

112b) DISCOUNTED ACCOMMODATION: ADDITIONAL NOTES

Last year, Members resolved to let 97 South Undercliff at market rent for up to 12 months to give RTC more time to ensure that its discounted accommodation allocation policy was legally-compliant – particularly in respect of equalities legislation (notably age).

Heringtons passed to RTC initial (gratis) advice from Counsel – namely:

(i) Before commencing work he would like confirmation from SSALC that parish councils do not fall within section 80 of the Housing Act 1985;

(ii) The work is complex and will take a significant amount of time [*Heringtons indicated that the cost of instructing Counsel could be c£2,500*];

(iii) RTC could obtain a copy of a housing authority's eligibility criteria (with its consent) and ask him to modify it.

In respect of (i)

SSALC has confirmed that this is the case – RTC is not a section 80 body. This means that it is not obliged to offer secure tenancies and it is not required to give preference to the housing needs of certain groups – ie former armed forces personnel – regardless of whether or not they have a local connection with the area they wish to be accommodated.

In respect of (ii-iii)

The Clerk has referred to the housing allocation policies of 6 housing authorities (including RDC, Wealden, Eastbourne and Canterbury) in order to draft a 'non-discriminatory' housing allocation policy to support RTC's discounted accommodation scheme.

These policies prioritise on the basis of a range of needs – including: homelessness, threat of homelessness, medical, welfare/social, pregnancy and overcrowding – and 'weight' them. This approach has been ruled out for RTC because it has just the one property available and there is a high probability that the applicant/s with the most points would have high medical/social/welfare needs – and would otherwise qualify for social housing.

The draft Discounted Housing Scheme eligibility criteria focus on local connection (especially), age (legally applicants must be 18+ to hold a tenancy) and finance (household income and savings). Housing associations include these considerations within their allocation policies and so it can safely be presumed that it would be lawful for RTC to do the same.

The household income and savings thresholds reflect RDC's.

The Data Protection section may need to be re-worded once the requirements of the new Data Protection Regulations (May 2018) become clearer.

It is considered that there is no need to seek Counsel's opinion on the Draft policy – and that the cost of doing so could be usefully applied elsewhere.

Loan cost

The PWLB repayments are £7,769pa (£647pcm). Members will recall that Council resolved to part fund the Discounted Accommodation scheme from the precept at the level of £2,000pa. If the initial discounted rent is set at £650pcm, the £2,000pa provision will be available to cover insurance, maintenance and, potentially, a lettings fee and lost rent in the event of a tenancy ending early.

Deposit Grant Reserve

To keep the Discounted Accommodation Scheme simple it is **recommended that this proposal be abandoned – and that the discounted rent be increased from c10% below market rent to c15% below market rent.**

The original proposal was to charge rent at 10% below market rent – and then for RTC to put to one side 10% of the rent received. At the end of the tenancy the outgoing tenants could then apply for a grant from this reserve to put towards their deposit on their next home (rented or purchased).

Harris & Rigby has suggested that this is unnecessary (a rental at 10% below market rent should attract sufficient interest) – and the receipt of a lump sum at the end of a tenancy might create financial difficulties for those households receiving certain benefits.

Heringtons has advised that a reserve linked to a tenancy agreement/discounted accommodation scheme is potentially problematic in terms of actual/perceived entitlement.

Borrowing approval

In August 2016 RTC obtained borrowing approval from DCLG for *the purchase of a 2-bed dwelling to let to a young Rye household at a discounted rent.*

SSALC's CEO, Trevor Leggo considers that, if RTC does not use the term 'young' within its allocation policy - and associated publicity - it should not be necessary to seek a borrowing approval variation because, in any case, 'young' can be subjective nowadays - and the property purchased is available to a 'young household' should a 'young household happen to apply to be considered.

Outstanding

Should the draft Allocation Policy be approved, this will just leave the drafting of a suitable application form.

Note At the time of writing these notes, comments on the draft RTC policy are yet to be received from the Council's nominated letting agent.

