



Mayor and Cabinet

Report title: Response to Housing Select Committee Referral on Statutory Overcrowding

Date: 11th November 2020

Key decision: No

Class: Part 1

Ward(s) affected: All

Contributors: Executive Director for Housing, Regeneration and Environment

Outline and recommendations

It is recommended that the Mayor:

- Notes the response that follows in relation to the Housing Select Committee referral to Mayor & Cabinet on the 12th February 2020;
- Notes the ongoing review of the Allocations scheme and invites Housing Select Committee to comment on this and to take an active part in the consultation when launched;

Timeline of engagement and decision-making

On the 30th January 2020 a report on overcrowding in social housing was presented to Housing Select Committee.

Following this report, Housing Select Committee made a referral to Mayor and Cabinet on the 12th February 2020. The report asked that Mayor and Cabinet conduct an assessment of the potential impact of including statutory overcrowding as a rehousing reason for the purposes of the allocations scheme. It was agreed that officers would complete a report back to Mayor and Cabinet on this matter.

1. Summary

- 1.1. On the 30th January 2020 a report on Overcrowding was received at Housing Select Committee.
- 1.2. *Housing Select Committee made a referral to Mayor & Cabinet on the 12th February 2020. The referral stated that “Given the additional pressures on households of living in statutorily overcrowded conditions, the committee recommends that Mayor and Cabinet agrees, in principle, to the Council adopting the statutory definition of overcrowding as an additional measure of overcrowding within its Housing Allocation Scheme, subject to an assessment of the potential costs, procedural issues and impact on other priority groups on the housing list. The committee asks Mayor and Cabinet to assess the impact of such a change and report back to the Housing Select Committee in 6 months’ time.”*
- 1.3. To respond to this referral, officers have undertaken analysis of the different ways to define overcrowding, and analysed the impacts of adopting the statutory overcrowded measure in addition to the current method already used.
- 1.4. Since the referral was made, officers in Housing Services have undertaken a comprehensive review of the Allocations scheme, which has included a review of the way in which overcrowding is prioritised in the banding scheme of the allocations policy. Mayor & Cabinet are being asked on 11th November 2020 to authorise a consultation on proposed changes to the allocation policy, which includes a new primary rehousing reason ‘overcrowded by 3 bed’
- 1.5. Following the analysis undertaken to respond to this referral, and in light of the Allocations review underway, officers recommend continuing to use the bedroom standard to determine bedroom need. Officers do not recommend introducing statutory overcrowding as an additional measure.
- 1.6. Introducing an additional element of statutory overcrowding to the existing overcrowding assessment will complicate a widely accepted and generous definition of overcrowding. Furthermore, this change alone will not necessarily increase the supply of accommodation for those overcrowded households in the most need. As such, it is not recommended that this approach is considered at this time.

2. Recommendations

- 2.1. It is recommended that Mayor and Cabinet:
- 2.2. Notes the response that follows in relation to the Housing Select Committee referral to Mayor & Cabinet on the 12th February 2020;
- 2.3. Notes the ongoing review of the Allocations policy

3. Policy Context

- 3.1. The Council's Corporate Strategy (2018-2022)^[1] outlines the Council's vision to deliver for residents over the next four years. Building on Lewisham's historic values of fairness, equality and putting our community at the heart of everything we do, the Council will create deliverable policies underpinned by a desire to promote vibrant communities, champion local diversity and promote social, economic and environmental sustainability. The contents of this report are applicable to the following priorities:
 - Tackling the Housing Crisis – Providing a decent and secure home for everyone.
 - Building Safer Communities – Ensuring every resident feels safe and secure living here as we work together towards a borough free from the fear of crime.
- 3.2. This report is also consistent with Homes for Lewisham, Lewisham's Housing Strategy (2015-2020) which includes the following priority outcome:
 - Key Objective 1 – Helping residents in times of severe and urgent housing need.
- 3.3. The new Lewisham Housing Strategy 2020-26, which is being considered by Mayor and Cabinet on the 11th November 2020, also contains the following priorities that are met by this report.
 - Preventing homelessness and meeting housing need.
 - Supporting our residents to live safe, independent and active lives.

