



COUNCIL – 19TH NOVEMBER 2013

SUBJECT: NOTICE OF MOTION – ‘BEDROOM TAX’

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 For Members to determine whether or not they support the Notice of Motion submitted by Councillors: C. Mann, J.A. Pritchard, K. Lloyd, L. Ackerman, P.J. Bevan, C. Elsbury, J. Taylor and A. Angel. The Notice of Motion was first considered by Policy & Resources Scrutiny Committee on 24th July, 2013 and is set out in full in section 2 of this report.
- 1.2 To provide Members with further information as requested by Council on the 8th October 2013, in relation to proposals that were agreed by the Caerphilly Homes Task Group and supported with additional proposals by the Policy & Resources Scrutiny Committee held on the 1st October, 2013, to mitigate against the introduction of the under-occupancy rules following Welfare Reform.
- 1.3 To seek Members' approval for progressing these proposals and agree that further detailed reports be submitted to the Caerphilly Homes Task Group on their implementation.

2. SUMMARY

- 2.1 The Welfare Reform Act introduced the under-occupancy rules from the 1st April 2013. Members have attended seminars previously and were provided with details on the under-occupancy rules, including the anticipated impact on our tenants and the support provided by the Council to mitigate against the impact.
- 2.2 The Notice of Motion asked that Council agree:-
 - (a) “that where the appropriate officers are satisfied that tenants who are subject to the under-occupancy charge have done all they reasonably could to avoid falling into arrears, then all legitimate means to collect rent arrears should be utilised except eviction and the use of bailiffs”.
 - (b) “to establish a joint working group that will include elected members, officers from Housing and Revenues and Benefits, Registered Social Landlords and tenants representatives. The role of the working group shall be to monitor the implementation and impact of various benefits changes and to contribute to consideration of further measures to support tenants, including examples as mentioned below”.
 - (c) “to support calls by local campaign groups to scrap the bedroom tax”.
 - (d) “to support appeals – extend the deadlines for appeals and give clear information on how to appeal”.
 - (e) “not to prevent tenants moving to smaller properties because of bedroom tax arrears”.

- (f) “not to force people to move from homes and out of communities where they have lived for many years”.
- (g) “to increase provision of smaller units of housing, especially in areas most affected by the bedroom tax, by reclassifying properties or other means”.

- 2.3 Prior to being submitted to full Council, the Notice of Motion was considered by the Policy & Resources Scrutiny Committee and this resulted in a request for the Caerphilly Homes Task Group to consider the financial, legal and equality issues in relation to proposals within the Notice of Motion to introduce a no eviction policy and re-classification of properties where tenants were affected by the under-occupancy rules.
- 2.4 The Caerphilly Homes Task Group concluded that a no eviction policy for those affected by the under-occupancy rules would be illegal and would leave the Council open to challenge in respect of equalities legislation – see Appendix 1. The Task Group did however agree the limited re-classification of some properties in certain circumstances and also made a number of other proposals to assist those tenants affected. The findings of the Caerphilly Homes Task Group were supported by the Policy & Resources Scrutiny Committee, although two proposals were amended.
- 2.5 This report lists the individual proposals that were agreed by the Caerphilly Homes Task Group and amended by the Policy & Resources Scrutiny Committee and provides further details, whilst specifically considering the financial, legal and equality issues where these apply.

3. LINKS TO STRATEGY

- 3.1 **National Housing Strategy:** The Welsh Government’s National Housing Strategy ‘Better Homes for People in Wales’ (2001) has key themes of quality and choice. The WG vision for housing “wants everyone in Wales to have the opportunity to live in good quality, affordable housing”.
- 3.2 **Community Strategy:** Living Environment Objective A: “Encourage the development and maintenance of high quality, well-designed and efficient, sustainable homes and residential environments that can meet all needs” which promotes the vision of good quality housing.
- 3.3 **Local Housing Strategy 2008-2013:** Property Theme: “Providing the opportunity for everyone to live in affordable, sustainable, good quality housing, regardless of tenure”. And links specifically to Strategic Aim 6: Housing Management, “To provide good quality, well-managed homes in communities where people want to live, and offer people housing choices which meets their needs and aspirations”.

