

Committee: Cabinet

Date: 7 March 2016

Subject: Interim Homeless Placement Policy

Lead officer: Simon Williams, Director of Community and Housing

Lead member: Councillor Nick Draper, Cabinet Member for Community and Culture

Contact officer: Steve Langley, Head of Housing Needs and Strategy

Reason for urgency:

The chair has approved the submission of this report as a matter of urgency. This is because it provides the Cabinet with latest information and legal advice with regards to housing placement and Council policy.

Recommendations

1. That the content of this report be noted.
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1. PURPOSE OF THE REPORT AND EXECUTIVE SUMMARY

- 1.1 This report proposes the adoption of an Interim Homeless Placement Policy for housing. This policy will cover the use of available housing to meet the needs of homeless households where the Council has or is likely to accept a housing duty.

This will include

- Temporary Accommodation under Section 193 Housing Act 1996 Part 7.
- Private rented offer as either a housing option or bringing the homeless duty to an end.
- Accommodation for households with no recourse to public funds.

This paper will also outline the Supreme Court judgement against Westminster Council in a case relating to how it had made a decision on where to place a family to which it had a duty to accommodate under the Housing Act 1996. The judgement has consequence for the Council who are now required to develop policies to show how they procure accommodation both in and outside their boroughs and how they will decide who has priority for accommodation in or close to the borough.

The paper proposes that this policy is adopted on an “interim” basis and a further report is produced in 12 months to examine the impact of the policy.

The purpose of the report is to:

- Provide details of the Nzolameso vs Westminster Judgement.
- Consider the supply/demand data which have shaped this policy.

2. DETAIL

Background

2.1 The Council has a statutory duty under Part VII (7) of the Housing Act 1996 to provide temporary accommodation to households, who it has reason to believe may be eligible, homeless and have a priority need until a decision has been reached on their application. If the Council decides that it owes a “full housing duty” because the applicant is

- Homeless
- Eligible for assistance
- Has a local connection
- Is not homeless intentionally
- Has a priority need

He/she will be offered temporary accommodation until a permanent housing solution is found.

Context:

2.2 The Council has a statutory duty under Part VII (7) of the Housing Act 1996 to provide temporary accommodation to households who it has reason to believe may be eligible, homeless and have a priority need until a decision has been reached on their application. If the Council decides that it owes a “full housing duty” because the applicant is

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Case Law - The Nzolameso Judgement

2.3 There have been a number of recent Supreme Court Judgements which have impacted upon how the Council responds and deals with homeless applications.

The most relevant to this report is the judgement *Nzolameso Vs City of Westminster* (see Appendix 4) which tightened rules to Councils providing accommodation outside their own districts to those owed a housing duty.

Implications of the Judgement

- 2.4 In the *Nzolameso* judgement there were two important matters for the court to address; how the phrase 'reasonably practicable' set out in s208 HA 1996 should be applied in relation to out-of-borough placements, and the evidence required to be provided by the Authority in giving their decision.

The Courts found that Local Authorities were obliged to provide in borough accommodation so far as was reasonably practical which provides a stronger duty than simply being reasonable. If it was not possible to provide such accommodation, the Authority should attempt to provide accommodation that was as close as possible to where the applicant had previously been living. The court highlighted that although an applicant can ask for a decision to be reviewed under s202, the decision to place the applicant out of the borough is, in itself, not reviewable. However the suitability of the accommodation is reviewable and location of the property is relevant in the accommodation's suitability.

The Court emphasized the duty of Councils to have regard to the need to safeguard and promote the welfare of children under the Children Act 2004, and the fact that these considerations would be relevant in determining whether accommodation was suitable. The Court found that the Local Authority should identify and have regard to the principle needs of the children, which must be evidenced in their decision. These do not need to be regarded as paramount or primary considerations in making the decision, but it must be demonstrated that they have been considered and in these circumstances merely asking whether the children were approaching GCSEs was not sufficient.

It must also be clear from a Council's decision that proper consideration has been given to the relevant matters required by the relevant Act and the Homelessness Code of Guidance for Local Authorities and Supplementary Guidance. The Court found that amongst others, the Authority had not made necessary enquiries into the practicalities of moving schools, whether school places were available and the implications of the Appellant's medical conditions. The Court also criticised the fact that the Authority had not indicated what type of accommodation was available in and around Westminster or a recognised that alternative accommodation offered should be as close to Westminster as possible. The standard paragraph utilised by the Respondents in this instance was not sufficient to discharge their duty and consequently the above the decision was quashed.

