

BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

7 OCTOBER 2014

NEW RENT SETTING POLICY 2015

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Summary

This report provides further details of the Government's new rent setting guidance for Social Housing that will be effective from April 2015. It sets out further information about the options open to the Council to increase rents for council tenants in households with taxable income of more than £60,000 per year. This follows Member consideration of the recent guidance at the Business Support Overview and Scrutiny Committee on 26 August 2014 at which further clarity was requested.

The report sets out the potential impact on the income stream of the Housing Revenue Account and proposals for defining bedrooms when these are on the ground floor in houses.

A report will be submitted to Cabinet on 28 October 2014 seeking approval to the council's new rent policy.

1. Budget and Policy Framework

1.1 The Council is required by law to carry out a review of council rents from time to time and to ensure that the Housing Revenue Account does not fall into a deficit position. The rent policy determines the income to the Housing Revenue Account a ring fenced budget which drives the 30 year business plan.

2. Background

2.1 Since 2001, rents for social housing ("social rents") have been set based on a framework set by Government. The framework creates a "formula" rent for each property, which is calculated based on the relative value of the property, relative local income levels, and the size of the property, and landlords are expected to move the actual rent of a property to this formula rent, over time. An aim of this formula-based approach is to ensure that similar rents are paid for similar social rent properties.

- 2.1.1 At the 2010 Spending Review, the Government also introduced “affordable rent”. The Government’s policy is that landlords can let properties at affordable rent (up to 80 percent of local market rent, including services charges) where they have in place an agreement with the Homes and Communities Agency, Greater London Authority (for new housing in London) or the Department (for new housing under the Right to Buy replacement policy) to provide new affordable housing.
- 2.1.2 The Council signed its agreement with the Homes and Communities Agency in terms of its Right to Buy receipts in 2012 which allows Members to set affordable rents.
- 2.1.3 A report to the Business Support Overview and Scrutiny Committee on 26 August 2014 informed Members of the various strands of the new guidance.
- 2.1.4 Members requested further information around the option of increasing rent for households with a taxable income of more than £60,000 was requested.
- 2.1.5 Further consideration has been given to the definition of a “bedroom” and this report provides clarification on this in paragraphs 2.3.6 and 2.3.8.
- 2.1.6 HRA Business Plan

The HRA Business Plan is currently being revised and a final revised version will be in place within a few months once Members approval is obtained to the future rent setting policy from 1 April 2015.

The current plan is based on charging of Social Housing Rents for all households. The current plan is sustainable to maintain existing services and maintain the Decent Homes Standard for the next 30 years at the time it was produced.

The current plan shows a healthy income into the HRA and therefore no change to rent charging structure is currently needed to maintain it.

2.2 The New Rent Setting Policy from April 2015

- 2.2.1 From April 2015 the Government has issued new guidance for social housing providers including local authorities who rent property on social rents.
- 2.2.2 From April the Council is asked to consider the following four key strands of the changes:
- Rental increase for tenants with taxable income over £60,000
 - New framework for rental increases for households with income of less than £60,000
 - Option of charging affordable rent for new builds that the Council provides using the 1-1 replacement monies arising from the 100% right to buy receipts
 - The option of charging affordable rent for existing stock that is let at social housing rent

2.3 Bedroom Size

- 2.3.1 The Government Guidance also sets out the need for bedroom classification. Members received a budget report in February 2012 regarding the rent setting

of some properties in Beatty Avenue and Cornwallis Avenue. In this report the opportunity was taken to clarify the rent setting of properties where there was a room on the ground floor that was being used as a bedroom (commonly known as PODS).

