



POLICY TO DISCHARGE THE HOMELESSNESS DUTY WITHIN THE PRIVATE RENTED SECTOR

1. BACKGROUND

1.1 Under Homelessness legislation (s 193 of the Housing Act 1996), a local housing authority has a duty to secure that accommodation is available to occupy for those households that are found to be eligible, unintentionally homeless or threatened with homelessness and in priority need. This duty is known as the main housing duty and, prior to the homelessness changes brought about by the Localism Act 2011, this duty could be discharged, principally, by:

- Securing suitable social housing accommodation under Part 6 of the Housing Act 1996
- Offering privately rented accommodation only with the applicant's explicit agreement (a Qualifying Offer)

1.2 If an applicant refused to accept the offer of privately rented accommodation as a discharge of duty, the s193 duty would still be retained and this would be the case even if they moved into the property. In effect, the large majority of homeless households for whom a main housing duty had been accepted were housed in the social rented sector.

Since 9th November 2012, changes brought about by the Localism Act 2011 mean that a local authority has the power to bring this duty to an end by making available an offer of suitable privately rented accommodation. The duty would end whether the accommodation is refused or accepted as long as the applicant is informed in writing of;

- I. the consequences of refusal or acceptance of the offer
- II. the right to request a review of the suitability of the accommodation.
- III. the effect, under s195A, of a further homeless application to the authority within two years of accepting the private rented sector offer (see point 8.1 Reapplication Duty)

1.3 The implementation of this part of the Localism Act repealed legislation that enabled the housing authority to discharge its main homelessness duty by rehousing a household with a 'qualifying offer' of accommodation in the private rented sector.

1.4 On the 9 November 2012, the Government introduced new guidance for Local Authorities covering homelessness and the suitability of accommodation for private rented sector offers to enable them to discharge their duty through a private rented sector offer. Local authority housing staff are required to have regard to this guidance when seeking to discharge the full homelessness duty. It is important to note that existing guidance on suitability contained in the Homelessness Code of Guidance 2002 continues to apply.

2. POLICY OVERVIEW

- 2.1 This document relates to the policy and procedural arrangements Derby City Council will follow when discharging the statutory homeless duties into the private rented sector following the enactment of the Localism Act 2011. The document will be referred to as “the policy”.
- 2.2 The policy operates in conjunction with the authority’s existing Allocation Scheme and will be reviewed in parallel with any future proposed changes to that Scheme.
- 2.3 Any amendments to the policy will be included on the version that the authority provides on its website. This will always be the current version.
The policy complies with:
- The Housing Act 1996, as amended by the Homelessness Act 2002
 - The Localism Act 2011
 - Equality Act 2010
 - Suitability of Accommodation Order October 2012
 - The Homelessness Code of Guidance

3. THE POLICY AIMS AND OBJECTIVES

- 3.1 Derby City Council will only use the option of discharging the main homeless duty by way of a ‘private rented sector offer’ if the applicant explicitly agrees to and accepts the accommodation.
- 3.2 The duty will be discharged by arranging for a private landlord to make available a suitable assured short-hold tenancy in the private rented sector for a period of at least 12 months.

Each private rented sector property will be assessed for suitability against the Homelessness (Suitability of Accommodation) (England) Order 2012 Part2 and matched to an individual household.

- 3.3 A suitable offer will only be made where the Council have fully considered:
- The Homelessness (Suitability of Accommodation) (England) Order 2012 and specifically all the statutory requirements in part 1 which cover the suitability of the location of accommodation and Part 2 which sets out the circumstances in which accommodation is not to be regarded as suitable for a person. (See Appendix 1)
 - Whether the property is suitable in relation to existing suitability requirements relating to space and arrangement.
 - Any other subjective matters and issues that relate to an applicant’s circumstances and that of any other household members
 - Whether the accommodation is affordable having fully considered the cost of the rent and any other expenditure relating to the property compared to the income available to the household.
 - All existing legislation, statutory guidance and case-law relating to making suitable offers of accommodation and specifically paragraphs 17.40 and 17.41 of the Homelessness Code of Guidance.