4. Background

- 4.1. The Allocations Policy defines who can apply to join the housing waiting list, identifies those with the greatest housing needs and sets out how individuals will be prioritised for council and other registered provider housing that comes available. It is therefore at the forefront of the council's response to housing need.
- 4.2. The policy must clearly state how bands for reasonable preference, and priority within bands, are determined and assessed. The policy recognises the need to ensure fair and equal access to social housing. Reducing severe overcrowding is one of the key priorities of the policy, alongside a number of other key priorities including reducing the number of homeless households in Lewisham.
- 4.3. The policy aims to use resources available as efficiently as possible, retaining flexibility to respond to fluctuations in demand from different client groups, preventing homelessness and offering choice to applicants.

^[1]<http://councilmeetings.lewisham.gov.uk/documents/s61022/Draft%20Corporate%20Strategy%202018-2022.pdf>

- 4.4. The demand for social housing in Lewisham is considerably higher than the available supply. Since 2016/17 the Council has had access to between 950 and 1,200 social lets per year. We anticipate that this year the lets will be less than 950 due to the impact of Covid-19.
- 4.5. With 10,000 households on the register as at September 2020, this is not enough supply to respond to pent up demand on the Housing Register and the growing need for social housing across the borough. Table 1 outlines this acute supply and demand issue.

Bedroom need	Let in 19/20	Number on the register in housing need
1 bedroom	624	1694
2 bedroom	305	3814
3 bedroom	171	2980
4 bedroom	27	986
5 bedroom	1	363

Table 1: numbers of lets in 19/20 compared with number of applicants on the register

- 4.6. The Council is currently undertaking a comprehensive review of the allocations policy, to ensure that the scheme effectively responds to the housing pressures currently being faced in Lewisham. Mayor & Cabinet are being asked on 11th November 2020 to authorise a consultation on proposed changes to the allocation policy. The proposed changes includes adding a new primary rehousing reason 'overcrowded by 3 bed' to band 2 to prioritise above those who are most acutely overcrowded.

5. Overcrowding and the Allocations Scheme

Defining overcrowding and the approach taken in Lewisham

- 5.1. There are two methods used to measure overcrowding. The statutory overcrowded measure and the bedroom standard.
- 5.2. The current Allocations policy uses the bedroom standard to assess how many bedrooms are needed by a household. The bedroom standard is generous, widely used and simple mechanism for determining bedroom need. The use of the bedroom standard is recommended in the statutory code of guidance on Allocations.¹ The bedroom standard allows one bedroom for,
- Each adult couple;
 - Any other adult aged 21 or over;
 - Two adolescents of the same sex aged 10 to 20;
 - Two children regardless of sex under the age of 10.
- 5.3. The statutory overcrowding measure is detailed in the Housing Act 1985, and is an alternative measure to use when defining overcrowding. A household may be considered to be statutorily overcrowded if either the room standard or the space standard is breached.
- 5.4. The room standard is breached where two people of the opposite sex must sleep in the same room, except where they are a cohabiting or married couple, or where they are under the age of 10 and thus not included in this standard. For the purposes of the room standard, all living rooms, bedrooms and in some instances kitchens may be included in

¹ <https://www.gov.uk/government/publications/allocation-of-accommodation-guidance-for-local-housing-authorities-in-england>

the calculation.

- 5.5. The space standard determines the number of rooms that a household need dependent on the age of the applicants, the number of living rooms and bedrooms in the dwelling and their size. Under the space standard the maximum number of people allowed based on the number of living rooms and bedrooms is set out in table 1 below, whereas table 2 sets out the number of people that can live in a property based on the size of those rooms. Rooms under 50 square feet are not included in calculations, nor are children under the age of 1, and children between the ages of 1 and 10 are counted as a half in the calculations.

Table 1

Number of rooms	1	2	3	4	5+
Number of people	2	3	5	7 1/2	2 per room

Table 2

Floor area of each room in a dwelling (square feet)	110	90 –109	70 – 89	50 – 69
Number of people	2	1 1/2	1	1/2

Overcrowding in Lewisham

- 5.6. Overcrowding is the most common reason for households to be on the Housing Register. At the start of October 2020 there were 4,620 households on the housing register that were overcrowded by 1 bed and 560 that were overcrowded by 2 bed. There were 9,110 households on the register in total.
- 5.7. Table 2 below breaks down the bedroom need for households who are overcrowded. It is evident when considering these figures compared to table 1 at 4.5 of this report that it is highly unlikely that many overcrowded households will move into a social home, particularly where the households has a 4 or 5 bed need.