- 2.3.2 Members agreed that properties would be classified in terms of bedroom size in these houses, for rooms above the ground floor only.
- 2.3.3 Officers have undertaken further analysis around the current housing stock and identified that some properties are defined and charged as having bedrooms on the ground floor where these were clearly purpose built as such.
- 2.3.4 The definition of a bedroom is not set out in legislation.
- 2.3.5 The redefining of the property stock in terms of bedrooms needs to be carefully considered in terms of the demand for larger properties, the allocations policy and redefining larger properties to smaller definitions. Any significant changes could see an impact on the allocations priorities and also the income stream to the HRA Business Plan if rental charges were to be changed.
- 2.3.6 Having reviewed the guidance and potential impact, it is proposed that for those properties clearly identified as having a purpose built bedroom on the ground floor of properties with more than one level (ie houses) that the bedrooms on the ground floor be counted as such. These properties are as set out in Appendix A.
- 2.3.7 Where a tenant chooses to use a parlour room on the ground floor (second lounge) as a bedroom it is not proposed to charge this as an extra bedroom.
- 2.3.8 In regards to the properties previously agreed where the “PODs” were identified, there is no proposal to change the rent charging policy for these and that the “PODs” will continue not to be classed as bedrooms.

2.4 Affordable Rent and Households with Taxable Incomes exceeding £60,000

- 2.4.1 The new guidance also sets out new criteria for rent setting for those households where there is a taxable income of £60,000 or more. The Government believes that local authorities should be able to charge those in social housing with high taxable incomes a fairer level of rent to stay in their homes. It allows the Council if it so wishes, the opportunity to charge up to market rent for its Council owned stock where a household falls within this category.
- 2.4.2 The guidance is intended to allow local authorities to make best use of social housing. It aims to give additional income to invest in new housing – helping more people in housing need – and would help ensure sub-market rents are being provided only to those tenants who clearly need them.
- 2.4.3 As a result, the Government does not expect local authorities to adhere to its social rent policy expectations in relation to social tenants with high taxable incomes. It encourages local authorities to implement rent policies for social tenants in these circumstances that reflect the aims outlined above. Where they do so, they expect them to follow some general principles.

- 2.4.4 This criteria will affect joint tenants, or where there are more than two tenants the income will be based on the two highest incomes. This criteria does not include the income of household members. It does however include the income of tenant's spouses, common law partners and civil partnership partners.
- 2.4.5 Officers do not currently have robust financial data about tenant's incomes and therefore the impact on this change currently is unknown. However approximately 70% of existing tenants of Medway Council are in receipt of either full or partial housing benefit which would indicate they do not have a taxable income in excess of £60,000. This means that the immediate potential impact would affect 1000 tenants whose income data is unknown.
- 2.4.6 There is currently no specific statutory power that local authorities could use to require information about household income from existing tenants. This is accepted by the Government in its response to its consultation on rent setting policy. The Government also accepts that new legislation would need to be brought in to change this, and intends to enact this in due course when the parliamentary timetable permits. It anticipates that such legislation will put the onus on tenants to declare their incomes.
- 2.4.7 Government guidance does advise local authorities that it expects discretion whereby a tenant has faced financial hardship since declaring their income above £60,000 based on up to 12 months earlier, maybe as a result of redundancy, and this could result in mid year rent decreases for some tenancies. Given this local authorities will have the discretion to reduce rents for households facing this circumstance and allow rents to revert to Social Housing Rent.
- 2.4.8 The HRA Business Plan that is currently being revised will assume all tenants pay Social Housing Rent so any mid year adjustments from higher rents back to Social Rent will not have an impact on the plan.
- 2.4.9 Tenants are entitled under the Housing Act to a minimum of 28 days notice of a variation to their rent charge. Whilst this will be formally undertaken where a rent is reduced, it is not anticipated that where an immediate reduction in charge is made on the account that a household will complain that they have not had the right period of notice for a rent reduction, as opposed to a rent increase. The 28 days notice period is generally assumed to be for increases at the beginning of each year.
- 2.4.10 Until the proposed legislation requiring tenants to declare their income is introduced, the Council could face serious practical difficulties in seeking to establish the household incomes of existing tenants. These difficulties could outweigh the income likely to be gained from this new approach. One possible approach to obtaining this information from existing tenants would be to serve notice under section 103(1) of the Housing Act 1985 on all Council tenants varying the tenancy agreement to include a term requiring disclosure of income over the £60,000 threshold. This would require statutory consultation with tenants under section 103(2) of the 1985 Act.
- 2.4.11 On balance it is considered better to implement the new guidance for new lettings only in the first instance, pending new legislation. This approach would allow the Council to request financial data from households as properties become vacant and are relet. This is a similar approach as is

currently the arrangement for adjusting rent under the current rent restructuring arrangements where by rents are reset to the rent target levels rather than a cascade approach. It would be possible to include a provision in the Council's standard tenancy agreement on a new letting requiring the tenant, to notify the Council of any increase in household income over the £60,000 threshold, which would mean that failure to do so would be a breach of the tenancy agreement.

