

MAYOR AND CABINET		
Report Title	Using private rented sector accommodation to address homelessness in Lewisham	
Key Decision	Yes	Item No.
Ward	Lewisham Central	
Contributors	Executive Director of Customer Services, Executive Director for Resources and Regeneration, Head of Law	
Class	Part 1	Date: 25 March 2015

1 Purpose of report

- 1.1 The purpose of this report is to set out the extent and seriousness of the on-going housing crisis that Lewisham, like all London local authorities, faces at present. Given this background, the report recommends a further course of action to the range of measures that the Council has already initiated, in order to address that crisis and to provide stable and suitable housing for homeless households.

2 Summary

- 2.1 Over the past 18 months Mayor and Cabinet has received a number of reports and recommendations relating to the current housing crisis in London. Over that time rents have increased far more quickly than inflation, the construction of new homes has fallen short of the number needed to meet demand, and the number of properties becoming available annually to the Council for it to meet the housing needs of its residents has halved.
- 2.2 As a result of all of these factors, the level of demand on the Council is far greater than the supply at its disposal, and this is likely to be the case for some time. In response the Council has initiated a wide range of counter-measures including: a programme of house building of ambitious scale and pace; the investment of nearly £10m in purchasing large properties in order to provide better quality and cheaper temporary housing, and a recent resolution to lend Lewisham Homes £20m for it to pursue a similar programme, focussing on smaller individual properties; and an innovative “pop-up” housing development on vacant land. All of these measures combined with a more focused prevention service have succeeded in reducing the rate of increase in demand, but they will be insufficient in reducing the backlog in a timely manner.

- 2.3 As a result, in addition to reviewing options for asset investment as a means to address the crisis, officers have reviewed a range of policy changes and interventions which might also address the issues the Council faces. This paper presents one of those options as a recommendation for Mayor and Cabinet to consider.
- 2.4 At present the Council discharges its statutory duty to relieve homelessness by making homeless households an offer of social housing. This offer may take a number of years to be made – given the imbalance of demand and supply – but in every case where the Council accepts it has a duty to relieve homelessness, this duty will eventually be met by making a social housing offer. However it is possible for the Council to meet its homelessness duty by making an offer of accommodation in the private rented sector rather than by providing social housing, and given the scale of the housing crisis, this option is now being pursued by a number of London local authorities.
- 2.5 This report recommends that the Mayor considers the case for a policy change in Lewisham, which would enable officers to consider discharging the Council’s homelessness duty into the private rented sector in certain circumstances. The report specifies the circumstances in which this course of action would not be pursued, and recommends that if the change is agreed then the impact it has on managing demand in general, and on the residents affected specifically, should be reviewed after a year. Officers have undertaken pre-decision scrutiny with the Housing Select Committee (HSC) regarding this change, and the overall support that HSC offered, along with a request for specific client groups to be excluded, is detailed in this report at section 7.

3 Policy context

- 3.1 The contents of this report are consistent with the Council’s policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:
- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
 - Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
 - Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.
- 3.2 The proposed recommendations are also in line with the Council policy priorities:

- Strengthening the local economy – gaining resources to regenerate key localities, strengthen employment skills and promote public transport.
- Clean, green and liveable – improving environmental management , the cleanliness and care for roads and pavements and promoting a sustainable environment.

4 Recommendations

- 4.1 The Mayor is recommended to:
- 4.2 Note the extent of the housing crisis in London, the imbalance between the demand for housing that the Council faces and the amount of supply it has available to meet that demand, and the impact of this imbalance which can be seen in the number of residents forced to live in temporary accommodation and the cost implications for the Council;
- 4.3 Note the options that are available to the Council in the way it chooses the private rented sector to meet this demand, as set out at section 6;
- 4.4 Note the views of the Housing Select Committee as set out at section 7;
- 4.5 Agree that officers should be enabled to discharge the Council's homelessness duty into the private rented sector, in the manner and with the exclusions set out at section 8; and
- 4.6 Agrees that officers should review the working and efficacy of this policy change one year after implementation, and bring a further report back to Mayor and Cabinet accordingly.

5 Background

- 5.1 Lewisham, and London more generally, faces severe housing pressures across all tenures. A combination of historic and on-going lack of new supply, a reduction in the number of available lets across the social housing stock, welfare reform, and rising property prices and rents, has led to rapidly increasing, and unmet, demand for social housing.
- 5.2 This increasing demand has recently started to translate into acute pressure for temporary accommodation. The latest data from DCLG show that, London-wide, demand for temporary bed spaces has doubled in two years, and the impact in Lewisham has been even more severe. In Lewisham there are currently 573 households in nightly paid accommodation, against a target of a maximum of 50. The number has increased nearly tenfold in the two years since March 2013, when there were 60 households in nightly paid accommodation, although over the last three months numbers have been held at a steady, rate. However demand remains high and despite a re-focus on preventing homelessness by our front line Housing Options Centre the numbers in nightly paid accommodation have not reduced significantly.

