

BROMSGROVE DISTRICT COUNCIL

CABINET

FEBRUARY 6TH 2008

CRITERIA AND ALLOCATIONS POLICY FOR THE LETTING OF RURAL AFFORDABLE HOUSING DEVELOPED UNDER 'EXCEPTION SITE' POLICY

Responsible Portfolio Holder	Councillor P. J. Whittaker
Responsible Head of Service	David Hammond

1. SUMMARY

1.1 The report relates to the following motion that was submitted to Full Council in January by Councillor Mrs. C. M. McDonald:-

“The Council’s Allocation Policy for the letting and allocation of rural affordable housing developed under ‘Exception Site’ policy cannot be supported by its own Equality and Diversity Policy. In light of this the Council no longer supports such a policy.”

1.2 The matter was referred by Full Council for consideration by the Executive Cabinet and accordingly this report:

- Sets out the background to the introduction of a Local Lettings Criteria for the allocation of newly developed rural housing.
- Provides a recent example of the policy in operation.
- Explains the Rural Affordable Housing Programme
- Examines possible conflict with Equality and Diversity policy and national guidance.

2. RECOMMENDATION

2.1 Members are asked to consider the motion submitted by Councillor Mrs C.M. McDonald relating to the Council’s allocation policy for rural housing.

3. BACKGROUND

- 3.1 At the meeting of Bromsgrove District Council on January 16th 2008, the following motion that was submitted Councillor Mrs. C. M. McDonald:-

“The Council’s Allocation Policy for the letting and allocation of rural affordable housing developed under ‘Exception Site’ policy cannot be supported by its own Equality and Diversity Policy. In light of this the Council no longer supports such a policy.”

The Council, without discussion, referred the matter for the consideration of the Executive Cabinet.

4. **BACKGROUND TO THE INTRODUCTION OF A LOCAL LETTINGS CRITERIA**

- 4.1 Planning Policy guidance encourages the provision of affordable rural housing that contributes to, and helps maintain sustainable rural communities through a positive and proactive approach that is informed by evidence.
- 4.2 The guidance states that local planning authorities should consider allocating and releasing sites solely for affordable housing, including using a Rural Exception Site Policy thus enabling small sites to be used, specifically for small scale development of affordable housing in rural communities that would not normally be used for housing, for example where they are subject to policies of restraint.
- 4.3 The guidance recommends that a Rural Exception Site Policy should seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities.
- 4.4 This Council’s Local Plan therefore allows for consideration to be given to Green Belt land being released for the provision of appropriate levels of affordable housing to be provided to meet locally identifies rural housing needs.
- 4.5 This Council’s General Allocations Policy and Housing Register includes a clause:

that allows “Applications for dwellings that are provided to meet a specific housing need under specific planning policy or other conditions to be subject to local lettings policy. A local lettings policy may be applied to limit access to such dwellings by way of a set criteria, as may be adopted form time to time, with or without reference to the point’s scheme”.

This clause was approved by Executive Cabinet in March 2005 to allow for the Rural Exception Site Policy to be used to enable affordable

housing to be provided to meet locally identified needs in rural areas on Green Belt Sites.

4.6 In accordance with this, An 'Allocation Criteria and Rural Lettings Policy For Use Where Affordable Housing Schemes Are Developed Under Exception Site Policy' was considered by Executive Cabinet in March 2005, The Parish Council's Forum in April 2005, all Parish Councils by way of written consultation and was considered and amended by the Housing and Planning Scrutiny Committee before gaining final approval by Executive Cabinet in January 2006.

4.7 **The Criteria and Allocations Policy For The Letting And Allocation Of Rural Affordable Housing Developed Under 'Exception Site' Policy** is set out at Appendix 1 of this report.

In summary, to qualify for a newly built affordable housing unit built on an 'Exception Site', the criteria requires the applicant to either be resident in the parish with a minimum of 5 years residence or have previously resided in the parish (for at least 5 out of the past 15 years) and need to return (and cannot afford to do so) because they are employed in the parish or to give support or receive support from a close family member.

