



Cabinet
17 June 2019

**Report from the Strategic Director
of Community Wellbeing**

Amendments to the Housing Allocation Scheme

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Five: <ul style="list-style-type: none"> • Appendix 1 – Allocations Scheme Summary • Appendix 2 – Online Consultation Results • Appendix 3 (a) – BMG Survey (Professionals) • Appendix 3 (b) – BMG Survey (Residents) • Appendix 4 – Equality Analysis • Appendix 5 – Policy on displaced tenants and leaseholders
Background Papers:	None
Contact Officer:	Laurence Coaker, Head of Housing Needs Laurence.Coaker@brent.gov.uk Tel: 020 8937 2788

1. Summary

- 1.1 The council is statutorily obliged to have a scheme for allocating the limited amount of social housing that we have access to. This report recommends changes to that scheme following formal consultation with members, residents and interested organisations and council departments. It is important to note that changes to the allocations scheme do nothing to increase the supply of affordable housing so the intention here is simply to make sure we are making best possible use of what we do have.
- 1.2 The interaction between homelessness, social housing and the private rental market is complex. About a third of households in Brent rent privately and, with rising rents, job insecurity and a welfare system that will leave many worse off, more people are likely to need our help in coming years. The options at our disposal are a small amount of social housing, a Private Sector Rental Offer (PRSO) and, where neither is possible, families are moved into Temporary

Accommodation (TA). Supply of good quality TA is in decline so, increasingly, we are having to place people in annex or B&B accommodation, which is often poor quality and always expensive.

- 1.3 There is no one solution to this problem and we must therefore take every opportunity to increase supply of affordable housing and reduce the number of families in TA – especially annex and B&B – whilst keeping Brent’s communities together and doing our best to ensure anyone who wishes to live in the Borough can do so. This is not an easy task and the conversations throughout the consultation have demonstrated how difficult it is to decide to prioritise some families over others when need is so acute.
- 1.4 The rationale for each of these recommendations is therefore based on whether a particular proposal is likely to increase the supply of affordable housing or reduce reliance on TA. Recommendations are informed by an Equality Impact Assessment which identifies groups who are likely to be disproportionately advantaged/disadvantaged by the proposal and takes account of the consultation response for each proposal.

2. Recommendations

Cabinet resolves:

- 2.1 To approve the following proposed amendments to the current Allocations Scheme:
 - (a) Amendment 3 - Local Lettings Policy – New Accommodation on their current estate as set out in paragraphs 5.29 to 5.37 below;
 - (b) Amendment 4 - Local Lettings Policy – Regeneration Areas as set out in paragraphs 5.38 to 5.44 below;
 - (c) Amendment 5 - Revising Quotas as set out in paragraphs 5.45 to 5.53 below;
 - (d) Amendment 7 - Give appropriate priority for social housing to victims of domestic abuse who are currently living in a refuge or other form of temporary accommodation as set out in paragraphs 5.63 to 5.65 below;
 - (e) Amendment 8 - Policy for Displaced Tenants and Leaseholders in Regeneration Schemes as set out in paragraphs 5.66. to 5.69 below and Appendix 5 to be added as an appendix to the Council’s Allocations Scheme.
- 2.2 Not to approve the following amendment, but review in six months to enable officers to research further into how this proposal would work in practice and examine intended and possible unintended consequences:
 - (i) Amendment 1: Allow for the future introduction of a new nominations agreement with Registered Providers with reasonable rents as set out in paragraphs 5.2 to 5.17 below:

- 2.3 Not to approve the following amendment, but review in two years to understand the impact of the wider activity to increase the supply of other forms of affordable housing:
- (i) Amendment 2 - Allowing households currently in Band D to retain the waiting time they accrued when in a higher band if they become homeless and are placed in TA as set out in paragraphs 5.18 to 5.28 below;
- 2.4 Not to approve the following amendment:
- (i) Amendment 6 -Prioritise Unaffordability as set out in paragraphs 5.54 to 5.61 below.
- 2.5 To note and give due regard to the content of the Equalities Impact Assessments in Appendix 4.
- 2.6 To delegate authority to the Strategic Director Community Wellbeing to implement the proposed changes to the Council's Allocation Scheme as set out in paragraph 2.1 above.

3. Background and Context

- 3.1 The council is statutorily obliged to have a scheme for allocating the limited amount of social housing that we have access to. Brent's scheme was last reviewed following implementation of the Localism Act (2011) and changes came into force in 2014. At this point, Brent made the decision to significantly reduce the number of households who are eligible to bid for social housing. This was to reflect the fact that many thousands of the 19,500 households then on the register stood no realistic chance of being offered one of the approx. 600 social homes that become available each year.
- 3.2 This was an important decision that makes clear that the focus of the allocations policy is on the demand that might realistically be met, rather than the demand that actually exists. The driver was to give households on the register a more realistic sense of the situation and to manage their expectations. Households with the most acute need, e.g. who were homeless, severely overcrowded or whose living situation was inappropriate because of medical need or poor conditions remained in bands A-C and retained the right to bid. Households with a recognised need that was less acute, e.g. overcrowded by one bedroom, were moved into band D. the upshot is that the number of households eligible to bid reduced to about 5,500. A summary of the current Allocation Scheme is attached at Appendix 1.
- 3.3 The interplay between social housing, homelessness and the private rental market is complex. Brent's Allocations Policy can be seen as a supply-side response to a housing crisis that is far larger than the scope of this report. It was felt that a review of the scheme was timely, given Brent's strategic aims of increasing the supply of affordable homes and reducing the number of families

living in TA, particularly poor quality B&B and annex accommodation. These aims exist against a backdrop of ever intensifying demand so we need to make sure we are making the very best use of what we have.

Current demand

- 3.4 There is a huge gap between the number of households eligible to bid for housing and the number of affordable homes that are available. As at 21st May 2019, there were 3,298 households in priority Bands A-C on the Council's Housing Register, 2,193 of whom were living in TA. During 2017/18, only 618 units of social housing were available to meet this demand. Not only does the number of homes available fall far short of demand, but the types of homes do not match what is needed. Of the 618 homes, 44% were 1 bed properties, whereas 83% of the demand, in Bands A-C is for family sized accommodation.
- 3.5 Homelessness is on the rise in Brent, as in many other areas. About a third of households in Brent rent privately and, with rising rents, job insecurity and a welfare system that will leave many worse off, more people are likely to need our help in coming years. Since the implementation of the Homelessness Reduction Act 2017, homelessness applications have increased by 52%. Whilst sometimes a suitable PRSO can be found, the supply is insufficient to meet demand, so homeless households have to move into TA whilst they wait for an offer of social housing. Clearly, this not only increases the number of households who are not living in permanent homes, but it puts even more pressure on our limited social housing.

