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## Report of the Director of Environment and Neighbourhoods

### Executive Board

Date: 8 October 2008

Subject: Environment and Neighbourhoods Lettings Policy revision

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Yes

Not Eligible for Call In

(Details contained in the report)

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## EXECUTIVE SUMMARY

This report seeks Executive Board approval to implement a revised version of the council's lettings policy, which sets out how council properties are let by the Arms Length Management Organisations (ALMOs) and the Belle Isle Tenant Management Organisation (BITMO).

The main changes being proposed are summarised below, along with the reference to the section of the lettings policy document they relate to:

- including a statement on tackling fraud (section 3.7.2) and introducing the photographing of the main and joint tenants at the time of signing their tenancy agreement (section 3.4.2)
- revision of the tenancy management sections (section 4)
- simplifying the eligibility criteria (section 5.1.1)
- introducing 'reduced preference' for unsuitable customers (section 5.3)
- amending the bedroom requirements to be more generous (section 6.6.2)
- improving the opportunity of disabled customers to obtain appropriate rehousing (section 6.7.3)
- reducing the choice based lettings advertising period from 7 to 6 days (section 7.2.3)
- introducing assisted bidding to allow housing staff to make expressions of interest on behalf of customers (section 7.2.10)

- introducing new offer bypass reasons (section 7.4)
- introducing a new direct letting category for tenancy management issues (section 7.5)
- allowing statutorily homeless customers to be considered for a final offer of accommodation after their initial priority period of 120 days, regardless of whether their priority has been extended (section 7.5.4)
- a new section covering the role of elected members in the lettings process to bring the policy in line with legislative requirements (section 9).

It is recommended that Executive Board approves the proposed lettings policy, to be implemented from Wednesday 22 October 2008.

## **1.0 Purpose of the report**

- 1.1 This report seeks Executive Board approval to implement a revised lettings policy from Wednesday 22 October 2008. A full copy of the proposed lettings policy is available on request from the author of this report.

## **2.0 Background information**

- 2.1 The current lettings policy was approved by the council's Executive Board in May 2007 and was implemented on 4 June 2007.
- 2.2 This review is not seeking to make major changes to the operation of the policy, but to incorporate lessons learned from customer complaints and Ombudsman enquiries on the operation of the current policy.
- 2.3 The context of supply and demand for council homes has significantly changed over the past decade. The number of council properties has reduced to just over 58,500 from 80,000 a decade ago. To add to this, the number of council properties available to let has continued to fall, from 5014 in 2006/07 to 4429 in 2007/08. Whilst the supply of council property has reduced, demand has not. There are approximately 31000 households registered on the Leeds Homes Register, 20,000 of whom are actively bidding for council homes each year. On average 88 expressions of interest are made in each property advertised through the Leeds Homes choice based lettings scheme.
- 2.4 The impact of the demand and supply of council homes to let was the subject of an Environment and Neighbourhoods Scrutiny Board enquiry in 2007/08. Scrutiny Board made a number of recommendations including making best use of stock by tackling fraud and subletting, providing incentives to underoccupying tenants, and increasing the range of housing options advertised through the choice based lettings scheme such as mutual exchanges, private rented accommodation and affordable home ownership opportunities.
- 2.5 The council has consulted on the proposed lettings policy changes with interested parties, including the Leeds Arms Length Management Organisations (ALMOs) and the Belle Isle Tenant Management Organisation (BITMO), all Registered Social Landlords which operate in Leeds, other sections within Environment and Neighbourhoods and the council, Supporting People providers, Leeds Tenants' Federation, Leeds Housing Partnership members and customers on the Leeds Homes Register.

- 2.6 Throughout the consultation period, which ran from 24 June to 15 August 2008, a copy of the draft policy was available on the council's Talking Point internet site. In addition a summary of the changes appeared in the Leeds Homes Property Flyer and website directing customers to the Talking Point website and giving details of how to respond to the consultation. The main issues arising from the consultation are summarised in section 16 below.
- 2.7 More detailed procedures have been developed, which give further guidance about the lettings policy to staff working in the ALMOs and the BITMO, One Stop Centres and Housing Needs.

### **3.0 Main issues**

- 3.1 The main changes to the policy are outlined in sections 4 to 15 below.

