

WELWYN HATFIELD BOROUGH COUNCIL
CABINET – TUESDAY 8 SEPTEMBER 2020
REPORT OF THE CORPORATE DIRECTOR (HOUSING AND COMMUNITIES)

ASSESSING HOMELESSNESS (PRIVATE SECTOR)

1 Executive Summary

1.1 This report sets out the current process for determining how the Council assesses applicants' homelessness, and how it consequently deals with those that it assesses as homeless and seeks approval to continue the current process. This housing function is carried out by the Housing Options Team.

2 Recommendation(s)

2.1 Members are asked to:-

2.1.1 note the content of the report

2.1.2 consider the current procedure for dealing with applicants who are homeless or threatened with homelessness as a result of their private sector tenancy coming to an end and the possible alternatives as detailed below at Paragraph 3.59

2.1.3 consider the additional demands and pressures placed on the Council's Housing Needs service since the start of the COVID19 crisis, noting information in paragraphs 3.50 to 3.58

2.1.4 approve the continuation of the current procedure as set out below in Paragraphs 3.40 to 3.46 of this report.

3 Explanation

3.1 The Housing Options team sits within the Housing Needs team, which is under the Communities and Housing Strategy Service.

3.2 The Housing Options team is responsible for carrying out statutory functions under homelessness legislation.

3.3 Led by the Housing Options Manager, the team comprises 14 officers in total, (13 full time equivalent) which includes a Senior Housing Options Officer, a support officer, seven housing options officers and the Temporary Accommodation Team (four officers in total)

3.4 The statutory functions include:

- carrying out assessments on those who approach the council for housing assistance
- determining whether applicants are homeless or threatened with homelessness

- providing advice and assistance to prevent and relieve homelessness
 - determining whether a duty to accommodate is owed towards applicants who are eligible and homeless and providing accommodation when such a duty is owed.
- 3.5 Local authorities have a duty to provide temporary accommodation when an applicant is eligible for assistance (meaning they are able to access public funds), homeless (meaning they have no accommodation available to them), and meet a certain level of vulnerability (known as being in a priority need).
- 3.6 Most applicants are housed due to pregnancy or because they have dependent children. These are known as automatic priority need criteria.
- 3.7 The other main group triggering a housing duty, are deemed vulnerable (they are deemed significantly more vulnerable than an ordinary person faced with homelessness)
- 3.8 Welwyn Hatfield Borough Council has several sites of temporary accommodation, in different areas of the Borough. At the time of writing there were 119 households in temporary accommodation, which includes designated temporary accommodation, properties let on non-secure tenancies and specialist refuge accommodation. There were nine households in temporary hotel accommodation.
- 3.9 The council also has arrangements with a number of supported housing providers and in recent years has developed new initiatives in partnership with voluntary organisations; examples of local specialist and supported housing are YMCA, Foyer, Mably House, Hatfield Night Shelter, Emerging Futures (HCC commissioned) and our own Housing First project, delivered by Drug Link.
- 3.10 Despite ongoing work to prevent homelessness and to develop pathways into settled accommodation, the council's temporary accommodation has been at capacity since approximately March 2018.

Assessing applicants

- 3.11 Assessment of eligibility is based on the applicant's status in the UK – an applicant is either eligible or not eligible because of their status in the UK, whether they are British or not. Non-UK nationals can be eligible, and UK nationals can be deemed not eligible, dependent on their circumstances.
- 3.12 Assessment of homelessness is based on whether the applicant has accommodation available to them, which is reasonable for their continued occupation. A person may be homeless despite owning accommodation that they cannot access, or if it poses a risk to their health were they to return to the accommodation which they own.
- 3.13 Assessment of vulnerability is based on the person's personal details, including but not limited to the circumstances of their physical and mental health.

Homelessness Reduction Act 2017

- 3.14 The most recent homelessness legislation to come into effect is the Homelessness Reduction Act 2017 (HRA), which became law in April 2018. This increased the assistance that local authorities are required to give to households who are homeless or threatened with homelessness.

- 3.15 There was a change in the period which defined when an applicant is threatened with homelessness from 28 days to 56 days
- 3.16 A requirement to issue a Personalised Housing Plan came into effect, with advice to be provided and the setting out of steps to take for every customer who is homeless or threatened with homelessness
- 3.17 New Prevention and Relief duties were set, increasing the length of time a case was dealt with by the Local Authority
- 3.18 A Duty to Refer for specified public bodies was introduced, including Probation services, Prisons, Jobcentres, Social Services departments and hospitals.
- 3.19 The new law also stated that all tenants who had received a valid section 21 notice were to be treated as threatened with homelessness, regardless of the notice period.