Temporary Accommodation

- 3.6 When the Council accepts a family as homeless, if no suitable PRSO is available the family are moved into TA while they wait for an offer of social housing. TA is privately owned accommodation which is leased by a housing provider, such as a Registered Provider or, indeed, the council. Average leases are 3-5 years and, provided the landlord is willing to renew the lease, households can stay in the accommodation. Brent has a very small amount of TA that it directly leases in this way: approx. 80 units. By far the most TA is leased through Housing Associations Lease Scheme, which is discussed in detail in section 5. Given the huge gap between supply and demand outlined above, homeless households are likely to be in TA for many years, as illustrated below.

Table 1. Average waiting time for accepted homeless households to secure social housing by bed size

Year	Average Waiting Time - Band C
2 Bed	9 Years
3 Bed	16 Years
4 Bed	18 Years

- 3.7 The TA market is contracting, which is making it increasingly difficult to find good quality, long-term options for people. The available housing benefit for TA has been frozen whilst market rents have increased in recent years. For example, less than 50% of leases accessed through Housing Associations are now being renewed on expiry, because owners want to receive a rent closer to the market rate. Families are frequently having to move into emergency B&B or annex accommodation when the lease comes to an end while they wait for new TA. Because of the increasing shortage of TA, the new TA is often, unfortunately, in a different part of the Borough or can be outside Brent.
- 3.8 The cost of accessing TA is also increasing. In September 2018 the 3 Housing Associations through whom we access TA increased their management costs by £20 per property per week to manage the existing portfolio at a cost of £1.25M per annum to the Council. The situation with this kind of TA is detailed below in relation to proposal 1.
- 3.9 The shortage of TA means that the Council is increasingly having to use emergency B&B and annex accommodation. This is often poor quality and always expensive, as it is charged at a nightly rate. Over the past two years, the number of families in emergency accommodation has gone from 30 to 121. Officers believe this is a direct consequence of the shortage of good quality TA, particularly through Housing Associations.
- 3.10 There is uncertainty about how the cost of TA will be met in the future. It is primarily met through the Government's Flexible Homelessness Support Grant provided. Between 2017/18 and 2019/20, Brent's allocation reduced from £8.1M to £5.2 and there is uncertainty about future funding levels. If TA levels are not reduced and costs continue to increase, this will put additional pressure on our already stretched General Fund.
- 3.11 To alleviate the pressures above, Brent's priority is to support homeless households to move out of TA into a permanent home as quickly as possible. This is why 70% of available social housing is offered to homeless families living in TA.

Our response

- 3.12 There is no one solution to this problem and we must therefore take every opportunity to increase supply of affordable housing and reduce the number of families in TA – especially annex and B&B – whilst doing what we can to keeping Brent's communities together. Brent would like to be able to offer all homeless households a social home but, as described above, our current supply cannot do this, even in the medium term.

3.13 In 2015, Cabinet agreed to use the powers under the Localism Act (2011) to enable a PRSO to be used to end a households' homelessness. The private rented sector will need to continue to be part of the solution. In October 2018, Cabinet also agreed to join Capital Letters - a collaborative endeavour between thirteen London Boroughs to procure and manage affordable private rented sector accommodation across London. The collaboration will ensure that Brent is given access to properties within the Borough. The first leases are expected to start in summer.

3.14 We are making good progress in reducing the number of families living in TA. Where we were once the council with the highest number in the country, we are now 8th. Given the increasing pressures, we are redoubling our efforts to implement the Temporary Accommodation Reform Plan agreed by Cabinet in 2015 which has so far seen numbers reduced from 2900 to 2193. This is against a backdrop of increasing TA numbers across London. The plan included:

- Focusing on early intervention to prevent homelessness through the Find Your Home scheme
- Acquiring and developing 180 PRS units through I4B to let to homeless households at Local Housing Allowance rates. To date 190 families have been, rehoused in I4B properties, and
- Developing council owned land to provide self-contained TA as an alternative to B&B for emergency and short term use, e.g. Knowles house will deliver 90 units of high quality TA.

3.15 The Council also has ambitious plans to increase the supply of affordable housing, aiming for 1000 units each year. In addition to the approx. 600 properties that become available annually, we will achieve this through:

- our own building - we have secured £65m of GLA funding which will help us deliver 250 units each year from 2019/20
- Housing Associations - we are working proactively to shape the market to deliver an additional 250 social units a year

3.16 The above means that, in a few years' time, there is every chance of being in a radically different position, where our Allocations Policy does not need to focus so much on reducing TA and we are better able to meet demand.

4. Consultation

4.1 The Allocation Scheme is a statutory document, requiring formal consultation on any proposed changes reflecting a major change in policy. Consultation started in September 2018 and included:

- Pre-scrutiny by Brent's Housing Scrutiny Committee

- Formal public consultation – from 12 November 2018 to 21 January 2019. The online consultation survey was promoted through the Council’s website and the Locata home page. Every household currently on the housing register (including Band D) was notified
- Workshops with key stakeholders, including people living in TA, Members, Registered Providers, voluntary sector organisations and relevant council departments (adult social care, children and young people’s services and Brent Housing Management). Workshops were an opportunity to go through some of the more technical issues in depth and attendees were invited to submit their views via the online consultation as well
- Two workshops facilitated by bmg Research in March 2019 following close of the Public consultation. The first was for housing professionals and the second with a cross section of residents from across the Borough. The purpose was to further test the proposals, particularly the likely impact on households seeking social housing. The outcome of these workshops is attached at Appendix 3 (a) and 3 (b).

4.2 The online consultation received a high number of responses, 4,984 responses when the survey closed on 21 January 2019. Given there had only been 1,178 responses as at 3 January, officers made enquiries to verify the validity of responses received after this date. It was confirmed that 3,743 were submitted in three tranches, in blocks within a few seconds of each other. These responses had identical answers to all questions, except the ethnicity questions which had mixed responses, but predominantly Bangladeshi. 2,279 of these responses identified themselves as Bangladeshi, although the estimated Bangladeshi population in Brent is 1,800 (GLA population projections 2016).

4.3 Based on the above, officers have given less weight in the outcome analysis to responses which appear to have been coordinated, and considerably more weight to the 1,241 responses that are considered to be valid. See Appendix 2 for further details. Officers advise that this approach gives proper due regard to the respective responses to the consultation.

5. Proposals and Recommendations

5.1 Each of the six proposals is set out below alongside details of the consultation feedback. Recommendations are based on the likely impact of the proposal on Brent’s strategic objectives of increasing the supply of social housing and reducing use of TA.