RF 6.2.18

RYE TOWN COUNCIL

DRAFT DISCOUNTED ACCOMMODATION ALLOCATION POLICY

This document summarises Rye Town Council's Discounted Housing Scheme and how tenancy agreements are issued.

OVERVIEW

Rye Town Council has one unfurnished, 2(-3)-bedroom property, close to Rye town centre, which is let to qualifying applicants at a discounted rent. The purpose of the scheme is to provide cheaper accommodation to those with a strong local connection to the Parish of Rye in order to help them stay in – or move back to – Rye. Priority will be given to households with the strongest connection with the Parish.

LEGAL CONTEXT

Rye Town Council is a parish council with the power to let residential accommodation. It is not a housing authority or a housing association. When the Town Council lets property it is subject to the same regulations applicable to a private sector landlord – including the Equality Act 2010. The Council has regard also to the Public Sector Equality Duty contained within the Act.

PROPERTY PARTICULARS

97 South Undercliff is an extended 2-bedroom Victorian property with one other room having the potential to be used as an additional bedroom. It is a terraced house within easy walking distance of shops and amenities.

The ground floor consists of a lounge, dining room, kitchen, wet room and utility room. The first floor comprises two bedrooms and bathroom. Above this is attic space.

The rear courtyard garden (which includes a shed) backs on to allotments.

The cooker, central heating and hot water systems are gas-fired. The Council Tax Band is C.

There is no off street parking and on street parking is restricted.

Smoking is not permitted within the dwelling. Pets are considered.

ACCESS

The Town Council will make reasonable adaptations to accommodate tenants' accessibility requirements. A number of adaptations are in place – including a ground floor wet room.

PERIOD OF TENANCY

Successful applicants are offered an initial one-year tenancy (with a six-month break clause). Subject to the applicant/s continuing to meet the 'Eligibility' criteria – and not disqualifying themselves – a maximum of four further (successive) one-year tenancies will be offered.

Rye Town Council does not offer secured tenancies.

RENT

Rye Town Council aims to set the level of the property's discounted rent around 15% lower than the market rent (as determined by the Council's appointed letting agent) at the time applications are invited.

As at February 2018 the market rent for the property has been assessed to be £775 per calendar month and the discounted rent payable has been set at £650 per calendar month.

RIGHT TO BUY

As a parish council, Rye Town Council is not a Right to Buy Landlord and, therefore, it is not possible for tenants to purchase the property at a discount. However, the time spent with the Council as a residential tenant can be taken into account when the former tenant is considering exercising the Right to Buy from a Right to Buy Landlord (such as a local authority) in the future.

ELIGIBILITY

a) Age

Applicants must be at least 18 years of age (the minimum legal age a tenancy may be held).

b) Local Connection

To establish a 'local connection' with the Parish of Rye the applicant – or one of the applicants if it is a joint application – must, as a minimum, meet either of the criteria following:

- Reside currently in the Parish as their only or principal home and have done so continuously for the previous 10 years;
- Reside currently outside the Parish but have lived previously within the Parish for an aggregate of at least 10 years.

Note Examples of evidence of current/past residency include: a selection of old utility bills; school certificates; (dated) letters addressed to the applicant at an address within the Parish; bills or letters sent to this applicant's parents/guardians; tenancy agreements.

c) Financial considerations

Applications will not be considered if any of the following apply:

- The household has an annual gross income of £35,000 or more.
- The household has savings/investments in excess of £24,000 (unless this is the principal source of income).
- The applicant/s own accommodation; have a legal interest in home ownership; or have the financial resources to own accommodation.

Note Examples of evidence of income/savings/investments include:

- Payslips (last 5 weeks if paid weekly; last two months if paid monthly)
- Latest pension statement, student financial support notice or trading accounts
- Latest benefit award letter from Jobcentre Plus or the Pension Service, or tax credit award letter from HM Revenue & Customs
- Bank, building society or Post Office passbooks or statements – showing transactions for the last two months
- Share certificates or dividend statements for stocks, shares or bonds.