### **4.0 Tackling fraud**

- 4.1 Given the increased demand for council housing, it is important that the council makes best use of its stock, and is seen to do so by customers. The lettings policy will include a statement on the council's approach to tackling housing-related fraud, including making fraudulent applications (such as providing false information or using a false identity to obtain a council property) and subletting council properties in contravention of the tenancy agreement<sup>1</sup>.
- 4.2 Under the Management Agreement with the council, the ALMOs are obliged to inform the council of any fraudulent activity they are aware of. Strategic Landlord, in conjunction with each ALMO and the BITMO, is currently developing more robust strategies to tackle sub-letting of council properties, including a reporting regime to monitor cases of suspected fraud more effectively.
- 4.3 The policy has been amended to state that it will be the usual practice for the Arms Length Management Organisations (ALMOs) and the Belle Isle Tenant Management Organisation (BITMO) to photograph the main and joint tenants at the time of signing their tenancy agreement, to enable staff to identify the rightful tenant and reduce incidences of subletting.
- 4.4 This change has been proposed to ensure a consist approach across the city, along with safeguards to ensure photographs are held securely and in accordance with the Data Protection Act. Customers will be asked to sign a standard consent form which makes it clear the purpose for taking their photograph. The photograph will be used solely to confirm the customer's identity at follow up tenancy visits. Where the customer declines to have their photograph taken, they will normally be expected either to provide their own photograph or provide other photographic proof of their identity. Exceptions to this could be where the customer is rehoused through the National Witness Mobility Programme.

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<sup>1</sup> Under section 3A of Leeds City Council's Tenancy Agreement, introductory tenants do not have the right to take in lodgers or sublet part of the property, but secure tenants do provided they have the landlord's permission. In the context of this report, 'subletting' refers to the letting of the whole of the property, which is prohibited.

## **5.0 Tenancy management sections**

- 5.1 In the main, tenancy management issues are regulated by primary legislation. The policy has been updated to clarify the legal position in relation to succession and to joint tenancies.
- 5.2 The lettings policy sets out who can succeed to a tenancy on the death of a tenant, and where no-one is eligible to succeed, outlines the factors which will be taken into account in deciding whether to allow a family member to remain in the property.
- 5.3 The policy also explains the circumstances in which a sole tenant can request a new joint tenancy be granted to them and their spouse or civil partner, and when the council will allow a joint tenant to remain in the property should the other joint tenant give notice.
- 5.4 In the circumstances set out in sections 5.2 – 5.3 above, the council will consider whether permitting the customer to remain in the property promotes best use of council stock, and whether they are suitable to be a tenant at the time. Where the individual is allowed to remain in the property the original tenancy will be terminated and a new tenancy will be created through a direct let.
- 5.5 The Law Commission published 'Renting Homes: A Law Commission Report' in May 2006, which made a number of recommendations relating to the law on joint tenancies and succession. These recommendations would allow a sole tenant to add another person to their tenancy without the need to issue a new tenancy agreement, and a joint tenant would only be able to terminate their share of a tenancy, not extinguish the whole tenancy as is the case at present. Under these proposals a joint tenancy could only be brought to an end by the agreement of all parties.
- 5.6 The Law Commission report also recommends that second successions be permitted when there has already been a succession by a spouse, to allow another family member to take over the tenancy on their death.
- 5.7 The government has until November 2008 to consider the Law Commission's report and decide which recommendations to adopt. It may be necessary for the lettings policy to be reviewed again in light of any amendments to the law.

## **6.0 Amendments to the eligibility criteria**

- 6.1 By law, certain groups of customers are ineligible to be rehoused by the council. This mainly affects customers from abroad who have no recourse to public funds, or who have come to the United Kingdom from the European Union but do not have sufficient financial resources to support themselves.
- 6.2 Rather than listing all the categories of eligible persons, the policy has been amended to recognise that this is a complex area of law which is subject to regular change by Statutory Instrument. The policy now simply states that certain groups of customers, for example, some people from abroad who are subject to immigration control may not be eligible for council housing, and that customers should speak to a member of staff for an assessment.

6.3 Full guidance on the current categories of eligible customers can be found in the lettings procedures, and is also covered in the council's lettings policy training course.

## **7.0 Introduction of reduced preference for unsuitable customers**

7.1 The Housing Act sets out how a customer's behaviour can be taken into account in determining the degree of priority they are given on the housing register.

7.2 Customers who are deemed to be guilty of unacceptable behaviour – defined as behaviour such that had they been a secure council tenant they would have been evicted – can be removed from the housing register completely. The Act also allows authorities to take into account 'any behaviour of a person (or of a member of his household) which affects his suitability to be a tenant' when determining the level of priority to award.

7.3 Currently the lettings policy allows customer guilty of unacceptable behaviour to be removed from the housing register. However, this has led to a number of anomalies. The proposed change seeks to address these anomalies by awarding customers a lower degree of priority.

