

<b>Committee Cabinet</b>	<b>Date</b> 8 April 2009	<b>Classification</b> Unrestricted	<b>Report No:</b> CAB 138/089	<b>Agenda No:</b>
<b>Report of:</b> Corporate Director, Development & Renewal		<b>Title:</b> Amendments to the Council's Lettings Policy		
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## 1. SUMMARY

- 1.1 This report recommends changes to the Council's existing Letting Policy following the Judicial Review hearing in the case of Mr Alam – v – London Borough of Tower Hamlets and the judgement issued by the High Court on 23 January 2009 (reference [2009] EWHC 44 (Admin)).

## 2. RECOMMENDATIONS

That Cabinet agrees:

- 2.2 To amend paragraph 2.2.2 of the Lettings Policy (Community Group 2) as follows: *“to include persons who are statutorily homeless and who have an assessed priority need and are accepted as unintentionally homeless.”*
- 2.3 To amend paragraph 2.2.3 of the Lettings Policy (Community Group 3) as follows: *“to include persons who are statutorily homeless and who do not have an assessed priority need, and all other housing applicants who do not fall within groups 1,2 or 4”*
- 2.4 To amend paragraph 2.3 of the Lettings Policy as follows: *“Group 3 If you are not included in any of these other groups or have been assessed as homeless but are not in priority need, your application will normally be placed in Group 3”.*

### **3. BACKGROUND**

- 3.1 In February 2007 Mr Alam applied to the Council for assistance under part 7 (Homelessness) of the Housing Act 1996. He was provided with temporary accommodation pending further investigation of his homeless application.
- 3.2 On July 23 2007 the Council determined that he was homeless and eligible for assistance but was not in priority need. This meant that although entitled to advice and assistance, the Council did not have a statutory duty to house him permanently and he was not entitled to retain his temporary accommodation. An internal review of this decision did not alter the outcome.
- 3.3 Mr Alam appealed against this decision in the county court. His appeal was dismissed on 16 April 2008. The Council agreed he could remain in his temporary accommodation pending further legal proceedings being undertaken by him.
- 3.4 Mr Alam had also made an application for permanent accommodation under part 6 of the Housing Act 1996. His application was accepted and he was placed in Community Group 3 in accordance with existing practice for homeless applicants who were not in priority need. Mr Alam brought further judicial review in respect of this decision.

### **BODY OF THE REPORT**

- 3.5 The Judicial Review hearing was held in December 2008. Mr Alam claimed he had been incorrectly placed in Community Group 3 because according to the Council's Lettings Policy he should have been in Community Group 2.
- 3.6 The criteria for homeless cases in Community Group 2 states, *"those assessed by the Council as homeless under the Housing Act 1996 Part 7 and other Homeless households who have an assessed priority need"*. Mr Alam argued that this meant that as a homeless person he did not also have to be in priority need to qualify for Community Group 2.
- 3.7 The Court issued its judgement on 23 January 2009 and found in favour of Mr Alam. The judge stated that although the practice of the Council was not unlawful, the Lettings Policy did not reflect the practice. Therefore on the present wording of the Lettings Policy (as above):  
  
*" the Borough's Lettings Policy requires, in compliance with s167 (2) (a) those who are assessed by the Council as homeless under the Housing Act Part 7 to be allocated to Community Group 2 whether or not the Borough owes them a duty of any kind under Part 7. The Claimant, who was and is such a person, was wrongly allocated to Community Group 3 and the Borough was in error to that extent."*
- 3.8 There is a risk that the judgement means that in addition to having to place Mr Alam in Community Group 2, in future *"all homeless persons are to be*

*placed into Community Group 2..... There is simply no provision in the policy itself for placing any homeless person in Community Group 3.”*

3.9 Previously applicants assessed as homeless but not in priority need have been placed in Community Group 3. Unless the existing Lettings Policy is amended, the Council could be faced with a significant increase in the numbers in Community Group 2, that will place even further pressure on the limited housing resources available.

3.10 The Council has appealed against the judgement and Counsel has advised that the Lettings Policy should be amended. Although a full review of the Allocations Scheme is underway, a revised scheme will not come to Cabinet for decision until later in the year. Pending the outcome of the appeal and the conclusions of the full review it is proposed that in relation to homeless cases, the existing scheme is amended as follows: -

3.11 Community Group 2 to be amended:

*From: “those assessed by the Council as homeless under the Housing Act 1996 part 7 and other homeless households who have an assessed priority need”*

*To: “to include persons who are statutorily homeless and who have an assessed priority need and are accepted as unintentionally homeless.”*

3.12 Community Group 3 to be amended

*From: “this group includes applications from all others on the housing list whose applications are not included in groups 1,2 or 4”,*

*To: “ to include persons who are statutorily homeless and who do not have an assessed priority need, and all other housing applicants who do not fall within groups 1,2 or 4”.*

3.13 Paragraph 2.3. Of the scheme to be amended:

*From: “Group 3 If you are not included in any of these other groups, your application will normally be placed in Group 3.”*

*To: “Group 3 If you are not included in any of these other groups or have been assessed as homeless but are not in priority need, your application will normally be placed in Group 3”.*

3.14 These amendments will ensure that the wording of the Lettings Policy is fully in line with existing practice. These amendments will not alter or reduce the service that has been provided for some time for homeless applicants who are not in priority need. The amendments will simply ensure that the wording of the Lettings Policy is clear and transparent and in line with existing practice.