4. THE REPORT

- 4.1 When the Notice of Motion was considered by the Policy & Resources Scrutiny Committee in July 2013, whilst there was unanimous support for the principles behind the Motion, the Scrutiny Committee did not support the Motion as drafted. The Policy & Resources Committee requested that the matter be considered further by the Caerphilly Homes Task Group. The Task Group met on the 28th August, 2013, and their deliberations were reported to Policy & Resources Committee on 1st October. The reports which are referred to in the background papers, detail the reasons why Members of the Policy & Resources Scrutiny Committee did not support the Motion as submitted.
- 4.2 At the meeting of full Council held on the 8th October 2013, Members requested a report from officers to provide further information on the proposals that were agreed at the Policy & Resources Scrutiny Committee meeting held on the 1st October 2013, following consideration of the Notice of Motion. Members did not determine whether or not they wish to support the Notice of Motion, this was deferred to be considered as a part of the further report that was requested on the 8th October, 2013.

- 4.3 This report focuses on those proposals and also considers the financial, legal and equality issues where these apply.
- 4.4 Waive Limited Breaches of Tenancy to Assist with Transfers, for example, Certain Levels of Arrears and Property Condition**
- 4.4.1 In response to the Welfare Reform Act, changes to the Allocations Scheme were reported to Caerphilly Homes Task Group in February 2013. The Scheme was amended to allow management discretion to overlook deduction of penalty points on grounds of tenancy breaches. This includes rent arrears and property conditions and would support transfers and mutual exchanges to enable tenants to move to more suitable accommodation.
- 4.5 Award Tenants affected by the under-occupancy rules additional points to assist their transfer to more suitable accommodation.**
- 4.5.1 As referred to in paragraph 4.3 the Allocations Scheme was also amended to allow additional points to be awarded where tenants are under occupying.
- 4.5.2 The Allocations Scheme change noted above in points 4.4 and 4.5 have resulted in 16 tenants affected by the size criteria rules being assisted to exchange properties. These exchanges would not have been facilitated if the Scheme had not been amended. The number of transfers has also increased from 80 to 100 compared with the same period last year (April to September)
- 4.5.3 Funding has also recently been identified through the government's transitional budget which can be used to develop a scheme to assist tenants in financial hardship with removal costs. It is anticipated that the financial assessment will be linked to the Discretionary Housing Payment scheme to determine eligibility for this funding.
- 4.5.4 A consequence of the increase in transfers is that there is a detrimental financial impact on our rental loss and repairs budget. The position is monitored regularly and is currently within the estimates set for this financial year. There are no legal or equality issues associated with proposals 4.4 or 4.5.
- 4.6 Pursue opportunities to increase the use of the private sector for suitable alternative properties.**
- 4.6.1 Welsh Government are actively encouraging local authorities to develop better partnerships with the private rented sector (PRS), a housing sector which has now become numerically equivalent to social housing across Wales.
- 4.6.2 Over the past six weeks the Council Housing Advice Centre has been holding Housing Pathways interviews four days per week across the County Borough. During this relatively short period 25 PRS tenancies were obtained by providing financial assistance with bond payments and/or the payment of agency fees or rent in advance. Notwithstanding this positive progress, this type of financial support comes at a cost to the authority at a time when future funding for such initiatives cannot be guaranteed.
- 4.6.3 There are no legal or equality issues associated with this proposal.
- 4.7 Continue to provide practical/financial support to those tenants who wish to downsize for example signposting, debt and financial management advice, assist with applications for DHP, energy advice, referral to voluntary sector for assistance, assistance to move home, fast-track referral to Job Centre Plus.**
- 4.7.1 Funding has been provided for five additional support staff at a cost of £150k. Also two temporary clerical support staff have also been appointed through the Council Passport Scheme and funded by Jobs Growth Wales. There is no legal obligation to offer this additional support to tenants, but with the additional financial hardship tenants are faced with, the support can be justified in order to maintain their tenancies.

