



Cabinet
17 January 2022

**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: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	Three Appendix 1: Allocation Scheme consultation results Appendix 2: Equalities Impact Assessment - give reasonable preference to homeless households Appendix 3: Equalities Impact Assessment - Transfers
Background Papers:	None
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1. Purpose of Report

- 1.1 This report sets out the proposed changes to the Council's Housing Allocation Scheme, the consultation responses to those changes, the recommendations and the impact following formal consultation with key stakeholders on a number of issues.
- 1.2 The review of the Allocation Scheme commenced in January, and has been informed by recommendations from the Stock Maximisation Report, which were approved by Cabinet on 16 August 2021 and is designed to ensure the scheme is fully compliant with legislation, following a recent legal challenge. The review also considered the implementation of the Domestic Abuse Act 2021 (the DAA 2021) and whether there are any further amendments necessary arising out of the changes made in light of the amendments to the Statutory guidance issued

by the then Secretary of State for Housing, Communities and Local Government (now known as the Department for Levelling Up, Housing & Communities) "Allocation of accommodation: guidance for local authorities" amended in December 2020 and July 2021

- 1.3 The report sets out how the consultation was conducted, whom we consulted with and what the outcomes were for each of the issues that were considered, as well as providing the full results of the online consultation in Appendix 1.

2. Recommendations

Cabinet resolves:

- 2.1 To approve the following changes to the current Allocations Scheme:
- (a) Change 1: Give reasonable preference to homeless households as set out in paragraphs 6.2 to 6.4 of this report;
 - (b) Change 2 - Give priority to existing Council tenants, who need a transfer, to bid for all new build properties as set out in paragraphs 6.5 to 6.12 of this report;
 - (c) Change 3 - Emergency Management Transfers as set out in paragraphs 6.13 to 6.19 of this report;
 - (d) Change 4 - Transfers due to Overcrowding as set out in paragraphs 6.20 to 6.24 of this report;
 - (e) Change 5 - Award Priority Band A to Special Guardians as set out in paragraphs 6.25 to 6.28 of this report;
 - (f) Change 6 - Decant moves for essential repair as set out in paragraphs 6.29 to 6.33 of this report.
- 2.2 To note and give due regard to the content of the Equalities Impact Assessments in Appendices 2 & 3 of the report.
- 2.3 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

- 3.1 The Council is statutorily obliged to have a scheme for allocating the limited amount of social housing that is available. Brent's scheme was last reviewed in 2019, when revisions were implemented to introduce Local Lettings policies for new developments on existing Council estates and regeneration areas. As well as revisions to quotas and giving appropriate priority for social housing to victims of domestic abuse, living in a refuge or other forms of temporary accommodation
- 3.2 The Council now proposes to make some more changes to make sure that the Scheme works to make the most effective use of the social housing that becomes available. This is important because the supply of homes is limited and the Council can only meet a small amount of the demand each year. As at

19 November 2021, there were 2,633 households in priority Bands A-C on the Council's Housing Register, of whom The Council has accepted the main homeless duty to 1,521. There are a further 21,862 in Band D, making a total of 24,495. However, only households in priority Bands A-C are eligible to bid, as they have an identified housing need as defined by the Council's current Allocation Scheme.

- 3.3 The Housing Act 1996 Part VI ("The 1996 Act") provides the following: The scheme must be framed so as to give reasonable preference to any applicant who falls within the statutory reasonable preference categories as set out in the 1996 Act over those who do not. There is no requirement to give equal weight to each of the reasonable preference categories, but local authorities will need to demonstrate that overall, reasonable preferences have been given to all of them. Local housing authorities may frame their scheme so as to give additional preference to particular descriptions of people who fall within the reasonable preference categories and who have urgent housing needs. Following a recent legal challenge, amendments to the scheme are required to ensure that it is compliant for all homeless households who fall within the statutory reasonable preference categories.
- 3.4 The Domestic Abuse Bill received Royal Assent on 29 April 2021, and is now an Act of Parliament (law). Only one element of the Domestic Abuse Act 2021 concerns the allocation of social housing, and therefore could potentially affect the Council's Allocation Scheme. However, no amendment to the scheme is necessary, as all new social housing allocations, including those made to domestic abuse victims, are lifetime tenancies. Nor were any changes required in light of the amendments to the "Allocation of accommodation: guidance for local authorities" July 2021, or subsequent amendments to the immigration eligibility criteria in September 2021.

