

Appendix One:

Draft Sandwell Metropolitan Borough Council

Temporary Accommodation Policy

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1 Introduction

- 1.1 This policy sets out the Council's policy for placement of homeless households in temporary accommodation. It covers both interim placements made under Section 188 of the Housing Act 1996, while homeless enquiries are undertaken, and longer-term temporary accommodation placements for households accepted as homeless under Section 193 of the Housing Act 1996.

2 Background

- 2.1 Local authorities have a statutory duty to provide temporary accommodation in their own area "so far as is reasonably practicable". Statutory guidance requires local authorities "where possible" to try and secure accommodation as close as possible to where an applicant was previously living (Housing Act 1996, Part vii, Section 208(1)), although local authorities are not constrained by the preference of the applicant. As temporary accommodation is necessary only for a short term for most households, there is usually no expectation that households will need to make alternative arrangements for education or employment during their stay in temporary accommodation.

3 Legal Framework

- 3.1 This policy has been developed in accordance with the relevant sections of the following legal and statutory guidance:
- S188 Housing Act 1996
 - S193 Housing Act 1996
 - S208 Housing Act 1996
 - Homeless (Suitability of Accommodation) Order 2012
 - Localism Act 2011
 - S11 Children Act 2004
 - Equality Act 2010
 - Homelessness Code of Guidance for Local Authorities (Department for Communities and Local Government, 2006) (February 2018 – as amended)
 - Associated Case Law
- 3.2 Supplementary guidance to the homelessness changes in the Localism Act 2011 and the Homeless (Suitability of Accommodation) Order 2012 states the following:

"Where it is not possible to secure accommodation within the district, and an authority has secured accommodation outside their district, the authority is required to take account of the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation which it has secured is unlikely to be

suitable unless the authority has a justifiable reason or the applicant has expressed a preference.”

- 3.3 Nzolameso v Westminster City Council – the Supreme Court Judgment included a set of requirements that local authorities need to consider when allocating temporary accommodation to homeless households. These include:
- A requirement that local authorities need to explain their decisions as to the location of the properties offered.
 - Each local authority should have, and keep up to date, a policy for allocating temporary accommodation to homeless households.
 - The policy should reflect the authority’s statutory obligations under both the Housing Act 1996 and the Children’s Act 2004.
 - Where there is an anticipated shortfall of accommodation in the District, the policy should explain the factors to be taken into account when making decisions on where a household is placed.
 - The Supreme Court also proposed that each local authority should have a policy for procuring sufficient units of temporary accommodation to meet anticipated demand for the coming year.
- 3.4 In Birmingham City Council v Ali, Moran v Manchester City Council [2009], the court observed that *‘what is regarded as suitable for discharging the interim duty may be rather different from what is regarded as suitable for discharging the more open-ended duty in section 193(2).’* This confirms the Code of Guidance’s approach that, accommodation that would not be suitable in the long term may be suitable in the short term.
- 3.5 In exercising these functions, the Council will have due regard to S149 Equality Act 2010 to:
- eliminate any form of unlawful discrimination
 - advance equality of opportunity for people with protected characteristics
 - foster good relations between people with protected characteristics and those who do not.

4 Key Principles

- 4.1 The Council will wherever possible offer temporary accommodation within the Sandwell district.
- 4.2 There may be occasions when demand for temporary accommodation exceeds the number of available commissioned units, or there are other constraints in finding suitable commissioned accommodation. In these circumstances, if there is a duty to accommodate a household, the Council will as a last resort place a household in bed and breakfast/hotel/guesthouse accommodation.