Amendment 1 - Introduce a new nominations agreement with Registered Providers

- 5.2 This proposal suggests that Brent make use of the opportunity to make nominations to Registered Providers for families newly accepted as homeless. The offer would be an Assured Shorthold Tenancies (AST) based on a Reasonable Rent under part 6 of the Housing Act 1996 and would therefore end the homelessness duty for that family.
- 5.3 Brent currently leases almost 1000 units of TA through the Housing Association Leasing Scheme, through which properties are leased from private owners and managed by an RP. Currently, Housing Benefit will only cover 90% of the January 2011 LHA rate. This represents a much lower rent compared to what a landlord could get in the private market. For example, a three bed property in the north of the Borough would attract a rent of £260, compared to £420 on the private market.
- 5.4 We know that landlords are pulling out of the scheme. We have lost a total of 500 properties in the past five years and this rate appears to be increasing, with 91 properties lost in the past six months. When a landlord pulls out of the scheme, the family living in the property are made homeless, unless the landlord is willing to lease the property to the same family as a PRSO. This attracts rent at 100% of LHA level (£312 for a three bed in the north of the Borough). It is extremely rare for this to happen given that the rent is still short of what would be possible on the private market - £420 in this case - and the landlord would need to manage the property themselves.
- 5.5 The most likely outcome is that the family returns to us for help. Our options are then as for any other homeless family, i.e. possibly a PRSO but most likely a return to alternative TA, often via a stay in emergency B&B or annex accommodation until appropriate TA becomes available. The likelihood of needing to use emergency accommodation is much increased given the pressures on TA outlined earlier in this report.
- 5.6 The cost of maintaining our existing HALS portfolio is also increasing. In recent weeks, our main HALS provider (providing approximately 700 of our almost 1000 properties) has informed us that, in order to make the scheme financially viable, an increased management cost totalling almost £1m will be required.
- 5.7 This proposal offers a way to retain a property for use by a homeless family in Brent, albeit one that can be seen to have been designed to favour landlords. Because the property is managed by an RP, a higher rent – so-called Reasonable Rent - can be charged which would be fully covered by Housing Benefit/Universal Credit. This makes it more likely that a landlord would be willing to continue to offer the property for use in this way. This is more than a landlord can get by offering the property as a PRSO, where Housing Benefit/Universal Credit will only cover 100% of LHA rate. For a three bed in

the north of the Borough, this would be £375 compared to a PRSO level of £312.

- 5.8 There are compelling arguments for adopting this proposal, beyond the chance that at least some of the current HALS properties might be retained by landlords able to get a Reasonable Rent. In addition, the two/three-year lease is longer than a typical PRSO and the quality of the property is likely to be good as it is managed by an RP. Reasonable Rents would be another option which, combined with I4B, Capital Letters and the private rented sector, would mean that only families with very specific needs would be reliant on HALS TA.
- 5.9 However, Reasonable Rents is untested. Brent is in a unique position is having so many HALS properties still and we would be the first authority to use Reasonable Rents, with the attendant risks. In particular, there is a risk that the rent is not considered reasonable under Universal Credit and the DWP refers the matter to the Rent Officer. If the Rent Officer considered the rent not to be reasonable, the Council would need to change its policy.
- 5.10 Families living in properties at a Reasonable Rent could become increasingly reliant on benefits. Whilst Housing Benefit/Universal Credit would cover a Reasonable Rent, the gap between this higher rent and, for example, LHA, means that the reliance on benefits is much greater. This is unlikely to mean anything materially to the family because Housing Benefit tapers off based on needs and income and only at a rate of less than 65% of increased income. This means that the contribution to rent from earned income would remain affordable, but clearly places the family in a position of being reliant on benefits. If a family was subject to the Overall Benefit Cap, or had a change in circumstances that made their contribution unaffordable, the Council would support them to find an alternative option: for context, of the 100 families in TA who are subject to the OBC, only 24 are currently in HALS.

Recommendation

- 5.11 There is a strong case for adding Reasonable Rents to our portfolio of options for supporting homeless families, not least the immediate relief of budget pressures of increased HALS management fees and use of emergency accommodation. It would clearly be inappropriate where the rent was unaffordable but has the potential to offer good quality homes to families who, given the current losses in HALS properties, are likely to need to make use of emergency accommodation.
- 5.12 In relation to the strategic objectives by which this paper judges the proposed changes, Reasonable Rents is likely to increase the supply of good quality, affordable properties as landlords are more likely to continue to make the property available because the RP is able to provide them with a rent that is closer to the market. It is also likely to reduce the number of families in TA

because, for some families, a property at Reasonable Rent would be a suitable settled home that prevented the need for the family to live in TA.

- 5.13 57% of the responses to the on-line consultation survey which the Council is giving greater weight to agree with this proposal. The responses which include what appear to be part of a coordinated response and therefore are being given less weight are included in the first page of Appendix 2. The qualitative feedback from the Housing Scrutiny Committee and BMG workshops acknowledged that Reasonable Rents was one way to increase supply of affordable housing.
- 5.14 In terms of the Equality Impact Assessment, the cohort who would be affected by this proposal are newly accepted homeless households. The characteristic profile of this cohort who are currently either going into PRSO or TA accommodation are broadly the same. The exception is households with a disability who generally go into TA because PRSO properties (with the exception of Council owned i4B units) are rarely able to be adapted to meet the needs of the household. Therefore, households with disabilities would generally be allocated TA while they wait for social housing or an i4B adapted property. The full Equality Impact Assessment (EIA) is attached at Appendix 4. The purpose of the allocations scheme is to ensure suitable accommodation is offered to households in priority need based on clear and equitable guidelines. Whilst the "Reasonable Rents" model introduces another option for households to access, for households in need through disability or medical reasons, access will remain the same to social housing either directly or through TA.
- 5.15 Whilst a small majority of the online respondents supported the introduction of Reasonable Rents and the Housing Scrutiny and BMG workshops acknowledged the potential advantages, there are risks with this change.
- 5.16 There are risks with introducing this policy. It is untested, potentially widens the benefit gap for some families and potentially becomes the default option for landlords who want to generate greater income, ultimately making it an unaffordable and unattractive scheme. Most important, it does nothing to prevent a family currently living in HALS from becoming homeless. Even if their landlord converted the property to a Reasonable Rent, this would only apply to a new agreement with a new family.
- 5.17 Discussion subsequent to the consultation have made it clear that a greater level of confidence is needed for this rather technical option to be supported. The recommendation is therefore to continue to investigate how Reasonable Rents would work in practice and examine intended and possible unintended consequences. Officers are recommending that this proposed amendment is revisited in six months for reconsideration when more is known about how this reasonable rents proposal would work in practice and what the intended and possible unintended consequences of introducing this proposal would be. If

officers recommend that this proposal be adopted, this will be submitted to the Cabinet for a decision.

Amendment 2 - Allowing households currently in Band D to retain the waiting time they accrued when in a higher band if they become homeless and are placed in TA

- 5.18 As outlined in 3.1 and 3.2 above, changes were made when the allocations scheme was last reviewed that placed households with less acute housing need in band D. These changes affected approximately 14,000 households and the waiting time they had accrued while they were in Band C was retained when they were moved to Band D.
- 5.19 If one of these households subsequently becomes homeless and is placed in TA, they are automatically placed in Band C and given reasonable preference, alongside other families who are accepted as homeless. Their registration date is the date of their placement in TA and they do not retain the waiting time they accrued prior to being moved into band D.
- 5.20 Put simply, this proposed amendment would allow households who were moved from a higher Band to Band D back in 2014 to retain the waiting time accrued in that higher band, along with years accrued subsequently in Band D, if they find themselves homeless and are placed in settled TA (as opposed to stage 1 emergency TA). This is a question raised frequently with officers and it therefore felt important for the integrity of this consultation that it has been included.