For the protection of the RSL owning the accommodation, in the event of the RSL being unable to let or part sell a vacant dwelling to a qualifying person with a connection to the parish in which the dwelling is situated then the criteria allows a cascade out to qualifying persons with a connection with the immediately surrounding parishes, and in the event of this failing the whole District and ultimately beyond.

5.0 THE POLICY WORKING IN PRACTICE

5.1 A recent example of the policy being put into practice is the development of 15 units of affordable housing at The Glebe, Belbroughton.

5.2 When considering the planning application for the development, the Planning Committee approved that delegated powers be granted to the Head of Planning & Environment to determine the application subject to a number of conditions including:

"Receipt of an acceptable unilateral undertaking to reserve the affordable housing for local needs in perpetuity"

5.3 This was in accordance with Sect S16 of the District Council's Local Plan – Affordable Housing in the Green Belt – which states that "proposals for affordable housing in rural areas to meet local needs may be granted as an exception to normal restrictions operating as a result of Green Belt constraints"

5.4 Accordingly a Unilateral Undertaking was drawn up between BDC and West Mercia Homes Ltd under which the Housing Association covenants and undertakes to allocate the affordable housing units in accordance with the Lettings Criteria and Policy.

6.0 THE RURAL AFFORDABLE HOUSING PROGRAMME

6.1 All of the districts in Worcestershire work in partnership with the Rural Housing Enabler who's role is to enable rural housing to meet local needs by working with Parish Councils, RSLs and local authorities to identify local housing needs and seek sites upon which to provide affordable housing to meet those needs. In most instances this requires the release of Green Belt land by planning authorities under Exception Site Policy and thus the application of a local lettings criterion.

6.2 The work of the Rural Housing Enabler, the rural survey work and consultation with local communities is all based upon providing affordable housing for local people. If the local lettings criteria were not applied:

- i. Planning permission would not be forthcoming on small village Green Belt sites.
- ii. There may be a lack of support to the provision of affordable housing in rural locations by Parish Councils and local communities as they may be averse to seeing green belt sites allocated to non local applicants or applicants with no past local connection.
- iii. Objections to local development are likely to increase and site owners may be less likely to come forward with sites for sale. Sites for affordable housing under Exception Site Policy value at a significantly lower level than open market value so the financial incentive to sell is already not great.

6.3 Accordingly, if a local lettings policy is not in place, our inability to assure local communities that local people would have priority for the dwellings would severely curtail the rural enabling programme.

6.4 It is important to consider the reasons behind the implementation of the rural housing programme in this District. Existing affordable housing stock (ex Council housing and now BDHT stock) in rural settlements has never been subject to a local lettings policy. Therefore these dwellings have always been, and continue to be, allocated to anyone on the Bromsgrove Housing Register, subject to housing need (the point's scheme). Accordingly, over the years a high proportion of these dwellings have been allocated to people who do not have a local connection with the rural settlement because they go to the applicants

with the highest housing need. The Local Allocation Criteria attempts to redress this imbalance when newly built dwellings are let.

- 6.5 The development of affordable housing on 'Exception Sites' offers another pathway of choice for local people who, over the years, have themselves been precluded from being able to live in their local areas due to the allocation of social housing in villages being allocated to people from the wider Bromsgrove District or beyond on the basis of housing need. The Rural Affordable Housing Programme aims to redress this imbalance and offer local people an opportunity to overcome their otherwise exclusion from housing in their locality (i.e. both due to affordability and wider / general lettings policies that has favored non local people for tenancies because they had a higher housing need.)