5.3 The table below sets out for Mayor & Cabinet the data which demonstrates the driver for this acute level of demand. In short, the projection for the number of cases this year in which the Council has accepted a homeless duty is 786, which is nearly 20 per cent more than two years ago. At the same time the total number of available lets is projected to fall by nearly 43 per cent.

Supply and demand			
	2012/13	2013/14	2014/15 (projected)
Homeless applications taken	1,248	1,041	1,287
Homeless duty accepted	653	710	786
Total tenanted lettings made (re-lets and new lets)	1,774	1,443	1,169

5.4 It is as a result of this pressure that the Council has already launched a range of acquisition programmes and other policy interventions in order to better manage demand and also to provide better short term alternatives where demand cannot be reduced. The next section of this report sets out the business case for augmenting those programmes with a further programme of purchasing small, individual properties in addition to the larger hostel-type acquisitions that have been made to date.

6 Options for using the Private Rented Sector

6.1 Under existing legislation (principally the Housing Act 1996), local housing authorities are required to provide accommodation to those accepted as statutory homeless. This is referred to as 'temporary accommodation'. The duty to provide temporary accommodation is enduring, and will last until such time as the duty is brought to an end in one of a number of ways set out in the Act. This is referred to as 'discharge of duty'. The main way that duty has traditionally been discharged is by an offer of social rented housing.

6.2 An offer of private rented accommodation can be made, although this has usually been through a 'qualifying offer' (with the consent of the applicant). An offer of suitable private rented property can also be made in order to prevent homelessness, for applicants that are threatened with homelessness within 28 days (using s.195 of the Act). Private rented housing can also be provided as temporary accommodation for homeless households without discharging the duty.

6.3 The Localism Act 2011 (sections 148 and 149) has amended the 1996 Housing Act, and new statutory regulations have been produced. These

provide a new power that allows suitable 'Private Sector Offers' to be used to end the main homeless duty, without requiring the applicant's agreement. This only applies to new homeless applicants applying as homeless from the 9th November 2012. The regulations require local authorities to take a number of matters into account in determining the suitability of accommodation.

- 6.4 This approach gives local housing authorities greater opportunity to use the private rented sector to satisfy households' housing needs. This should reduce the Council's need to use temporary accommodation. It has long been recognised that placing families in short term temporary accommodation, especially Bed and Breakfast style accommodation, can be detrimental to all members of the household concerned.
- 6.5 The Council has used private rented accommodation as a central part of its homelessness prevention strategy for many years. This year the housing options centre enabled 80 new tenancy 'starts' in the private sector. But many applicants choose to decline this as an option, preferring to be placed in temporary accommodation and to wait for a secure council tenancy. This means we are unable to make the best use of the supply, and match the private sector properties we have available to those that are most suitable. Discharge of homelessness duty through private sector offers will therefore support the homelessness prevention strategy.
- 6.6 Although the homelessness duty can traditionally be ended by an offer of social rented housing, the limited supply of this type of accommodation means that homeless households typically have to wait a long time in temporary accommodation before being offered social housing. As an example, in January of this year there were a total of 3,309 households on the housing register awaiting a two-bed property, of which 776 households were in homeless in temporary accommodation. In the year to date the Council has let 194 two bed properties. This means that, even if the Council closed the register and took no new cases, it would take four years of letting two bed properties only to homeless households just to clear the backlog.
- 6.7 Given the extent of the on-going crisis, and the fact that discharge into the private rented sector is now possible, officers have reviewed the options for pursuing this approach in Lewisham. There are three principle options, which are set out in the table on the following page.

Option	Considerations / Impact
1. Not to adopt the power.	<ul style="list-style-type: none"> • High levels of allocations to accepted household cases; homelessness remains the perceived route through to social housing. • Increased levels in temporary accommodation • Use of the private rented sector would continue much as it is now.
2. Considered for most homelessness applications. Discharge particularly used in cases where there is a significant financial burden on the local authority or applicant. All cases subject to individual assessment	<ul style="list-style-type: none"> • Weakens the perceived link between homelessness and social housing • Mitigates against the impact of welfare reform and unsustainable temporary accommodation costs • Reflects the lack of supply of private sector homes.
3. Use the power to end the duty for all accepted homelessness cases	<ul style="list-style-type: none"> • This would completely remove the link between homelessness and obtaining social housing • Supply of private rented homes unable to meet need. As such an untenable position. • There are certain groups for whom private rented housing not suitable.