Recommendation

- 5.21 77% of the responses to the on-line consultation survey which the Council is giving greater weight to agree with this proposal. The responses which include what appear to be part of a coordinated response and therefore are being given less weight are included in the second page of Appendix 2. The feedback from the bmg workshops was generally supportive of the proposal, on the basis that it was considered unfair that households lost the waiting time they had previously accrued.
- 5.22 The Housing Scrutiny Committee acknowledged that, whilst this proposal would benefit households who had lived in the borough longer and previously accrued waiting time in a higher band, it would disadvantage households who had not previously accrued any waiting time. The current allocation scheme prioritises households by need and length of time they have waited with that identified need. Whilst the cohort that would benefit from this amendment would have a recognised need for housing because they have been accepted as homeless, they might be placed above other homeless families with the same need, who have been waiting in TA for longer. For example: a family accepted on to the

Register at Band C in 2009 one bedroom overcrowded, who become homeless in 2019 could be prioritised over a family who were accepted as homeless in Band C (at least 2 bedrooms overcrowded) and had been in TA for the last 4 years.

- 5.23 In terms of the impact of this proposal on the Council's strategic aims, it is neutral in terms of housing supply. It does not have any impact – positive or negative. Analysis of the households moved into Band D in 2014 who have subsequently been accepted by the Council as homeless suggests that the demand would be approximately 125 homeless households annually. This number is, of course, based on data for years when this proposal was not in play. Also, the amendment could not be limited to the cohort who were affected in 2014 but would need to include all households who have been moved into Band D from a higher band since 2014. Approximately 9,000 households have gone into Band D since 2014, although it is not possible to identify how many of these households were previously in a higher band. Officers do not think the number will be high as it is rare for a household to move down a band since the 2014 changes.
- 5.24 There is a risk that this proposal would offer false hope to families in Band D that, should they be accepted as homeless, their opportunities for accessing social housing would increase. Given the incredibly limited current supply of social housing and the already existing demand in Bands A-C, this is highly unlikely. In reality, this change would only have a material impact on the family if the Council was unable to find a suitable PRSO and, as a consequence, the family was placed in settled TA. Given the Council's desire to reduce the use of TA, this change is even less likely to make a difference to the family as alternative sources of affordable PRSO, e.g. through Capital Letters or I4B become more common.
- 5.25 We are committed to reducing our use of TA but it must be acknowledged that both Capital Letters and I4B are in their infancy and have not yet had chance to comprehensively demonstrate delivery of suitable PRSO for our homeless families. A risk exists that this proposal would increase demand on TA should these initiatives prove less effective than anticipated.
- 5.26 The full EIA is attached at Appendix 4. Analysis shows that the characteristic profile of the cohort of households who are currently in Band D, and so would potentially gain if this proposal was implemented is similar to the cohort of people who apply as homeless to the Council. The impact of this proposal is therefore neutral.
- 5.27 For this proposal to be meaningful to families who have been moved into Band D from a higher band, we need to be able to evidence that we are delivering substantial increases in the supply of affordable housing. Otherwise, the risk of giving families currently in Band D false hope is significant and risks these

families perceiving that homelessness would improve their chances of accessing social housing. The only way in which we would be able to support most of these families into a suitable, permanent home is through a PRSO and we do not yet have the track record of improved supply to make this a reality. The proposal would also disadvantage families who have been in TA for a long time compared to people who are currently in Band D as a family in TA is, by default, awaiting a social home and we need to see a step change in delivery if they are to have a realistic chance of a permanent home.

- 5.28 Whilst having regard to the positive response to the online survey and BMG workshops, it is clear that the only way that this proposal would be realistic is with proven delivery of supply, both of social housing for families currently in TA and of PRSO – through Capital Letters and I4B - for families in Band D who find themselves homeless. Officers are therefore proposing that Cabinet reviews this proposal in 2 years' time when the impact of wider activity to increase the supply of all forms of affordable housing is known.

Amendment 3 - Local Lettings Policy - Give priority to households who need a transfer to bid for new accommodation that becomes available on their current estate

- 5.29 Building new council homes is disruptive for local people. This proposal suggests a way to make sure that local residents have a real stake in new developments in their area. Council tenants who are registered for a transfer would be given priority to bid for new units that become available on their estate. There are currently 267 Brent Council Tenants who are registered for a management transfer due to overcrowding, medical or other reason and who are in Bands A-C and therefore able to bid.
- 5.30 The Council has ambitious plans to increase the supply of affordable homes, including building new Council homes. Brent is not blessed with swathes of brownfield sites and most of these new homes will be built on under-used available land on existing estates i.e. infill, including through initiatives like demolishing underutilised garages.
- 5.31 For too long, tenants have been expected to put up with the downsides of new developments near them, without getting any of the benefits. This proposal would enable residents to continue to live on their estate and prevent the need for them to move away.

Recommendation

- 5.32 84% of the responses to the on-line consultation survey which the Council is giving greater weight to agree with this proposal. The responses which include what appear to be part of a coordinated response and therefore are being given less weight are included in the second page of Appendix 2. Feedback from the

Housing Scrutiny Committee consultation indicated support and included the observation that the proposal could make planning applications to develop Council housing on estates easier and quicker to process. The bmg workshops were also supportive, on the basis that it would contribute to community cohesion and support tenants to remain in the same area as their support network.

- 5.33 In terms of the strategic objective of the Council, the proposal is likely to have a positive impact on supply because it would facilitate the Council's ambitious house building programme. First, by demonstrating that local communities would experience benefits as well as disadvantages and also by encouraging people to move locally into more suitable homes, freeing up the homes they previously lived in.
- 5.34 It must be recognised that, in giving local tenants priority to bid for new units, they are prioritised over other households in the borough, some of whom may have been waiting longer. Whilst the home the tenant previously lived in would become available, most people on the transfer list are overcrowded and so would be unlikely to benefit from the newly vacated home. The Council needs to be mindful not to see developments on existing estates as the only way to provide larger homes. However, a significant number of tenants registered for a transfer are under-occupiers so, by offering them more suitable homes on their estate, their home could be freed up for a larger family.
- 5.35 The proposal would not increase the demand for TA as it only affects households already eligible to bid for a transfer. It would make a small but important contribution to reducing TA as families who move to a new home would no longer be in TA.
- 5.36 The full EIA is attached at Appendix 4. The analysis shows that the 18 households already registered for a transfer and living on an in fill estate are predominately White UK and tend to be older. Whilst the number of eligible households is small, this proposal would enable them to retain their local connections whilst freeing up their previous home for another household.
- 5.37 As both the qualitative and quantitative consultation responses were positive and the proposal contributes to the Council's strategic objectives, it is recommended for adoption. Although it does provide some households with an advantage because new houses are being built on their estate, the impact is relatively small as highlighted in the EIA.

