

Private Rented Sector Offer Policy

North Herts District Council

Policy on making an offer of private rented sector accommodation to fully discharge a homelessness duty

1. Introduction

- 1.1 The Localism Act 2011 provides for local housing authorities to fully discharge the main homelessness duty with a private rented sector offer¹; the homelessness changes were enacted on 9th November 2012. As such, this policy applies to households that approach NHDC as homeless or threatened with homelessness after 9th November 2012.
- 1.2 This policy sets out how NHDC will discharge its statutory homeless duties via accommodation in the private rented sector. It complies with:
- The Housing Act 1996, as amended by Homelessness Act 2002
 - The Localism Act 2011
 - The Equality Act 2010
 - Suitability of Accommodation Order, October 2012
 - The Homelessness Code of Guidance, 2006
 - The NHDC Tenancy Strategy 2012

2. Aims and Objectives

- 2.1 NHDC intends to employ the powers granted to it to fully discharge the main housing duty by way of a private rented sector offer (PRSO). A decision will be taken on whether to make a PRSO after taking into consideration a household's individual circumstances and the facts that apply to their case. Having undertaken this consideration, if the Council is satisfied that it is appropriate to exercise the power given to it under the Housing Act 1996 (as amended) it may discharge its duty by arranging for a private landlord to make a suitable offer of an assured shorthold tenancy in the private rented sector for a period of at least 12 months.

3. How the policy will be applied

- 3.1 For any applicant who has made a homeless application after November 9th 2012 and is owed the main housing duty, that duty will remain until either the Authority arranges for a private landlord to make an offer of an assured shorthold tenancy in the private rented sector for a period of at least 12 months, or one of the following actions or events occur which, by law, will also bring the duty to an end. These are:
- The applicant accepts an offer of settled accommodation from the Council (in accordance with Part VI of the Housing Act 1996)
 - The applicant refuses an offer of suitable temporary accommodation or a social housing tenancy offered under the Council's Allocation Scheme which the Authority is satisfied is

¹ s193 (7AA) - (7AC) Housing Act 1996 as amended by s.148(5) - (7) Localism Act 2011

suitable for their needs, and the Authority informs the applicant that it regards itself as having ended its duty under Section 193 of the Housing Act 1996.

- The applicant becomes intentionally homeless from the suitable accommodation made available for his/her occupation.
- The applicant ceases to be eligible for assistance due to their immigration status.
- The applicant otherwise voluntarily ceases to occupy as their only or principal home, the accommodation made available to them to meet the main housing duty.

3.2 The level of private rented sector supply will determine the number of households that may be made a suitable PRSO. In situations where the number of applicants exceeds the supply of properties, applicants will be selected for a PRSO in the following order:

1. Restricted cases², as defined by Section 193 (3B) Housing Act 1996.
2. Applicants who do not qualify for inclusion on the North Herts Common Housing Register.
3. Applicants who have been accepted as threatened with homelessness and owed the main housing duty and where no suitable temporary accommodation is available.
4. Applicants with whom it has been agreed that a private rented sector tenancy can best meet their needs and preferences.

3.3 Applicants within the above categories will be prioritised by date of acceptance of the main housing duty, (i.e. earliest acceptance first), and the suitability of the property in terms of size, type and location and other suitability matters (see Annex A).

4. Offers of Private rented sector accommodation

4.1 Each private rented sector offer will be assessed for suitability (see Annex A), and matched to the individual household. The Council will not make arrangements for an applicant to be made a final offer of a private sector assured shorthold tenancy unless it is satisfied that:

- a) the accommodation is suitable for the applicant; and
- b) the applicant is able to bring to an end any contractual obligations (e.g. tenancy agreement or licence) that they have in respect of their current accommodation before they are required to take up the offer.

