

# MAYOR'S EXECUTIVE DECISION MAKING

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Wednesday, 24 February 2016

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Mayor's Decision Log No. 120

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1. **POLICY FOR DETERMINING THE SUITABILITY OF TEMPORARY ACCOMMODATION PRIVATE SECTOR OFFERS (Pages 1 - 14)**

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: Matthew Mannion, Committee Manager, Democratic Services

Tel: 0207 364 4651, e-mail: [matthew.mannion@towerhamlets.gov.uk](mailto:matthew.mannion@towerhamlets.gov.uk)

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# Agenda Item 1

<b>Individual Mayoral Decision Proforma</b> Decision Log No: <u>120</u>	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Aman Dalvi, Corporate Director, Development & Renewal	<b>Classification:</b> Unrestricted
<b>Policy for determining the suitability of temporary accommodation/private rented sector offers.</b>	

<b>Is this a Key Decision?</b>	Yes
<b>Decision Notice Publication Date:</b>	Not before 15/2/16 <i>12/15</i>
<b>General Exception or Urgency Notice published?</b>	Not required
<b>Restrictions:</b>	No
<b>Reason for seeking an Individual Mayoral Decision:</b>	To minimise the risk of successful legal challenge relating to the procedures the Council uses for allocating out-of-borough temporary accommodation to homeless households

## EXECUTIVE SUMMARY

This report recommends the adoption of a policy setting out operational procedures for determining the suitability of temporary accommodation for homeless households.

This is being sought following the Supreme Court's decision in the case of *Nzolameso* which provided that, ideally, local authorities should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year as a failure to do so could leave local authorities vulnerable to legal action, particularly in respect of placements outside the Borough.

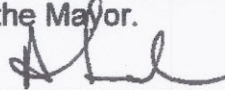
## DECISION

1. Agree the policy and procedures in Appendix 1 for assessing the suitability of accommodation provided for homeless households out of Borough.

**APPROVALS**

**1. (If applicable) Corporate Director proposing the decision or his/her deputy**

I approve the attached report and proposed decision above for submission to the Mayor.

Signed  Date 17/2/2016

**2. Chief Finance Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 17/2/2016


**3. Monitoring Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

(For Key Decision only – delete as applicable)

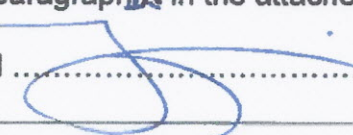
I confirm that this decision:-


- (a) has been published in advance on the Council's Forward Plan OR
- (b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed  Date 18/2/16

**4. Mayor**

I agree the decision proposed in paragraph above for the reasons set out in paragraph ~~1~~ in the attached report.

Signed  Date 22/2/16

<p><b>Individual Mayoral Decision</b></p> <p>Not before 8 January 2016</p>	
<p><b>Report of:</b> Aman Dalvi, Corporate Director, Development and Renewal</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Policy for determining the suitability of temporary accommodation/private rented sector offers</b></p>	

<b>Lead Member</b>	<b>Councillor Sirajul Islam, Cabinet Member for Housing Management &amp; Performance</b>
<b>Originating Officer(s)</b>	Lorraine Douglas, Service Manager Housing Management & Procurement
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>A Great Place to Live</b>

### **Executive Summary**

#### **Policy for determining the suitability of temporary accommodation/private rented sector offers.**

This report recommends the adoption of a policy setting out operational procedures for determining the suitability of temporary accommodation for homeless households.

This is being sought following the Supreme Court's decision in the case of *Nzolameso* which provided that, ideally, local authorities should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year as a failure to do so could leave local authorities vulnerable to legal action, particularly in respect of placements outside the Borough.

#### **Recommendations:**

The Mayor is recommended to:

1. Agree the policy and procedures in Appendix 1 for assessing the suitability of accommodation provided for homeless households out of Borough.

## **1. REASONS FOR THE DECISIONS**

The local authority has a duty under Part VII of the Housing Act 1996 ('the 1996 Act') to secure that accommodation is available for eligible applicants who are homeless, in priority need and not intentionally homeless. When the local authority receives a homeless application, it has a duty to assess the applicant's circumstances to decide what help, if any, they are entitled to and make enquiries. On completion of its enquiries, if the local authority decide to accept a full housing duty it must continue to accommodate the applicant in suitable temporary accommodation until such time when that duty comes to an end..