7. THE POTENTIAL CONFLICT WITH THE COUNCIL'S EQUALITY AND DIVERSITY POLICY AND THE CRE CODE OF PRACTICE ON RACIAL EQUALITY IN HOUSING

- 7.1 The request for the Executive Cabinet to consider the motion submitted provides a useful opportunity for Members to review the rural lettings policy it approved in 2005 against the National Code of Practice on Racial Equality in Housing that became operative in October 2006.
- 7.2 As with any restriction placed upon the delivery of a service, the danger of there being any indirect discrimination (which can sometimes be justified by objective criteria) presented by the operation of a local lettings criterion needs to be considered against the purpose for which it was developed.
- 7.2 The National Code of Practice on Racial Equality in sets out recommendations and guidance on how to avoid unlawful discrimination and the legal obligations of housing organizations.
- 7.3 Section 2 of the Code of Practice focuses upon Indirect Discrimination and identifies two definitions of indirect discrimination, depending on the grounds of discrimination. Which definition applies depends on the nature of the discrimination, and on the racial group that is disadvantaged.
- 7.4 **Grounds of race or ethnic or national** Indirect discrimination occurs when a provision, criterion or practice which, on the face of it, has nothing to do with race or ethnic or national origins, and is applied equally to everyone:
- a. puts or would put people of a certain race or ethnic or national origin at a particular disadvantage when compared with others; and

- b. puts a person of that race or ethnic or national origin at that disadvantage; and
- c. cannot be shown to be a 'proportionate means of achieving a legitimate aim'.

7.5 **Grounds of colour or nationality** Indirect discrimination occurs when an apparently non-discriminatory requirement or condition, which applies equally to everyone:

- a. can only be met by a considerably smaller proportion of people from a particular racial group than the proportion not from that group who can meet it; and
- b. puts a person from that group at a disadvantage because he or she cannot meet it; and
- c. cannot be justified on non-racial grounds.

7.6 The Code of Guidance provides an example (Example 8) below that addresses the issue under consideration.

Example 8

A rural housing organisation decides to reserve some affordable housing (for rent or purchase) for people with local connections in the community. The aim of the policy is to encourage younger people, in particular, to remain in the area. The housing organisation has objective evidence that younger people are being forced to move away because of the lack of affordable housing.

The organisation recognises that its policy could disproportionately disadvantage newcomers and outsiders without any local connections, and that if the newcomers who want houses are from different racial, ethnic or national backgrounds to people in the local community, the policy could have a discriminatory effect. To strike a balance between the legitimate aims of the policy and any discriminatory effects it might have, the housing organisation considers the following questions, to determine the scale of any possible discrimination.

- a. How many people in need of affordable housing are excluded by the policy, and what proportions are excluded on racial grounds? How restrictive is the policy in denying access to the housing in question? The more restrictive it is (for example, in the length of residence required), the more likely it is to be unreasonable, and therefore to result in unlawful indirect discrimination.
- b. What type of local connection is required? For example, does the applicant have to be born in the area, or have extended family living in the area, or have a job in the area? The more ways an applicant can demonstrate eligibility, the less likely the requirements are to be indirectly discriminatory.
- c. Are there other ways, besides having a local connection or being a resident, to qualify for the housing? Again, the more restrictive the criteria, the more likely they are to be indirectly discriminatory.
- d. Do the restrictions apply to all affordable housing or only a portion of it? If all the affordable housing provided, or a large proportion of it, is bound by restrictions, the more likely the practice is to be indirectly discriminatory.

In considering the four questions set out in Example 8 the following officers comments are provided for Members guidance:

- a) The majority of applicants on the Housing Register are excluded from the allocation of newly built affordable housing under the Exception Site policy if they do not have the required local connection with the parish. None are considered to be excluded on racial grounds. Members need to consider whether a current residential qualification of 5 years or a past residential qualification of 5 out of 15 years is unreasonably restrictive.

