



## **Legal Advice Note Housing Allocations Policy and Local Connections**

I have been asked to advise on the risks to the Council of adopting a local connection requirement across the District that would give priority for housing to those already living or connected to the Parish within which the housing is located.

### **Legal Background**

s166A of the Housing Act 1996 (“the 1996 Act”) requires every local housing authority in England (“LHA”) to have a scheme for determining priorities and the procedure to be followed in allocating housing.

Under S166A(3) of the 1996 Act “reasonable preference” must be given to certain classes of persons. This means that “positive favour should be shown to applications which satisfy any of the relevant criteria. To use colloquial language, they should be given a reasonable head start” (R v Wolverhampton MBC Ex p. Watters (1997) 29 H.L.R. 931).

S169 of the 1996 Act provides that regard must be had to guidance issued by the Secretary of State, currently “allocation of accommodation: guidance for local housing authorities in England”. When considering a “local connection” for the purposes of the 1996 Act and the above guidance this is framed in the context of a District. The prospect of a Parish connection is not specifically dealt with albeit provision is made for policies to be created at a more local level known as “local letting policies”. Again these must be evidence based.

In R (on the application of Ahmad) v Newham LBC 2009 UKHL 2009 Lord Neuberger stated “as a general proposition, it is undesirable for the courts to get involved in questions of how priorities are accorded in housing allocation policies”. Since that time the Equality Act 2010 has come into force and amendments have been made by the Localism Act 2011 giving rise to further challenges to housing allocation policies related mainly to the “reasonable preference” requirements.

The Equality Act 2010 (“2010 Act”) prohibits discrimination (direct and indirect) against persons with protected characteristics. Indirect discrimination occurs if a person or organisation adopts a provision, criterion or practice which is neutral but which nonetheless puts a person with a protected characteristic at a particular disadvantage (s19 2010 Act).

A level of indirect discrimination may be permissible if “it is a proportionate means of achieving a legitimate aim for the purpose of section 19(2)(d)” (R. (on the application of C) v Secretary of State for Work and Pensions 2017).

For example, In R (on the application of XC) v Southward LBC 2017 EWHC 736 (Admin) the Court considered that whilst a local authority’s housing allocation scheme which gave a

preference to working households indirectly discriminated against disabled persons and women the scheme had a legitimate aim, being the creation of sustainable and balanced communities and encouragement of residents to make a contribution to the local community, and was the least intrusive measure which could be used to achieve that aim.

A recent challenge to an allocation policy was in relation to its local connection criteria in R (TW and others) v London Borough of Hillingdon 2018 EWHC 1791. Here the Court held that a ten year residency requirement indirectly discriminated against persons with the protected characteristic of race under the Equality Act 2010. The Council had failed to consider whether it had struck the correct balance between disadvantage to Irish travellers and the aims of the residence requirement.

A local housing authority is free to put in place any policy it considers appropriate to “meet local needs and local priorities” subject to the overarching duties to act fairly and reasonably and to comply with the requirements of the 1996 and any other statutory requirements. When preparing, adopting and amending an allocations policy the Council must therefore have regard to the need to give “reasonable preference” under S166A(3) of the 1996 Act, to take into account government guidance, act fairly and ensure that where indirect discrimination occurs it is proportionate and serves a legitimate aim.

### **The Policy Amendment**

Officers have put forward a proposed amendment to the current Housing Allocations Policy to support the neighbourhood plan proposals of Parish Council’s supporting housing growth. This includes Parishes such as Swanton Morley, who have indicated a desire to utilise such a policy approach if amendments to the council’s housing allocations policy are agreed by the district council.

The proposed amendment is to enable additional preference to be given to applicants with a local connection to the Parish, rather than just the District, in relation to sites being allocated over and above those already allocated in the District Council’s local plan. This proposal would not override the need to give “reasonable preference” under the 1996 Act.

Previous advice given in relation to this proposal was that any amendment which could be considered unjustified due to a lack of need or because it is indirectly discriminatory is open to challenge. The risks of challenge are reduced by limiting the impact of the amendment (for example by reducing the circumstances it would apply so that it does not impact upon the Council’s wider housing needs), ensuring that any indirect discrimination resulting from the policy amendment can be shown to be “proportionate” when weighed against the legitimate aim of supporting neighbourhood plan policy and ensuring that there is evidence of need, such as the evidence base and examination process related to the neighbourhood plan policy itself.

In this case the aim of the amendment is to support the policies of a neighbourhood plan. Such a plan is supported by its own evidence base and is subject to independent examination. In addition, the amended policy only applies to sites not already identified as needed to meet the housing need of the District thereby reducing the likelihood of challenge.

### **The Members Proposal**

I am advised that members have enquired as to whether it is 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. My advice would be that the risk of challenge to such a policy is much higher for the following reasons:

- As highlighted in the Hillingdon case above local connection requirements have recently been subject to challenge. Such a policy may be considered unlawful if it results in indirect discrimination, is not proportionate and does not serve a legitimate aim. I am not aware of any evidence base to support a blanket policy and it would therefore be difficult to demonstrate a legitimate aim or consider whether it was proportionate or not.
- A blanket policy may affect the Council's ability to meet housing need within the District and be more likely to be challenged by local people seeking housing accommodation.

### **Recommendation**

As previously advised a change to the Allocations Policy without any evidence of need to support it or where a policy is likely to be considered discriminatory without a legitimate aim would be subject to challenge. This applies regardless of what amendments are considered.

The current amendment being put forward by officers carries the least risk whilst enabling the Council to support Parish Council's seeking to adopt this type of policy in their neighbourhood plans. This is because it seeks to facilitate the legitimate aim of supporting neighbourhood plan policies whilst applying only in those limited circumstances so as to limit the impact on any persons indirectly discriminated against.

The members proposal is much wider and it more likely to be considered as not "proportionate" in these circumstances and would therefore give rise to a higher risk of challenge. If the Council wishes to pursue such a policy Counsel's advice is recommended in relation to the risks of challenge and the level and type of evidence needed to justify such a policy.

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