7.4 Example:

- Customer 1 commits antisocial behaviour in an area of the city away from the vicinity of their home. They cannot be removed from the housing register and would be eligible to be rehoused by the council. Customer 2 commits acts of antisocial behaviour within the vicinity of their home and can be removed from the housing register.

7.5 Under the proposed changes, customer 1 would remain on the housing register, but would be given less preference than others within the same priority band, and could be bypassed for an offer of accommodation until they have addressed their behaviour.

7.6 For example, customer 1 registers a housing application and is awarded Priority Extra. The ALMO would write to him / her and advise that their preference will be reduced due to their antisocial behaviour. If customer 1 tops the shortlist for a property advertised through the choice based lettings scheme, they could be bypassed in favour of another customer within Priority Extra who does not have a history of antisocial behaviour. However, if the customer is the only person on the shortlist in Priority Extra they would still be made the offer.

7.7 The lettings procedures will be developed to ensure safeguards are included, such as not applying reduced preference to customers with rent arrears who are fleeing domestic violence. ALMOs will be expected to notify customers in writing of the reasons for their decision and advise them of their right to request a review of the decision.

7.8 The use of the bypass will be monitored, as outlined in section 12 below.

## **8.0 Bedroom requirements**

- 8.1 The lettings policy sets out the number of bedrooms a household will be assessed as requiring. Currently the policy states that where there are two children of the opposite gender, unless both are age 10 or over they will be expected to share a bedroom, resulting in a 15 year old boy and a 5 year old girl being expected to share a bedroom.
- 8.2 The bedroom requirements have been amended to state a separate bedroom ought to be available where there are two children of the opposite gender, where only one of them is age 10 years or over.
- 8.3 In the above example the 15 year old boy and a 5 year old girl would now be assessed as requiring a bedroom of their own. In theory, this change will increase the number of customers awarded a priority due to being overcrowded, but in practice the more generous interpretation is already being used, meaning the impact will be minimal.
- 8.4 In 2009/10 Strategic Landlord will be developing an overcrowding action plan, using the lessons learned from the Communities and Local Government pilot to tackle overcrowding which is currently funding 38 Pathfinder authorities with the highest rates of overcrowding in the country.

## **9.0 Adaptable and accessible ground floor accommodation**

- 9.1 Many customers who are awarded a priority on medical grounds require specific types of rehousing to meet their mobility needs, for example, a level access property. For this reason, where the ALMO identifies a ground floor property which is accessible (for example, without external steps to the property) the ALMO can choose to advertise it giving preference to disabled customers with an appropriate housing recommendation, over other customers in priority who do not require a specific type of property.

## **10.0 Reducing the advertising period for choice based lettings**

- 10.1 The choice based lettings advertising period will change from 7 to 6 days, and will run from Wednesday to Monday.
- 10.2 The impact on customer service will be minimal given that the vast majority of expressions of interest are received on Wednesdays. The change will mean ALMOs will be able to shortlist for properties on Tuesdays, slightly reducing the time taken to make an offer of accommodation and reducing re-let times.

## **11.0 Introduction of assisted bidding**

- 11.1 The Lettings Policy has, since CBL was introduced encouraged housing staff to support and assist customers who are vulnerable and find it hard to make expressions of interest for advertised properties. Nevertheless, there has been criticism that people who may be ill or have limited understanding have been placed at a disadvantage.
- 11.2 To counter this, it is proposed that Council and ALMO/ BTIMO staff can assist

customers in high housing need (i.e. those in the priority bands) by making expressions of interest for advertised properties, so that they can be offered accommodation, which meets their assessed needs. This measure will enable council and ALMO/ BITMO staff to register expressions of interest in appropriate and suitable properties on behalf of vulnerable customers in housing need. This would entail liaison with carers and support agencies, including Adult Social Care the Health Service, and Supporting People contracting agencies. For this to succeed ALMO/ BITMO staff will develop their operational relationships with advocates working for these agencies, so that they can support these customers through the lettings process.