4.2 When making a PRSO the Council will notify the applicant in writing:

- of the possible consequences of refusal or acceptance – which will normally be to bring the Council's main housing duty to an end; and
- the right to request a review of the decision that the accommodation is suitable for the household; and

² A restricted case is one where a local authority would not be satisfied the applicant had a priority need for accommodation without having regard to a "restricted person". A "restricted person" (defined by section 184(7) Housing Act 1996) means a person who is not eligible for assistance under Part VII of the Housing Act 1996 and is subject to immigration control

- that NHDC is satisfied that the accommodation is suitable; and
 - that NHDC is no longer subject to the main housing duty (Section 193(2) Housing Act 1996); and
 - of the re-application duty (unless it is a Restricted Case).
- 4.3 Applicants will be invited to view accommodation before being required to decide whether they accept or refuse the offer and before being required to sign any written agreement relating to the accommodation.
- 4.4 The applicant will be given a reasonable period to decide whether or not to accept the offer. In deciding what a reasonable period is, the applicant's circumstances, such as whether they wish to seek advice in making their decision, if they are in hospital or temporarily absent from the district, will be taken into account.
- 4.5 The applicant can request a review of its suitability whether or not the offer has been accepted.
- 4.6 Where a suitable offer of accommodation located outside North Herts is accepted, the Council will notify the housing authority in whose district the accommodation is situated, in writing, within 14 days of the accommodation being made available to the applicant.

5. The Re-application Duty - homeless

- 5.1 Where the homelessness duty has been discharged via the private rented sector and the applicant becomes homeless within two years of the date that the offer was accepted, a re-application duty will apply (Housing Act 1996 Section 195(1)) provided that:
- the applicant is eligible for assistance; and
 - the applicant did not become homeless intentionally
- 5.2 The duty will apply regardless of whether the accommodation from which the applicant is homeless is the accommodation secured as a result of a private rented sector offer, or accommodation subsequently secured by the applicant, provided that:
- It is not a restricted case, as defined by s.193(3B) Housing Act 1996 – the re-application duty is not owed in restricted cases; and
 - The applicant remains eligible for assistance; and
 - The applicant is not intentionally homeless.
- 5.3 Should a new application be made within the two-year window, the applicant will not be required to have a priority need in order to be entitled to the main housing duty again.
- 5.4 Where the applicant has been issued with a valid notice in accordance with Section 21 of the Housing Act 1988, they will be homeless from the date that the possession notice expires.
- 5.5 The Council will owe the applicant an immediate duty to secure interim accommodation from the date that the notice expires if there is reason to believe s/he may be owed the re-application duty.
- 5.6 If the Council is satisfied that the applicant is eligible for assistance and did not become homeless intentionally, the main housing duty will be owed again. In these circumstances, the Council will secure accommodation for

the applicant and his/her household until one of the events that bring the duty to an end occurs (see paragraph 3.1).

- 5.7 The re-application duty will only apply once.
- 5.8 There is no requirement that the new homelessness application be made to the same local housing authority that arranged the earlier private rented sector offer.
- 5.9 The applicant will be referred back to the local authority that arranged the private rented sector offer unless:
 - There is a risk of domestic violence to the applicant or any person who might reasonably be expected to reside with them in the other authority; or
 - A member of the household has suffered violence in the district of the other authority and it is probable that the return would lead to further violence.
- 5.10 Referrals regarding re-applications are not subject to any consideration of local connection by the local authority that receives the referral.
- 5.11 The referral will only be made once it has been established that the re-application has been made within two years and the conditions for referring a case to another local authority have been met (Section 198(1)).
- 5.12 In making the referral, the Council will have regard to The Homelessness Code of Guidance for Local Authorities paragraphs 18.26 -18.37.
- 5.13 The applicant will be notified of the decision to refer them to another authority and the duty to provide interim accommodation will cease. However, the duty to secure that accommodation is available to the applicant until the question of whether the conditions of the referral are met will apply.

6. The Re-application Duty – threatened with homelessness

- 6.1 Where an applicant has been given a valid notice under Section 21 of the Housing Act 1988, the applicant will be treated as threatened with homelessness from the date that the possession notice was issued.
- 6.2 The highest duty owed to those threatened with homelessness will apply and the Council will take steps to secure that accommodation does not cease to be available to the household. This duty will apply regardless of whether the private rented sector offer was arranged by NHDC or another local housing authority.

7. Re-application – Common Housing Register

- 7.1 The applicant's position on the housing register will be reviewed upon re-application. Any preference to which they are entitled for homelessness or threatened with homelessness will be applied.