- b) The local connection allows for:
 - i) Current residence.
 - ii) Previous residence where:
 - There is a need to return to the parish to receive support from a close family member
 - There is a need to return to the parish to provide support to a close family member.
 - The applicant is employed in the parish.
 - The applicant has a confirmed offer of employment in the parish.
- c) No, only applicants qualifying under the criteria can access the new rural affordable housing.
- d) No, the policy restrictions do not apply to all affordable housing in rural areas, they are designed to only apply where new dwellings are developed under 'Exception Site' policy on Green Belt Land that would otherwise be restricted for any form of development. Existing RSL and former Council Housing (transferred to BDHT) remains available to anyone (subject to the housing needs points system of allocation) in the District and beyond who is registered on the Housing Register. Whether the new development represents a small or large proportion of the affordable housing in a rural area varies from parish to parish. However it is reasonable to say that the vacancy rate and turn over of rural affordable housing is generally very low.

7.6 The Code of Practice recommends that when assessing the justification for policies and practices that could have a disproportionate effect on a racial group (or groups); it would be useful to consider the following questions, in the order given below.

- a. Does the provision, criterion, practice, requirement or condition correspond to a real need?
- b. Does the need pursue a legitimate aim; for example, health and safety?
- c. Are the means used to achieve the aim appropriate and necessary?
- d. Is there any other way of achieving the aim in question?
- e. Is there a way of reducing any potentially unlawful discriminatory effect?

Again the following officers comments in respect of the above questions are provided for guidance:

- a) Yes, the lettings criteria and policy is implemented to respond to the local housing need identified in the Rural Housing Surveys carried out in the villages where it is intended to be applied.
- b) Yes, the legitimate aim is to help achieve sustainable rural communities.
- c) The officers consider the means used to be appropriate and necessary to achieve the aim.
- d) Not within the limited amount of development that is deliverable or without being restrictive in the allocation of existing affordable rural housing.
- e) Only by continuing to allow the allocation of existing rural affordable housing to remain un-restricted.

7.7 The Code of Practice advises that a key question to be answered when assessing a potentially discriminatory rule or practice is whether it strikes a proportionate balance between avoiding a racially discriminatory effect and meeting the legitimate aim of the rule. Ultimately only the courts can decide whether a practice is lawful or unlawful. In the absence of case law on this subject, housing organisations and agencies should consider questions similar to those listed in Example 8 above. Housing organisations should aim for a high standard and examine all their practices to make sure they do not put anyone at a disadvantage on racial grounds.

8.0 A RECENT COUNSEL'S OPINION

8.1 It may be helpful to make reference to a report that was considered by the Midlands Rural Housing Board (a consortium of RSLs providing housing in rural areas) in June 2007 in which counsel's opinion had been sought relating to the possible conflict between the use of local letting policies for rural housing and the Commission For Racial Equality (CRE) Code of Practice.

8.2 In summary the outcome of the counsel's opinion was as follows:

- *Counsel's opinion is that there is no incompatibility between an obligation entered into via a Sect 106 agreement requiring applicants to satisfy a local connection criteria, and the over arching requirements of the RRA (and the code). However, a local connection condition is capable of being in directly discriminatory where it is not considered to be justifiable. In short, the condition*

applied to achieve the objective should not be disproportionate in its discriminatory impact.

- *In setting conditions in S106 Agreements, Planning Authorities themselves have to be mindful of their position from a discriminatory perspective. They must not unlawfully discriminate, and in discharging their functions have regard to the need to eliminate unlawful racial discrimination and promote equality. Consequently, they too are bound by the principle of utilising a proportionate means to achieve a legitimate aim. This requirement has an impact on the way in which Section 106 Agreements are drafted.*
- In giving consideration to a number of local lettings criteria presented to him, Counsel went on to state:
 - *In effect the 'legitimate aim' of providing housing for people with a local connection is supported by evidence, and qualitative assessment of its impact has been undertaken (via an assessment of need). However, the issue is the application of the qualifying criteria and its justification in pursuit of the legitimate aim. If this cannot be justified, a court could be compelled to find that the RRA (and, therefore, the code) has been breached.*

In this context, the length of the residency criteria is a concern. Two of the examples of lettings criteria are considered to have proportionate qualifying times attached (i.e. 12 months). However other examples are considered to be very restrictive, with a strong possibility of a court finding that it infringes the RRA due to the application of 'a strong local connection' and '10 year residence' criteria. In effect this could be deemed to be disproportionate to achieving the legitimate aim. (In short, do you need such strict criteria to ensure that people with a local connection are rehoused? Does this criteria mean a significant group of people, with a local connection are excluded? Does it, therefore, follow that this is unjustified indirect discrimination?)