2.4.12 The allocations policy currently states that generally applicants cannot join the Housing Register if they have a high level of assets. A high level of assets is considered as more than £50,000 or an income of more than £50,000. It is therefore anticipated that the new rent policy will not impact greatly on new tenants. It is currently anticipated that there are 10 households on the Housing Register, where for exceptional circumstances they have been accepted and their application is live.

2.4.13 There is discretion within the Allocations Policy regarding the above the wording of which was approved by Counsel which states that:

“All prospective new tenants will be required to supply evidence of their financial income and resources. Verification of income and savings may be required prior to applicants being offered accommodation.”

2.4.14 This is considered appropriate to allow flexibility and discretion relating to injured applicants obtaining compensation payments or single one off payment relating to redundancy. In circumstances where tenants subsequently receive such a payment after moving into a property this clause will allow the Council Management to utilise this discretion to waive a move to a higher rent.

2.4.15 The proposal for charging higher rents will therefore ultimately only apply where a household regularly earns a taxable income.

2.4.16 Once the proposed legislation is introduced, the option of rolling this approach out to existing tenants can be reviewed.

2.4.17 When implementing this policy, the Council must consider tenants' human rights, in particular Article 8 of the European Convention on Human Rights (right to respect for a person's home) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions). Human rights are relevant (particularly if a decision is taken to implement the policy in respect of existing tenants rather than only on new lettings) because tenants would face a stark choice between paying a much higher rent or losing their home. In making recommendations to Cabinet about the implementation of the policy, Members will need to consider whether the policy strikes a fair balance between the rights of the individuals adversely affected by it and the legitimate aims of the policy (targeting social housing at those who are most in need and of generating income that can be invested back into social housing so that more people in need can benefit from it).

2.4.18 Whilst rent arrears have been maintained and reduced in the last 18 months a change in framework for charging rent may have a detrimental effect on tenants ability to pay, particularly on working households as affordable or market rent is generally higher than Social Housing rent. This could also be

seen as a disincentive to encouraging households gaining or sustaining employment if they are then faced with a higher rent charge.

2.4.19 Consideration has also been given to member concerns in relation to households who receive a one off compensation payment such as war veterans or redundancy payments. It would be possible to allow where individual circumstances would lead to unfairness in applying this policy.

2.5 Administration of Letting and Rent Setting from April 2015

2.5.1 The Government has implemented a process to allow properties let on affordable rent terms by local authorities to be treated outside of the Rent Rebate Subsidy Limitation scheme, subject to meeting a set of criteria set out in the guidance including a signed letter by the Section 151 Officer.

2.5.2 Administration of letting and rent setting from April 2015

If either existing tenants or potential incoming tenants bidding for properties via the Homechoice scheme may have taxable income above the £60,000 threshold, vacant properties will need to be advertised with two rents – a social rent and a higher rent.

3. Options

	Option	Advantages	Disadvantages
1.	Higher rents for all households with taxable income of more than £60,000 for all tenants	<p>Reflects Government policy</p> <p>Potentially encourages home ownership and releases stock for those on low income</p> <p>Rent for properties would be in line with the private rented sector</p> <p>All tenants treated the same</p> <p>Potentially more income into the HRA Business Plan</p>	<p>HRA Business Plan less stable</p> <p>More administration for Officers</p> <p>Potential legal action from tenants arguing that the Council has no power under current legislation to require this information</p> <p>Properties when vacant to be advertised with 2 rents</p> <p>Increased rental charge could put further pressure on tenants</p> <p>Potentially a disincentive to tenants to sustain employment</p>
2.	Higher rents charged for <u>new tenants only</u> from April 2015 with Taxable Incomes	<p>Easier to administer</p> <p>No impact on existing</p>	<p>Less income to the HRA Business Plan</p>