7 Comments of the Housing Select Committee

7.1 Officers undertook pre-decision scrutiny on this matter with the Housing Select Committee at its meeting on 28 January 2015. The options set out in the previous table were discussed, alongside the relative benefits and risks of each, and the committee resolved the following:

The Committee recommends that:

- b) It supports the policy option to discharge the Council's homeless duty into the private rented sector – in or out of borough. However, the Committee would like the policy to be reviewed annually. In addition, with regards to the list of exclusions from this approach recommended by Housing officers, the Committee would like the following exclusions to be added:
 - i) Certain specified medical conditions (which can only be managed locally);
 - ii) Those with disabilities;
 - iii) Members of the Armed Forces, in line with the Council's commitment to the Armed Forces Community Covenant.

8 Recommended option, delivery timetable and risk management

- 8.1 On that basis, the officer recommendation to Mayor and Cabinet is that the Council should pursue option 2 in the table set out above, but with the exclusions recommended by Housing Select Committee and with a regular annual review of the new policy.
- 8.2 This course of action is recommended because officers consider that it best balances the risk of inaction against the risk of unintended consequences particularly on the most vulnerable groups as those groups will be excluded from the policy.
- 8.3 This new policy will not in itself eliminate the need for temporary accommodation entirely but including this as part of a menu of options available to meet housing need will help to reduce expenditure on unsuitable and expensive temporary accommodation, especially shared facility B&B. It also often offers more choice for clients at a more affordable rent, near to local amenities and schools, and supports clients to settle more quickly and not be impacted by their homelessness for long periods of time. This work will also help to support the ongoing work to transform the Housing Options service and focus their efforts on preventing homelessness and empowering clients to work with us to find the most appropriate solutions to their housing crisis. If clients are aware that the Council could discharge into the private rented sector then they are often much more willing to engage to secure accommodation that is most suitable to their need. Sourcing accommodation in the PRS for discharge will remain a challenge and so the primary purpose of this policy change will be largely to support the existing prevention work of the Housing Options team.
- 8.4 Mayor and Cabinet should be aware that Officers would only propose implementing this approach – should the Mayor agree to the recommendations – once policies and operating protocols have been finalised and once managers are satisfied that all staff have been trained and are comfortable in their operation. If approval is obtained then work to develop and sign off the policy and operating protocol would commence immediately.

Proposed operating model

- 8.5 In order to provide further clarity for Mayor and Cabinet about the manner in which a new approach could be implemented, the following section sets out the principles which would underpin its use in Lewisham.
- 8.6 First, and most importantly, before any household was made a Private Rented Sector Offer (PRSO), a thorough suitability assessment would be carried out. Furthermore the basis of that assessment would be reviewed at least annually, alongside an assessment of the success of the operation of the scheme, and those reviews will be put before Mayor and Cabinet to consider. On that basis the first review will be brought to

M&C shortly after the first year of operation, which will be in the spring of 2016.

- 8.7 Second, it is important that Mayor and Cabinet is clear that a PRSO will only be made when certain criteria are met, and is aware of what those criteria are. The following sets out a proposed list of criteria, on the basis that if households met one or more of these then officers would start to consider the potential to make a PRSO.

Example criteria for selecting applicants to be made a PRSO offer to fully discharge the homeless duty

Applicants owed a full housing duty that:

- Have expressed a preference to live in a particular area. Area choice will be considered when making a PRSO but cannot be guaranteed.
 - Are in temporary accommodation where there is a cost to the council
 - Are in temporary accommodation where due to the level of rent charged there is a cost to the applicant
 - Are in temporary accommodation and require longer term accommodation as a matter of urgency.
 - That have been accepted as being threatened with homelessness and owed a full housing duty and where a PRSO offer will avoid the need for the household to go into temporary accommodation.
 - Where there no exceptional circumstances relating to the need for the provision of long term social housing to provide longer term stability for a household (this could be where a household has a child or children on the at risk register or where a household requires an adapted property to meet their long term disability needs)
- 8.8 One or more criteria may apply at the same time. Regardless of the fact that an applicant has met the criteria for being considered for a PRSO offer officers will still ensure that it only makes a PRSO offer after a full consideration of household's individual circumstances and the facts that apply to that case. Having undertaken this consideration if the council is then satisfied that it is appropriate to exercise the power given to it under the Housing Act 1996 (as amended) it will discharge its duty by arranging for a private landlord to make a suitable offer of an assured short-hold tenancy in the private rented sector for a period of at least 12 months.