4. Context

- 4.1 The focus of the allocations scheme is on the demand that might realistically be met, rather than the demand that actually exists. The scheme is framed to give households on the register a more realistic sense of the current housing crisis and to manage their expectations. Households with the most acute need, e.g. who are homeless, severely overcrowded or whose living situation is inappropriate because of medical need or poor conditions are given priority to bid for properties, by being placed in bands A-C. Households with a recognised housing need that are less acute, e.g. overcrowded by one bedroom, are placed in band D. This is to reflect the fact that there is insufficient supply of social housing to meet the needs of all households on the register, as approximately only 600 social homes become available each year.
- 4.2 The Council is committed to doing everything it can to support all residents in housing need and increase the supply of affordable housing. The New Council Homes Programme (NCHP) has set an ambitious Council house building programme, which will deliver about 2000 new Council homes by 2028. To date we have delivered 563 new homes, with a further currently 278 on site. In

addition, we have 465 either with planning permission or submitted for planning permission and a further 1336 under feasibility.

4.3 We are also looking at every opportunity to increase the supply of social housing, in order to meet existing and future housing need. We are;

- Identifying new development opportunities on existing Council owned land and new sites.
- Working with partner Registered Providers and i4B to maximise the amount of affordable housing they are able to provide and tailoring this to housing need in Brent.
- Being aware of new private developments and the proposals for Affordable Housing and working with Planning colleagues to maximise the amount.

4.4 The Council is also making the best use of existing the Council Housing stock, through the initiatives approved by Cabinet in August 2021, in the Stock Maximisation report. In particular identifying current tenants whose needs can be better met by moving to a more appropriate accommodation. This has led to:

- Working with Private Housing Services to ensure that Adaptations meet housing need and that Empty Properties brought back into use also meet the housing need.
- Analysing cases of overcrowding with a view to considering whether extending the property is a practical solution to alleviate the issue.
- Analysing identified under occupied Council homes and working with residents to identify the type of offer that will help and encourage them to downsize, thereby freeing up larger homes for families who need them.
- Analysing cases where Council tenants are receiving care support and whether their circumstances can be improved by moving to newly built homes, including Independent Living homes.
- Making funds available to Council tenants who desire to buy a new home in the private market.

4.5 Unfortunately, people with “No Recourse to Public Funds” are excluded from bidding for social housing, as they are not eligible to join the Housing Register, as defined by legislation, due to their immigration status. The housing department work closely with colleagues in Adult Social Care to consider the circumstances of these individuals, to determine on a case by case basis what discretionary powers we have to support and/or accommodate them.

5. Consultation

5.1 As the Allocation Scheme is a statutory document, formal consultation is required when any alterations to the allocation scheme are proposed, which reflect a major change of policy (section 166A(13) of the 1996 Act). The Housing Needs service undertook a consultation exercise, which launched on 5 August 2021 and ended on 14 October 2021, through an on-line consultation survey. As well as advertising the consultation survey on the Council’s website,

and on the Locata home page, every household currently on the Housing Register (including Band D) was notified and invited to participate.

5.2 Formal Workshops were also held with key stakeholders as set out below:

Registered Providers

An online consultation meeting took place on 29 September 2021 with the major Registered Provider partners who the Council work with

Voluntary Sector

An online presentation on the proposed changes was given at the Brent Homelessness Forum on 6 October 2021, attended by key voluntary sector agencies who the Council work with

Adult Social Care

An online consultation meeting took place on 14 October 2021 with Heads of Service and Team Leaders

Children and Young People's Services

An online consultation meeting took place on 30 September 2021 with Heads of Service and Team Leaders

These workshops were an opportunity to go through some of the more technical issues in depth. The proposed changes were well received, with only points of clarification raised. Attendees were invited to formally submit their views via the online consultation.

6. Proposals and Recommendations

6.1 Each of the six proposals are set out below alongside the results of the consultation feedback. Recommendations are based on the likely impact of the proposal on Brent's strategic objective to maximise the use of the limited stock of social housing and reducing overcrowding.

Change 1 - Give reasonable preference to homeless households

6.2 The first proposed amendment is to ensure that the scheme gives reasonable preference to homeless households who fall within the statutory reasonable preference categories as set out in the 1996 Act. Currently, all homeless households are given reasonable preference, by being placed in Priority Band C on Locata, once the main duty has been accepted under homelessness legislation. However, under the 1996 Act the Council is also required to give reasonable preference to all homeless households, irrespective of whether the main duty has been accepted. This cohort includes those households who are owed a 56 day prevention or relief duty under the Homelessness Reduction Act 2017, households who do not have a priority need, or are intentionally homeless; as defined by homelessness legislation, or have refused an offer of suitable accommodation. It is therefore proposed that all homeless households, as specified above, are placed into a new Priority Band C – (minus), that will be created in Locata.