	of more than £60,000	<p>tenants</p> <p>Allows for further guidance from Government and legislative changes to be made</p> <p>Option available to Members to introduce this for all tenants at a later date</p> <p>Implementation for new tenants would allow Officers to manage process more effectively and trial this approach and assess impact</p>	New tenants disadvantaged over existing tenants
3.	Do nothing – do not implement policy	<p>Everyone treated the same</p> <p>Easier to administer if all rents charged the same</p>	<p>Goes against government guidance</p> <p>Less income to the HRA</p>

4. Risk Management

Risk	Description	Action to avoid or mitigate risk	Risk rating
HRA Business Plan not robust in terms of income	Erratic income levels will mean that the known income stream from households with taxable income of £60,000 will fluctuate	Business plan to be produced assuming all tenants pay social housing rent	DII
Reliant on tenants to declare income	Tenants will not declare their income meaning lower rent levels charged	Annual income survey undertaken	DII
Increased debt and financial pressure on tenants due to increased levels	Arrears increase and wider aspects of financial exclusion arise affecting households well being	Financial debt management workshops supported by Officers and partners held	DII

5. Consultation

- 5.1 A tenant consultation meeting was held on 31 January 2014 around the budget and rent setting for 2014/15. They were advised that at that time the Government had recently closed a consultation exercise around the guidance now referred to in this report.
- 5.2 Prior to this in Summer 2012 members of the Tenant Scrutiny Panel had been advised about the Governments "Pay to Stay" paper that had been issued at the Housing Scrutiny Panel Meeting on 26 July 2012. They were provided with the list of questions set out by the Government around the consultation. Three members provided formal written feedback. Of these the general principle was that they agreed to the rent setting being higher for households earning more than £60,000. There were some issues about rent controls.
- 5.3 A further Tenant Forum was held on 4 August 2014 when final consultation on the policy was undertaken. There were no significant objections to the proposals set out in the Business Support Overview and Scrutiny Report of 26 August 2014.

6. Financial and Legal Implications

- 6.1 The financial implications are contained within the body of this report.
- 6.2 Under Section 76 of the Local Government and Housing Act 1989, the council is required, in advance of the financial year, to formulate proposals which satisfy the requirement that, on certain stated assumptions the Housing Revenue Account for that year does not show a debit balance. The council is obliged to implement those proposals and from time to time to determine whether the proposals satisfy the 'break even' requirement. If not, then the Council shall make such provisions as are reasonably practicable towards securing that the proposals, as revised, shall satisfy the requirement.
- 6.3 Under Section 24 of the Housing Act 1985, the council can make such reasonable charges as it determines for the tenancy or occupation of its houses. The council is obliged, from time to time, to review rents charged and make such changes, as circumstances may require. The Council may increase the rent for its tenants by giving no less than four weeks' notice, pursuant to section 103(4) of the Housing Act 1985.
- 6.4 In recommending the adoption of a new policy for setting rents as proposed in this report, this committee is exercising a public function and must therefore comply with the duties in section 149 Equality Act 2010 to have 'due regard' to the matters set out that section. Accordingly the committee must have due regard to the need to eliminate discrimination, advance equality, and foster good relations between those with a protected characteristic (pregnancy and maternity, age discrimination, disability, gender reassignment, marriage and civil partnerships, race, religion or belief, sex and sexual orientation) and those who do not share it, and this must form an integral part of the decision making process in relation to the rent-setting. A Diversity Impact Assessment for each of the proposed options is set out in Appendix B.
- 6.5 The decision to adopt a new rent-setting policy is a decision for Cabinet.

7. Recommendations

7.1 The committee are asked to recommend to Cabinet

- (a) Where properties are let to new households with a yearly taxable income of £60,000 or more, the rent payable will be based on “affordable” rents from April 2015.
- (b) To agree that from April 2015 bedrooms will only be counted as bedrooms if they are not on the ground floor of a property, with the exception of these properties listed in Appendix A.
- (c) Discretion be applied to those households who receive compensation or a one off redundancy payment which exceed £60,000.