- 8.3 In conclusion therefore it would seem that the principle of utilising a local lettings criteria is reasonable provided that it is backed up by evidence of need. However the issue is within the application of the qualifying criteria which should not be overly restrictive in the context of the Code.

9.0 OFFICERS CONCLUSIONS

- 9.1 For Members guidance, the officers conclusions in respect of the implications for the Council's Equalities and Diversity Policies are set out below:
- 9.2 In deliberating the risk of unfairness, the conclusion is that the application of the policy does present a risk of unfairness but that this is justified as the legitimate aim cannot be met in any other way.
- 9.3 The means of achieving the legitimate aim is considered to be proportionate, i.e. 'fair and balanced' taking into account different groups and their needs.
- 9.4 The policy is seen to be a reasonable approach towards achieving a balance between the aims of meeting need and developing a local cohesive community as opposed to meeting the wishes of others to reside in a rural area based upon a personal preference and lifestyle choice.
- 9.5 Members will recognise from considering the questions posed by the CRE Code of Practice and the points raised by the Counsel acting for the Midland Rural Housing Board that the element of the policy that is possibly open to challenge is whether the residency requirement (5years) and past residency requirement (5 out of past 15 years) is overly restrictive and excessive for the purposes of meeting the justifiable aim.
- 9.6 The Worcestershire County Housing Enabling Officers Group (chaired by this Council's strategic Housing Manager) has the issue of Rural Lettings Criteria included in it's work programme. The group intends to review the rural lettings criteria of a number of authorities in the County with a view to developing a uniform countywide policy for adoption by the authorities concerned. It will be appropriate for the group to give consideration to the issue of potentially over restrictive residency restrictions in developing a draft countywide policy.

10.0 FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications to the review or implementation of a revised policy other than officer time and consultation expenses.

11.0 LEGAL IMPLICATIONS

- 11.1 Non compliance with the Code of Practice upon Racial Equality in Housing could expose the Council and partner RSLs to a risk of a claim.

12.0 COUNCIL OBJECTIVES

12.1 Objective 1 – Regeneration – Housing

Objective 3 - Sense of Community and Wellbeing

13.0 RISK MANAGEMENT

13.1 Non compliance with the Code of Practice upon Racial Equality in Housing could expose the Council and partner RSLs to a risk of a claim.

14.0 EQUALITIES AND DIVERSITY IMPLICATIONS

14.1 In deliberating the risk of unfairness, the conclusion is that there is that the application of the policy does present a risk of unfairness but that this is justified as the legitimate aim cannot be met in any other way.

14.2 The means of achieving the legitimate aim is considered to be proportionate, i.e. 'fair and balanced' taking into account different groups and their needs.

15.0 OTHER IMPLICATIONS

Procurement Issues None
Personnel Implications None
Governance/Performance Management Yes
Community Safety including Section 17 of Crime and Disorder Act 1998 Yes
Policy Yes
Environmental No

16.0 OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	Yes

Executive Director (Partnerships and Projects)	Yes
Executive Director (Services)	Yes
Assistant Chief Executive	Yes
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

17.0 WARDS AFFECTED

17.1 All Wards

18. APPENDICES

18.1 Appendix I - Criteria And Allocations Policy For The Letting And Allocation Of Rural Affordable Housing Developed Under 'Exception Site Policy'

16.0 BACKGROUND PAPERS

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