- 4.3 Any accommodation provided to 16 or 17 year olds must be suitable. The Secretary of State considers that bed and breakfast is never suitable under any circumstances for this category of applicants.
- 4.4 The Council will take account of all relevant need factors when assessing the suitability of location for temporary accommodation. These factors are listed in Section 5 below.
- 4.5 When assessing the suitability of location for temporary accommodation, the Council will only take account of actual need and not the applicant's preference. All accommodation located within the Borough which is otherwise suitable, affordable and compliant with any risk assessment specific to the household will constitute as a reasonable offer regardless of its actual location within Sandwell.
- 4.6 If it is not possible to provide temporary accommodation within the District, the Council will offer accommodation in another district, taking into account the distance of that accommodation from the Sandwell District. If this should prove necessary, the Council will endeavour to provide accommodation with good transport links to Sandwell.
- 4.7 Households placed outside of the district may be considered for temporary accommodation within the district once a suitable unit becomes available, subject to their needs being assessed alongside the needs of other households who are owed a duty at the time.
- 4.8 Applicants will be notified of their responsibilities and informed of the penalties that can be imposed by the Courts for withholding or providing false information and the impact that will have on their temporary accommodation provided

5 Factors to be taken into account when making placements

- 5.1 Risk - Where a household is perceived to be at risk from others, or where there is a history of risk to others, the extent, nature, likelihood and gravity of the risk will be assessed and taken into account.
- 5.2 Children's education - The ages and key educational stages of children will be taken into consideration, including any public examinations at Key Stage 4 (GCSE) or Key Stage 5 (A Levels or equivalent Stage 3 vocational courses such as BTECs). The practicalities of travel arrangements to existing schools will be considered including the cost and ease/length of time of travel. Support (to be) provided to any children with special educational needs will also be taken into consideration.

- 5.3 Children's needs - In accordance with Section 11 of the Children Act 2004, we will consider the needs of all children in the household and any arrangements for safeguarding those needs. The key areas that will be taken into account are risks to health, safety, to enjoyment and achievement and economic wellbeing. Households with children at risk, on the Child Protection Register or significantly disadvantaged, will be prioritised for an offer of temporary accommodation within the Sandwell district. In such cases Children's Services will be consulted about making a temporary accommodation placement outside of the Sandwell district.
- 5.4 Childcare and other caring responsibilities - The practicalities of maintaining existing childcare and/or other caring arrangements may be taken into account. The cost and availability of caring arrangements in the new area will also be explored, including travel time to that care provision.
- 5.5 Employment - Where the applicant or their partner is accepted as being in employment and has been working continuously for a period of six months in the District under a written contract of employment (temporary or permanent) which requires at least 16 hours work a week, the place of employment will be taken into consideration. Parents who are on parental leave who intend to return to work will also have their work location considered under this criterion. The ease and cost of travel from the location of the temporary accommodation to an existing place of work, including any shift patterns, may be taken into account.
- 5.6 Health and support needs - Households which contain person(s) suffering from a terminal illness or having a severe disability and receiving regular treatment under the care of a Sandwell hospital will be prioritised for an offer of temporary accommodation within the Sandwell district. Any other specialist medical or support needs will be taken into account, including any existing health or support services provided. The Council will consider whether moving the client's healthcare or support services would have a detrimental effect. Any need for accessible accommodation will be addressed.
- 5.7 The health and support needs of persons affected by substance misuse will be taken into account when making placements where moving them out of the Sandwell area would be detrimental, particularly in the early stages of care where the transfer to another provider would be involved risking disengagement etc. For this client group consideration in terms of placement will also be given to the dynamics and mix of potential residents in the same unit/building where it is felt determinantal in terms of client recovery.
- 5.8 Affordability – The Council will take into account a household's income in order to source temporary accommodation which has a rent that is affordable, as well as meeting the household's needs. Due to high rents within some parts of

the District, this may mean securing temporary accommodation not in a household's immediate locality. The household's ability to meet any shortfall between housing benefit paid and the rent charged will be taken into account. The Council will determine whether a household may be exempt from the general household benefit cap or whether they may be eligible for a Discretionary Housing Payment (DHP) to help pay the rent.

- 5.9 Transport links - Where accommodation is sourced outside of the Sandwell district for temporary accommodation placements, the distance of the property from Sandwell together with services, amenities and transport links in the new area may be taken into account. The potential impact of the location on family members will be considered.