Amendment 4 - Local Lettings Policy - Give priority to accepted homeless households living in Temporary Accommodation on an estate that is being regenerated, for an allocation of social housing that becomes available on the same estate

- 5.38 This proposal is similar to the above and would give households in TA priority for an offer of social housing on their estate, if the estate is being regenerated.

Recommendation

- 5.39 55% of the responses to the on-line consultation survey which the Council is giving greater weight to agree with this proposal. The responses which include what appear to be part of a coordinated response and therefore are being given less weight are included in the third page of Appendix 2. The Housing Scrutiny Committee consultation made no comments on this proposal. The bmg workshops were supportive of the proposal, on the basis that it contributes to community cohesion and enables tenants to stay close to their support networks.
- 5.40 Brent is committed to ensuring that estate regeneration happens in the right way, with strong resident support and engagement. This includes resident ballots and is supported by guidance from London's Mayor. Ballots must be open to all residents on the estate, including households who have been living in TA on the estate for over a year, for the purposes of fulfilling the requirements to obtain grant funding from the Mayor of London for regeneration. For many of these households, their TA property has become home and they feel fully part of the local community. This is an opportunity to make sure that they too benefit from any proposed regeneration in their area and are not being asked to support a future in which they have no stake and which is only likely to mean disruption and, potentially, relocation.
- 5.41 In terms of the Council's strategic objectives, it is likely that this proposal would have a positive impact on increased supply. Not only would it give households in TA a meaningful stake in the future of where they live, but it could also drive an increase in social housing generally. The Council would have to ensure sufficient supply to meet the needs of families in TA and, in opening up these options, it is highly likely that additional homes could be developed to offer to families in TA currently living in other parts of the Borough.
- 5.42 This amendment would not increase demand for TA or social housing, as it only affects households who are already living in TA. It must be noted that it would prioritise some households over others. For example, the 229 households living in TA in South Kilburn would be offered permanent homes locally, over families in TA in other parts of the Borough who may have been waiting longer.
- 5.43 The full EIA is attached at Appendix 4. It has only been possible to focus on existing schemes, but it confirms that the households living in TA on the South Kilburn Estate broadly have the same characteristics as other households living in TA, although they tend to be younger with fewer Black African households. We can see from the comparative demographic data that no group is advantaged or disadvantaged in this proposal by their protected characteristics

5.44 On the grounds that this proposal was supported through the consultation and contributes to the Council's strategic objectives, it is recommended for adoption.

Amendment 5 - Revising Quotas

5.45 The Allocation Scheme currently allows for quotas for access to social housing by the following specific groups:

- **Children leaving Care** - referred by Brent Children and Young People service.
- **Probation Service** - Applicants nominated to Brent Council by the Probation Service to avoid the risk of reoffending and where housing is a particular issue.
- **Children Services** - Existing tenants and non-tenants referred by Brent Social Services where accommodation is needed on grounds of children's welfare e.g. child protection cases.
- **Adult Social Care** - To release supported housing and approved for independent living by Brent Social Services and The Housing Department.
- **Voluntary Sector** – To release supported housing but not known to Adult Social Care, and approved for independent living by Brent Housing Needs.

5.46 Officers are of the view that the current quota system results in unintended consequences where alternative sources of suitable housing are not readily considered. The system is not felt to operate in a way which is as effective or responsive as it should be. For many people in these groups, safe and sustainable housing is an important part of their support and this proposal is designed to improve the way social housing is being allocated. This amendment is proposing that we abolish the quota system and instead consider referrals on a case by case basis via the Allocations Panel. This may result in these cohorts being allocated a higher number of social homes than under the quota system.

Recommendation

5.47 84% of the responses to the on-line consultation survey to which the Council is giving greater weight to agree with this proposal. The responses which include what appear to be part of a coordinated response and therefore are being given less weight are included in the fourth page of Appendix 2. The Housing Scrutiny Committee recognised a review of quotas was appropriate and that the current

system often resulted in blockages. The bmg workshops were also supportive of the proposal, on the basis that cases would still be able to be considered for an allocation of social housing.

- 5.48 The Council's Children and Young People (CYP) Service submitted a response to the consultation in favour of not abolishing the quota for care leavers. Access to social housing by care leavers in Brent is part of Brent's Local Offer for care leavers, approved by Cabinet in February 2018 and should therefore be preserved. If this proposal is agreed, a Service Level Agreement would be established with CYP guaranteeing access to Social Housing for Care Leavers, along with a shared CYP/Housing Allocation Panel. This recommendation is made on the basis that the Council has a Corporate Parent responsibility and moral and legal duty to promote the welfare of children under section 11 of the Children Act 2004.
- 5.49 This proposal would not have a significant impact on the supply of accommodation, nor on demand or the numbers in TA. The cohorts who will be affected are not in TA and the group who currently benefit most from the quota system are care leavers, whose access to social housing will not be affected as detailed above.
- 5.50 Whilst it is possible that more social homes are allocated to these cohorts in future, numbers are not anticipated to be high. The number allocated over the past three years is 155, of which 121 go to care leavers. In addition, the proposal mostly impacts on one bedroom and studio accommodation of which there is a greater supply.
- 5.51 The quota referral system is based on an area of inequality in the council. Those accessing services from which quota referrals are accepted are often the most vulnerable in society and certain protected characteristics are therefore overrepresented within this group.
- 5.52 The full EIA is attached at Appendix 4. On the basis that alternative arrangements are made for the various cohorts to access social housing, the EIA has confirmed that the impact on these cohorts is neutral.
- 5.53 Although this proposal does not contribute to the Council's strategic objectives it does make better use of the social housing stock that is available and should result in better access to suitable housing for these cohorts. It may also assist to generate voids in supported housing for vulnerable homeless people. The proposal is recommended for adoption.

Amendment 6 - Prioritise Unaffordability

- 5.54 As mentioned above, the Allocations Scheme is a reflection of the housing need that is likely to be met through supply. It is not intended as a true reflection of

demand which, in an era of rising rents, insecure work and welfare changes, is likely to increase in Brent. We know that many of our residents are struggling and we are frequently asked about whether the housing register should reflect issues of affordability more widely, i.e. whether households dependent on benefits or on low incomes should be given priority and be eligible to bid for social housing.

Recommendation

- 5.55 68% of the responses to the on-line consultation survey which the Council is giving greater weight to agree with this proposal. The responses which include what appear to be part of a coordinated response and therefore are being given less weight are included in the fourth page Appendix 2. The qualitative Housing Scrutiny Committee acknowledged that, whilst the demand is evident, there is not enough supply to meet current demand and adding a significant new cohort would only raise expectations which could never realistically be met. The bmg workshops reinforced this view, with the majority not in favour.
- 5.56 Around 36,000 households in Brent receive Housing Benefit and the table below gives details of different contribution levels.