## **12 Inappropriate bidding and non bidding by those in priority need**

- 12.1 A significant number of customers in priority are not bidding or are bidding inappropriately, for example in property types and sizes that are unsuitable for them. A new facility is being currently being developed in the housing management computer system which will advise customers who place inappropriate bids that they will not be given preference for the property, for example, a customer who is not eligible for sheltered housing and customers who do not meet the age preference for a property with an approved local lettings policy. This should significantly reduce the number of inappropriate bids.
- 12.2 In other cases, however, this change will be insufficient. A number of statutory homeless clients in temporary accommodation are not making bids or only in areas where there is heavy demand and no local connection. In such cases it is proposed to introduce a facility through which the Council can make an offer through the lettings process to the client involved. Staff will identify customers who are not bidding despite being in high housing need. Before being considered for intervention, council or ALMO staff will review the customer's situation with them, to explain the system and establish why they are not bidding or are bidding inappropriately. They would then make a decision as to whether it was appropriate to make bids on the customer's behalf, and would write to them to inform them of this decision with details of the size and type of property they are eligible for and customer's preferred area for rehousing.
- 12.3 Staff would then make appropriate bids in advertised properties on behalf of the customer, where the customer is not making bids themselves.
- 12.4 If the customer tops a shortlist on a property as a result of staff making appropriate bids on their behalf, they would be offered the property. If they refuse the offer, the ALMO/ BITMO will decide whether the refusal was reasonable and, in line with the existing policy, may remove their priority award. In such cases, the ALMO will write to the customer advising them of the decision to remove their priority and of their right to request a review of the decision. Statutory homeless customers have additional legal rights to challenge the suitability of the property.
- 12.7 Currently, the only option would be for the ALMO/ BITMO to make a direct let of accommodation which the customer has no choice in. The option of staff making the bid for a customer is preferable to making a direct let because it allows the ALMO/ BITMO to let the property through the choice based lettings scheme. This ensures the property is offered to the customer in the highest degree of housing need, and is more transparent than making a direct offer. The proposal will also facilitate the rehousing of people in temporary accommodation. Should the customer refuse, the

property can be offered to another customer on the CBL shortlist without any delay arising from having to readvertise the property.

- 12.8 The feedback to the consultation on the lettings policy changes was generally against the introduction of this measure, on the grounds that the proposal reduces customer choice. The council remains committed to the principle of choice, but this change provides an additional safeguard to ensure the council can meet its duties to customers who are either unable to use or choose not to use the CBL scheme.

### **13.0 Introduction of four new offer bypass reasons**

- 13.1 Properties advertised through the choice based lettings scheme are normally offered to the customer in the highest housing need to make an expression of interest in the property. However, in certain circumstances the 'top ranked' customer may be bypassed to allow the offer to be made to another customer on the shortlist with a lower degree of priority, or who has spent less time in priority.

- 13.2 The lettings policy sets out the circumstances where the highest ranked customer can be 'bypassed' and will not be made the offer of accommodation. The new bypass reasons would be used:

- i) to bypass a customer who is ineligible for council housing, for example, due to immigration status or failing the habitual residence test. Ineligible customers will still remain on the Leeds Homes Register because they are eligible to be considered for rehousing by housing associations, but if they bid for a council property they will be bypassed.
- ii) to bypass a customer with reduced preference due to their suitability, for example, due to antisocial behaviour, as outlined in paragraph 7 above
- iii) where the customer is not able to take up an offer of accommodation within a reasonable time, for example:
  - if a prisoner bids for a property 6 months prior to their scheduled release date they could be bypassed for the offer of accommodation;
  - if a customer is being joined by family members currently living abroad, but they are not due to arrive in the UK within a reasonable time period; or
  - if a customer is living in supported housing and is not ready to move into a council property within a reasonable time period.

Each case must be treated on an individual basis to determine what a reasonable time period is, and the customer would retain any priority award they had. The proposal aims to make best use of council stock to ensure the property will not stand empty or be under occupied for prolonged periods of time.

- iv) to ensure a customer only has one offer at a time, for example, where the customer has an offer outstanding from a housing association. Under the lettings policy, a customer may only be considered for one offer of accommodation at a time, which this bypass reason facilitates.

- 13.3 The use of bypass reasons is monitored on a monthly basis and Strategic Landlord

carries out regular quality assurance sampling to ensure they are used appropriately.

#### **14.0 Introduction of a new direct letting category**

- 14.1 This new direct letting category is required to enable ALMOs to create a new tenancy when an existing sole tenant requests a joint tenancy, or when an existing joint tenant gives notice to end the tenancy, and is granted a new sole tenancy as outlined in section 5 above.

#### **15.0 Duties to statutorily homeless customers**

- 15.1 The lettings policy currently states: 'Statutorily homeless customers will generally be given a minimum of 120 days preference on the Leeds Homes Register in which they can make expressions of interest in advertised properties. If they have not secured rehousing during this time, or have not been granted an extension of their priority award, a direct letting will be made to discharge the council's duty to them.'