In exercising this duty, local authorities are required to have regard to such guidance as may from time to time be given by the Secretary of State pursuant to section 182 of the 1996 Act. The current general guidance is contained in the *Homelessness Code of Guidance for Local Authorities* (Department for Communities and Local Government, 2006) and the *Supplementary Guidance on Intentional Homelessness* (Department for Communities and Local Government, 2009).

In respect of Homelessness, the Council has found it increasingly difficult to procure affordable accommodation in-borough since the links between temporary accommodation subsidy, Local Housing Allowance and market rents were severed in 2011. These factors have resulted in around 90% of all new homelessness accommodation being procured out of borough, the proportion of out of borough placements jumping from 14% of the total in November 2012 to 45% in November 2015.

Following changes to Part VII of the 1996 Act that were introduced by the Localism Act 2011, the Homelessness (Suitability of Accommodation) (England) Order 2012 was introduced which set out specific considerations that local authorities must also take into account. As a result of the changes introduced by the Localism Act and the 2012 regulations, the Secretary of State also introduced further supplementary guidance, namely *Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012* (Department for Communities and Local Government, 2012). Amongst other things, the 2012 Regulations and Guidance addressed the suitability of accommodation including where offered accommodation is outside of the Local Authority's district.

As a result of these changes, the Council introduced written operational procedures for determining the suitability of temporary accommodation for homeless households and which all applications are assessed against.

In 2015, a homeless applicant in the London Borough of Westminster successfully challenged in the Supreme Court the suitability of an offer of accommodation in Milton Keynes. Following the Supreme Court's decision in this case it is expected that local authorities will have to address more specifically, in evidential terms, why it cannot offer accommodation within the Borough and the steps it has taken to secure accommodation closer to the Borough. It is crucial that suitability decisions be more specific, both in evidential terms and the reasoning behind it, to demonstrate compliance with the statutory duty to secure accommodation within Borough insofar



as reasonably practicable. If not practicable the local authority should seek to place applicants as close as possible to where they were previously living. There may well be good reason (i.e. other households with more urgent medical or social needs) why it has not been reasonably practicable to offer accommodation within Borough.

That judgement stated that, ideally, local authorities should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year. Whilst the Council has in place written procedures, as a result of this Judgement and given the number of out of borough placements, as well as the expectation that benefit-capped households are likely to be moved further away in order to access (relatively) affordable accommodation, it is considered that these procedures should be incorporated into a Policy to meet this new best practice indication.

A failure to adopt the policy could leave the Council vulnerable to appeals to the County Court under S204 of the 1996 Housing Act, and in some circumstances, judicial review proceedings. This is an ever-present risk given the number of review requests received challenging the suitability of out of borough placements. This year 89/164 review requests (55%) cited distance or location as one reason for challenging the suitability of the accommodation provided. The vast majority of these reviews do not decide in favour of the applicant, leaving them with the option to appeal their case to the County Court.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The Council could choose not to adopt a policy and rely solely on the written procedures.

## **3. DETAILS OF REPORT**

- 3.1 The local authority has a duty under the Housing Act 1996 ('the 1996 Act') to secure that accommodation is available for eligible applicants who are homeless, in priority need and not intentionally homeless. When the local authority receives a homeless application, it has a duty to assess the applicant's circumstances to decide what help, if any, they are entitled to and make enquiries. On completion of its enquiries, if the local authority decide to accept a full housing duty it must continue to accommodate the applicant in suitable temporary accommodation until such time when that duty comes to an end. Section 208(1) of the 1996 Act requires the local authority to provide accommodation in its own area 'so far as reasonably practicable.' The clear intention is that local authorities should not simply decant homeless persons into areas for which other authorities are responsible. In areas of acute affordable housing shortage a local authority may decide that it is not reasonably practicable to accommodate people in its own area.

- 3.2 Secretary of State Guidance advises local authorities to secure accommodation as close as possible to where applicants were previously living so that they can retain established links with schools, doctors, social

workers and other key services and support essential to the well-being of the household.

