We understand that additional regulation is due from government on this and will await this.
12. Does your allocation scheme already provide for some priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, how does your scheme provide for this?	No - however members at both councils have signalled that they would wish to examine this.
13. If not, do you intend to revise your allocation scheme to provide for more priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, what changes might you be considering?	Please see above, we will be reviewing as part of a review of the allocations policy.  We have given some thought as to whether to give preference to working households for a % of properties. We are however concerned that ,in an area of high demand, this will impact on levels of homelessness and adversely affect our homeless prevention

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	<p>work. This is because we in part use the flow of affordable housing to assist with homeless prevention via our allocations policy and any ring fence of that flow of affordable housing for certain classes of people leaves less for others</p> <p>The councils would also welcome in the guidance on what constitutes seeking work and contributing to the community since these could be open to wide interpretation.</p>
<p>14. Are there other ways in which housing authorities can frame their allocation scheme to meet the needs of prospective adopters and foster carers?</p>	<p>It would be possible for priority to be given to persons who have an agreed adoption plan or foster plan with social care. However for foster parents we would argue that there would need to be evidence of sustained commitment to the scheme</p>
<p>15. Does the draft guidance provide sufficient clarity on the extent of flexibilities available to housing authorities when framing their allocation scheme?</p>	<p>No, we would welcome more clarity.</p> <p>In particular the extent to which councils could disregard the reasonable preference categories in favour of, for example enhanced priority for local connection. We would also appreciate guidance on whether councils can define local connection themselves or whether, as the law currently states, it is defined by district.</p>