Impact

- 6.3 In practice, there are 3 outcomes for homeless households on the Housing Register. (1) Homelessness is prevented or Relieved - most of these households will have their homelessness prevented through the prevention work currently undertaken by the Housing Needs team. The majority of households will be made private rented sector accommodation offers during the prevention and relief duty and once housed their places on the Housing Register will then be reassessed, taking into account that they are no longer homeless. (2) When homelessness is not prevented or relieved, if the main duty is accepted, the household will be moved up to priority band C on Locata. (3) However, if the main duty is not accepted, or the applicant refuses an offer of suitable accommodation and remains homeless, the applicant will remain in Priority Band C- (minus). This cohort of homeless households will therefore have a lower priority than those households in Band C to whom the Council has accepted the main duty. However, this cohort will still be eligible to bid on LOCATA (as long as they fulfil the resident's criteria after any Part 7 duties have been lawfully ended) and therefore will have a reasonable preference over those applicants in Band D. There will not be an impact on homeless households to whom the Council has accepted the main duty, and require a family sized home, as they will have a higher priority. There may be some impact for single homeless households, who may be successful in securing less desirable bedsit accommodation, as people in high bands may not bid.

Recommendation

- 6.4 It is recommended to approve this proposal as giving reasonable preference to homeless households who fall within the statutory reasonable preference categories is a statutory requirement of the scheme. The current allocation scheme is subject to a threat of a Judicial Review, which has been adjourned to March 2022, on the basis that this amendment to the scheme is implemented. This recommendation was supported by 80% of the responses to the on-line consultation survey agree with this proposal, and a further 6% neither agree nor disagree.

Change 2 - Give priority to existing Council tenants, who need a transfer, to bid for all new build properties

- 6.5 A tenant can apply for a transfer on the basis of housing need – for example that the household is overcrowded – and the application will be assessed on the basis of reasonable preference. However, the Council is also able to set its own transfer policies in relation to tenants who have asked for a transfer but do not meet the reasonable preference criteria. There are currently 327 Council Tenants who are registered for a transfer due to overcrowding, medical or other reason (including under-occupation, domestic abuse, urgent decant) and have been assessed in Bands A-C.
- 6.6 In the previous review of the Allocation Scheme in 2019, existing tenants who are registered for a transfer were given priority to bid for new properties that become available on their estate, to enable them to remain on the estate and avoid having to relocate to another area. It is now proposed that existing

Council tenants who are registered for a transfer should be given priority to bid for all new build Council properties. Higher priority will be given to those tenants living in the new development area for new build properties compared with Council tenants living outside the relevant new development area.

- 6.7 In recent years, the Council has been allocating a very high percentage (70%) of all available social housing to accepted homeless households, to help reduce the number of families living in Temporary Accommodation. This percentage was reduced to 60% in August 2021, following a recommendation made to Cabinet in the Stock Maximisation report. However, this high percentage of available properties allocated to homeless households has resulted in fewer properties being available for existing Council tenants who are overcrowded, and require a larger property to live in. Although these overcrowded families did benefit from the change referred to in paragraph 5.6 above, this only gave them priority to bid for new properties that are available on their existing estate. Families living in overcrowded housing was one of the main issues that came up in recent consultation meetings with the black community in Brent.

Impact

- 6.8 By giving existing Council tenants registered for a transfer priority to bid for all new build properties, they will be given priority to secure a transfer to suitable accommodation over accepted homeless households and home seekers living in the private sector. However, the properties that the existing tenants move out of will then become available for accepted homeless households, and home seekers to bid for.
- 6.9 A breakdown of the households who are currently registered for a transfer, showing what size of accommodation they require, is illustrated in table 1 below.