Number of households currently receiving Housing Benefit and making a monthly financial contribution

Contribution Bands	Number of HB Claims
£0 to £49.99	16065
£50 to £99.99	5323
£100 to £149.99	2278
£150 to £199.99	788
£200 to £249.99	307
£250 to £299.99	133
£300 to £349.99	46
£350 to £399.99	27
£400 to £449.99	10
£450 to £499.99	12
£500 to £600	8
£600 to £700	2
£700 to £800	2
£800 to £900	12
£900 to £1000	12
£1000+	16
No Contribution	11653
Total	36694

- 5.57 In terms of how the proposal impacts on the Council's strategic objectives, it does nothing to increase affordable housing supply but would significantly increase the number of households who would join the housing register who would be able to bid.

5.58 For the purposes of the EIA, we have gathered information from housing benefit assessors on those households who are likely to be wholly dependent on benefits and paying a shortfall to their rent. The table shows the number and percentage of current claimants based on the amount of shortfall they are paying per week.

Shortfall banding	Claimants	%
Under £5	98	9%
£5 - £49.99	691	60%
£50 - £99.99	270	23%
over £100	92	8%
Total	1,151	100%

5.59 If the above proposal was approved for all households in receipt of HB and who make an additional contribution to their rent, the Housing Register would increase by approximately 25,000 households. If the proposal was approved for just the households who are likely to be wholly dependent on benefits and paying a shortfall to their rent, there would be additional demand of 1,151 households. As these households would be in a lower priority band than other households on the Housing Register (as they have no identified need), the majority of these households will never receive an offer of social housing.

5.60 The full EIA is attached at Appendix 4. To assess the impacts of this proposal EIA only considered those households who are likely to be wholly dependent on benefits and paying a shortfall to their rent. Households within this cohort tend to be within the 25-64 age range with younger and older groups under represented compared to Brent population and a lower proportion identified as disabled. Black and white ethnicities are over represented in this group while Asian ethnicities are underrepresented compared to the Brent population. However, ethnicity information is unknown for 40% of this group

5.61 We are not aware of any other councils who have adopted this approach. On the basis that it is unlikely that any household who joined the housing register on this basis would ever get an offer of social housing, it is recommended that this proposal is not approved.

Other Amendments to the Current Allocation Scheme

5.62 Two proposed amendments to the Allocations Scheme were not included in the consultation that took place between November 2018 and January 2019. The first is a statutory requirement and the second was consulted on separately and at a different time to the recent consultation.

Amendment 7 - Give appropriate priority for social housing to victims of domestic abuse who are currently living in a refuge or other form of temporary accommodation

5.63 In November 2018, the Government issued new statutory guidance for local authorities to improve access to social housing for victims of domestic abuse. The new guidance is intended to ensure that victims of domestic abuse are able to move into social housing from a refuge or other form of temporary accommodation. The guidance:

- Strongly encourages local authorities to exempt from their residency requirements those who are currently living in a refuge or other form of temporary accommodation having escaped from domestic violence in another local authority area, and
- Sets out how local authorities can give appropriate priority for social housing to those who are currently living in a refuge or other form of temporary accommodation, by applying the homelessness or medical and welfare reasonable preference requirements

Recommendation

5.64 The Council is committed to supporting victims of domestic violence. The current Allocation Scheme exempts people currently living in a refuge or other TA after escaping domestic violence in another local authority area from our residency requirements and is therefore compliant with the new guidance.

5.65 It is recommended that the proposal to give appropriate priority for social housing to those who are currently living in a refuge or other form of temporary accommodation, by applying the homelessness or medical and welfare reasonable preference requirements, is approved so that the Allocation Scheme is fully compliant with the new guidance.

Amendment 8 - Policy for Displaced Tenants and Leaseholders in Regeneration Schemes

5.66 In November 2017, Cabinet delegated authority to the Strategic Director Community Wellbeing, in consultation with the Lead Member for Housing, to finalise and adopt the policy for displaced tenants and leaseholders in regeneration schemes, after consideration of the responses received in the consultation process. It comes back to Cabinet now on the basis that it is proposed to append it to the amended Allocations Scheme that Cabinet is being asked to approve.

- 5.67 The Estates Regeneration Team completed consultation with leaseholders and tenants in South Kilburn in October 2018, which indicated general support and resulted in no substantial changes to the November 2017 proposed policy.
- 5.68 The proposals which were in the November 2017 Cabinet report in relation to re-housing and providing compensation to displaced tenants and leaseholders in regeneration schemes were as follows:
- (i) That the basic options currently available to tenants and leaseholders will remain part of the menu of options as follows:
 - Market purchase in the regeneration area
 - Market purchase elsewhere
 - Shared ownership on the basis of a minimum purchase of 25% of the equity, funded through the buyback receipt and a contribution from Home Loss payments and, where appropriate, any other capital or savings, with rent payable on the share retained by the council.
 - (ii) That a shared equity option, with no rent payable on the equity retained by the council, should be available subject to a minimum purchase of 50% of the equity. This only applies to resident leaseholders
 - (iii) That a leasehold swap option should be offered, through which a leaseholder can transfer the equity in their current home into a void council property within (provided the property is not scheduled for demolition) or outside the regeneration area.
 - (iv) That, where it would be to the council's advantage or will assist in meeting needs that could otherwise delay a regeneration programme, advance purchase of properties scheduled for demolition should be considered.
 - (v) That, on a similar basis to that proposed in recommendation 2.5, advance payment of Homes Loss and Disturbance compensation should be available to leaseholders and tenants.
 - (vi) That, in limited cases subject to detailed review, reversion to tenancy in acquired private sector property should be offered to leaseholders unable to pursue any other option, with buyback prices based on full market value. This would also be available to other leaseholders or tenants who wish to pursue this option.
 - (vii) That support and advice should be available to vulnerable households to secure supported housing where required, including the option of reversion to tenancy in Extra Care or similar provision where necessary.
 - (viii) That the council should purchase properties tailored to the needs of under-occupiers to release larger homes for renting within existing acquisition programmes. This could include purchase in the private

sector or buy-back from leaseholders of smaller properties seeking to sell.

- (ix) That the council should develop a programme to buy back properties from leaseholders who need to move on grounds of ill-health, disability or vulnerability, offering the full range of options available to displaced leaseholders in regeneration schemes.

Recommendation

- 5.69 Officers recommend that the proposed policy for displaced tenants and leaseholders in regeneration schemes, which is discussed in the November 2017 Cabinet report, is approved and incorporated as an appendix to the amended allocation scheme. A copy of the proposed appendix to the Allocations Scheme is set out in Appendix 5 to this report.