This judgement provides guidance to the Council as to how they should go about explaining their decisions as to the location of properties offered. The guidance recognises that local authorities are entitled to take account of the resources available to them, the difficulties of procuring sufficient accommodation at affordable prices in their own district and the practicalities of procuring accommodation in nearby authorities.

However, the decision on an individual case will depend on the policies which the Council has adopted for the procurement and allocation of these units.

This judgment lays the foundation for a more transparent and accountable system for placing tenants out of the borough, hopefully enabling a tenant to see more clearly why and how the decision has been made. Emphasis is also placed on the Authority's duty to house the tenant as close to the borough as possible, and if this is not possible to provide an explanation. Such obligations will hopefully prevent such drastic moves as the one proposed in Ms Nzolameso's case and enable the tenant to continue to access the help and support they require and have already secured.

As a consequence of the Nzolameso Judgement the Council must develop a policy which

- Explains how the Council will decide who will receive priority for accommodation "in borough", "closer to home" and further away.
- Outline the Council's approach to procuring accommodation.

Demand/Supply

2.5 In Merton the Council has seen a 90% increase in temporary accommodation in the last 5 years. We currently have 160 households in temporary accommodation under the Housing Act 1996. Whilst this remains the lowest number for any London Borough it is likely that demand for housing will increase in line with proposed welfare reforms, for example the reduction in the benefit cap from £26,000 to £23,000.

At the same time the number of affordable social rented properties to let has reduced. As at January 2016 only 294 housing association homes have become available to the Council for letting. These are detailed below

<u>Type of Property</u>	<u>Number of lets</u>
Bedsit	6
1 bedroom	156
2 bedrooms	80
3 bedrooms	50
4 bedrooms	2
5 bedrooms	0

The Council has 8864 individuals and families on the Housing Register and the average wait for a 3 bedroom home is 4 years.

Additionally, the Council has a requirement to find temporary accommodation for approximately families who have no recourse to public funds. Currently the Council is providing approximately 40 families with temporary accommodation who are subject to “No Recourse to Public Funds”.

The Council has over a number of years had regular contact with private landlords and lettings agents who supply privately rented accommodation in our borough.

The cost of renting a home in the private sector is rising faster than household income, increasing by about 27% over the last 4 years. The cost of renting 4-bed homes having the biggest increase of 36%. Average rent for 1-bed homes had increased by 29% and by 25% for 2 to 3-bed homes over the same period. The increase in the year to March 2015 alone was 3.2% (ONS April 2015), the highest annual change since the summer of 2013.

The table below compares average weekly rents in Merton with LHA rates of the 2 main Broad Rental Market Areas (BRMAs) in Merton.

	1-Bed	2-Beds	3-Beds	4-Beds
Average Weekly Rents in Merton	265	325	403	623
LHA Outer South	167.22	210.57	279.14	344.38
LHA Outer South West	209.77	280.6	336.96	417.02

The number of properties for rent must be within the LHA rates.

The LHA rates are set at 30th percentile. From April 2011 this had increased by 1% per annum. Broadly speaking this means that 30% of the total number of private rented properties available in Merton should be within LHA rates. However our analysis of around 1,000 properties available for rent at the end of September 2015, suggests that the reality is only around 1%.

Additionally we face barriers in procuring private sector housing supply. This is because Landlords can decide whether or not they wish to rent their properties to households on benefits.

We have contacted a number of Landlords and agencies who have told us that they

- Do not rent properties to people on benefits.
- Some would only do so with a guarantor.
- Some would do so at the discretion of the Landlord.

The stark reality however is that the number of PRS properties for our families and individuals is reducing.

There are in excess of 40,000 households in temporary accommodation in London being housed by Local Authorities and as a consequence there is competition to secure PRS properties from all local councils.

Furthermore PRS properties are available on the open market and are therefore in competition with individuals and families seeking PRS accommodation in Merton and in London generally.

That said officers continue to have success, even in this challenging environment, to source properties in the PRS. This is achieved by:-

- Landlord rent deposits/incentives.
- To make the Council offer more desirable in the current operating market.
- Support Landlords and provide a soft housing management service.
- Regular checks with landlords to obtain individual properties.
- Undertaking advertising campaigns.

This practise, coupled with homeless prevention activities, seeks to minimise numbers of households/individuals in temporary accommodation.

The Council's "in borough" temporary accommodation consists of 81 units of self contained accommodation in Hall Place, Mitcham.