Table 1. Brent Council Tenants who are registered for a transfer Bands A-C on the Housing Register

Reason for Transfer	Number of households	Number of bed required
Overcrowded	2	2
	33	3
	31	4+
Medical	11	1
	13	2
	14	3
	6	4
Other	124	1
	63	2
	30	3+
Total	217	

- 6.10 These are currently 77 exiting tenants who require a 3 bedroom property, and 37 tenants who require a 4+ bedroom property. A review of the properties that these families are currently living in has confirmed that only one property has the possible potential to be extended to make it larger, as the majority of the properties are in blocks of flats. If these tenants are prioritised for an allocation to all new build properties, there will be fewer large properties available to allocate to larger accepted homeless families, currently living in Temporary Accommodation. However, the New Council Homes Programme (NCHP) is now prioritising building and increased number of larger properties. Which, combined with the initiatives in the Stock Maximisation report, approved by Cabinet on 16 August 2021, to make the best use of our housing stock, will mitigate the impact on larger homeless households waiting for an allocation of social housing to end their homelessness.
- 6.11 There is already a shortage in supply of 3 and 4 bedroom social housing that is available. The impact of this on accepted homeless households living in TA is that they have to wait longer for accommodation to become available. Table 2 below illustrates the number of accepted homeless households, broken down by bedroom size needed.

Table 2 the number of accepted homeless households, broken down by bedroom size needed

Bedroom Size Required	Number of Households
1	106
2	413
3	701
4	277
5	44
6	2
Total	1543

Recommendation

- 6.12 It is recommended to approve this proposal, as it will help address the very real problem of overcrowding in existing Council properties. There will be an impact on larger homeless families currently living in Temporary Accommodation. However, this will be mitigated by increasing the overall supply of larger properties, through development of new homes via the NHCP as well as the initiatives set out in the Stock Maximisation report. This recommendation was supported by 78% of the responses to the on-line consultation survey agree with this proposal, and a further 9% neither agree nor disagree.

Change 3 - Emergency Management Transfers

- 6.13 Brent Council tenants and tenants of Registered Providers where the Council has nomination rights, may be provided with an emergency management transfer. This will occur when the Allocations Panel has determined that a

transfer to alternative social housing is essential to ensure the personal safety of the tenant, members of their household and/or the local community.

- 6.14 Where the Allocations Panel approves the transfer, the household will be placed in Priority Band A and may be made a 'direct offer' of alternative accommodation on a like-for-like basis in terms of the number of bedrooms in the new property. Where the household has already been awarded medical priority, the home that they are offered will reflect their assessed needs.
- 6.15 However, where the household is overcrowded in their existing property, and there are no significant health issues, they are currently transferred to a property of the same size, and therefore the transfer does not address the issue of the overcrowding. This is because the reason the household has been awarded an emergency management transfer is to address the issue of personal safety, often related to domestic abuse, gang related violence, hate crime or threats to kill.
- 6.16 It is proposed that the scheme should be amended so that households who are transferred due to an emergency, are moved to the appropriate size accommodation to meet all of their housing needs, including overcrowding.

Impact

- 6.17 This change will have a positive impact on those households who, through no fault of their own, need to transfer to another property to ensure their personal safety and the safety of their family. It will mean that all of their housing needs are met, as overcrowded households will transfer to larger properties avoiding the need to move twice. It will, however result in fewer large properties being available for accepted homeless families living in Temporary Accommodation, which as stated above will be mitigated through the NCHP and Stock Maximisation programme.
- 6.18 However, the number of households who receive an emergency management transfer is low. In the last 12 months, only 15 households were transferred for this reason, and some of these were actually moved to larger accommodation, due to underlying medical issues.

Recommendation

- 6.19 It is recommended to approve this proposal, as it will address all of the housing needs of households who require an emergency management transfer, avoiding the need to move twice. As stated in 5.11, the impact on homeless families living in Temporary Accommodation, will be mitigated by increasing the overall supply of larger properties through the NCHP and Stock Maximisation programme. This recommendation was supported by 86% of the responses to the on-line consultation survey agree with this proposal, and a further 8% neither agree nor disagree.

Change 4 - Transfers due to Overcrowding

- 6.20 As in most London boroughs, families living in overcrowded accommodation is a serious problem in Brent. Prior to the review of the allocation scheme in 2014,

there were over 20,000 households with priority banding for social housing on the Housing Register. Approximately 16,000 of these households had been awarded priority due to being overcrowded, and needing one additional bedroom. The Allocation Scheme was therefore amended to target those in the greatest need, by only giving priority banding to those families who were most severely overcrowded, lacking two bedrooms or more.