6. Summary and conclusions

- 6.1 The majority of the responses to the on-line consultation survey which the Council is giving greater weight to supported implementation all the proposals in the revised Allocation Scheme. The Housing Scrutiny Committee favoured implemented all proposals, except prioritising affordability (Proposal 6). Members also acknowledged there would be “winners and losers” in relation to retaining years previously accrued on the Housing Register. The majority of the responses from the bmg workshops also agreed with all proposals, except prioritising affordability (Proposal 6).
- 6.2 Having had regard to these views and the EIA, and the positive impact of these proposals on the Council’s strategic objectives of increasing the supply of affordable housing and decreasing use of TA, it is recommended that five of the 8 proposals are implemented as soon as possible:
- Amendment 3 - Local Lettings Policy – New Accommodation on their current estate
 - Amendment 4 - Local Lettings Policy – Regeneration Areas
 - Amendment 5 - Revising Quotas
 - Amendment 7 - Give appropriate priority for social housing to victims of domestic abuse
 - Amendment 8 - Policy for Displaced Tenants and Leaseholders in Regeneration Schemes
- 6.3 This report represents a snapshot in time and, given the real challenges of insufficient supply to meet current demand and huge pressures on availability of good quality and cost effective TA, the Council is not in a position to do all we would like. Whilst the Council is working to significantly increase the supply

of social housing, this will not meet existing and new homelessness demand and the PRS will remain an important part of the picture.

- 6.4 Reducing the number of households in TA is not only important because it provides the best chance of sustainable housing for families in need, but because it allows future reviews of the Allocations Scheme to be conducted in a different context. More radical proposals may well be feasible in a scenario where supply is considerably increased and TA is close to zero.
- 6.5 An understanding of our various efforts to achieve this is needed before more radical decisions might be taken. For example, Cabinet is asked to agree to review and consider again Amendment 2 (Allowing households currently in Band D to retain the waiting time they accrued when in a higher band if they become homeless and are placed in TA) in 2 years' time. We will have a clear idea of the extent to which our own building and development plans and initiatives like Capital Letters and I4B etc. are meeting the supply challenge. The same applies to the recommendation not to agree Amendment 6 (Prioritise Unaffordability) at this point. Whilst it would arguably more accurately reflect the demand for support, it does not represent a demand that could be met by current supply and risks raising expectations for families who would never be offered social housing.
- 6.6 The reality of being able to help as many families as we can to find safe, sustainable homes means that we must continue to consider all options available to us. It is evident that a greater level of understanding on intended and unintended consequences of Amendment 1: using Reasonable Rents to Introducing a new nominations agreement with Registered Providers, is required. This amendment is presented in the context of a context in which we have limited options and where the focus, inevitably, is on managing a far from ideal situation. Officers recommend that this should be revisited as just one other potential option that members wish to make use of in future.

7. Financial Implications

- 7.1 The amendments to the policy recommended relate to the priority for which accommodation should be offered. Therefore, these are unlikely to have a net financial impact, particularly if the overall average tenure in TA remains unchanged.
- 7.2 However, the expectation is that demand for TA will continue with a reducing supply of TA accommodation leading to growing budgetary pressures in future year.
- 7.3 The report highlights in paragraphs 3.14 and 3.15 the activities in place to help manage the TA demand in the medium and long term. However, pressures

remain in the short term which will need to be managed utilising the Flexible Homelessness Support Grant.

- 7.4 Historically, the Flexible Homeless Support Grant (FHSG) has been sufficient for the financial pressures. However, the grant has been cut from £7.8m in 2017/18 to £5.2m in 2019/20. There is increasing uncertainty as to whether the FHSG will continue after 2019/20.

8. Legal Implications

Allocation Scheme

- 8.1 The requirements regarding allocations schemes are set out in section 166A of the Housing Act 1996 (“the 1996 Act”).
- 8.2 Under section 159(1) of the Housing 1996 Act (“the 1996 Act), it states that for the purposes of Part 6 of the 1996 Act, a local housing authority allocates housing accommodation when it : (i) selects a person to be a secure or introductory tenant of housing accommodation held by them, or (ii) nominates a person to be a secure or introductory tenant of housing accommodation held by another person or (iii) nominates a person to be an assured tenant (this includes an assured shorthold tenant) of housing accommodation held by a private registered provider of social housing or a registered social landlord.
- 8.3 The main requirements regarding allocations schemes are set out in section 166A of the Housing Act 1996 (“the 1996 Act”).
- 8.4 Under section 166A (1) of the 1996 Act, every local housing authority (which includes Brent Council) shall have a scheme for determining priorities and as to the procedure to be followed in allocating housing accommodation. The allocations scheme must also include the authority’s statement on offering choice of accommodation or how people are offered the opportunity to express their choice.
- 8.5 Section 166A (3) outlines priorities to which the scheme must give reasonable preference. These categories are outlined in detail within the allocation scheme, but in summary they are;
- Homeless households
 - Homeless households in temporary accommodation
 - People living in overcrowded, insanitary or unsatisfactory housing
 - People who need to move on medical or welfare grounds (including any ground relating to a disability)
 - People who need to move to a particular locality within the district where to not move them would cause hardship (to themselves or others)
 - people who are owed a duty by the Council under section 190(2), [i.e. eligible for assistance, homeless, in priority need and intentionally homeless], 193(2) [i.e. eligible for assistance, homeless, in priority need

and not intentionally homeless] or 195(2) [i.e. the prevention duty owed to persons who are eligible for assistance and threatened with homelessness] of the 1996 Act.

Additional preference may be given to any particular category where there is urgent housing need.

- 8.6 The “prevention duty” and the “relief duty” were introduced by the Homelessness Reduction Act 2017 (“the 2017 Act”) and applicants who are owed the prevention duty or the relief duty come within the categories of reasonable preference. The “prevention duty” and “relief duty” apply when a local authority is satisfied that an applicant is homeless and eligible for assistance.
- 8.7 Subject to the content of section 166A (3) of the 1996 Act as set out in the previous paragraph, the allocations scheme may contain provision about the allocation of particular housing accommodation: (a) to a person who makes a specific application for that accommodation; (b) to persons of a particular description (whether or not they are within the categories set out in the previous paragraph). The Secretary of State has the power to make regulations to specify factors which a local housing authority in England must not take into account in allocating housing accommodation.
- 8.8 The allocations scheme must be framed so as to secure that an applicant for an allocation of housing accommodation has the right to request such general information as will enable him to assess - (i) how his application is likely to be treated under the scheme (including in particular whether he is likely to be regarded as a member of a group of people who are to be given a reasonable preference); and (ii) whether housing accommodation appropriate to his needs is likely to be made available to him and, if so, how long it is likely to be before such accommodation becomes available for allocation to him.
- 8.9 The allocations scheme must also be framed so that an applicant for a housing allocation has the right to request the Council to inform him of any decision about the facts of his case which is likely to be, or has been, taken into account in considering whether to allocate housing accommodation to him and he also has the right to request a review of such a decision and to be informed of the decision on the review and the grounds for it. There is also the right to request a review against a decision of the Council by an applicant on grounds of being ineligible for an allocation and of not being a qualifying person to be allowed to be given an allocation of housing under section 160ZA (9) of the 1996 Act.
- 8.10 Under section 166A (12) of the 1996 Act, a local housing authority must, in preparing or modifying their allocation scheme, have regard to: (a) its current homelessness strategy under section 1 of the Homelessness Act 2002, (b) its current tenancy strategy under section 150 of the Localism Act 2011, and (c)

as Brent Council is a London Borough, the London housing strategy prepared by the Mayor of London. These strategies have been considered and given due regard in relation to the proposed amendments to the Council's housing allocations scheme. The Council's homelessness strategy and the Council's tenancy strategy will be reviewed this year and following consultation, the Cabinet will be invited to consider and amend the Council's homelessness and tenancy strategies later this year.

