

## Housing Select Committee

|                     |   |                                     |
|---------------------|---|-------------------------------------|
| <b>Report Title</b> | Location Priority Policy and Temporary Accommodation Procurement Strategy |                                     |
| <b>Key Decision</b> | Yes   | Item No. 5                          |
| <b>Ward</b>         | All   |                                     |
| <b>Contributors</b> | Executive Director for Customer Services                                  |                                     |
| <b>Class</b>        | Part 1  | Date: 27 <sup>th</sup> October 2015 |

### 1 Summary

- 1.1. The Supreme Court judgment in the case of *Nzolameso v Westminster City Council* required local authorities to have ‘a policy for procuring sufficient units of temporary accommodation secondly, each local authority should have and keep up to date, [and] a policy for allocating those units to individual homeless households.
- 1.2. This report accompanies both the final Location Priority Policy and the Temporary Accommodation Strategy which have been developed to satisfy this requirement.
- 1.3. An Interim Homeless Allocations (Locational Priority) Policy was presented to Mayor and Cabinet on 15<sup>th</sup> July 2015, subsequently, officers have conducted consultation and finalised a Location Priority Policy which provides a framework for the fair allocation of temporary accommodation within and close to the London Borough of Lewisham.
- 1.4. The Procurement Strategy has been developed to meet the needs of homeless households and households being assisted by social care to address the shortage in supply the Council is currently facing. This Procurement Strategy aims to meet the needs of Lewisham’s residents in conjunction with Lewisham Council’s Location Priority Policy and overall Housing Strategy.
- 1.5. This paper outlines the policy context and background and summarises the key elements of the Location Policy and Procurement Strategy, and how they have been adapted to reflect feedback from consultation.

## **2 Purpose of Report**

- 2.1. The purpose of this report is to enable Committee to pre-scrutinise the report to Mayor and Cabinet for the implementation of a Location Priority Policy and a Temporary Accommodation Strategy which will support officers to make decisions in relation to the allocation of temporary accommodation.

## **3 Policy Context**

- 3.1. On 2<sup>nd</sup> April 2015, the Supreme Court gave its judgment in the case of *Nzolameso v Westminster City Council* and required local authorities to have 'a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year... secondly, each local authority should have and keep up to date, a policy for allocating those units to individual homeless households. Where there was an anticipated shortfall of 'in borough' units, that policy would explain the factors which would be taken into account in offering units close to home, and if there was a shortage of such units the factors which would make it suitable to accommodate a household further away'.
- 3.2. The implications of the judgment for local authorities are hugely significant as demand rises rapidly and the supply of affordable accommodation to meet this demand reduces. It is estimated that at a national level there are currently 16,000 households in temporary accommodation outside of their local authority area. This has almost tripled since 2010 when the figure was 5,880.
- 3.3. A briefing by Shelter following *Nzolameso* outlined that a procurement policy and a policy for the allocation of temporary accommodation would have the advantage of:
  - Guiding temporary accommodation letting teams in their daily business, and helping ensure that the right accommodation is procured for a household.
  - Informing homeless households, and their supporting agencies of local housing pressures and what to expect from an offer of temporary accommodation.
  - Assisting reviewing officers in ensuring that policies were applied correctly to an individual case.
  - Assist both homeless households and local authorities in disputes around the offer of temporary accommodation.

## **4 Background**

- 4.1. At the Mayor and Cabinet meeting on 15<sup>th</sup> July 2015, it was resolved that:
- the new legal responsibilities for the Council in relation to the development of a locational priority placement policy be noted;
  - the rationale for the development of an interim policy be noted;
  - the interim locational priority placement policy be approved; and
  - officers be authorised to proceed with consultation to develop a full locational priority placement policy to be presented to Mayor and Cabinet in November 2015.
- 4.2. The report presented on 15<sup>th</sup> July 2015 outlined that the following next steps would take place:
- Engagement with London Councils and other London boroughs to gather insights into the approaches being undertaken by other boroughs.
  - Consultation with advocates and homeless households likely to be affected by this policy.
  - Detailed supply and demand analysis and comparison to other boroughs.
  - Analysis of impacts of interim arrangements for homeless households and service delivery.
  - A full financial impact assessment.
  - A full Equalities Analysis Assessment.