Causes of homelessness

- 3.20 There are many causes of homelessness but there are particular reasons which are often the most frequently recorded.
- 3.21 Family evictions and domestic abuse have for a long time been the main causes of homelessness, but in the last few years private sector evictions have increased and now appear regularly in the top three.
- 3.22 In all cases, attempts are made to prevent the need for a homeless application. This is usually done by speaking to and negotiating with the excluder and trying to find alternative ways to resolve the housing problems without the need for placement into temporary accommodation.
- 3.23 For obvious reasons, it is not possible to speak to perpetrators of domestic abuse, and those cases are dealt with differently.

Scale of Demand

- 3.24 In order to demonstrate the workload of the Housing Options team, the following numbers are provided (rounded up):
- Number of customers approaching the service (monthly – 2018/19): 100
 - Number of customers approaching the service (annually – 2018/19): 1195
 - Number of customers approaching the service (monthly – 2019/20): 104
 - Number of customers approaching the service (annually – 2019/20): 1258
 - Current caseload of team: 250 (160 open cases without decision/90 cases with decision)
 - Current caseload per officer (4.5 full time equivalent due to maternity vacancies): 56 cases (35 open cases without decision/21 cases with decision)
 - Current number of households in Temporary Accommodation: 119

- 3.25 The changing demand upon Temporary Accommodation is demonstrated with appendix A.
- 3.26 In January 2016 temporary accommodation numbers were well within capacity. However since the spike in numbers, we have taken on additional sites of accommodation in order to deal with the increased numbers. The longer term strategy is to develop two larger, modern purpose built sites, one in Hatfield and one in Welwyn Garden City. It is anticipated that this, supplemented by some specialist provision, will meet demand.

Private Sector Evictions

- 3.27 There can sometimes be particular attention paid to how local authorities deal with private sector evictions, and an element of friction between the private sector and local authorities.
- 3.28 This friction can essentially be distilled down to a difference of priorities and opposing views on what action should be taken when a tenant is required to leave the accommodation.
- 3.29 Private Sector landlords/agents, who have issued Notice to their tenants, usually would prefer the tenants to leave as soon as possible, without the need for any court action to be taken to remove them.
- 3.30 Local Authorities are required to assist and advise applicants as to their housing rights, as well as steps they should take to alleviate threatened homelessness. This will always include advising a tenant of their right to remain in the accommodation pending a court order.
- 3.31 Depending on an individual's circumstances and/or the situation in terms of availability of alternative accommodation for the applicant, the council may also advise the tenant to stay at the property until their legal right of occupation has concluded.
- 3.32 There is a balance to be struck in dealing with cases. The Housing Options team are very aware of the competing interests and try to manage them as best as possible. However ultimately the priority is the customer's housing situation.
- 3.33 The landlord is contacted in all cases so that the reasons for eviction are known and to see if the tenancy can be saved.
- 3.34 If it is possible to prevent homelessness, steps are taken to facilitate that outcome. If it isn't possible, the tenants are advised of their rights, and provided with advice to seek alternative accommodation. Advice also includes steps that need to be taken by Council officers and the tenant themselves.

Guidance from Government

- 3.35 There is guidance to authorities on how to act in cases involving private sector evictions. The most recent Code of Guidance was published in 2018, but Guidance can include letters by ministers issued to local authorities.
- 3.36 In 2016 a letter was issued by then Housing Minister Brandon Lewis providing further guidance to local authorities about how to deal with section 21 notices and intentional homelessness.

- 3.37 The guidance advised authorities not to routinely advise tenants to stay until the bailiffs arrive and reminded them that there is no barrier to them assisting the tenant before this.
- 3.38 It said that housing authorities should not, in every case, insist upon a court order for possession, that no local authority should adopt a blanket policy in this case and that unless a local authority has very good reason to depart from the statutory guidance then they should not be placing households in this position.
- 3.39 As well as the factors set out elsewhere in this Guidance, factors which may be relevant include the general cost to the housing authority.