- 6.21 Families living in overcrowded accommodation can be divided into three cohorts, Council Tenants, Housing Association Tenants, and Private Rented Sector Tenants (PRS). This proposed change will affect Council Tenants who are overcrowded. Families living in the PRS, who are lacking more than two bedrooms or are statutory overcrowded, are dealt with under homelessness legislation. A family is defined as being statutorily overcrowded, either through not having a sufficient number of rooms available for people to sleep in, or the amount of space in the home not being enough for the number of people living in it. Council Tenants and Housing Association Tenants who are overcrowded are dealt with through the Allocations Scheme. The current Allocation Scheme is framed to give priority banding to social housing tenants as follows;

Council Tenants

- Lacking one bedroom no priority
- Lacking two bedrooms – Priority Band C
- Statutory Overcrowded – Priority Band B

Housing Association Tenants

- If their Housing Association is a member of Locata, the family must approach their Housing Association landlord for a transfer, as they are responsible for dealing with the overcrowding in line with their Housing Allocation Scheme.
- If the Housing Association is not a member of Locata, or the family are severely overcrowded, the family have the option to apply to the Council as homeless.

- 6.22 It is proposed to amend the scheme to award priority band B to all Council tenants who are lacking three bedrooms or more.

Impact

- 6.23 This is largely a technical change as it is highly likely that the majority of Council tenants who lack three bedrooms, would meet the definition of statutory overcrowded, and would therefore have been awarded priority Band B anyway. The impact of this change is therefore not considered significant. However, there may be some families who would not meet the definition (due to the age, sex of their children, or room measurements) who will benefit from this change.

Recommendation

- 6.24 It is recommended to approve this proposal, as it will be a lot clearer for tenants to know that if they are lacking 3 bedrooms or more, they will automatically be awarded Band B priority, rather than have to worry about whether they meet the definition of being statutory overcrowded. This clearer explanation of how the Council is acknowledging and addressing the housing needs of

overcrowded families is in direct response to the consultation with the black community in Brent. This recommendation was supported by 64% of the responses to the on-line consultation survey agree with this proposal, and a further 18% neither agree nor disagree.

Change 5 - Award Priority Band A to Special Guardians

- 6.25 The current Allocation Scheme recognises the contribution that Brent foster carers and adopters make towards ensuring that children that are under the Council's care have appropriate housing. Priority Band A is awarded on a case by case basis, working closely with the Council's Children and Young People Service to ensure the households' re-housing requirements are prioritised within the scheme.
- 6.26 However, the scheme does not currently cover Special Guardianships, where an order has been made by the Family Court that places a child or young person to live with someone other than their parent(s) on a long-term basis. Therefore, it is proposed that the current scheme should be amended to include giving priority for cases involving Special Guardianships.

Impact

- 6.27 It is anticipated that the impact of this proposal will be relatively low, as the number of cases involving Special Guardianships is small. It will also not be mandatory that all households with a Special Guardianship arrangement will be awarded priority, but only those arrangements that ensure that children who are under the Council's care and are supported by Brent's Children and Young People Services, are awarded priority.

Recommendation

- 6.28 It is recommended to approve this proposal as the allocation scheme will be explicit in supporting a household who require alternative housing to enable a child to reside with them, under a Special Guardianship arrangement, and will therefore have a positive impact on the family as a whole. This recommendation was supported by 68% of the responses to the on-line consultation survey agree with this proposal, and a further 19% neither agree nor disagree.

Change 6 - Decant moves for essential repair

- 6.29 It is sometimes necessary for a property to be vacant, to enable the Council to complete major repairs. Moves will usually be temporary but in some circumstances consideration will be given to permanent moves arising from a decant. The Allocations Panel will also consider whether or not, for technical or safety reasons, it is feasible for the applicant to remain in their home while the works are carried out around them. For the tenant to be awarded decant priority, the Allocations Panel will need to be satisfied that the work is so disruptive that it cannot be completed with the tenants remaining in occupation and either:
- The work is likely to take more than 3 months to complete; or

- The health of the tenant or a member of their household will be severely affected if they have to leave their home and then move back again at a later date

6.30 In most instances where essential repairs are required officers are able to give a good indication of how long works should take, and therefore whether the work is likely to take more than 3 months and trigger a permanent transfer. However, sometimes the Council might not be able to complete works in three months because the works have become more complex than initially diagnosed or because of circumstances beyond our control.

6.31 The current wording of the scheme regarding decant moves for essential repairs to Council properties does not provide any flexibility for the Council to apply discretion. This is because the current wording states “If the work is estimated to take less than three months but then runs on for longer, the tenant will be awarded decant priority”. It is therefore proposed to amend the wording to read ‘If the works to the property are estimated to take three months but this timescale is not achieved, the tenant may be awarded decant priority’.

Impact

6.32 This amendment is a minor change in the wording of the scheme, designed to give more flexibility to BHM (Brent Housing Management) in deciding whether or not a household should be given priority for a transfer.