DISQUALIFICATION

Applicants shall not qualify for consideration for a tenancy – or, if applicable, a tenancy renewal – if:

- There is evidence that legal or other serious action has been taken against any member of the household due to anti-social behaviour (ASB).
- A member of the household has a property-related arrear owed to a local authority, housing association or private sector landlord – unless six months of regular repayments have been made subsequently.
- They are found to have deliberately given false information, not disclosed full facts, or not disclosed relevant changes to their situation.
- They now exceed the ‘financial considerations’ limits.
- They have failed to comply with their last or current tenancy agreement.

HOW TO APPLY

Rye Town Council does not operate a waiting list. When its discounted accommodation becomes available a lettings agent is appointed to publicise the vacancy and help the Council find qualifying tenants. The Town Council also publicises the vacancy through its web site and social media presence.

a) Viewings

Because there is usually considerable interest in vacancies, individual viewings of the property are arranged in exceptional circumstances only. Instead, no later than one week prior to the closing date, the Town Council will hold at least two open house viewings at the property.

b) Application

When we are inviting applications the application form can be found on our home page at www.ryetowncouncil.gov.uk. Alternatively, the form may be requested by emailing townhall@ryetowncouncil.gov.uk or by collecting one from the Town Hall, Market Street, Rye between 9am and 1pm, Monday-Thursday.

Those who require the form in a different format or need assistance with its completion should contact the Council by emailing townhall@ryetowncouncil.gov.uk or telephoning 01797 223902.

We do not consider applications received after the closing date.

We may need to contact applicant/s if information is missing or unclear.

ASSESSMENT

Applications are evaluated against the ‘eligibility’ criteria. The Discounted Accommodation Assessment Panel* assesses the strength of the applicant/s’ – and their household’s - local connection to the Parish and the financial circumstances of the applicant/s.

*Comprising the Town Clerk (or nominated member of staff), one other member of staff and one Elected Member.

Up to three applications are then shortlisted and the shortlisted applicants are invited to meet with the Panel members.

OFFER

Before a tenancy is offered the Assessment Panel seeks advice from the Town Council's appointed letting agent.

Tenancies are offered subject to satisfactory credit referencing and other relevant checks.

The lettings agent carries out a number of checks on the successful applicant/s – including: verifying identity, confirming that the rent can be afforded, credit checks and obtaining references.

Assuming the outcome of the checks is satisfactory the offer of a tenancy is confirmed and the letting agent is authorised to prepare and issue a tenancy agreement.

LETTINGS TO STAFF, COUNCIL MEMBERS AND THEIR RELATIVES

Council staff and Members and their relatives are treated as any other applicant and must not be seen to be gaining any advantage, disadvantage or any preferential treatment in the course of their application.

Accordingly, the aforementioned persons must declare their interest and have no direct input into any decisions regarding their application.

DATA PROTECTION AND INFORMATION SHARING

Information provided by applicant/s is used by the Council's Discounted Accommodation Assessment Panel* – and any staff who service it – only. However, some information may be shared with the Council's nominated letting agent.

The information provided by applicants is subject to data protection regulations and will be used for the purpose of assessing applications for – and issuing - a tenancy only.

EQUALITY AND DIVERSITY

Rye Town Council is committed to the principle of equal opportunity and accessibility in relation to its discounted housing scheme.

We seek to ensure that all applicants are treated fairly and that no-one receives less favourable treatment on the grounds of age, disability, gender, religion, race, ethnic or national origin, sex, sexual orientation, gender reassignment, pregnancy or other factor that might cause unjustifiable disadvantage.

As far as is reasonable and practical Rye Town Council will endeavour to help anyone who needs assistance in accessing its discounted accommodation scheme.

Scheme effective date: 13 February 2018

52 DISCOUNTED ACCOMMODATION SCHEME

At the Council meeting held on 5 June 2017, following comments made by a letting agent, it was resolved to:

1 Ask Heringtons to advise RTC in respect of:

- (a) The type and duration of the tenancy agreements during the tenants' 'up to 5 years' occupancy.
- (b) Any legal and practical implications that should be considered in relation to the proposed 'Grant Reserve' (putting to one side 10% of the rent paid towards a deposit on a subsequent property).