6 Type and size of accommodation offered

- 6.1 This policy takes into account the statutory requirements on councils in respect of the suitability of accommodation, including the Suitability of Accommodation Order 2012. When deciding if a temporary accommodation placement is suitable, consideration will also be given to the Homelessness Code of Guidance for Local Authorities. Households requiring temporary accommodation will often be placed into accommodation that has fewer bedrooms than a household may be entitled to on a permanent basis. The condition of the decoration, furniture in the property (where applicable), the layout or type of accommodation, provision of parking and lack of access to a garden are extremely unlikely to be classed as acceptable reasons for refusals of offers.
- 6.2 Type of Temporary Accommodation - In allocating temporary accommodation the Council will consider the needs of the applicant together with their household. In particular, it will take into account any physical or mental health needs in identifying any special requirements to the property, and access to specialist services essential to the wellbeing of the applicant and their household, including:
1. Level access
 2. Adaptations to kitchens & bathrooms
 3. Layout of the accommodation, including any internal stairs
 4. Access to the accommodation
 5. Location of the accommodation in relation to access to essential health or support services
 6. Issues that may exacerbate any issues relating physical or mental health or old age
- 6.3 Size of Accommodation - Sandwell Council will ensure that when allocating temporary accommodation that it is of an appropriate size for the applicant together with their household. Making a calculation using bedroom and space

standard tests will be used to inform the overall number of rooms required for each applicant household.

- 6.4 When making this decision the Council will take into account the accommodation available to it at the time. Due to the emergency nature of temporary accommodation placements living rooms and dining rooms may need to be calculated as bedrooms.
- 6.5 Where households are placed in accommodation that is smaller than their bedroom needs, support and practical assistance may be provided. Households will not be placed into accommodation of such a size that would result in statutory overcrowding. However, the Council will take into account the general housing circumstances prevailing in the district when sourcing accommodation.
- 6.6 Physical Condition of the Property - The Council will ensure that all of its temporary accommodation complies with relevant housing quality standards including health and safety, hygiene and fire legislation and regulations.
- 6.7 Change in circumstances - Any change of circumstances that affects an applicant's needs in relation to temporary accommodation will be considered on a case-by-case basis. An assessment of what is reasonable with regard to the above guidance will be made. Changes in circumstances that in the view of the Council make the temporary accommodation unsuitable will be given priority for a move to alternative temporary accommodation

7 Offers and Refusals

- 7.1 An applicant will receive one reasonable offer of TA. The Council considers a reasonable offer of accommodation to be accommodation that meets the applicant household's needs, based on the information held in relation to the applicant's homeless application at the time of allocation. All accommodation located within the Borough which is otherwise suitable, affordable and compliant with any risk assessment will constitute as a reasonable offer regardless of its actual location within Sandwell. Applicants will be notified of their rights and timescales to seek a review or appeal any decision made about the suitability of temporary accommodation offered or provided. Applicants will be informed where they obtain assistance to take this action and how to go about requesting a review or appeal.
- 7.2 If an applicant refuses an offer of temporary accommodation any of the following duties may come to an end:
 - a) Section 188 interim accommodation duty.
 - b) Section 190(2) duty to accommodate for reasonable period.
 - c) Section 193(2) main housing duty.

- 7.3 The applicant will be notified in writing of the possible consequences of refusal, and advised of their right to request a review of the suitability of the accommodation. Applicants will be encouraged to accept the offer of temporary accommodation, and request a review of the suitability if they consider it to not be appropriate. On this basis if their review request is unsuccessful they are able to continue to occupy the accommodation.
- 7.4 If the accommodation is refused and upon review the Council is satisfied that the accommodation is suitable the Council will notify the applicant in writing that they are no longer subject the section 193(2) duty. No further offer of temporary accommodation will be made available.