Ensuring that only suitable offers are made

- 8.9 Officers propose that the Council will make a formal PRSO only having undertaken four tests, which would be as follows:
1. Would the offer be affordable? This will require an income and expenditure assessment for each case which is an existing

requirement for all offers of temporary accommodation (TA) and this would be therefore extended to cover PRSO as well;

2. Is the property type suitable? This would relate to the space and arrangement of the property, and is also an existing requirement that applies to TA that would be extended to the operation of a PRSO model;
 3. Is the property location suitable based? Of particular significance would be the impact on education, health, employment and support. This will also include an assessment of any subjective matters based on the applicant's circumstances which are relevant to whether the offer of accommodation is suitable.
 4. Is the property standard acceptable? PRSO offers will only be suitable if the property meets the Homelessness (Suitability of Accommodation) (England) Order 2012 – Part 2 which relates to property standards and management.
- 8.10 Only where a household meets the initial criteria, and it has been proved possible for an offer to be made to that household that meets all four of the tests set out above, would a PRSO be made.
- 8.11 If within two years of accepting the offer an applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the authority is satisfied that they are homeless, or threatened with homelessness, and eligible for assistance, and not satisfied that they became homeless intentionally, then a new duty to secure that accommodation will fall to the authority.
- 8.12 An applicant who reapplies will be considered to be homeless, or threatened with homelessness, if they have been served with a valid notice under s.21 Housing Act 1988 by the landlord of the private rented sector property.
- 8.13 Mayor and Cabinet is asked to note all of the protections set out above which will ensure that no PRS offers are made, other than where a number of tests have been made, and that there are significant protections in this approach for residents with vulnerabilities, with children at key education stages, and who would be significantly disadvantaged by being placed into the PRS.
- 8.14 For the residents discussed above, then offers of social housing will continue to be made. However, given the extent of the housing crisis officers propose that there is now no alternative other than to make PRS offers to some households in some circumstances. This could enable those households to be placed into a sustainable housing situation sooner, and would prevent them from spending a number of years in temporary accommodation.

- 8.15 On that basis, the Mayor is recommended to agree that officers be enabled to make PRS offers in certain circumstances, with the protections outlined above, and on the basis that the operation of the scheme is reviewed after a year and that the results of that review are brought back for M&C to consider.

9 Financial implications

- 9.1 The cost to the Council of nightly paid accommodation is currently expected to be in the region of £3m in 2014/15, and estimated to be between £2.0m and £2.5m in 2015/16,
- 9.2 The ability to discharge its homelessness duty into the private rented sector will, subject to no further increases in homeless applications, assist in reducing this cost.

10 Legal Implications

- 10.1 The Homelessness Act 2002 places a duty on local housing authorities to carry out a homelessness review and to formulate and publish a Homelessness Strategy every 5 years
- 10.2 Sections 148 and 149 of the Localism Act 2007 amend Part 7 of the Housing Act 1996. ("The 1996 Act".) These provisions, as well as the Homelessness (Suitability of Accommodation) (England) Order 2012 came into force on 9th November 2012.
- 10.3 The principal effect of the Localism Act amending provisions, is to change the way in which the duty on local housing authorities to secure accommodation under section 193(2) of the 1996 Act can be brought to an end; namely, with an offer of suitable accommodation in the private rented sector. These changes allow local housing authorities to end the main homelessness duty with a private rented sector offer, without the applicant's consent. The duty can only be ended in the private rented sector in this way with a minimum 12 month assured shorthold tenancy. The arrangement of a private rented sector offer is a power, not a duty
- 10.4 When ending the duty using the Localism Act power, local housing authorities are also subject to the provisions of the Homelessness (Suitability of Accommodation) (England) Order 2012. The Order deals with suitability of location of accommodation and circumstances in which accommodation is not to be regarded as suitable for a person for the purposes of a private rented sector offer under section 193(7F) of the 1996 Act.
- 10.5 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil

partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

10.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

10.7 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

10.8 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

10.9 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

10.10 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and

resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

11 Crime and Disorder Implications

11.1 There are no crime and disorder implications arising directly from this report.

12 Equalities Implications

12.1 As part of the pre-decision scrutiny work with the Housing Select Committee, an initial equalities analysis was undertaken to determine whether the proposed option for discharging the Council's homelessness duty into the private rented sector was likely to have a positive, neutral or negative impact on different protected characteristics within the local community and identify mitigating actions to address any disproportionately negative outcomes.

12.2 This analysis found that whilst the overall impact of introducing the policy was broadly positive, particularly in terms of reducing the use of inappropriate B&B accommodation and addressing the mismatch between housing supply and demand, there was potential for it to have a negative impact on some groups. As a result, the proposals were amended in conjunction with the Housing Select Committee to exclude certain groups.

12.3 A full Equality Analysis Assessment (EAA) utilising all the available data and research will be undertaken to support the policy design and implementation process, assuming approval to proceed is received. This EAA will closely monitor the impact of the policy during its delivery and ensure that appropriate action is taken to mitigate any negative impacts wherever possible. The outcome of this process will be reported to Mayor & Cabinet after the first year of operation, alongside a wider review of the working and efficacy of the policy change.

13 Environmental implications

13.1 There are no environmental implications arising directly from this report.

14 Background documents and originator

14.1 There are no background documents. If you would like any further information on this report please contact Madeleine Jeffery on 020 8314 9484.