	2 Bed Need	3 Bed Need	4 Bed Need	5 Bed or More Need
Overcrowded by 1 or 2 Bed	2085	2116	704	275

Table 2: Number of households that are on the register for overcrowding broken down by bedroom need

- 5.8. 9% of all properties that were let between 17/18 and 19/20 went to a household that was overcrowded by 1 or 2 bedrooms and households that were overcrowded on the housing register were successful in bidding for over 20% of what was available and appropriate for them.

Allocations Scheme review

- 5.9. As part of the allocations policy review that is ongoing, a wide range of considerations have been taken into account as to how best to ensure households that are overcrowded are prioritised for the accommodation that they need. The full review is being considered by Mayor and Cabinet on the 11th November 2020.
- 5.10. The council is proposing that an additional category of overcrowded by 3 bedrooms be included on the housing register and is placed into band 2 to ensure that those in most need are suitably prioritised for the accommodation that is available. This proposal has

arisen as a result of a comprehensive analysis of the register, and in light of the approximately 160 households estimated to be overcrowded by 3 or more bedrooms who represent the most acutely in need.

Reviewing the use of statutory overcrowding in the allocations policy

- 5.11. To consider this referral from Housing Select Committee, officers have conducted analysis of the current housing register to try and assess how many households would likely be considered statutory overcrowded, and what merit would be brought by including this measure in the allocations policy. An assessment of the impact of introducing the statutory measure on other bands within the allocations scheme has also been undertaken.
- 5.12. Room size is a key component of the measure, which is information unavailable. As a result, analysis has focussed on the number of rooms available and number of people in the household. There are data quality issues with the data available, where information on households additional rooms such as living rooms and dining rooms are incomplete or contradictory. This makes conducting a comprehensive analysis of statutory overcrowding across the housing register more challenging.
- 5.13. Notwithstanding this it is possible to make some reasonable assumptions and the estimated proportions of households that are statutorily overcrowded are as detailed in the below table.

Table 3: Proportion of households that are estimated to be statutorily overcrowded on the housing register

	Not Statutorily Overcrowded	Statutorily Overcrowded
Overcrowded by 1 Bed	56%	44%
Overcrowded by 2 Bed	24%	76%
All other households [those with another higher banded primary rehousing reason]	73%	27%

5.14. If these proportions were applied to the housing register as at the start of October 2020 it would mean that 1,780 households overcrowded by 1 bed, 364 households that are overcrowded by 2 bed and 1,250 households that are on the housing register with other primary rehousing reasons would also be statutorily overcrowded. There are also 2,339 households on the housing register as overcrowded but that are not statutorily overcrowded.

- 5.15. However, in order to be accurate in these figures, each household circumstances would need to be reviewed, and where necessary room sizes measured, to include the space standard measure in the assessments.
- 5.16. Any change to the housing register which removed households that are overcrowded by the bedroom standard but not statutorily overcrowded, or prioritised statutory overcrowding over the bedroom standard, would have a negative impact on these 2,339 households. The impact of any change is ultimately dependent on the priority banding that is afforded to the groups in question.
- 5.17. A large number of households overcrowded by 2 beds are also statutory overcrowded, which makes logical sense. It is certain that those who are overcrowded by 3 bed would be statutory overcrowded, thus the proposed change to the allocations policy outlined at 4.6 of this report would ensure that those who are most severely affected by overcrowding are prioritised.

Conclusions

- 5.18. The review conducted for this referral has highlighted the challenge in accurately assessing statutory overcrowding. Whilst assumptions can be made, more accurate assessments of household's circumstances are needed to fully be able to adopt the statutory overcrowding measure.
- 5.19. It is also the case that using the bedroom standard ensures that we are capturing all households who are living in overcrowded circumstances, where the use of the statutory measure alone will result in some households assessed as being overcrowded by the bedroom standard being missed. When balancing the two approaches, the bedroom standard is both comprehensive, easy to understand and enables us to prioritise the most acutely overcrowded households on our register.
- 5.20. In addition, administering the inclusion of statutory overcrowding on the housing register will present a particular challenge. As the size of rooms is a determinant in the decision that is made, officers will be required to validate room sizes which will take longer and require in-person inspections to be conducted. This will require additional resource.
- 5.21. In light of the allocations policy review underway, which includes a proposal to introduce a more acute overcrowded by 3 bed category, officers propose maintaining the use of the bedroom standard.
- 5.22. Officers conclude that using the Bedroom Standard ensures that the council is acting in accordance with statutory guidance, using a widely understood and widely used measure, whilst also prioritising those most in need for accommodation.