- 8.11 Section 166A (13) of the 1996 Act states that before adopting an allocation scheme, or making an alteration to their scheme reflecting a major change of policy, the Council must -
- a) send a copy of the draft scheme, or proposed alteration, to every private registered provider of social housing and registered social landlord with which they have nomination arrangements (see section 159(4)), and
 - (b) afford those persons a reasonable opportunity to comment on the proposals.

These consultation requirements have been carried out.

- 8.12 Under section 166A (14) of the 1996 Act, a local housing authority shall not allocate housing accommodation except in accordance with their allocation scheme. In other words, if a Council pursues allocation policies that are outside its scheme, then it will be deemed to be unlawful.
- 8.13 Section 160ZA of the 1996 Act sets out which classes of persons that local authorities shall not allocate housing accommodation under their allocations scheme and these are mainly on grounds of immigration status.
- 8.14 The Department for Communities and Local Government (as it was then known) issued statutory guidance in June 2012 and is entitled: "Allocation of accommodation: guidance for local housing authorities in England". The Council has given regard to this statutory guidance when drafting its allocations scheme as the following subsequent statutory guidance including "Providing social housing for local people" dated December 2013 and "Right to Move" dated March 2015. Most recently, MHCLG has issued further statutory guidance in November 2018 "Improving Access to social housing for victims of domestic abuse in refuges or other types of temporary accommodation" which strongly encourages local authorities to exempt from their residency requirements those who are currently living in a refuge or other form of temporary accommodation having escaped from domestic violence in another local authority area and sets out how local authorities can give appropriate priority for social housing to those who are currently living in a refuge or other form of temporary accommodation, by applying the homelessness or medical and welfare reasonable preference requirements.

- 8.15 In relation to the issue as to whether a nomination of an assured tenancy comes within Part 6 of the 1996 Act, it will fall outside Part 6 of the 1996 Act (i.e. outside the Council's Allocations Scheme) if the following conditions apply:
- (a) it involves a direct offer from a private registered provider of social housing; or
 - (b) it involves a nomination in respect of an existing secure or assured registered social landlord tenant (including assured shorthold tenant) unless the following exceptions apply (in which case it is an allocation under Part 6 of the 1996 Act):
 - (i) the nomination relates to a transfer of housing accommodation to a different property; and
 - (ii) the transfer was made at the request of the applicant; and
 - (iii) the Council is satisfied that the existing tenant has a reasonable preference under section 166A (3) of the 1996 Act.
- 8.16 If the Council wishes to make an offer under Part 6 of the 1996 Act to discharge its duty to someone already in temporary accommodation which is secure or assured (including an assured shorthold tenancy), the Council must ensure that all three of the exceptions in section 159(4B) of the 1996 Act apply as set out in sub-paragraphs (i) to (iii) above. If a homeless applicant under Part 7 of the 1996 Act has already been given an assured shorthold tenancy as temporary accommodation, a further grant of an assured shorthold tenancy will not come within Part 6 of the 1996 Act unless the exceptions set out in (i) to (iii) above apply. This restricts to some extent the scope of the Council to make a nomination of housing accommodation with assured shorthold tenancies under Part 6 of the 1996 Act to homeless households who are already in temporary accommodation under Part 7 of the 1996 Act and have assured shorthold tenancies in that temporary accommodation with a registered social landlord or private registered provider of social housing. This paragraph is relevant to the proposal to introduce a new nominations agreement with registered providers and make nominations in respect of assured shorthold tenancies with private registered providers of social housing or registered social landlords under Part 6 of the Housing Act 1996. As stated in paragraph 5.5 above, an offer of accommodation under Part 6 of the Housing Act 1996 must be suitable and affordable for the housing/homelessness applicant in order to discharge the Council's duty to provide temporary accommodation to accepted homeless households under section 193 of the Housing Act 1996
- 8.17 Under section 11 of the Children Act 2004, local authorities must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children.
- 8.18 In relation to the proposed policy for displaced tenants and leaseholders in regeneration schemes, Members are referred to the content of the legal

implications set out in section 8 of the November 2017 Cabinet report, which is set out in Appendix 5.

9. Equalities – Public Sector Equality Duty

- 9.1 The public sector equality duty, as set out in section 149 of the 2010 Act, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and those who do not share that protected characteristic.
- 9.2 The “protected characteristics” are: age, disability, race (including ethnic or national origins, colour or nationality), religion or belief, sex, sexual orientation, pregnancy and maternity, and gender reassignment. Marriage and civil partnership are also protected characteristics for the purposes of the duty to eliminate discrimination.
- 9.3 Having “due regard” to the need to “advance equality of opportunity” between those who share a protected characteristic and those who do not includes having due regard to the need to remove or minimise disadvantages suffered by them. Due regard must also be had to the need to take steps to meet the needs of such persons where those needs are different from persons who do not have that characteristic, and to encourage those who have a protected characteristic to participate in public life. The steps involved in meeting the needs of disabled persons include steps to take account of the persons’ disabilities. Having due regard to “fostering good relations” involves having due regard to the need to tackle prejudice and promote understanding.
- 9.4 The Council’s duty under section 149 of the Equality Act 2010 is to have “due regard” to the matters set out in relation to equalities when considering and making decisions on the provision of localised council tax support for the area of Brent. Due regard to the need to eliminate discrimination, advance equality and foster good relations must form an integral part of the decision making process. When the decision comes before the Cabinet, Members of the Cabinet must consider the effect that implementing or amending a particular policy will have in relation to equality before making a decision. An Equality Impact Assessment will assist with this and an equality impact assessment is attached to this report.
- 9.5 There is no prescribed manner in which the equality duty must be exercised, though producing an Equality Impact Assessment is the most usual method. The Council must have an adequate evidence base for its decision making. This can be achieved by means including engagement with the public and interest groups and by gathering detail and statistics from the Council’s Housing Register.

- 9.6 Where it is apparent from the analysis of the information that the policy, or amendments to the policy, would have an adverse effect on equality, then adjustments should be made to avoid that effect and this is known as “mitigation”.
- 9.7 The public sector equality duty is not to achieve the objectives or take the steps set out in section 149 of the Equality Act 2010. The duty on the Council is bring these important objectives relating to discrimination into consideration when carrying out its public functions. The phrase “due regard” means the regard that is appropriate in all the particular circumstances in which the Council is carrying out its functions. There must be a proper regard for the goals set out in section 149 of the 2010 Act. At the same time, when the Members of the Cabinet make their decision on amending its allocations scheme, they must also pay regard to countervailing factors which it is proper and reasonable for them to consider. Budgetary pressures and economic and practical factors will often be important. The amount of weight to be placed on the countervailing factors in the decision making process will be for Members of the Cabinet to decide when it makes its final decision.

Report sign off:

PHIL PORTER

Strategic Director, Community
Wellbeing