Recommendation

6.33 It is recommended to approve this proposal, as it will give officers discretion to determine whether a household should receive a priority for a transfer, where the repairs to their current accommodation have over-run due to unforeseen circumstances, which are beyond the control of the Council. However, their property will be suitable for them to continue to occupy, once the repairs are finalised. The amendment will not be used to unnecessarily prolong any repair which is necessary. This recommendation was supported by 64% of the responses to the on-line consultation survey agree with this proposal, and a further 24% neither agree nor disagree

7. Financial Implications

7.1 There are a number of proposals, each of which will have a varying degree of financial impact, dependent on the impact these measures have on existing households in temporary accommodation.

7.2 Changing the allocation process to give priority to existing Council tenants to bid for new build properties will reduce the availability of these properties to those living in Temporary Accommodation. However, as existing tenants will effectively be moving within the Council’s existing stock, each new build property will still increase the overall supply and there will be opportunities for those in Temporary Accommodation to move into the properties that become vacated by those moving into new properties.

- 7.3 There is a risk of larger households within Temporary Accommodation having less opportunity to move into a new property. Over the medium term, this may lead to increased costs within Temporary Accommodation, particularly as the availability of more affordable Temporary Accommodation for larger households through the Housing Association Leaseholder Scheme (HALS) is decreasing over time. This may lead to higher costs if these households remain in Temporary Accommodation for extended periods.

8. Legal Implications

Allocations Scheme

- 8.1 The requirements regarding allocations schemes are set out in section 166A of the Housing Act 1996 (“the 1996 Act”), which has been inserted by section 147 of the Localism Act 2011.
- 8.2 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.
- 8.3 Under section 166A(14) of the 1996 Act, a local housing authority shall not allocate social 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.
- 8.4 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.
- 8.5 Section 166A(3) of the 1996 Act outlines priorities to which the scheme must give reasonable preference. These categories are outlined in detail within the scheme, but in summary they are;
- Homeless households
 - Homeless households in temporary accommodation
 - People living in overcrowded 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).
- 8.6 Additional preference may be given to any particular category where there is urgent housing need.
- 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 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.
- 8.11 The Department for Communities and Local Government issued statutory guidance in June 2012 entitled: Allocation of accommodation: guidance for local housing authorities in England, this guidance was substantially updated in January 2021 (with minor further updates in July and September 2021). In addition, further statutory guidance was issued in November 2018, entitled Improving Access to Social Housing for Victims of Domestic Abuse in Refuges or Other Types of Temporary Accommodation. The Council has given regard to this statutory guidance when drafting and preparing proposed amendments to its allocations scheme.
- 8.12 When considering the proposed changes to the allocations scheme, consideration needs to be given to the impact on families and children under the right to respect for private and family life under Article 8 of the European Convention of Human Rights and section 11 of the Children Act 2004, the latter of which places a duty on local authorities to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children. The Council is also required to have due regard to the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 when drafting and amending its allocation scheme.

- 8.13 An Equality Impact Assessment (“EIA”) has been carried out in respect of the proposed changes to the Council’s allocations scheme and the results of the EIA will need to be considered by the Cabinet when it makes a final decision. The EIA will assist the Cabinet in meeting its requirement to comply with the PSED when making a final decision on whether to approve the proposed changes to the Council’s allocations scheme. The EIA clarifies that none of the proposed changes to the Council’s allocations scheme will adversely affect any groups with “protected characteristics” under the Equality Act 2010 and because there are no adverse implications, no mitigating actions are necessary.

9. Diversity Implications

- 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.
- 9.8 An EIA has been carried out to determine the impact of the proposed changes. The EIA on the proposed change (1), to give reasonable preference to homeless households, is attached at Appendix 2. The EIA on the proposed changes (2), (3) and (4), regarding transfers is attached at Appendix 3. The EIA on proposed change (5) Special Guardianship and proposed change (6) Decant moves for essential repair, confirmed that the number of people potentially affected is very small. Given the very limited data available, it is not feasible to carry out a full analysis on these proposals, however there is no evidence to suggest that anyone with a protected characteristic would be adversely affected by this proposed change.
- 9.9 The EIA's at Appendix 2 and 3 clarifies that none of the proposed changes to the Council's allocations scheme will adversely affect any groups with "protected characteristics" under the Equality Act 2010 and because there are no adverse implications, no mitigating actions are necessary.

Report sign off:

Phil Porter

Strategic Director of Community
Wellbeing