8 Length of stay in temporary accommodation

- 8.1 Where there is an interim duty to accommodate (as described in Housing Act 1996 Part 7 Section 188), applicants will be provided with temporary accommodation until:
- a) The investigation into their homeless application is complete
 - b) The outcome of any review is known
 - c) The household is found to be in breach of their occupation agreement.
Action will be taken against applicant who fraudulently gains temporary accommodation
- 8.2 Where there is a temporary duty to accommodate following a decision of intentional homeless but in priority need (as described in Housing Act 1996 Part 7 Section 190) applicants will be provided with temporary accommodation until a reasonable period of time has elapsed that will allow them to secure their own accommodation (taking account of the local housing conditions e.g. the availability of alternative accommodation and the personal circumstances of the applicant, which may affect their ability to secure accommodation).
- 8.3 Where the 'main duty' to secure accommodation applies (as described in Housing Act 1996 Part 7 Section 193(2)) applicants may be provided with temporary accommodation until:
- a) They cease to be eligible for assistance
 - b) They become homeless intentionally from the accommodation provided or otherwise voluntarily ceases to occupy the accommodation provided as his/her only or principal home
 - c) They accept an offer of accommodation under the Housing Act 1996 Part 6 (allocation of housing accommodation)
 - d) They accept an offer of an assured tenancy
 - e) They accept an offer of suitable private rented sector accommodation (by means to an assured shorthold tenancy which is of a minimum term

of 12 months and includes a break clause should the accommodation deemed to be not suitable).

- f) They refuse a final offer of suitable accommodation under the Housing Act 1996 Part 6 (allocation of housing accommodation) where they have been informed of the possible consequences of refusal and of their right to request a review of the suitability of the accommodation
- g) They refuse an offer of suitable private rented sector accommodation (by means to an assured shorthold tenancy which is of a minimum term of 12 months and includes a break clause should the accommodation deemed to be not suitable) where they have been informed of the possible consequences of refusal and been notified them that they have discharged their duty.

8.4 An applicant's temporary accommodation will also be brought to an end when an applicant sources his or her own private sector accommodation for a 6-month period.

9 Procurement of Temporary Accommodation

9.1 The Council will ensure the provision of Temporary Accommodation in the following ways:

- a) The Council will provide units of accommodation from its own stock
- b) The Council will source units of accommodation from known third sector providers
- c) The Council will source units of accommodation from the private sector mostly by leasing accommodation.

9.2 The Council has developed its own Temporary Accommodation facility at Applewood Grove. In all instances except where a risk assessment advises otherwise, this facility will be the preferred option by the Council for Temporary Accommodation. Where the use of Applewood cannot be facilitated, the Council will endeavor to source accommodation in the first instance from within its own wider stock or latterly from one of its third sector or private sector contracted arrangements.

9.3 Bed & Breakfast accommodation will not be used except in an emergency. Where this does become necessary the Council will endeavor to use one of its approved premises. These Bed & Breakfast premises will be inspected by the Council annually (or more often if required) to ensure that they meet statutory standards.

9.4 It is recognised that in certain circumstances Bed & Breakfast premises that are not on the approved premises list will have to be used. Where an applicant and their household remains within this accommodation for longer than a week the

Council will endeavor to inspect this premise providing that it does not place an undue strain on resources. However, where an applicant who is pregnant and/or dependent children reside, or the applicant is a child aged 16 or 17, the property will be inspected within a week.

- 9.5 The Council will work in accordance with all relevant legislation when procuring temporary accommodation e.g. The Local Government Act 1999, the Council's Procurement Policy, the Housing Act 1996 as amended by the Homeless Act 2002, Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601), Localism Act 2011, Section 1 of the Children's Act 1989, The Local Code of Guidance for Local Authorities 2006, Public Contracts Regulations 2015, and any subsequent guidance, relevant statutes, case law, national and local requirements.
- 9.6 Under the Council's procurement regulations, it is not required to tender for the lease of accommodation, as regulation 10 Public Contracts Regulations 2015 specifically excludes the acquisition or rental of land (including buildings) and rights over land as a service contract. However, with this in mind, officers will continue to monitor and review contracted arrangements for sourcing TA in the private sector to ensure the said arrangements remain cost effective.

10 Monitoring and Review

- 10.1 The Council or any partner acting as the Council's agent in providing temporary accommodation services will keep daily records of what properties or units are available on each day, and assess the best use of vacancies based on the needs of all households requiring accommodation.
- 10.2 A desktop review of this policy will be undertaken as and when required, taking into account patterns of demand for temporary accommodation and the availability of both commissioned and non-commissioned sources of temporary accommodation.
- 10.3 The Director for Housing, in consultation with the Cabinet Member for Homes, is authorised to review and approve subsequent Temporary Accommodation Policy reviews and amendments except where the changes are major or involve amended legislation