WHBC processes

- 3.40 The Housing Options team operate within all guidance provided by Government, and there has been no legal challenge to any procedures by applicants or other parties on this issue.
- 3.41 There have been enquiries from several private sector landlords, questioning the policies and processes that the Housing Options team work to. The essence of the enquiries is the expectation that Welwyn Hatfield Borough Council will provide alternative accommodation when the notice expires, regardless of the tenant's circumstances.
- 3.42 When a valid section 21 notice is issued, the Housing Options Team considers the applicant as homeless at the expiry of that notice. This is not dependent on anything and is an approach that is followed consistently. The relevant duties are accepted towards the applicant at that stage and the applicant is notified.
- 3.43 Whether accommodation is provided will be dependent on several factors including:
- Whether WHBC owes a duty to accommodate (taking into account the criteria set out above in points 3.11 to 3.13).
 - Whether WHBC has available suitable temporary accommodation
- 3.44 If no duty to accommodate exists, the tenant will be advised to look for alternative accommodation, but also of their right to remain in the property until a court order is obtained or until they secure somewhere else to live. The alternative would mean the tenant leaving the property and being homeless and potentially roofless.
- 3.45 If a duty to accommodate exists, but there is currently no suitable temporary accommodation available for the applicant, the tenant will be advised to look for alternative accommodation, but also of their right to remain in the property until a court order is obtained, until they secure somewhere else to live or temporary accommodation becomes available for them. The alternative would mean housing the tenant in hotel accommodation instead of their own home.
- 3.46 If there is a duty to accommodate and there is available temporary accommodation, the tenant will be accommodated around the time of the expiry of the section 21 notice.

Impact of Private Sector Evictions

- 3.47 As advised at 3.21, Private sector evictions is one of the leading causes of homelessness.
- 3.48 Since April 2018 when the HRA came into effect, we have collected data for each customer. This allows us to analyse reasons for homelessness.
- 3.49 The data shows that in the two years since the HRA came into effect:
- Eviction from Private sector accommodation was the second most common cause of homelessness in Welwyn Hatfield, with the leading cause of homelessness being 'relatives asking an applicant to leave their accommodation'.
 - In 2018/19 there were 186 approaches, with the reason for threatened homelessness 'being evicted from private sector accommodation'. In 2019/20 (up to 9 March 2020) there were 203 approaches with this reason.
 - Of those 389 cases approaching, only 151 cases progressed to an open case at Homeless stage, meaning that the Council's assistance was either not needed, or efforts to prevent homelessness were successful.
 - Of those 151, a duty to accommodate would be owed to at least 83 of those cases.
 - If the policy changed to accommodating these cases at the point the notice expired in call cases, the number of households in temporary accommodation would increase dramatically.
 - Members should also note that in the case of the 68 applicants where there was not a duty to accommodate, the applicants could find themselves 'roofless' if they have not been able to secure an alternative.

COVID19 – Additional demands and pressures

- 3.50 Since the start of the COVID19 crisis in approximately mid-March 2020, the Housing Needs service has had to deal with increased difficulties in providing the service. These have been wide-ranging, from the logistical to the operational.
- 3.51 Logistical issues have included working out solutions to the limits on personal contact, such as limiting and then ending the possibility of face to face interviews, the closure of the Council reception area and the requirement of home working in order to reduce potential infection. Solutions have been an increase in the reliance on IT products which support the team in accepting online applications and the wider use of the Council's IT solutions.
- 3.52 Operational issues have been the demands placed on the service from an increase in numbers of approaches to the Council, and an increase in the amount of applications leading to the provision of accommodation.
- 3.53 On 24 March 2020, following the Prime Minister's address to the nation the previous evening, many hotels closed their doors and ejected 10 households without notice.
- 3.54 On 27 March 2020, local authorities were instructed by the Government to assist all known rough sleepers and those who were at risk of rough sleeping into accommodation. As a consequence, Welwyn Hatfield Borough Council has

provided accommodation to an additional 36 households that would not ordinarily be owed an accommodation duty.

- 3.55 This increase is equivalent to the current average caseload of a single full time housing options officer.
- 3.56 On the same date, the court service suspended all ongoing housing possession actions, effectively ending all evictions for the foreseeable future. At the time of writing this suspension is still in effect, however we anticipate unprecedented delays to possession action when the courts resume business.
- 3.57 Due to these changes it is not currently feasible to accommodate households at the point of their notice expiring.
- 3.58 The pressures placed upon the service arguably support the recommendation to continue with the existing methods, as opposed to making changes that would severely impact the ability to provide a functioning homelessness service.