4. HOW THE POLICY WILL BE APPLIED

4.1 For any applicant who has made a Homeless Application and is owed a full duty that duty will remain until either the authority arrange for a suitable private rented sector tenancy or one of the following actions or events occur which by law will also bring the duty to an end. These are:

- If the applicant accepts an offer of settled accommodation from the council (in accordance with Part VI of the Housing Act 1996)
- If the applicant refuses an offer of suitable temporary accommodation or a Social Housing Tenancy offered under the council's Allocation scheme which the authority are satisfied is suitable for their needs, and the authority inform the applicant that it regards itself as having discharged its duty under Section 193 of the Housing Act 1996.
- If the applicant becomes intentionally homeless from the suitable accommodation made available for his/her occupation
- If the applicant ceases to be eligible for assistance due to their immigration status.
- If the applicant otherwise voluntarily ceases to occupy as their only or principal home, the accommodation made available to them to meet the full housing duty.

5. WHEN WE ARE LIKELY TO MAKE A PRSO OFFER TO FULLY DISCHARGE THE HOMELESS DUTY

5.1 Derby City Council will discharge its full housing duty by means of a private sector tenancy only if an applicant explicitly agrees to the ending of the duty and moving into the property

5.2 The authority will still ensure that it only uses a private sector tenancy after a full consideration of the household's individual circumstances and the facts that apply to that case.

6. ACTIONS TO BE TAKEN TO IMPLEMENT THE POLICY

- 6.1 This policy will be sent to all relevant stakeholders in the area along with the Allocation Policy for Derby City Council. All applicants for whom a full housing duty is accepted will be notified of this policy. The key messages that will be communicated to applicants and stakeholders are:
- a) Derby City Council will only discharge its full housing duty by way of a 'private rented sector offer' if an applicant explicitly agrees to this.
 - b) Cases that are owed a full homelessness duty will be afforded reasonable preference priority in accordance with the Derby Homefinder Allocations Policy. However, if a suitable PRSO offer is made and the full homeless duty discharged, the applicant will have their reasonable preference priority removed at that point.

7. ACTION FOLLOWING ACCEPTANCE OF A PRSO OFFER

- 7.1 Housing Advice services will ensure that contact is maintained with all households who have accepted a Private sector tenancy for the length of the tenancy period in order to actively manage those cases approaching the expiry of the 12 month Assured Shorthold Tenancy.

8. REAPPLICATION DUTY (S195A(1))

- 8.1 The s193 main housing duty will apply again if, within 2 years of accepting the PRSO, an applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the authority is satisfied that they are eligible for assistance and homeless, or threatened with homelessness unintentionally. This new duty is regardless of whether the applicant has a priority need. An applicant who reapplies will be considered to be homeless, or threatened with homelessness, if they have been served with a valid notice under s.21 Housing Act 1988 by the landlord of the private rented sector property.

9. REVIEW OF SUITABILITY OF OFFER

- 9.1 As with an offer of social housing, applicants have the right to request a review of the suitability of a Private Rented Sector Offer whether they accept and move into the accommodation or if they refuse the offer. Subsequently, applicants have the right of appeal to the County Court on a point of law if they are not satisfied with the outcome of the review.

10. REVIEWING THE POLICY

- 10.1 The Policy will be monitored and reviewed formally within the first 12 months of implementation to ensure effectiveness. If changes are required these will be made as and when required.
- 10.2 The Policy may also be reviewed at any time, in line with any relevant changes in legislation or Guidance issued by relevant Government Departments.

Approved by:	
Effective date:	
Review date:	
Policy developed by:	Trisha Thomas
Associated Documents:	

Appendix 1

How the Council will ensure it makes suitable offers of accommodation to discharge the full homeless duty.

Under the Policy the Council will make suitable offers of accommodation to discharge their homeless duty considering the following factors.

Suitability and property standards and management.

The local authority must be of the view that the accommodation is in reasonable physical condition. The authority must also satisfy itself that the property is suitable in relation to:

- Certain electrical regulations
- Fire safety
- CO poisoning – there must be adequate carbon monoxide alarm/s
- HMO licensing
- The property has a valid energy performance certificate (EPC)
- Gas safety record
- That a written tenancy agreement will be provided
- And that the landlord is a fit and proper person to act in the capacity of landlord.