## **5 Lewisham and London Profile**

- 5.1. The London Borough of Lewisham has observed a 77% increase in the number of households in temporary accommodation over the previous five years - there are currently 1,800 homeless households in temporary accommodation; the number of affordable properties to let has decreased by 44% in this time. The Council has just over 9,000 individuals and families on the Housing Register and the average wait for a four bedroom property is 4 years.
- 5.2. In the 2014/15 financial year, the Local Authority spent £12.6m on Bed and Breakfast type accommodation before income; with rental charges to clients, the net spend was £3.5m (an increase from £1.5m in 2013/14 and £0.6m in 2012/13). Additionally, in the 2014/15 financial year, there was a net income of £450k generated from Private Sector Leasing and a net income of £92k from hostels.
- 5.3. The Council currently spends in excess of £5m per annum on the provision of accommodation and other services for homeless families under s17 Children Act 1989 who are excluded from support under Housing Act 1996, for

example because they have no recourse to public funds or have made themselves intentionally homeless.

- 5.4. In September 2015, the Council provided temporary accommodation to 103 families and single adults (approximately 80% under Housing Act 1996 and 20% under Children Act 1989 and Care Act 2014).
- 5.5. It is expected that demand for services will increase in line with welfare reform, for example the reduction of the benefit cap from £26,000 to £23,000.

Supply: in-borough temporary accommodation

- 5.6. Procuring properties within LHA rates locally has become increasingly difficult. The Council's in-borough temporary accommodation consists of a combination of hostels, which are owned and managed by the Local Authority, and Private Sector Leased (PSL) properties which are procured on long leases and managed by the authority.
- 5.7. The Council purchases nightly-paid (Bed and Breakfast type) accommodation for those it is not able to accommodate in hostels or PSL properties. Lewisham Council is part of the Inter Borough Accommodation Agreement which sets the maximum rates which local authorities should pay for nightly-paid. This agreement is designed to mitigate the competition between London Boroughs on the London property market so as to ensure a reasonable supply of available affordable accommodation for all councils.
- 5.8. In June 2015, there were 83 families in private sector nightly-paid accommodation placed by the London Borough of Lewisham. 34% of these families were placed within the London Borough of Lewisham (4% fewer than the South East London average and 5% fewer than the London average).
- 5.9. Based on current London-wide agreements, the London Borough of Lewisham expects to be able to sustain its current levels of in-borough nightly-paid placements. However, the Local Authority has received notice that landlords wish to withdraw from current arrangements for 93 PSL properties which are currently managed.
- 5.10. The following table provides a snapshot of the number of units available in borough (June 2015):

|                        |     |
|------------------------|-----|
| Number of hostel units | 330 |
|------------------------|-----|

|                                 |      |
|---------------------------------|------|
| Number of PSL properties        | 621  |
| Number of B&B units in Lewisham | 154  |
| Total in borough units          | 1105 |

5.11. The following table provides a snapshot of the types of properties on the market within the London Borough of Lewisham through major agencies (June 2015):

| Property type                   | Total available | Total within LHA rates |
|---------------------------------|-----------------|------------------------|
| 1 bed PRS                       | 265             | 13 (5%)                |
| 2 bed PRS                       | 563             | 19 (3%)                |
| 3 bed PRS                       | 197             | 9 (5%)                 |
| Total affordable PRS in borough |                 | 41                     |

Supply: close to borough temporary accommodation

5.12. In addition to the properties procured in borough, the Council procures nightly-paid accommodation and PSL properties in the Greater London area, the following table provides a snapshot from June 2015:

|                               |     |
|-------------------------------|-----|
| Number of B&B units in London | 402 |
| Number of PSL properties      | 2   |
| Total number of units         | 404 |