2 Seek an opinion from a junior barrister in respect of whether the proposed tenancy criteria contravene equalities legislation.

Status of the Town Council (housing)

Heringtons (letter of 19.7.17 - provided) considers that, in relation to housing, RTC (as a parish council) does not fall within Section 80 of the Housing Act 1985 – and so is not obliged to offer secure (as opposed to assured shorthold) tenancies. SSALC has advised previously that RTC is acting as a private landlord and, therefore, its tenants cannot take advantage of Right to Buy.

The Housing Act 1985 consolidates housing legislation and sets out the powers and duties of housing authorities, housing associations, and similar bodies.

Tenancy type and duration

Heringtons' advice appears on page 2 of its letter of 19.7.17.

The lettings agent has reviewed the advice and suggests that RTC offers consecutive 1-year assured shorthold tenancies, each with a 6-month break clause.

RECOMMENDATION That RTC issues discounted/affordable accommodation tenants with a maximum of five consecutive 1-year assured shorthold tenancies, each with a 6-month break clause.

Deposit Grant Reserve

Heringtons' advice appears on 3-4 of its letter of 19.7.17.

The advice has been reviewed by the lettings agent. Her view remains that the proposed Grant Reserve should be abandoned. Her reasons are as follows:

- (i) Given the limited supply of rental property in Rye, there is a likely to be a high demand for a 3-bed property pitched at 90% of market rent. Even it was known that RTC intended to put aside 10% of the rent paid for the prospective tenant's future benefit, the agent considers this would have negligible impact on their decision to express interest in the property.

(ii) Depending on their circumstances, the receipt of a lump sum payment (c£4,000) at the end of their tenancy could affect the tenant's benefits entitlement.

She suggests that RTC should advise prospective tenants that, in addition to helping Rye households remain in the Parish, a (90%) discounted rent is being offered to help the tenant save for a deposit towards their own property (ie the onus would be on the tenant to save for a deposit – not, additionally, RTC on behalf of the tenant).

An alternative would be to abandon the Grant Reserve but to lower the 90% discounted rent proposed. Heringtons has suggested 80% (the legal definition of 'affordable rent') – which would most likely result in a substantial increase in demand – particularly if the Tenancy Eligibility Criteria are made less prescriptive (*see below*).

That said, it would be a logical step because, when the scheme was first considered (before the Grant Reserve had been suggested) it was envisaged that the rent should be 'affordable'.

OPTIONS

(a) Retain the proposed Grant Reserve (but not publicise it) and accept that it might be disadvantageous for an outgoing tenant to receive the whole – or part – of it.

(b) Withdraw the Grant Reserve proposal and set the rent at 90% of market rent.

(c) Withdraw the Grant Reserve proposal and set the rent at 80% of market rent.

(d) Withdraw the Grant Reserve proposal and set the rent at some other percentage of market rent – but no lower than 80%.

Current Tenancy Eligibility Criteria (provided)

Issue: Ensuring that RTC is not at risk of contravening equalities legislation.

Heringtons has received initial advice from Counsel free of charge. An estimate for providing an Opinion is awaited but is expected to be in the region of £2,500.

Counsel's initial comments include:

(i) Before commencing work he would like confirmation from SSALC that parish councils do not fall within section 80 of the Housing Act 1985;

(ii) The work is complex and will take a significant amount of time;

(iii) RTC could obtain a copy of a housing authority's eligibility criteria (with its consent) and ask him to modify it.

(iv) The motivation behind RTC's discounted housing scheme is commendable.

I have attempted to research this issue and a summary of the findings appears below:

Under the Equality Act 2010 it is unlawful to discriminate against anyone because of the 'protected characteristics' following:

- Age [*later addition*]
- being or becoming a transsexual person
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion, belief or lack of religion/belief
- sex
- sexual orientation

These apply:

- at work
- in education
- as a consumer
- when using public services
- when buying or *renting property*
- as a member or guest of a private club or association

Discrimination can be direct or indirect. (Under certain circumstances 'positive discrimination' is lawful.)

