

Guildford Borough Council
Procedure on the Allocation and Procurement of Suitable Accommodation for
Homeless Applicants
Housing Act 1996 Pt VII as amended
June 2016; updated November 2019

Introduction

This procedure has been developed in light of the good practice recommendation in the Supreme Court judgement *Nzolameso v Westminster City Council* (2015 UKSC 22), reiterated in *Alibkhiat v London Borough of Brent* (2018 EWCA Civ 2742). It explains the Council's responsibilities on providing suitable accommodation for homeless and potentially homeless households and its procedure on location. It should be read in conjunction with the following:

Housing Act 1996 Pt VII as amended ('the Act')
Homelessness Code of Guidance for Local Authorities 2018 esp. ch. 17 (suitability of accommodation)
Relevant case law
Housing Act 1985 (re. slum clearance and overcrowding)
Human Rights Act 1998 (esp. children's right to education)
Equality Act 2010 (Public Sector Equality Duty)
Housing Act 2004 (re. housing conditions, HMO's and licensing)
Children Act 2004 s.11 (safeguarding & promotion of child welfare)
Homelessness (Suitability of Accommodation) Order 1996
Homelessness (Suitability of Accommodation) (England) Order 2012
The Council's homelessness prevention strategy
The Council's B&B procedure
The Council's PRSO procedure

In addition, *Housing Allocation & Homelessness Ch. 18* (5th. edition, Luba/ Davies/ Johnston/ Buchanan) is helpful.

Legal Background

Section 188 of the Housing Act 1996 Pt VII imposes a duty on the Council to provide suitable accommodation where there is reason to believe a household is eligible, homeless and in priority need.

Accommodation may then be secured through the prevention (s.195) duty or the relief (s.189) duty. If not (or the duty is discharged by a Final Accommodation Offer or a Part VI offer), an eligible, unintentionally homeless and priority need household will be owed a s. 193 duty to 'secure that accommodation is available for occupation by the applicant' (the main housing duty). The Council may choose to discharge this duty by making a Private Rented Sector Offer (PRSO)- see the Council's PRSO procedure.

The Council may take into account the likely duration of any accommodation, for example accommodation in an emergency may be suitable for a few days or weeks but no longer. No accommodation may fall below an irreducible minimum standard (*Wednesbury*). The suitability of accommodation should also be reconsidered when a change of the household's circumstances occurs.

Particular Considerations when placing households

When placing homeless households (regardless of which legal provision), the Council must take into account:

Demolition, clearance & overcrowding: Households should only be placed in accommodation scheduled for demolition or major redevelopment where the Council is satisfied that it is suitable and habitable. Households should not be placed in properties where statutory overcrowding would occur, unless all other options have been exhausted.

Housing Conditions, HMO's and licensing: The Code of Guidance recommends that a property is free of Category One hazards. A HMO that is required to be licensed but lacks a licence is unlikely to be suitable.

Affordability: As Guildford Borough is an expensive area where most private rents are far in excess of the Local Housing Allowance (LHA), this is a key consideration. Unless there is an overriding need for the household to be locally placed, larger households subject to the Benefit Cap in particular may need to be placed in cheaper areas away from Guildford Borough, as it will not be reasonably practicable to place them in or near Borough. Discretionary Housing Payment (DHP) may help in the short-term if the household is likely to become exempt in future, through for example finding sufficient employment or securing disability benefits. A non-secure tenancy of a Council property may be justified in an individual case, or an allocation under Part VI where the household is sufficiently well placed on the housing register. The Homelessness (Suitability of Accommodation) Order 1996 should be taken into account, as well as *Samuels v Birmingham City Council [2019] UKSC 28*. The order states that the Council must have regard to the financial resources available to the applicant; the costs of the accommodation; maintenance payments to a spouse/former spouse under a court order; child support payments under a court order or under the Child Support Act 1991 and the applicant's other reasonable living expenses. Households should be able to afford the basic essentials of living after payment of housing costs. While having regard to suitability, it may be necessary to place households in smaller properties than they are entitled to according to LHA criteria in order to ensure affordability. For example, households with one child may be placed in one bedroom properties. Most single people under 35 will only be able to afford a room in a shared house due to being restricted to the Shared Accommodation Rate of Housing Benefit or the equivalent on Universal Credit.