Alternative proposals

- 3.59 In light of the recent landlord enquiries, the committee are asked to consider whether to continue with the policy and processes set out above for applicants where a housing duty exists, or to consider making provision to applicants where a duty is owed at the expiry of the Section 21 notice, regardless of whether suitable accommodation is available.
- In cases where a duty to accommodate is owed, this will mean arranging accommodation even in cases where no suitable temporary accommodation is available, therefore placing applicants in hotels
 - The implication of this is that there will be a big increase in the number of households in hotel accommodation and this will have reputational, financial and potential legal implications for the council.
- 3.60 There have also been discussions regarding providing advice to private sector tenants where no housing duty is owed, to suggest that they should relinquish their tenancy at the point of expiry of the Section 21 Notice. However this would be in breach of the council's legal duties and also potentially place these applicants at risk of being roofless, therefore this is not a feasible policy change.

4 Legal Implication(s)

- 4.1 Homelessness is determined in line with the current homelessness legislation, and the current Guidance issued by Government. This is defined in the Housing Act 1996, as amended most recently by the Homelessness Reduction Act 2017.
- 4.2 The Protection from Eviction Act 1977 ensures that Assured Shorthold Tenants cannot be required to leave rented property without a court order. Any attempts by landlords to remove them before this is obtained could give rise to action against the landlord for unlawful eviction, which is a criminal and civil offence.
- 4.3 The Homelessness (Suitability of Accommodation) Order 2003 makes it unlawful for Local Authorities to provide hotels as family accommodation for longer than 6 weeks.

5 Financial Implication(s)

- 5.1 If the council amends its current policy and as a result provides accommodation for all applicants where there is a legal duty at the expiry of the Section 21 Notice, regardless of whether there is suitable temporary accommodation available, this will lead to increasing expenditure as additional accommodation will need to be arranged, most likely using local hotels.
- 5.2 The amount of expenditure will not be fully recouped by Housing Benefit and this will be a shortfall that WHBC will have to incur.
- 5.3 The additional pressures placed on the service during the COVID19 crisis make a change in policy likely to overwhelm the Council's ability to provide accommodation, increasing costs several fold.

6 Risk Management Implications

- 6.1 The risks related to the content of this report are:
- 6.2 Reputational – the council is likely to face criticism if the number of households in temporary accommodation increase, particularly if there are a greater number of people in hotel accommodation.
- 6.3 Financial – the cost of the additional hotel placements is difficult to estimate, however based on the figures provided in this report, there was a duty to accommodate 83 households across the two years; if you assume that they will be in hotel accommodation for two months (based on the extra length of time an applicant usually remains in a private sector tenancy) – this would be an annual increase in hotel costs of £199,200. (83 households/weekly cost of approximately £600 per week/8 weeks each household)
- 6.4 Social – the council works hard to seek to prevent homelessness and keep the number of households in temporary accommodation to a minimum. In particular we work hard to ensure that we only use hotel accommodation as a last resort, or where due to the volume of cases, demand for temporary accommodation is outstripping supply. Provision of hotel accommodation is highly undesirable, as it is not an ideal environment for a family to live in, other than for a very short period.
- 6.5 Legal – the council has a responsibility to provide housing advice to any applicant who approaches the council and there is a duty to prevent and relieve homelessness under the HRA. Providing tenants with information about their rights in the context of a private sector tenancy forms part of this duty. If the council is not clear in this advice, it could be subject to challenge. Additionally, if the council provides temporary accommodation in the form of hotel accommodation to households with children, for more than six weeks, it will fall foul of the Homelessness (Suitability of Accommodation) Order 2003 which makes it unlawful for Local Authorities to provide hotels as family accommodation for longer than 6 weeks.

7 Security and Terrorism Implication(s)

- 7.1 There are no known security or terrorism implications arising from this report.

8 Procurement Implication(s)

- 8.1 There may be procurement implications if extra expenditure is incurred due to additional costs of accommodation

9 Climate Change Implication(s)

- 9.1 There are unlikely to be any climate change implications

10 Human Resources Implication(s)

- 10.1 There may be human resources implications if extra expenditure is incurred due to additional costs of accommodation and the temporary accommodation team is required to manage additional units of accommodation.

11 Health and Wellbeing Implication(s)

- 11.1 Suitable housing is a significant factor in ensuring that people have positive health and well-being.
- 11.2 As set out in Para 6.4, it could be detrimental to the applicant or their households health and well-being, if they are living in hotel accommodation.

12 Communication and Engagement Implication(s)

- 12.1 There are unlikely to be any communication and engagement implications

13 Link to Corporate Priorities

- 13.1 The subject of this report is linked to the Council's Corporate Priority 'Our Housing', and specifically to the achievement of 'plan for current and future housing need'

14 Equality and Diversity

- 14.1 An EqIA was not completed because this report does not propose changes to existing service-related policies or the development of new service-related policies.

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Background papers to be listed:

Appendix A