RTC is eligible to exercise the General Power of Competence – and this gives it the power to buy and let residential accommodation.

It appears to be lawful for RTC to:

- Issue assured shorthold (rather than secure) tenancies;
- Allow an authorised individual (eg lettings agent) to credit reference check prospective tenants;
- Decide not to let a property to a tenant dependent on benefits;
- Check that a tenant can afford to pay the rent sought;
- Specify that prospective tenants should have a 'local connection' (housing authorities/associations typically award 'points' for a local connection when allocating council/social housing – permitted under the Localism Act)

Income and employment are not protected grounds under anti-discrimination legislation. However, one housing authority's allocations policy that a least one household member should make a 'community contribution' by working at least 24 hours a week was ruled unlawful because it discriminated against those unable to work on the grounds of age/health.

Although RTC is not a Section 80 entity, under the Equalities Act 2010, as a public sector organisation it is subject to the Public Sector Equality Duty.

This came into force in April 2011 and covers age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. It applies in England, Scotland and in Wales. Those subject to the duty must have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity between different groups
- Foster good relations between different groups

Housing authorities are subject to a raft of legislation and regulations – a number of which can be safely disregarded by RTC (eg prioritising those in need with an armed forces connection). These authorities allocate council/social housing on the basis of need (eg medical, overcrowding, homelessness) and 'weight' applications because, unsurprisingly, demand consistently – and substantially – outweighs supply. They have limited scope for positive discrimination.

(With a few exceptions) The Equality Act 2010 states that people must not be discriminated against because:

- They are (or are not) a certain age or in a certain age group.
- Someone thinks they are (or are not) a specific age or age group. ('Discrimination by perception'.)
- They are connected to someone of a specific age or age group. ('Discrimination by association'.)

Age groups can be quite wide (for example, 'people under 50' or 'under 18s'). They can also be quite specific (for example 'people in their mid-40s'). Terms such as 'young person' and 'youthful' or 'elderly' and 'pensioner' can also indicate an age group.

Direct and indirect age discrimination can be lawful if 'objective justification' can be demonstrated. Usually a health or safety consideration is involved.

Discussion

RTC's current Tenancy Eligibility Criteria is clearly discriminatory in relation to the age protected characteristic.

RTC's discounted accommodation scheme was constructed as a way of helping a young Rye household remain in the Parish by providing them with subsidised

accommodation. It was envisaged that the tenants would have (or be about to have) children.

The current Tenancy Eligibility Criteria (and, indeed, the *raison d'être* for the scheme) appear to be open to challenge under the age protected characteristic.

The issue is complex (there are number of statutes not mentioned above that *may* be relevant); however, it does appear as though it will be necessary to amend the draft Criteria, reflect these changes within an Allocation policy and seek a variation to RTC's borrowing approval ('to purchase a 2-bed property to let to a young Rye household at a discounted rent'). This could take some time.

RTC could, immediately, remove the age references within the Tenancy Eligibility Criteria. (Which would result in an even higher level of demand.) However, the question then arises: what factors/circumstances may lawfully be taken into account when assessing those prospective tenants who meet RTC's (lawful) 'core' eligibility requirements?

It is conceivable that RTC could end up letting 97 South Undercliff for a social purpose other than the one originally intended.

Whilst advice on the Tenancy Eligibility Criteria [*and, probably, an Allocation policy*] is obtained from Counsel, both Cllr Potter and the lettings agent have suggested **letting 97 South Undercliff for a year at market rent**. Because the property is unfurnished, a 6-month tenancy would not be an attractive proposition, and so a 1-year tenancy has been proposed. (Even then, the fact that it is unlikely to be renewed may deter some potential tenants.) A proportion of the additional rent gained could be used to partly offset RTC's additional legal costs. The main risk would be the 'market rent tenant' being reluctant to vacate at the end of the tenancy (in favour of a 'discounted/affordable rent tenant').

The alternative is to allow the property to remain unoccupied for a further period of time (possibly 2-3 months) until RTC is in a position to proceed with a discounted let.

RF 25.7.17