This is owned and managed by a private landlord. In addition to this, the Council has access to accommodation at the Wimbledon YMCA and MASH. These units are only suitable accommodation for single vulnerable adults and young people.

Additionally the Council purchases nightly paid accommodation for those households/individuals it is not able to accommodate in the accommodation units described earlier.

It is increasingly difficult to find affordable accommodation in Merton and London and this difficulty is shared with all other London Boroughs.

In addition to properties procured "in borough", the Council procures accommodation in the Greater London Area. These are not "in borough", but are within 90 minutes travelling distance from Merton.

The current landscape makes it very difficult to accurately predict the number of properties we will be able to secure in Merton and whilst our aim is to provide accommodation within Merton wherever possible, this is sadly not always achievable.

On-going benefit change means that for some households accommodation in Merton will not be affordable and as a result there is an increasing need to use accommodation that is further away.

As highlighted within this report we must have a policy in place to ensure we prioritise those who have the greatest need to be “in borough”, “close to the borough” or “further away”. This is attached at Appendix 1.

Background to the Interim Homeless Placement Policy.

- 2.6 As part of the assessment process to decide where a family or individual should be placed a robust process will be put in place. The application form at Appendix 2 will assist in this process.

This assessment will be agreed by a Senior Manager within the Housing Needs Service.

It is also worth mentioning that there may be instances, where despite an “in borough” or “close to home” assessment, available and affordable accommodation cannot be found. Whilst we will do our best to identify suitable properties within the agreed location if this is not available, the household will be housed to the closest available accommodation. We will then seek to secure alternative accommodation in an area that better matches the individual/families needs.

3. Financial Implications

- 3.1 In addition to the £400k costs on No Recourse to Public Funds, the Council also spent £2,011,293 on temporary accommodation costs for households/individuals requiring assistance under the Housing Act 1996.

4. Legal Implications

- 4.1 The judgement made by the Supreme Court in *Nzolameso vs Westminster Council* [2015] are set out in this report.

Section 188 of the Housing Act 1996 Part 7 imposes a duty on the Council to secure accommodation for an applicant where it has reason to believe that they may be homeless, eligible for assistance and has a priority need.

Section 193 of the Housing Act 1996 Part 7 imposes a duty on the Council to secure accommodation for an applicant where it is satisfied that they are homeless, eligible for assistance, has a priority need and are not homeless intentionally.

Section 17 of the Children’s Act 1989 also provides a general duty on the Council to safeguard and promote the welfare of children within their areas who are in need by providing a range of services to the child and/or his family, which may include the provision of temporary accommodation on a temporary basis.

Section 208 of the 1996 Act also provides that so far as reasonably practicable the Council shall in discharging their housing functions secure that accommodation is available for the occupation of the applicant in their district and that if it secures accommodation outside its district it shall give notice to the local housing authority in whose district the accommodation is situated. The Homelessness (Suitability of Accommodation) Order 2012 sets out factors to be taken into account in determining whether accommodation provided under part 7 is suitable, which includes the location of the accommodation. It also lists various factors to be regarded as unsuitable in relation to a Private Rented Sector Offer ("PRSO"). The Homelessness Code of Guidance and Supplementary Guidance include various provisions on suitability of accommodation in relation to part 7.

5. Equalities

- 5.1 The Equalities Act 2010 sets out the Public Sector Equality Duty. In discharging this duty the Council must have "due regard" to a number of equality considerations and the potential impact on groups with protected characteristics under the Act. An EIA has been carried out (see Appendix 3) for the Interim Homeless Placement Policy. In addition to the impact on groups identified in the EIA, the Council must consider the individual equality impact on each case before making a placement decision. The placement policy is compliant with this and makes provision to deal with individual needs arising from each case. It is important to review implementation of this policy as detailed in this report in 12 months, thus ensuring it's impact continues to remain compliant with the Equality Act 2010.

6. Crime & Disorder

- 6.4 No specific crime and disorder implications.

7. Other Implications

- 7.1 Risk management – There is a risk that the Council could face legal challenges for placing an applicant out of borough. This risk will be mitigated by this policy which takes regard of the Housing Act 1996 Part 7, Homelessness Code of Guidance and Supplementary Code, the Government Suitability Order and the Children's Act 2004 S11 (2).

List of Appendices

- Appendix 1 – "Interim Homeless Placement Policy"
- Appendix 2 – Homeless Placement Application Form
- Appendix 3 – Equality Impact Assessment
- Appendix 4 – Case Law Judgement Nzolameso vs City of Westminster