- 3.3 Local authorities must also take into account specific consideration of the matters set out in the Homelessness (Suitability of Accommodation) (England) Order 2012 and in particular, paragraph 2 of the 2012 Order which requires consideration of:
- the distance of the accommodation from the district of the authority;
  - the significance of any disruption caused by the location of the accommodation to the caring responsibilities or education of household members; and
  - the proximity and accessibility of support which are currently used and which are essential to the well-being of the applicant or household members.
- 3.4 The Supplementary Guidance on the homelessness changes (Localism Act 2011 and Suitability Order 2012) further advises if accommodation is outside of district, the authority is required to take into account the distance of that accommodation from the district of the authority.
- 3.5 As a result of these changes, the Council introduced written operational procedures for determining the suitability of temporary accommodation for homeless households and which all applications are assessed against
- 3.6 Following the Supreme Court's decision in the case of *Nzolameso* local authorities are expected to address more specifically, in evidential terms, why it cannot offer accommodation within the Borough and the steps it has taken to secure accommodation closer to the Borough. It is crucial that suitability decisions be more specific, both in evidential terms and the reasoning behind it, to demonstrate compliance with the statutory duty to secure accommodation within Borough insofar as reasonably practicable. If not practicable the local authority should seek to place applicants as close as possible to where they were previously living. There may well be good reason (i.e. other households with more urgent medical or social needs) why it has not been reasonably practicable to offer accommodation within Borough. The Judgement advised that, ideally, local authorities should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year,
- 3.7 Whilst the Council has in place written procedures, as a result of this Judgement and given the number of out of borough placements, as well as the expectation that benefit-capped households are likely to be moved further away in order to access (relatively) affordable accommodation, it is considered that these procedures should be incorporated into a Policy to meet this new best practice indication. This Policy is contained in Appendix 1.



#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 As a result of the combination of the increasing numbers of applications to the homelessness section, the scarcity of available temporary accommodation and the high levels of rent charged to the Council, significant service pressures are being faced. Due to the difficulties in procuring suitable accommodation within the borough, it has been necessary for an increasing number of properties to be provided outside Tower Hamlets; indeed approximately 90% of all new homelessness accommodation is located outside the borough (section 1 of this report).
- 4.2 In light of this, this report seeks approval to adopt the procedures for assessing the suitability of homeless households to be placed in accommodation outside the borough. This will ensure that the Council is able to explain and evidence the reasons for the allocation decisions that it makes in accordance with the policy.
- 4.3 The gross budget of the Homeless Service for 2015-16 is £32 million, with the major cost element being the £26.1 million budget for the rent payable to landlords for the supply of temporary accommodation. The main source of income derives from the rents and charges that are levied to customers.
- 4.4 The majority of the rental income is however met through benefits payments, so the financial implications within the service budget cannot be looked at in isolation. Although the Council has a statutory duty to pay benefits, the level of subsidy that is recouped from the DWP is capped. The high rent levels charged by suppliers of temporary accommodation are leading to budgetary pressures within the Housing Benefits budget due to this variance between the statutory benefits paid out and the Government subsidy received.
- 4.5 Formalising the process for the location of the placement of applicants may lead to households being placed in more expensive accommodation within the borough with a resultant cost to the Council as set out in paragraphs 4.3 and 4.4. It will however reduce the risk of possible legal challenge and the consequential significant costs that could result.

#### **5. LEGAL COMMENTS**

- 5.1 This Report was prepared in conjunction with Legal Services and any legal implications are addressed in the body of the report.

#### **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The procedures enable a fair and transparent assessment of the accommodation needs of homeless households and ensures there is no risk of households suffering discrimination because of a protected characteristic in the allocation of temporary accommodation.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 The Council has spent between £5.5 and £7million subsidising temporary accommodation for homeless households in each of the last three years. The only way this cost can be reduced is if accommodation is procured within temporary accommodation subsidy levels.
- 7.2 It is highly unlikely that significant savings can be achieved for as long as the majority of properties used are in the private rented sector in London.
- 7.3 Additionally around 10% of all households are subject to the £500 welfare benefit cap (this will rise to around 25% when the cap is reduced in October 2016). For these households the only option will be a move to much cheaper accommodation. If they are not yet eligible for a permanent offer this means they will almost certainly need to be moved out of London where housing costs are much lower, subject to the assessment indicating the placement would be suitable.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 Not applicable

