

## BRECKLAND DISTRICT COUNCIL

**Report of:** Executive Member for Growth – Councillor Gordon Bambridge

**To:** Overview and Scrutiny Commission, January 31<sup>st</sup> 2019

**Author:** Matthew Hogan, Executive Manager for Growth

**Subject:** A report concerning proposed amendments to the council's Housing Allocations Policy

**Purpose:** To consider a proposed policy direction and associated amendments for the council's Housing Allocations Policy in respect of housing allocations on sites planned for through the neighbourhood planning process. To consider updated and refreshed legal advice in respect of the proposed amendment, commissioned in response to questions raised by the committee at a previous meeting on November 8<sup>th</sup> 2018.

### **Recommendation(s):**

- 1) That Overview and Scrutiny Commission give consideration to the content of the report and the proposed amendments to the council's Housing Allocations Policy, ahead of the amendment being made available for a period of public consultation during February 2019.
- 2) That Overview and Scrutiny Commission give consideration to the legal advice note (appended to the main report) which seeks to answer a number of questions raised by the committee's previous meeting on November 8<sup>th</sup> 2018 (see Para 1.17).

### **1.0 BACKGROUND**

- 1.1 The Housing Act 1996 requires every local housing authority in England to have a scheme for determining priorities and the procedure to be followed in allocating housing accommodation. In Breckland, this policy is captured within the Breckland Housing Allocations Policy.
- 1.2 Breckland Council's current housing allocations policy was last reviewed and adopted by the authority in 2016. The council's policy sets out who is eligible to apply for housing, and then sets out an approach to the prioritisation of eligible households.
- 1.3 The council's policy has been created in such a way to ensure compliance with the legislation that governs housing allocations, specifically in relation to the requirement to provide 'reasonable preference' to households with a certain level of housing need
- 1.4 Broadly speaking, the council's current allocations policy is structured in the following way;
  - **Local Connection.** Under the council's existing policy, an applicant is required to have a local connection to the district of Breckland as a whole in order to be considered to be eligible to apply for housing. Local connection is determined through one or more of the following; residency, employment within the district and/or family connection. Note that there are other factors that the council considers when looking at eligibility, including household income and previous tenancy conduct.
  - **Priority.** Once an applicant has been determined as being eligible, applicants are then prioritised in accordance with a banding scheme. The Breckland prioritisation scheme

has been structured to award greatest priority to those who fall into the 'reasonable preference' categories. There are two key reasons why the council's policy is structured in this way; firstly, in order to ensure compliance with the legal requirement to provide 'reasonable preference' to certain households, and secondly to ensure that the authority can discharge its duties to homeless households in the most timely manner possible.

1.5 Consequently, the council's current policy position can be summarised by saying that affordable housing within the Breckland is ring-fenced for households with a local connection to the district as a whole, and that priority for housing is awarded to local households in the highest housing need. The only exception to this is for homes developed on 'exception sites', whereby homes are developed on small sites in response to the identification of a locally arising need for additional affordable housing. In this scenario, homes built on exception sites are typically prioritised for households with a connection to the parish where the homes have been built, over and above those who do not have a connection with the parish.

## **1.6 Affordable Housing Allocations and Neighbourhood Planning**

1.7 Separately to the processes relating to the housing allocations, a number of local communities across Breckland are developing Neighbourhood Plans. As members will be aware, the neighbourhood planning process has been developed by government as a means of providing local communities with the opportunity to shape development in their areas. It is common place for neighbourhood plans to include policies on matters relating to design, amenity space and the location of development within settlements.

1.8 An increasingly common policy area featured within neighbourhood plans relates to affordable housing. This includes policy to guide the development of exception sites, and policies concerning preferences for housing mix.

1.9 Linked to this, a common 'ask' by local communities developing neighbourhood plans is for a proportion of affordable housing delivered on sites allocated by the district council (through the local plan process) to be prioritised for households with a local connection to that specific settlement.