To ensure suitability against these statutory standards a property will always be visited and inspected by an appointed housing surveyor. The Housing Advice Team will ensure a written tenancy agreement is in place and ensure a fit and proper assessment is made of the landlord.

b: Suitability and ensuring that the property is affordable

For the property to be suitable it must be affordable under Homelessness (Suitability of Accommodation) Order 1996 (Appendix 2)

In assessing affordability the authority will consider not only if the accommodation is affordable now but whether it will be affordable in the next 12 months (for example if it is known that the household, income is likely to reduce due to changes in benefit entitlement). The authority may consider any access to Discretionary Housing payments (DHPs) which may reduce any rent shortfall to a level where the rent is affordable.

The authority will strictly assess affordability under the Suitability Order 2012 and having had regard to the Homelessness Code of Guidance and existing caselaw. At the end of this assessment the authority will have considered the whole of the applicants financial resources set against the cost of accommodation; ordinary necessities of life for that applicant and any other reasonable living expenses. Before deeming the property to be suitable the authority will consider paragraph 17.40 of the Homelessness code of guidance. (Appendix 3)

c: Suitability and property location and subjective circumstances of the applicant

The Homelessness (Suitability of Accommodation) (England) Order 2012 – Part 1 sets out by regulations a list of statutory matters that a local authority must consider when making an offer of suitable PRSO accommodation. These regulations are grouped under the title Location of accommodation.

In addition existing caselaw and the statutory code of guidance (par 17.41) still applies and requires an authority to take into account any subjective matters in making a suitable offer of accommodation.

The suitability Regulations relating to Location

The local authority must take into account certain factors regarding the location of the accommodation and these include

- What the significance would be of any disruption caused to the employment, caring responsibilities or education of the person or a member of their household.
- How close and accessible the accommodation is to medical facilities and support, local services, amenities and transport.

Suitability and the consideration of any other subjective matters

Other subjective matters which may affect the suitability of the property offered will also be considered at the point the property is matched to the applicant. The list below contains examples of the type of subjective matters that may be relevant and will be taken into account. It is not an exhaustive list of all subjective matters the authority will take into account.

- Any safety issues relating to possible harassment or domestic abuse that relate to the location of the accommodation offered.
- The size of the accommodation offered in respect of bedroom eligibility under the Local Housing Allowance rules.
- Any physical, mental health, or addiction issues and the impact of the accommodation on any of these issues.
- Any claim that the property is too far away from a place of worship.
- Any claim that the property is a flat and has no access to a garden which is essential.
- Any claim that the property location will impact on the ability of the applicant to access childcare which is essential for an applicant to continue in education, training or employment.

Appendix 2

Extract from Homelessness (Suitability of Accommodation) Order 1996

Matters to be taken into account

2. In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation and in determining whether accommodation is suitable for a person there shall be taken into account whether or not the accommodation is affordable for that person and, in particular, the following matters :-

(a) The financial resources available to that person, including, but not limited to: -

- i. salary, fees and other remuneration;
- ii. social security benefits;
- iii. payments due under a court order for the making of periodical payments to a spouse or a former spouse, or to, or for the benefit of, a child;
- iv. payments of child support maintenance due under the Child Support Act 1991(1)
- v. contributions to the costs in respect of the accommodation which are or were made or which might reasonably be expected to be, or have been, made by other members of his household;
- vi. pensions
- vii. financial assistance towards the costs in respect of the accommodation, including loans, provided by a local authority, voluntary organisation or other body;
- viii. benefits derived from a policy of insurance;
- ix. savings and other capital sums;

(b) The costs in respect of the accommodation, including, but not limited to:-

- i. payments of, or by way of, rent;
- ii. payments in respect of a licence or permission to occupy the accommodation;
- iii. mortgage costs;
- iv. payments of, or by way of, service charges;
- v. mooring charges payable for a houseboat;
- vi. where the accommodation is a caravan or a mobile home, payments in respect of the site which it stands;
- vii. the amount of council tax payable in respect of the accommodation;

- viii. payments by way of deposit or security in respect of the accommodation;
- ix. payments required by an accommodation agency;

(c) payments which that person is required to make under a court order for the making of periodical payments to a spouse or a former spouse, or to, or for the benefit of, a child and payments of child support maintenance required to be made under the Child Support Act 1991;

(c) that person's other reasonable living expenses.

Appendix 3

Extract from the Code of Guidance

'In considering an applicant's residual income after meeting the costs of the accommodation, the secretary of state recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseeker's allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit.'