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 The proposals will mitigate the risks of successful legal challenge on the suitability of temporary accommodation, thereby limiting the risk of reputational damage and costs. The policy will assist the Council to procure accommodation out of London at prices far closer to the temporary accommodation subsidy rates, thereby mitigating the risk of unplanned expenditure to meet the statutory duty to accommodate eligible homeless applicants.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 Not applicable

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 Procedures for notifying London Boroughs about placements in their areas already exist, but are currently under review. It will be necessary to ensure any interim notification arrangements are sufficient to fulfil the Council's statutory duty to notify receiving authorities in London as it will to ensure the procedures that are in place to notify the receiving authority of placements out of London are robust and properly followed.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE.

### **Appendices**

- Appendix 1 – Proposed Policy for determining the suitability of temporary accommodation/private rented sector offers.

### **Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012**

- NONE.

### **Officer contact details for documents:**

Lorraine Douglas  
Service Manager Housing Options and Procurement  
Telephone: 020 7364 7082

## **POLICY FOR DETERMINING THE SUITABILITY OF TEMPORARY ACCOMMODATION/PRIVATE RENTED SECTOR OFFERS**

In determining the suitability of temporary accommodation/ private rented sectors offers for persons who have been assessed as homeless and a housing duty accepted then the following procedures apply:

### **1. General Principles**

- 1.1 The local authority has a duty under the Housing Act 1996 ('the 1996 Act') to secure that accommodation is available for eligible applicants who are homeless, in priority need and not intentionally homeless. When the local authority receives a homeless application, it has a duty to assess the applicant's circumstances to decide what help, if any, they are entitled to and make enquiries. On completion of its enquiries, if the local authority decide to accept a full housing duty it must continue to accommodate the applicant in suitable temporary accommodation until such time when that duty comes to an end. Section 208(1) of the 1996 Act requires the local authority to provide accommodation in its own area 'so far as reasonably practicable.' The clear intention is that local authorities should not simply decant homeless persons into areas for which other authorities are responsible. In areas of acute affordable housing shortage a local authority may decide that it is not reasonably practicable to accommodate people in its own area.
- 1.2 The Homelessness (Suitability of Accommodation) (England) Order 2003 effectively outlawed the use of B&B and other accommodation with shared facilities for any household with dependent children or pregnant woman, meaning B&B can only legally be used in an emergency and for no longer than 6 weeks. The only exception to this is where a case has been found intentionally homeless and/or we are accommodating under homelessness power rather than duty.
- 1.3 The Homelessness (Suitability of Accommodation) (England) Order 2012 redefined into regulations those matters set out in the Homelessness Code of Guidance that should be taken into account when assessing the suitability of accommodation. These include the location of the accommodation, specifically the distance from the borough; the significance of any disruption caused by the location of the accommodation to the employment, caring responsibilities or education of the household; proximity & accessibility to medical facilities and other support currently provided that are essential to the well-being of the household; proximity & accessibility of the accommodation to local services, amenities & transport.

1.4 In assessing the suitability of accommodation being offered, it is crucial that case notes reflect the consideration of these factors, and the conclusions clearly identify the reasons why a particular property is offered to a particular household, and where more than one property is available on the day – why an alternative property was not offered. ***The essential principle is that each case must be treated on its merits – and the case notes must reflect this.***

1.5 The procedures set out below are to be implemented when assessing suitability of accommodation.

## **2. Location of Property**

- 2.1 Unless the applicant is in fear of violence in a particular part of the borough, or there is an overwhelming social, medical or welfare reason for specifying a particular area, any location within LBTH is normally to be deemed suitable. The Borough covers a small geographical area; all parts of the borough are well served, and connected by, public transport. Most journeys by public transport to any part of the borough can be concluded within 40 minutes. Individual circumstances will be taken into account when determining the suitability of a particular location, in the context of the foregoing.
- 2.2 In determining whether a property outside the borough is suitable the requirements set out in the order need to be taken into account. It is essential that the question of disruption is specifically addressed, and recorded on notes. While individual circumstances must be taken into account the following should be used as a guide:
- 2.3 It is reasonable to assume that someone could normally travel up to 90 minutes to get to work. It would be necessary to take account of the cost of travel in the affordability assessment
- 2.4 It is reasonable to assume that a child in years 10-13 could travel for up to an hour to get to school.
- 2.5 It is reasonable to assume that children under year 10 could transfer to a local school and that this would not constitute a significant disruption to their education. If children are in a special school or have a Statement of Special Educational Needs it would be necessary to assess whether a transfer to a location out of the borough would represent a significant disruption to their education. This may involve making enquiries of the potential host authority to see if those needs could be met in a local school. Ideally out of Borough Placements for families with a child in a special school should be avoided unless there is no suitable in-borough property available or in the pipeline at the point the need arises.
- 2.6 Generally we should try to avoid placing households which are engaged with social services out of the borough. Again this is subject to the availability of