5.13. The following table provides a snapshot of properties within 90 minutes commuting distance of the London Borough of Lewisham on the market with major agencies (June 2015):

| Property type | Total available | Total within LHA rates |
|---------------|-----------------|------------------------|
| 1 bed PRS     | 52819           | 1087 (2%)              |
| 2 bed PRS     | 38572           | 754 (2%)               |

|                                |       |          |
|--------------------------------|-------|----------|
| 3 bed PRS                      | 15625 | 883 (6%) |
| Total affordable PRS in London |       | 1850     |

### Key Pressures

5.14. The following factors contribute to the limited supply of suitable properties within and close to the London Borough of Lewisham:

- Landlords' discretion whether or not to rent their properties to households on benefits. Five agencies advertising properties within LHA rates in the London Borough of Lewisham were contacted, three indicated that they did not rent properties to people on benefits; one said they would only do so with a guarantor and the fifth said it would be at the discretion of individual landlords.
- LHA rates are set at the 30th percentile meaning that 30% of the total number of PRS properties in Lewisham should be within LHA rates. However, analysis suggests that in fact, this is closer to 5% of available properties.
- All local authorities are in competition to secure PRS properties across London. There was an increase from circa 44,000 to 49,000 households in placed temporary accommodation by London councils between June 2014 and June 2015. The London Borough of Lewisham observed an increase of 276, the highest increase in South East London (170 in the London Borough of Bromley (2<sup>nd</sup>) and 131 in Southwark (3<sup>rd</sup>).
- Local authorities are in competition for PRS on the open market.

5.15. The Housing Procurement Team expects to be able to house 70% of homeless households in temporary accommodation within or close to the London Borough of Lewisham.

## **6 Categories of Location Priority**

6.1. In *Nzolameso v Westminster City Council*, Lady Hale outlined three categories of property location. Where there is a shortfall of in-borough units, a policy should explain the factors to be taken into account in offering households those units, also the factors taken account of in offering units close to home and the factors which would make it suitable to place people further afield.

6.2. This Location Priority Policy requires that if the local authority has a duty to secure accommodation, an assessment will be carried out to determine the

location priority of the applicant. The assessment will determine whether the applicant has:

- Priority to be located in the London Borough of Lewisham.
- Priority to be located close to the London Borough of Lewisham.
- No priority as to the location of a property.

6.3. Regardless of the location priority, the Council will have regard to the principal needs of any children in the household, and the need to safeguard and promote the children's welfare. In particular, regard will be had to any disruption to schools, medical care, social work, other key services and other support.

6.4. Under the Equality Act 2010, the Council will have due regard to the protected characteristics in determining whether there are exceptional and compelling circumstances which would require an applicant to be placed in a particular location.

## **7 Categories of Location Priority: 'In-Borough'**

7.1. Applicants and their household members to be housed with them who satisfy one or more of the following criteria will qualify for 'in-borough' priority:

- They are receiving treatment for a physical or mental health condition from a specialist hospital unit which cannot be transferred to another NHS service or they are at a critical point in their treatment.
- Children subject to a Child Protection Plan in the London Borough of Lewisham which cannot be transferred to another local authority without causing serious detriment to a child's welfare.
- Children subject to an Education Health and Care Plan (EHCP) or a Statement of Special Educational Needs in the London Borough of Lewisham which cannot be transferred to another local authority without causing serious detriment to the child's welfare.
- They have a longstanding arrangement to provide essential care to another family member in the London Borough of Lewisham who is not part of the household. Carers must be in receipt of Carer's Allowance.
- Other circumstances which demonstrate an exceptional and compelling need which cannot be met outside of the London Borough of Lewisham.

7.2. Since the development of the interim policy, the following additional factors are to be considered for an 'in-borough' priority:

- Following advice from the Housing Department's medical advisor, the threshold for in-borough priority relating to carers has been clarified. Carers must be in receipt of Carer's Allowance.
- Clarity has been provided in relation to children and young people with an Education Health and Care Plan (EHCP) or Statement of Special Educational Needs and the need to consider the impact of transferring their EHCP or Statement to another local authority.
- Officers are to have regard to the exceptional impact of housing sixteen and seventeen year old applicants outside of the London Borough of Lewisham within the assessment process.