The proposed change adds to this by stating a final offer may be made regardless of whether their priority has been extended.

This change is proposed to clarify the existing policy that a final offer can be made to bring the authority's duty to statutorily homeless customers to an end, either by a direct letting or through the choice based lettings scheme, including by an assisted bid.

#### **16.0 Role of Elected Members**

- 16.1 A new section has been included in the lettings policy which covers the role of Elected Members in the lettings process to bring the policy in line with legislative requirements. In summary, this section explains that members are not involved in the allocation of individual properties, but do contribute towards the development of the policy and in holding officers accountable for the management of individual cases.

#### **17.0 Implications for Council policy and governance**

- 17.1 A large number of stakeholders were consulted during the initial development of the proposed policy, and also during a 9 week consultation period from June to August 2008. A list of those invited to respond to the draft policy can be found in Appendix 1.
- 17.2 A total of 12 responses were received; 10 from organisations and 2 from customers.
- 17.3 Overall the feedback on amending the bedroom requirements and giving preference to disabled customers for accessible ground floor properties was positive. However, respondents were more concerned about the following proposals:
- i) Photographing tenants – some respondents felt the photographing of tenants was a disproportionate response to the problem of subletting
  - ii) Reduced preference – respondents wanted more detail on the kind of behaviour which will be taken into account and about how the bypass facility would operate
  - iii) Assisted bidding – respondents expressed concerns that this may reduce customer choice, and that robust procedures were required
  - iv) Final offers being made to homeless customers regardless of whether their

priority has been extended – respondents felt this may reduce choice, although most objected to the time period being limited to 120 days, not the fact that the policy was being amended to clarify this could also be to a customer whose priority award had been extended.

## **18.0 Legal and resource implications**

- 18.1 The lettings policy must comply with the Housing Act 1996 as amended by the Homelessness Act 2002. The Lettings Policy has been approved by a representative of the Council's Legal Services Division and by counsel.
- 18.2 The changes will be communicated to customers on the Leeds Homes Register through the Leeds Homes flyer and website, as well as in a revised customer information leaflet. In addition, all correspondence such as registration and priority award letters will be amended as appropriate.
- 18.3 Stakeholders will be informed of the changes, with briefing sessions being delivered to ALMO staff who manage the lettings process on behalf of the council. Leeds Homes will also produce a Members' Handbook and provide briefing sessions on the lettings policy, as recommended by Scrutiny Board inquiry into lettings.
- 18.4 Communities and Local Government published a Code of Guidance on allocations and choice based lettings just after the consultation closed in August. As a result of the publication of the Code it is envisaged that the current banding system may need to be reviewed. Officers will seek further guidance from Legal counsel and will consult on any further changes to the policy.
- 18.5 The renaming of the housing need bands on the Leeds Homes Register was included as part of the consultation on the lettings policy changes. Feedback indicates that homeless customers find the current band names Priority Extra, Priority and General Needs confusing, for example, when the customer has been informed they are 'not in priority need' under the homeless legislation, but are placed in the 'Priority' band of the Leeds Homes Register. The renaming of the band names will be considered in any review of the banding system.

## **19.0 Conclusions**

- 19.1 The lettings policy is being continually improved as a result of strategic, operational and housing market changes. The policy changes outlined above are being made in the light of the changing environment, and will be continually reviewed.

## **20.0 Recommendations**

- 20.1 That the Executive Board approves the implementation of the lettings policy with effect from Wednesday 22 October 2008.

## **Appendix 1: List of organisations invited to respond to the consultation**

West North West homes Leeds  
East North East homes Leeds  
Aire Valley Homes Leeds  
Belle Isle Management Organisation  
Registered Social Landlords  
Leeds Homes Partnership  
Supporting People Provider Forum  
Environment and Neighbourhoods Scrutiny Board  
Leeds Tenants Federation

Leeds City Council Departments / Sections:

- Leeds Community Safety
- Leeds Interagency Project
- Leeds City Council Equality Unit
- Housing Needs Group: Homeless Service and Medical Housing Team
- Housing Strategy Team
- Environmental Health: Leeds Landlord Accreditation Scheme and Adaptations Agency
- Adult Social Care

## **Appendix 2: Background papers referred to in this report**

Leeds City Council Environment and Neighbourhoods Scrutiny Board recommendations made following an Inquiry into Choice Based Lettings, July 2008

Renting Homes: A Law Commission Report (LAW COM No 297) Law Commission, May 2006

Allocation of Accommodation: Choice Based Lettings Code of Guidance for Local Housing Authorities, Communities and Local Government, August 2008