Annex A

Suitability

1. Matters for consideration

- 1.1 A suitable offer will only be made where the Council has fully considered;
1. The Homelessness (Suitability of Accommodation) (England) Order 2012 and specifically all the statutory requirements in Part 1 which cover the suitability of the location of accommodation and Part 2 which sets out the circumstances in which accommodation is not to be regarded as suitable for a person.
 2. That the property is suitable in relation to existing suitability requirements that relate to space and arrangement.
 3. Any other subjective matters and issues that relate to the circumstances of the applicant and/or of any other household members.
 4. That the accommodation is affordable having fully considered the cost of the rent and any other expenditure relating to the property compared to the income available to the household with or without benefits and specifically the outgoings which are needed for necessities such as food and clothing and heating, plus any other expenditure that is essential to meet the ordinary necessities of life, plus all other reasonable living expenses.
 5. All existing legislation, statutory guidance and case law relating to making suitable offers of accommodation and specifically paragraphs 17.6 and 17.39-17.41 of the Homelessness Code of Guidance.

2. The Homelessness (Suitability of Accommodation) (England) Order 2012

- 2.1 The Order requires local authorities to put in place arrangements to ensure that private rented sector offer accommodation is suitable for all members of the household. Before making an offer, the accommodation will be inspected by a Council Officer trained in making assessments under the Housing Health and Safety Rating System.
- 2.2 In making a decision on the suitability of an offer of accommodation the Council will take into consideration:
1. Location
 2. Affordability
 3. The physical condition of the property
 4. Space and arrangement
 5. Landlord behaviour
 6. Management
 7. HMO licensing
 8. Tenancy Deposit Protection Scheme

3. Location

3.1 Legislation and guidance on the suitability of the location of accommodation is contained in the following documents:

- The Housing Act 1996 Section 208(1);
- The Homelessness Code of Guidance, paragraph 17.41
- The Homelessness (Suitability of Accommodation) (England) Order 2012

3.2 When making a decision on the suitability of the location of a private rented sector offer the circumstances of all members of the household will be considered.

3.3 The accommodation will be, so far as is reasonably practicable, within North Herts.

3.4 Where it is not possible to secure accommodation within the district, the Council will take into account the distance of that accommodation from the district.

3.5 The Council will try to secure accommodation that is as close as possible to where the applicant was previously living. In all cases the significance of any disruption will be taken into account. Specific regard will be given to employment, caring responsibilities or education of members of the household.

4. Affordability

4.1 Sections 17.39 and 17.40 of the Homelessness Code of Guidance will apply when making an assessment of affordability. Accordingly, an income and expenditure assessment will be carried out for each case.

4.2 The Council will not regard accommodation as affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseeker's allowance to which they would be entitled.

4.3 The Council will have regard for the recommendation of the Secretary of State that housing authorities avoid placing applicants in low paid employment in accommodation where they would need to claim housing benefit to meet the costs of that accommodation, and to consider opportunities to secure accommodation at affordable rent levels where this is likely to reduce perceived or actual disincentives to work.

5. The physical condition of the property

5.1 All **electrical equipment** will meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994.

5.2 In multi-occupied residential buildings landlords, owners or managing agents should demonstrate compliance with the Regulatory Reform (Fire Safety) Order 2005.

5.3 All furnishings and fittings must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988.

5.4 The property must have:

- a valid Gas Safety Certificate; and
- a carbon monoxide alarm; and

- a smoke alarm; and
- an Energy Performance Certificate.

6. Space and arrangement

- 6.1 Consideration will be given to the needs, requirements and circumstances of the households in regard of space and arrangements in the property. The property will not be over-crowded and reasonable special needs, such as disability, will be taken into account.

7. Landlord behaviour

- 7.1 NHDC must be satisfied that the landlord is a fit and proper person to act in the capacity of landlord.
- 7.2 NHDC will consider any convictions in relation to:
- landlord and tenant law
 - fraud or other dishonesty
 - violence
 - illegal drugs
 - discrimination
 - sexual offences
- 7.3 The Council will carry out reasonable enquiries on the suitability of a potential landlord including checking internal records. The potential landlord will be asked to declare any relevant convictions. Where there is a suspicion that the landlord may not be suitable the Council may seek a Disclosure and Barring Service check.

8. Management

- 8.1 NHDC must be provided with the written tenancy agreement that the landlord intends to use for the PRSO.
- 8.2 NHDC will review the tenancy agreement to ensure that it:
- sets out the tenant's obligations, for example, clear statement of the rent and other charges; and
 - sets out the responsibilities of the landlord; and
 - does not contain unfair or unreasonable terms; for example, call out charges for repairs or professional cleaning at the end of the tenancy.

9. Tenancy Deposit Protection Scheme

- 9.1 Landlords and applicants will be informed of the landlord's responsibility to use a tenancy deposit protections scheme.