## **8 Categories of Location Priority: 'Close to Borough'**

8.1. The Location Priority Policy defines 'close to borough' as located within 90 minutes travelling distance of the London Borough of Lewisham by public transport. 90 minutes was considered as a 'reasonable' commuting time in-line with the 90 minutes jobseekers could be required to travel to work.

8.2. Applicants or their household members to be housed with them who satisfy one or more of the following criteria will qualify for 'Close to Borough' priority:

- They have been continuously employed close to the London Borough of Lewisham for 16 hours or more per week in a role which cannot be transferred to another area. Applicants must have been employed in this role for six months prior to the date of application and remain so employed. Wherever practicable, the Local Authority will seek to place such households within 90 minutes travelling distance, by public transport, from the place of employment at the time of application.
- Women who are on maternity leave from employment and meet the above criteria will also be prioritised for placements close to the London Borough of Lewisham. Wherever practicable the Local Authority will seek to place such households within 90 minutes travelling distance by public transport from their place of employment.
- Children who are enrolled in GCSE, AS, or A level courses in the London Borough of Lewisham, with public exams to be taken within the current or



next academic year. Wherever practicable the Local Authority will seek to place such households within 90 minutes travelling distance by public transport of their school or college.

- Other exceptional circumstances, where applicants demonstrate an exceptional and compelling need to be housed close to the London Borough of Lewisham.

8.3. The award of an 'In-borough' or 'Close to Borough' location priority does not guarantee the provision of temporary accommodation within those areas, rather priority for such accommodation should it be available and suitable.

## **9 Categories of Location Priority: 'No Location Priority'**

9.1. Applicants who meet none of the 'In-borough' or 'Close to Borough' criteria will be offered properties further afield than 90 minutes travelling distance of the London Borough of Lewisham by public transport, when no suitable property is available within these areas.

9.2. Regardless of the location priority category, the Council will have regard to the principal needs of any children in the household, and the need to safeguard and promote the children's welfare. In particular, regard will be had to any disruption to schools, medical care, social work, other key services and other support. Additionally, in determining the suitability of a property. The Council will have due regard to the protected characteristics under the Equality Act 2010 when determining the suitability of a property (an Equalities Analysis Assessment is attached at Appendix E).

## **10 Procedure**

10.1. The assessment will take the form of a universal checklist which will be completed by the referring team – Housing, Children's Social Care or No Recourse to Public Funds. The checklist - attached at Appendix B - will highlight the key policy criteria, permit evidence to be submitted in relation to the categories of need and give officers the opportunity to provide details of any specific circumstances which should be considered in determining suitable temporary accommodation.

10.2. Completed assessments will be referred to the Procurement Team or the Finance & Admin Team who will match the applicant to a suitable property within or as near to the London Borough of Lewisham as possible, prioritising the applicant according to their assessed priority. The Council will house the

applicant within their priority area provided that there is a suitable and affordable property available within the area.

- 10.3. Advice and information will be provided to applicants, particularly in relation to key services in areas outside of the London Borough of Lewisham.

## **11 Procurement Strategy**

- 11.1. To be adequately prepared for the impact of the Government's welfare reform on the PRS and homelessness, Lewisham Council created a Private Sector Housing Agency (PSHA). The PSHA functions as the procurement hub across housing and social care.

- 11.2. This approach ensures that the Council:

- Achieves value for money through its collective buying power and by eliminating internal competition for PRS accommodation.
- Delivers accommodation which is fit for purpose.
- Delivers an enhanced customer-focussed service.
- Identifies and swiftly deals with rogue landlords operating within Lewisham Council's private rented sector.
- Increases joint-working between different teams and departments across the Council, minimising duplication and contributing to the Council's Futures programme by delivering its vital services efficiently and effectively.

- 11.3. A new Temporary Accommodation (TA) Procurement Strategy is attached as Appendix C. The Procurement Strategy has been developed to meet the needs of homeless households and households being assisted by social care to address the shortage in supply the Council is currently facing. This Procurement Strategy aims to meet the needs of Lewisham's residents in conjunction with Lewisham Council's Location Priority Policy and overall Housing Strategy.