suitable accommodation at the point of need. The duty to notify the receiving borough must be met, as must checks with the Council's Children's Services to ensure any safeguarding concerns are properly considered prior to placement.

- 2.7 In considering disruption to care & support arrangements – it is necessary to consider the frequency and duration of such support; the extent to which those needs can be met by someone else, or by another method and to consider the likelihood and extent of disruption to the continuity of that care and support. Generally travel of up to an hour to deliver care or support would be considered reasonable, but individual circumstances need to be taken into account.
- 2.8 If specialist medical care is being provided – the extent of the disruption & the capacity for that support to be transferred to a local hospital/medical facility needs to be assessed, along with an assessment of how disruptive that transfer is likely to be to the continuity of care provided. Generally travel of up to an hour to specialist medical care is considered reasonable – although individual circumstances do need to be taken into account.
- 2.9 Distance from the borough needs to be noted; the extent to which the distance is likely to be disruptive needs to be assessed in light of the foregoing. Take Albert Jacob House as the reference point for measuring distance to the Borough.
- 2.10 Transport, local services and amenities should generally be within a 30 minute walk (1.5 miles) of the accommodation.

### **3. Prioritisation of cases for in-borough placements**

3.1 At least one of the following criteria will be required for a household to be allocated an in-borough self-contained property; unless there is no-one awaiting a placement for which the property is suitable who meets any of these criteria:

- Property is affordable for the household
- Household with at least 1 child in special school or with statement of Special Educational needs.
- Largest household that can legally fit the property (refer part X 1985 Housing Act)
- Other pressing social/welfare/medical need that means the household needs to stay in the borough
- Where the transfer is in the Council's interest, including but not restricted to; deadline for commencement of capital work; to avoid legal action being taken against the Council; risk to the Council's reputation or finances.
- Household with at least 1 child in years 11 or 13.
- Family with dependent children in B&B
- Employment within the Borough and/or where a placement outside the Borough would result in the applicant being unable to continue in employment.

- 3.2 Where more than one household meets the prioritisation criteria then those with the greatest need (i.e. multiple priorities) will be allocated the property. All things being equal, allocations will otherwise be in date order with those who have waited longest having the highest priority.

#### **4. Affordability**

- 4.1 The property must be affordable, or the Council will have to subsidise a placement in temporary accommodation. An affordability assessment should be carried out at the point of application. This should identify how much disposable income a household has after assessing all essential expenditure and the amount of rent they have to pay. The bookings officer will also need to check the likely energy costs of the property (available from EPC) and incorporate that into the affordability assessment.

#### **5. Other matters affecting suitability**

- The property must be large enough for the household (see Part X 1985 Housing Act)
  - The property must be in a reasonable condition (reference to our TA property standards), and free from Category 1 hazards, taking into account local housing conditions. We are required to take reasonable steps to satisfy ourselves of this – either through property inspection, or evidence provided by the owner/agent (e.g. photographs), along with production of all statutory certificates
  - It must be available for the household to occupy, and reasonable for them to do so.
  - (For PRSOs) we have to satisfy ourselves that the landlord is a fit & proper person. These checks are carried out by the procurement team before we accept the property.
  - There are a range of health & safety matters covered in the suitability regulations – and which are captured by our property standards.
  - If an HMO/ B&B it must be compliant with licensing standards (again this will be established by the procurement team).
- 5.1 So far as possible the additional requirements for Private Rented Sector Offers (where applicable) will be applied to the procurement & allocation of temporary accommodation.



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