1.10 Whereas this 'ask' from those developing neighbourhood plans is entirely comprehensible, given the desire for many local communities to see new housing growth deliver tangible benefits to local people, there are a number of legal impediments that make it difficult for the district council (as the local housing authority) to support this approach. These legal impediments mainly relate to the legal requirement for local authorities to gear the allocation of affordable housing to those in the highest need. There are also risks of legal challenge under equalities and housing legislation where these requirements are deviated from without strong evidence to justify an alternative approach.

1.11 Acknowledging these legal constraints, the authority has been seeking to explore a means through which it can balance a) the desire of local communities to see affordable housing developed on site within their areas allocated to local people, with b) the need for the local housing and planning authority to have policies that seek to meet the housing needs of the district as a whole, and c) the need to ensure that affordable housing is prioritised in accordance with relevant housing and equalities legislation.

## **1.12 A potential option concerning policy direction**

1.13 Consequently, and in response to requests from a number of local communities developing neighbourhood plans, the authority has been exploring how amendments to its housing allocations policy could facilitate an outcome whereby, in circumstances where a local

community uses a neighbourhood plan to proactively plan for additional housing growth over and above the growth planned through the council's Local Plan, an element of any additional affordable housing delivered as a result of this growth could be 'ring-fenced' to meet locally arising housing need.

- 1.14 Having obtained legal advice on the matter, officers have prepared some draft policy wording which, if adopted by the authority as an amendment to its existing Housing Allocations Policy, would enable that outcome to be delivered. The draft policy wording is included in Appendix 1.
- 1.15 In order to deliver a change to the council's allocations policy, there is a statutory requirement for the authority to consult with housing associations that operate within the district. Furthermore, whereas there is no strict legal requirement to consult with the public on changes to a housing allocations policy, the authority has received legal advice which confirms that the chances of a successful challenge against this or other parts of the Housing Allocations Policy will be lessened should the authority be able to demonstrate that it has conducted a full and fair public consultation of any proposed changes.
- 1.16 It is worth noting that, alongside introducing this proposed policy change, it is also proposed that as part of the review process, the references to now-extant legislation within the council's current allocations policy (e.g. the Housing Act 1996) are amended to reference current and prevailing legislation (i.e. the Homelessness Reduction Act 2016). This amendments will not change the council's policy, but will ensure that it reflects the latest legislation.
- 1.17 Meeting of Overview and Scrutiny Committee, November 8<sup>th</sup> 2018**
- 1.18 The proposed amendment to the council's Housing Allocations Policy was considered previously by the committee on November 8<sup>th</sup> 2018.
- 1.19 Following a detailed discussion on the proposed amendment, members of the committee requested that officers return to a future meeting as a means of providing clarity on a number of points and raised by the committee at the November 2018 meeting.
- 1.20 The two key points raised by the committee during the previous meeting were as follows;
  - That further consideration be given as to whether the policy amendment should be amended in order to enable the parish local connection requirement to apply to lettings 'in perpetuity' (as opposed to simply applying on 'first let').
  - A question from the committee in respect as to whether it would be possible to apply a parish local connection requirement to all sites in all parishes in the district, regardless of whether a neighbourhood plan is in place.
- 1.21 In respect of the matter of whether the policy should apply on 'first let' or 'in perpetuity', having given further consideration to the operation of the policy, it is proposed that the policy proceeds to public consultation on the basis of the policy applying on 'first let' as opposed to 'in perpetuity'. This is with a view to keep the effectiveness of the policy under close review if or when it comes to be implemented in the future, and for the matter of the policy applying 'in perpetuity' being considered as part of the next full review of the council's Housing Allocations Policy.
- 1.22 In respect of the matter as to whether such a policy could or should apply to all parishes in the district regardless of whether a neighbourhood plan is in place, officers have sought fresh external legal advice on this as an alternative policy option. This legal advice, which is set out in Appendix Two, sets out the following view;