- 11.4. The Procurement Strategy takes into consideration the local and national shifts in the PRS landscape driven by the buoyant property sales and lettings market, legislative changes and recent legal judgements.

- 11.5. The Local Authority will continue to procure suitable properties to meet the needs of applicants. The Procurement Team will procure accommodation in the London Borough of Lewisham, close to Lewisham and also further afield

in circumstances where there are no suitable and affordable properties available in-borough.

- 11.6. An estimated 600 units of nightly paid accommodation that are accessible to households on benefits will be needed during 2015/16. A temporary accommodation portfolio of around 1800 units will be needed until 2020.

## **12 Consultation**

- 12.1. A consultation event was held on 25 September as a means of providing information to stakeholders on the proposed policy and an opportunity for them to communicate their views and raise any concerns. Officers attended the Homelessness Forum in order to give a verbal invitation to the event and stakeholders were contacted. Invitations were sent to a range of support services including Housing, Health and preventative services. A total of 18 people attended the event.
- 12.2. A detailed breakdown of issues and questions raised is provided at Appendix D but can broadly be summarised along with responses on the day under the following headings.

### General questions and comments

- 12.3. Questions largely related to the details of the policy and its implementation, clarification was provided on the day.

### Financial impact on service users

- 12.4. Concern was raised about the impact on people who might want to travel back to Lewisham for work, study or to access services. Concern was noted but it was pointed out that accommodation outside of the borough would be more affordable and therefore sustainable because it would put less of a financial burden on service users.

### Equalities impact

- 12.5. Concern was raised about the possibility that people from black and minority ethnic communities or with particular religious beliefs might be placed in parts of the country where they would feel isolated or potentially ostracised. Participants were assured that officers would have due regard to the protected characteristics under the Equality Act 2010 when determining the suitability of a property and be sensitive to the concerns of applicants.

## Health and wellbeing impact

- 12.6. Concern centred on taking people away from specialist support services that they were accessing in the London Borough of Lewisham, such as for substance misuse or domestic violence. Participants were assured that these issues would be taken into account when considering housing options.

## **13 Financial Implications**

- 13.1 The Council spent in excess of £28m on temporary accommodation in 2014-15. Whilst the majority of that was recovered through housing benefits and rental income, the net expenditure was over £8m in excess of the budget provision. Current budget projections are indicating that similar levels of expenditure will be incurred in this financial year.
- 13.2 The overspend is as a result of increased demand for the services and rising accommodation costs. The Procurement Strategy sets out how the council decides how to procure property to meet that demand and, as such, is not expected to increase the overspend in itself.
- 13.3 When acquiring the various types of accommodation set out in the strategy, officers will follow the procedure appropriate for that type of acquisition, ensuring financial viability and that costs to the council are kept to a minimum.

## **14 Legal Implications**

The implications of the decision of the Supreme Court in *Nzolameso v Westminster City Council* have been set out in this report. There are two main groups of applicants to whom the Council owes a duty to source accommodation on a temporary basis- those to whom a Children Act 1989 duty is owed, following assessment, and those to whom a homelessness duty is owed, pursuant to the 1996 Act and Guidance.

Sections 206 and 208 of the Housing Act 1996 [“the 1996 Act”] impose distinct but related requirements upon the local authority.

Section 206(1) provides that the authority may discharge their housing functions only by securing “suitable” accommodation, albeit by a variety of routes.

Section 208(1) provides that: “So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district”.

By virtue of section 205(1) of the 1996 Act, their “housing functions” refers to their functions under Part 7 to secure that accommodation is available for a person’s occupation. It is clear, therefore, that these are duties owed to the individual person to whom the main homelessness duty is owed. The accommodation offered has to be suitable to the needs of the particular homeless person and each member of her household and the location of that accommodation can be relevant to its suitability:

This has since been fleshed out in statutory guidance.