6. Financial implications

- 6.1. This report responds to the referral to Mayor and Cabinet on the use of statutory overcrowding as a measure within the allocations policy. As such, there are no direct financial implications arising from this report.
- 6.2. However, it should be noted that changes to how allocations are made or changes to the annual lettings plan, which affect allocations to homeless families, could put additional pressure on nightly paid accommodation costs through increased length of stay or increased numbers accommodated in this form of TA.

7. Legal implications

- 7.1. See footnote and for further Notes on statutory overcrowding see Part X Housing Act 1985 [as amended]
- 7.2. Section 166A requires housing authorities in England to allocate accommodation in accordance with a scheme which must be framed to ensure that certain categories of applicants are given reasonable preference for an allocation of social housing. Section 166A(9) includes a new requirement for an allocation scheme to give a right to review a decision on qualification in s.160ZA(9), and to inform such affected persons of the decision on the review and the grounds for it. This is in addition to the existing right to review a decision on eligibility.
- 7.3. Section 166A(12) provides that housing authorities must have regard to both their homelessness and tenancy strategies when framing their allocation scheme. The requirement for an allocation scheme to contain a statement of the authority's policy

on offering a choice of accommodation or the opportunity to express preferences about their accommodation is retained. (s.166A(2)). However, the requirement to provide a copy of this statement to people to whom they owe a homelessness duty (under s.193(3A) or s.195(3A) of the 1996 Act) is repealed by s.148(2) and s.149(3) of the Localism Act 2011. This is because, following the changes to the main homelessness duty made by the Localism Act 2011, there can no longer be a presumption that the homelessness duty will be brought to an end in most cases with an allocation under Part 6.

- 7.4. The European Convention on Human Rights states in Article 8 that “Everyone has the right to respect for his private and family life, his home and correspondence”. The Human Rights Act 1998 incorporates the Convention. Whilst it does not, however, mean that everyone has a *right* to a home, the provision by an Authority of a relevant proactive Allocations Policy and Lettings Plan does assist to reinforce the Article 8 principles. 16
- 7.5. 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.
- 7.6. 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. 11
 - foster good relations between people who share a protected characteristic and those who do not.
- 7.7. 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 advance equality of opportunity or foster good relations. The Equality and Human Rights Commission 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: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>
- 7.8. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
 - The essential guide to the public sector equality duty
 - Meeting the equality duty in policy and decision-making
 - Engagement and the equality duty
 - Equality objectives and the equality duty
 - Equality information and the equality duty

- 7.9. 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: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

8. Equalities implications

- 8.1. This report outlines the possible implications of the use of a different measure of overcrowding in the housing allocations scheme. Analysis of equalities data held for our own housing stock, managed by Lewisham Homes and RB3, show that residents of Black African origin are disproportionately represented in the overcrowded cohort. Any changes to the way in which overcrowded households are prioritised within the allocations scheme will have more impact proportionally on this group than others. The proposed change in the allocations policy to introduce an overcrowded by 3 bed category, if adopted, will have a positive impact on Black African households who are more likely to be living in the worst overcrowded circumstances.

9. Climate change and environmental implications

- 9.1. There are no climate change or environmental implications arising specifically from this report.

10. Crime and disorder implications

- 10.1. There are no crime and disorder implications arising specifically from this report.

11. Health and wellbeing implications

- 11.1. There are no health and wellbeing implications arising specifically from this report.

12. Report author and contact

- 12.1. Fenella Beckman – Director of Housing Services (Fenella.Beckman@lewisham.gov.uk)
- 12.2. Comments for and on behalf of the Executive Director for Corporate Resources:
Tony Riordan, principle accountant, 020 8314 6854, Tony.Riordan@lewisham.gov.uk
- 12.3. Comments for and on behalf of the Director of Law, Governance &HR
Leonard Tribe, Senior Lawyer; 020 8314 7820, Leonard.Tribe@lewisham.gov.uk