- That any amendment to the council's allocations policy, be it on this or other matters, carries with it a degree of risk of successful challenge.
- That the likelihood of a challenge being successful is dependent largely upon the amount to which any discrimination which may occur as a result of any policy can be justified as serving a 'legitimate aim', whilst also being 'proportionate'
- That as the proposed policy amendment would only apply in limited circumstances, as a means of supporting the delivery of evidence-backed policies within a neighbourhood plan (i.e. the delivery of affordable housing to meet locally identified need), the proposed policy amendment carries with it a lower risk of successful challenge from any individual naturally disadvantaged by the policy.
- That if the policy applied all parishes in the district regardless of whether a neighbourhood plan is in place, it is more likely to be considered by the courts as not being 'proportionate', and would therefore give rise to a higher risk of challenge from any individual disadvantaged by such a policy..
- That should the authority wish to develop a policy approach which is wider and far reaching than the policy approach proposed through the amendment set out within this report, that counsel's advice be sought as a means of understanding the level and type of evidence needed to justify such a policy.

1.23 Consequently, on the basis of this advice, it is proposed that the policy amendment set out within this report proceeds to public consultation on the basis that it will apply only in circumstances where a neighbourhood plan is in existence. This is with a view for any more far-reaching policy amendments, including those discussed at the November 2018 meeting of OSC, be considered as part of the next full review of the council's Housing Allocations Policy.

1.24 It should be noted that, should the authority adopt the proposed amendment to the Housing Allocations Policy, a parish council within Breckland has already indicated an desire to utilize the policy as a means of meeting affordable housing need within their parish.

## 2.0 OPTIONS

2.1 **That Overview and Scrutiny give consideration to the content of the report and the associated legal advice, with a view to provide comment and input on the proposed amendments to the council's Housing Allocations Policy ahead of a period of public consultation in February 2019 (recommended).**

2.2 **Do nothing.** Under this option, the members of the committee would not give consideration to the proposed policy changes (not recommended).

## 3.0 REASONS FOR RECOMMENDATION(S)

3.1 The reason for officers proposing a potential new policy direction in this area stems from discussions that have taken place between the authority and communities that are developing neighbourhood plans across the district, and the common 'ask' from communities to have greater influence over the allocation of affordable homes developed within their areas.

3.2 Consequently, officers have sought to consider what may be possible within a legal context to support these 'asks'. If members are minded to support this policy direction, in response to requests from many local communities developing neighbourhood plans, then members are recommended to support the proposed amendments to the council's allocations policy.

## 4.1 EXPECTED BENEFITS

4.1 If members are minded to support the report recommendation, it will enable local communities that accept additional housing growth through the neighbourhood planning process to seek for the allocation of any additional affordable homes delivered through this growth to be prioritised for households with a connection to that settlement.

## 5.0 IMPLICATIONS

### 5.2 Constitution & Legal

5.2.1 Officers have sought external and specialist legal advice on both a) the nature of the proposed policy direction, and b) the proposed policy wording set out within Appendix 1. This legal advice has returned a view that the proposed policy approach is likely to be a legally sound and defensible approach to achieving an outcome whereby the allocation of housing on sites promoted through neighbourhood plans is prioritised for households with a connection to that settlement.

### 5.3 Corporate Priorities

5.3.1 The authority's support for local communities developing neighbourhood plans is rooted in the alignment between neighbourhood planning and the council's corporate objectives linked to 'enabling stronger and more independent communities' alongside 'supporting Breckland to develop and thrive'.

### 5.4 Equality and Diversity

5.5.1 The matter of the impact of the proposed policy direction upon equalities and diversity has been considered at great length as part of the process of developing the approach contained within this report. Officers are satisfied that the proposed policy approach is legally robust when considered against the requirements set within the Equalities Act 2010.

### 5.12 Consultation / Timescales

5.12.1 As set out within this report, it is proposed that any proposed amendments to the council's Housing Allocations Policy are made subject to a period of public consultation (with 28 days being the proposed period). The authority will also need to complete statutory consultation with housing associations with housing stock within the district.

## 6.0 WARDS/COMMUNITIES AFFECTED

6.1 This report does not directly relate to any specific Ward within the District.

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Background papers:- [See The Committee Report Guide for guidance on how to complete this section](#)

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### Lead Contact Officer

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**Key Decision:** No

**Exempt Decision:** No

**This report refers to a Mandatory Service**

**Appendices attached to this report:**

Appendix A Proposed Policy Wording

Appendix B Legal Advice