Location: Under s.193 of the Act, the Council should so far as reasonably practicable secure accommodation within Guildford Borough. As noted above, this may be difficult or impossible due to lack of affordability and/or lack of supply (particularly where the need is urgent). When properties become available in the Borough, households with a particular need to be rehoused locally for employment, medical, social or other reasons should normally be considered before other households. Particular regard should be had to the Homelessness (Suitability of Accommodation) (England) Order 2012, which states that the a council should have regard to the distance of any out of district placement from its own district; the significance of any disruption to employment, caring responsibilities or education; proximity to medical or support facilities essential to well-being and proximity to local amenities and transport. If suitable accommodation is unavailable locally, accommodation should normally be sourced as close as possible (having regard to transport links rather than 'as the crow flies'). *Offer letters should set out what factors were considered when placing out of Borough and what arrangements are being made to meet medical, social and education needs in the new area.* A new area may be beneficial for certain applicants, such

as offenders or domestic abuse victims. Where the household must be accommodated outside the Borough the Council will take reasonable steps to ensure all relevant statutory authorities who may need to be involved, such as Children Services, are informed.

Public Sector Equality Duty: The Equality Act requires the Council to focus sharply on whether a person has a protected characteristic such as long-term disability when allocating accommodation.

Space and Arrangement: 'Key factor' according to the Code of Guidance. Particularly important where there are young children, elderly people or disabled people.

Private rented offers: Certain offers of accommodation must comply with factors listed in the Homelessness (Suitability of Accommodation) (England) Order 2012. These offers are Private Rented Sector Offers, a Final Accommodation Offer under the relief duty (unless sourced by the applicant), or to an applicant *in priority need* to prevent or relieve homelessness (unless sourced by the applicant). The factors (in summary) are: reasonable condition; meets electrical regulations; reasonable fire safety and carbon monoxide precautions; landlord is fit and proper person; HMO licensed as required; valid EPC, gas safety record and adequate written tenancy agreement. Note: a PRSO must also have a minimum tenancy of 12 months (without a 'no fault' break clause within this period).

Bed and Breakfast accommodation with shared facilities (shared WC, bathroom and/or kitchen)

Under the Homelessness (Suitability of Accommodation) (England) Order 2003, bed and breakfast accommodation is not regarded as suitable for any household with children under 18 or expecting a child except where there is no other accommodation available, in which case the household should not stay for a period, or total of periods, exceeding 6 weeks. This does not apply where the household is being accommodated under a power rather than a duty. See also the Council's B&B procedure.

Main Sources of Accommodation:

The level of need for accommodation is kept under continuous review by the Housing Advice Manager.

Housing Register: the Council's housing register is the main gateway to social or affordable/intermediate housing provided by the Council and registered providers of housing locally. Legally homeless applicants are entitled to join the register and be awarded reasonable preference. However, since the average waiting time for households with a local connection is around five years, long-term social housing is not a sufficiently quick option for the majority of homeless applicants. See the Council's Allocation Scheme.

Non-secure lets of Council properties: The Council 'borrows' properties from its own stock of mainly general needs properties to assist homeless households, mostly single people with mental health or other issues making it difficult to place them with private landlords or risk averse registered providers.

Shared Ownership: the Council manages a small stock of shared ownership properties, as do other registered providers. However, very few homeless applicants will be able to afford this option.

Private Rented Sector: Due to insufficient supply of social housing, this is the main accommodation resource for households with children and may be a suitable option for

some single people and childless couples. However, as noted above Guildford Borough is an expensive area where market rents are well above the LHA hence unaffordable for households on low and middle incomes. Although applicants are encouraged to source their own private let where possible, the *Homes 4 U* rent deposit team pursue all possible leads with letting agents and individual landlords in order to procure as many properties as possible, as close to the Borough as possible. The Council offers rent deposit bonds or cash deposits (and in exceptional circumstances loans or grants for rent in advance), a free inventory service and day-to-day advice for landlord and tenant. The need for other landlord incentives is kept under review. Tenants who require additional support in order to manage a private tenancy may be referred to West Surrey Floating Support Service or to one of the Council's in-house tenancy support officers.

Rosebery Housing Association: Rosebery leases five schemes from the Council, managing 53 self-contained one and two bedroom flats. The Council uses its 100% nomination right to nominate suitable households, usually where evidence suggests they could not manage a private tenancy or the need is urgent and no suitable private let is available. The scheme at Merchant Row is intended for working households.

A2 Dominion (Pilgrim scheme): 11 self-contained flats for young households with children who require higher levels of support.

Single person hostels: The town centre hostels Vaughan House, Mulberry House, Cyrenian House and the YMCA cater for single people, mainly those with support needs referred by the Council's outreach service HOST.

Other supported housing: There are various supported housing schemes across the Borough, provided by the Council, registered providers and other small-scale providers.

Sheltered and other housing designated for older people: Elderly people (and some 55+) may be accommodated in sheltered housing due to relatively easy availability. This is provided by the Council (for over 60's), registered providers and almshouses.