8. Lead Officer Contact

8.1 Marc Blowers, Head of Housing Management, Housing Services, Level 2 Ext 4382 marc.blowers@medway.gov.uk.

Background Papers

Links to previous reports:

<http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=2934&T=10>

<http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=2372&T=10>

<http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=2948&T=10>

Appendix A

Properties with ground floor bedrooms that will continue to be recognised as bedrooms and will be charged appropriately.

House number	Address line 1	No. of bedrooms	Property Type Description
1	FORGE LANE	4	SEMI DETACHED HOUSE
2	FORGE LANE	4	TERRACED HOUSE
3	FORGE LANE	4	TERRACED HOUSE
8	FORGE LANE	4	SEMI DETACHED HOUSE
9	FORGE LANE	4	SEMI DETACHED HOUSE
28	FORGE LANE	4	SEMI DETACHED HOUSE
30	FORGE LANE	4	SEMI DETACHED HOUSE
31	FORGE LANE	4	SEMI DETACHED HOUSE
32	FORGE LANE	4	TERRACED HOUSE
33	FORGE LANE	4	TERRACED HOUSE
34	FORGE LANE	4	SEMI DETACHED HOUSE
35	FORGE LANE	4	SEMI DETACHED HOUSE
36	FORGE LANE	4	TERRACED HOUSE
16	SELSTEAD CLOSE	5	SEMI DETACHED HOUSE

Diversity Impact Assessment

Appendix B

TITLE <i>Name/description of the issue being assessed</i>	Social Rent Policy
DATE <i>Date the DIA is completed</i>	June 2014
LEAD OFFICER <i>Name of person responsible for carrying out the DIA.</i>	Michael Bull

1 Summary description of the proposed change

- *What is the change to policy/service/new project that is being proposed?*
- *How does it compare with the current situation?*

When setting rents local authorities are expected to have regard to guidance issued by Government on rent policy.

The new rent guidance proposes to:

- Allow landlords to let properties at affordable rent (up to 80 percent of the local market rent) that have been built from the income from selling a property. The increased rental income can be used for building more properties. This is optional and will not be pursued for reasons set out in the report.
- Charging affordable rent for households (tenant(s) and partners) with taxable income over £60,000. This is optional and recommended to be pursued because it is designed to make the best use of social housing for those in the greatest need and fits within the flexible tenancy policy of the Council.
- Future rental increases are to be based on the Consumer Price Index plus 1% as oppose to the current rent based on the Retail Price Index plus 0.5% and an additional maximum 2%. For properties that have not been converted to formula rent, (69 are not formula rent) the rent can be moved up when the property becomes void. A consequence of this change in policy is that we do not intend to extend the flexibility to increase rents by up to an additional £2 above the increase in formula rent, where the rent is below (for 69 properties) the rent flexibility level or rent cap, beyond 2014-15. The purpose is to help to control the housing benefit bill, a key priority for Government.

2 Summary of evidence used to support this assessment

- *E.g: Feedback from consultation, performance information, service user records etc.*
- *E.g: Comparison of service user profile with Medway Community Profile*

The new rent setting framework (raising rents by CPI as opposed to RPI) will now match the annual uprating of the majority of Welfare Benefits including Housing Benefit. Unless there is a change in the circumstances of a tenant they should continue to receive a similar level of entitlement to Housing Benefit as they have previously. Currently 70.4% of HRA tenants are in receipt of Housing Benefit, of which approximately half receiving full Housing Benefit and approximately half receiving partial Housing Benefit.

Due to the benefit cap (restricting benefit payments for a family to £500 per week), it is unlikely that any of these households will be impacted if Medway Council charged

affordable rents.

29.22% of our tenants pay their rent without a contribution from housing benefit. The new rent setting framework (based on CPI not RPI) will limit the increase in rent. These tenants age and disability is detailed below based on information available:

Age

20-29: 79
30-39: 124
40-49: 188
50-59: 155
60-69: 104
70-79: 67
80-89: 58
90-99: 7

Disability: 109

In the context of detailed information concerning the amount of existing tenants income, the definitive impact of charging “affordable rent” is unknown as Officers have not had the need to collate this information previously.