Under section 182(1) of the 1996 Act, local housing authorities are required to have regard to such guidance as may from time to time be given by the Secretary of State. The current general guidance is contained in the Homelessness Code of Guidance for Local Authorities (Department for Communities and Local Government, 2006). As to the duty in section 208(1), this provides: “16.7. Section 208(1) requires housing authorities to secure accommodation within their district, in so far as is reasonably practicable. Housing authorities should, therefore, aim to secure accommodation within their own district wherever possible, except where there are clear benefits for the applicant of being accommodated outside of the district. This could occur, for example, where the applicant, and/or a member of his or her household, would be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s) or where ex-offenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contacts which could exert a negative influence.”

As to suitability, the Code says this about the location of the accommodation: “17.41. The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.”

This has since been expanded upon. Under section 210(2), the Secretary of State may by order specify (a) the circumstances in which accommodation is or is not to be regarded as suitable, and (b) the matters to be taken into account or disregarded in determining whether accommodation is suitable for a person. During the passage of the Localism Act 2011, the Government undertook “to remain vigilant to any issues that arose around suitability of location”. It had come to light that some local authorities were seeking accommodation for households owed the main homelessness duty “far

outside their own district". The Government was therefore "willing to explore whether protections around location of accommodation need to be strengthened and how this might be done" (Department for Communities and Local Government, Homelessness (Suitability of Accommodation) (England) Order 2012 – Consultation, May 2012, para 38). A full consultation exercise showed widespread support for strengthening that protection (Department for Communities and Local Government, Homelessness (Suitability of Accommodation)(England) Order 2012 – Government's Response to Consultation, November 2012): "Government has made it clear that it is neither acceptable nor fair for local authorities to place households many miles away from their previous home where it is avoidable. Given the vulnerability of this group it is essential that local authorities take into account the potential disruption such a move could have on the household."

The method chosen was to make it a matter of statutory obligation to take the location of the accommodation into account when determining whether accommodation is suitable. Hence, in October 2012, shortly before the decisions were taken in this case, the Secretary of State made the Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601).

Article 2 provides: "In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including - (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority; (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household; (c) the proximity and accessibility of the accommodation to medical facilities and other support which - (i) are currently used by or provided to the person or members of the person's household; and (ii) are essential to the wellbeing of the person or members of the person's household; and (d) the proximity and accessibility of the accommodation to local services, amenities and transport."

The Government's response to consultation had emphasised that the Order "does not prevent or prohibit out of borough placements where they are unavoidable nor where they are the choice of the applicant". However, the Department also issued Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012 (November 2012), which strengthened the obligation to secure accommodation as close as possible to where the household had previously been living:-

"48. Where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district, the authority is required to take into account the Page 9 distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the

accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference.

Generally, where possible, authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or education of the applicant or members of their household. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support.” (Emphasis supplied).

The guidance goes on to deal with employment, caring responsibilities, education, medical facilities and other support, and also with cases where there may be advantages in the household being accommodated somewhere outside the local authority’s district, including employment opportunities there.

The effect, therefore, is that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. “Reasonable practicability” imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate “in borough”, they must generally, and where possible, try to place the household as close as possible to where they were previously living. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the 2012 Order and the Supplementary Guidance changes, and was meant to change, the legal landscape as it was when previous cases dealing with an “out of borough” placement policy, such as *R (Yumsak) v Enfield London Borough Council* [2002] EWHC 280 (Admin), [2003] HLR 1, and *R (Calgin) v Enfield London Borough Council* [2005] EWHC 1716 (Admin), [2006] HLR 58, were decided.

An applicant who is dissatisfied with any of the local authority’s decisions listed in section 202(1) of the Act can request a review of that decision. The decisions listed do not in terms include a decision to place “out of borough” despite section 208(1). But they do include, at (f), any decision of a local housing authority as to the suitability of accommodation offered in discharge of their duty under, inter alia, section 193(2). They also include, at (b), any decision as to what duty (if any) is owed, inter alia, under section 193(2). It is common ground that (b) includes a decision that the duty is no longer owed because it has been discharged.