- 3.15 Before altering an existing Lettings Policy, the Council has a statutory duty to inform partner RSL's of the proposed alteration and give them reasonable opportunity to comment. All members of the Common Housing Register Forum including RSL partners were formally written to setting out the proposed amendments to the Lettings Policy and invited to comment. The proposed amendments were further considered at a full meeting of the Forum on 3 March 2009 where RSL partners were given a further opportunity to comment upon the proposed amendments. There were no objections or concerns raised in relation to the proposed amendments to the Lettings Policy. A concern was expressed that the Lettings Policy needed to ensure it gave reasonable preference to non priority homeless cases but it was agreed that this was a matter for the full review of the Lettings Policy currently under way with a report due to go to Cabinet later in the year.

#### **4 COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 4.1 The report seeks agreement to a number of amendments to the current published Lettings Policy of the Council to mitigate the potential impacts, both in terms of finance and service delivery, of the decision of the High Court with regard to the case outlined.

#### **5 CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)**

- 5.1 Cabinet is asked to authorise changes to the Council's existing Lettings Policy following the outcome of the Judicial Review hearing in the case of R (X) v London Borough of Tower Hamlets (judgment reference [2009] EWHC 44 (Admin)).
- 5.2 The Council is required by section 167 of the Housing Act 1996 to have a scheme for determining priorities and the procedures to be followed in allocating housing accommodation. The Council is required to allocate housing in accordance with the allocation scheme. The Lettings Policy serves the function of an allocation scheme in Tower Hamlets.
- 5.3 The Council has been following the lawful practice of allocating applicants assessed as homeless but not in priority need to Community Group 3 under the Lettings Policy. Unfortunately, the decision of the court in the case referred to above is that the correct construction of the Lettings Policy in its current wording is that such applicants should be placed in Community Group 2. This would be an unintended consequence, inconsistent with the Council's practice, and lead to the inconvenient consequences addressed in the report.
- 5.4 Before making an alteration to the Lettings Policy reflecting a major change in policy, the Council is required by section 167(7) of the Housing Act 1996 to carry out the following consultation –
- (a) send a copy of the proposed alteration, to every registered landlord with which the Council has nomination arrangements; and

- (b) afford those people a reasonable opportunity to comment on the proposals.

5.5 The expression “major change in policy” is undefined in the Housing Act 1996. There is relevant guidance which suggests that a major change would include any amendment that affects the relative priority of a large number of people being considered, and a significant alteration to procedures. By reference to the construction that the Court has given to the Lettings Policy, it is best to consider the proposed amendments as a major change, even though they really just bring the Lettings Policy into line with what has always been the Council’s practice.

5.6 The code of guidance for local housing authorities on allocation of accommodation contains the Secretary of State’s view that, in addition to the mandatory statutory consultation referred to above, housing authorities should consult social services departments, health authorities, supporting people teams, connexions partnerships, relevant voluntary sector organisations and other recognised referral bodies. The guidance recommends a minimum consultation period of 12 weeks. It has not been possible to comply fully with these recommendations. However, the consultation that has been conducted complies with the statutory requirements and is considered adequate in circumstances where the Council needs to respond as rapidly as possible to the judgment referred to above and bring the Lettings Policy in line with existing practice. The Lettings Policy (which will include these proposed changes) will be the subject of a review in July 2009 that will comply fully with the consultation recommendations contained within the code of guidance.

## **6 RISK MANAGEMENT IMPLICATIONS**

6.1 The judgement means that unless the Lettings Policy is amended, the Council can no longer place homeless applicants who are not in priority need, or other applicants for housing who meet the criteria for homelessness, in Community Group 3 but must place them in Community Group 2. This will be a significant change from the practice adopted since the inception of the Lettings Policy in 2002.

6.2 Placing these applicants in Community Group 2 will give them significantly higher priority for a limited supply of housing and raise expectations that are unlikely to be met unless higher priority and more vulnerable applicants are displaced. This risks undermining the Council’s management of the limited supply of social housing and damage to the Council’s reputation by raising unrealistic expectations.

## **7 ANTI POVERTY IMPLICATIONS**

There are no anti-poverty implications.

## **8 EQUAL OPPORTUNITIES IMPLICATIONS**

The changes recommended to the Lettings Policy will bring the wording of the policy into line with the status quo in relation to homeless applicants who are not in priority need. Although there is no indication that the recommendations to amend the Lettings Policy have any specific equal opportunities implications, a full equalities impact assessment will be carried out on the Lettings Policy as part of the planned review of the policy. The outcome will be reported to Cabinet later in the year.

## **9 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

None

## **10 EFFICIENCY STATEMENT**

Implementing the changes to the practice of placing homeless applicants who are not in priority need required by the judgement will place considerable additional administrative and customer contact demands on housing officers to no real purpose expect to manage unrealistic expectations and meet information needs that will potentially be required. This will impair efficiency and the effective delivery of the lettings service.

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Local Government Act, 2000 (Section 97)  
List of "Background Papers" used in the preparation of this Report

Tower Hamlets Lettings Policy  
1996 Housing Act  
High Court judgement Raihan Alam – v – London Borough of Tower, Hamlets 23 January 2009 (reference [2009] EWHC 44 (Admin))

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