Despite this, researchers at the Department of Communities and Local Government (DCLG) estimated that those households within the income threshold of £60,000 are between 11,000 – 21,000.

According to the last Census data, below are the median earnings in wards where there are Medway Council properties (Source: CACI 2012):

Gillingham North £27,100
Gillingham South £28,100
Rainham Central £36,800
Rainham North £31,900
Rainham South £35,100
Twydall £27,100
River £30,900
Watling £37,100

These figures are not tenure specific and according to the [Poverty Site](#), half of all people living in social housing are on low incomes compared to one in seven owner-occupiers.

Charging affordable rents for better off tenants is unlikely to significantly affect any new tenants. This is because Medway Council’s Allocations Policy states that applicants to the housing register will be excluded if their income is above £50,000. As a result there are potentially 10 applicants on the housing register with assets over this threshold (9 in Band C, 1 in Band B).

Were the Council to choose to charge affordable rent for its new build properties and not its existing stock, if a household transferred to a new build property the household may be charged more rent despite downsizing. This could deter tenants from moving. However, considering that it is likely that the majority of applicants downsizing wish to move due to the under occupation size criteria, housing benefit will still cover the costs of the rent entirely as the affordable rental charge will still be below market rent (within the LHA rate). It is not currently recommended that the Council charge affordable rent on its new builds.

The Government Guidance also sets out the need for bedroom classification. Members previously agreed that only bedrooms above the ground floor will be considered as a bedroom.

3 What is the likely impact of the proposed change?

Is it likely to:

- *Adversely impact on one or more of the protected characteristic groups?*
- *Advance equality of opportunity for one or more of the protected characteristic groups?*
- *Foster good relations between people who share a protected characteristic and those who don't?*

(insert ✓ in one or more boxes)

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age			
Disability			
Gender reassignment			
Marriage/civil partnership			
Pregnancy/maternity			
Race			
Religion/belief			
Sex			
Sexual orientation			
Other (e.g. low income groups)	X		

4 Summary of the likely impacts

- *Who will be affected?*
- *How will they be affected?*

Officers' recommendations are not to implement the policy of charging affordable rents. Officers do recommend pursuing affordable rents whereby a tenant and their partner have a taxable income that exceeds £60,000.

In terms of the classification of bedrooms as only being on the first floor this is likely to be limited as traditionally this has been the policy of the Council, except in the circumstances of the "PODS" which has now been rectified.

A full audit of the properties will be undertaken prior to next year's proposed rent increases. There are known to be some properties at Forge Lane where bedrooms on the ground floor are charged as the properties being 4 bed. These will change from a 4 to a 3 bedroom property.

5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?

- *Are there alternative providers?*
- *What alternative ways can the Council provide the service?*
- *Can demand for services be managed differently?*

The guidance does advise Local Authorities that it expects the use of discretion when a tenant has faced financial hardship since declaring their income above £60,000 based on up to 12 months earlier, which could result in mid year rent decreases for some tenancies.

6 Action plan

- *Actions to mitigate adverse impact, improve equality of opportunity or foster good relations and/or obtain new evidence*

Action	Lead	Deadline or review date
If rents are increased due to earnings, the council will monitor and review the households affected – ensuring support is offered as a result of financial pressures	Income Manager	Ongoing

7 Recommendation

The recommendation by the lead officer should be stated below. This may be:

- *to proceed with the change implementing action plan if appropriate*
- *consider alternatives*
- *gather further evidence*

If the recommendation is to proceed with the change and there are no actions that can be taken to mitigate likely adverse impact, it is important to state why.

Proceed to Cabinet for decision

Undertake a review of property stock to ensure all properties are charged rent appropriately, given the proposed change in terms of bedrooms.

Undertake publicity campaign in terms of the new rent charging for households with incomes over £60,000

8 Authorisation

The authorising officer is consenting that:

- *the recommendation can be implemented*
- *sufficient evidence has been obtained and appropriate mitigation is planned*
- *the Action Plan will be incorporated into service plan and monitored*

Assistant Director

Date

12 August 2014