Under section 204, an applicant who has requested a review under section 202 and is dissatisfied with the decision may appeal to a county court “on any

point of law arising from the decision” (alternatively, if the review decision has not been notified within the prescribed time, arising from the original decision).

The position with respect to the Councils duties pursuant to ss17 and 20 of the Children Act 1989 are that:-

(s17) It is a general duty of every local authority

(a) to safeguard and promote the welfare of children within their area who are in need; and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children’s needs. These services can include accommodation.

Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.

Children in need are those who are unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by a local authority ;whose health or development is likely to be significantly impaired, or further impaired, without the provision of such services; or who are disabled.

(s20) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of (inter alia)— the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

It is of note that the facts of the Westminster case are significantly stark: the parent had health issues, and it may seem to observers that the decision to refuse accommodation pending appeal, under their housing duties, and then to refuse accommodation to the family pursuant to s 17 Children Act 1989, restricting their support to the children alone under s20, then to split the sibling group and commence care proceedings, should have prompted a review of the family’s situation as a whole focussing upon the children’s welfare. However, that is not the course that Westminster pursued, with good cause or not. The Supreme Court did not comment upon the child protection issues, if any. They did however consider the issues relating to the children’s welfare very strongly in the light of the overall duties owed to the children flowing from s11(2) Children Act 2004, which states that the Local Authority, in the discharge of their functions,( in this case their housing function under the 1996 Act) must make arrangements for ensuring that they have regard to the need to safeguard and promote the welfare of children, including in their arrangements with other agencies..



Thus s11 imposes a similar duty upon a local authority to carry out their functions in a way which takes into account the need to safeguard and promote the welfare of children.

The Supreme Court in *Westminster* laid emphasis upon that need to promote as well as safeguard the welfare of children flowing from s11.

It is also the case that there will almost always be children affected by decisions about where to accommodate households to which the main homelessness duty is owed. Such households must, by definition, be in priority need, and most households are in priority need because they include minor children. The local authority may have the invidious task of choosing which household with children is to be offered a particular unit of accommodation. *This does not absolve the authority from having regard to the need to safeguard and promote the welfare of each individual child in each individual household, but it does point towards the need to explain the choices made, preferably by reference to published policies setting out how this will be done* “(my emphasis)

Such a duty under s11 is therefore a “have regard” duty. It is arguable ( and will no doubt be subject to further litigation) the extent to which such a duty is owed to any individual child.

However, as things stand, any policy in relation to the procurement, allocation and eligibility of temporary or more settled housing for families, should have due regard to the general duties imposed under s11, as well as the assessed individual needs of each child under s17 Children Act 1989.

## **15 Equalities Implications**

15.1. The Equality Act 2010 introduced a new public sector equality 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.

15.2. 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.

- 15.3. The council's P1E homelessness return collects demographic information on the people approaching the council's homelessness service. Based on the data available from the last return:
- Ethnicity: 55% of applicants are black, 25% are white, 5% are Asian, 5% are mixed. In total 10% of applicants said their ethnicity was 'other' or did not state an ethnicity.
  - Gender: 87% of applicants are female, 13% are male. 62% of applications are from lone parent households where the applicant is female
  - Age: 69% of applicants are aged between 25 and 44, 16% are aged between 16 and 24 and 15% are aged between 45 and 59.
  - Disability: Data on the most recent P1E return shows that 1% of applicants reported that they had a mental health or physical disability.
- 15.4. A full Equalities Analysis Assessment has been undertaken and is attached at Appendix E.

## **16 Environmental Implications**

- 16.1. No specific environmental implications have been identified as arising from this report.

## **17 Crime and Disorder Implications**

- 17.1. No specific crime and disorder implications have been identified as arising from this report.

## **18 Background Documents and Report Author**

- 18.1. Appendix A: Location Priority Policy.
- 18.2. Appendix B: Location Priority Checklist.
- 18.3. Appendix C: Temporary Accommodation Procurement Strategy.
- 18.4. Appendix D: Consultation Analysis.
- 18.5. Appendix E: Equalities Analysis Assessment.
- 18.6. If you require further information about this report please contact Genevieve Macklin on 020 8314 6057.