4.7.2 Key outcomes of the tenancy support visits so far are:-

- Face-to-face support interviews provided to 1300 Council tenants
- Promotion of Welsh Water Assist during the visits resulted in £90,000 reduction in water bills for tenants affected by under-occupation (overall the saving generated for all tenants in 2012/2013 equates to £200k).
- 120 referrals to CAB for money and debt advice. Appointments held in local offices with a very high attendance rate.
- 110 referrals for fast-track employment support to Job Centre Plus
- 203 applications for water meters (average of £100 savings per annum)
- 495 tenants received specialist energy saving advice
- 583 tenants were assisted in completing a Discretionary Housing Payment application (DHP). The success rate of these applications is 88%.

4.7.3 In addition to the above, the Tenant Support Officers also identify those households with other support needs and provide a valuable role by referring those to specialist support, e.g. Family First, Team Around the Family, Supporting People, etc.

4.8 Increase the provision of 1 and 2 bed properties on future new developments in conjunction with RSL partners

4.8.1 The Council's Housing Service works in partnership with Housing Association partners to deliver affordable housing through funds such as the Social Housing Grant programme. All schemes within the programme have been reviewed and changes have been made to incorporate smaller homes into the developments.

4.8.2 In August 2013, Welsh Government announced an additional £20 million pounds of Social Housing Grant funding in an attempt to assist local authorities in mitigating the effects of the UK Government's welfare benefit changes. This fund will be used to build 357 smaller affordable homes across Wales. Caerphilly successfully secured £1,583,095 and this will support the delivery of 28 new build one and two bedroom homes with both the Seren Group and United Welsh Housing Association.

4.8.3 There are no financial implications for the authority as part of this funding stream as the grants are claimed by housing associations and paid by Welsh Government. One of the grant conditions places a requirement on our housing association partners to allocate the new homes to households that have been and are impacted by the social rented size criteria (Bedroom Tax). The Housing Service is currently working with our partners in the mechanisms for the allocation of these homes, but no legal or equality issues are anticipated.

4.9 In limited circumstances convert vacant properties into smaller units of accommodation where appropriate to do so for example houses into flats

4.9.1 A pair of properties in Gilfach and Penyrheol are currently being considered for conversion to one-bedroom flats. Conversions will be managed in accordance with budget provision available, all potential projects will be reported to the Caerphilly Homes Task Group. The anticipated cost of conversion of these properties is £300k which can be funded within existing budgets and will provide eight one-bedroom flats in place of four three-bedroom houses. No legal or equality issues are associated with this proposal.

4.10 Introduce support for tenants who are in arrears to attend money management workshops/one-to-one sessions

4.10.1 Many tenants in rent arrears have complex personal and financial difficulties. These problems can appear to be intractable, and tenants can simply feel overwhelmed and avoid taking action to resolve the situation. In such cases, instigating legal action is unlikely to solve the underlying problems. The Housing Service is working in partnership with the Caerphilly

County Citizens Advice Bureau for the provision of debt and money advice to tenants. Surgeries are held at various locations within the County Borough. The Council's rent service staff maintain the appointment lists and offer appointments to tenants who are experiencing difficulties in maintaining their tenancies. It is therefore considered that this recommendation can be incorporated into the financial support already being provided under 4.7 of this report.

4.10.2 Officers will need to liaise with our Citizens Advice partner to establish if there will be any increase in costs, as it is likely that the number of appointments will also increase. There are however no legal or equality issues associated with this proposal.

4.11 Consider reclassifying some properties where appropriate and review rooms which are classified as bedrooms but are unable to accommodate the size of a standard single bed or are used to store large pieces of medical equipment (such as lifting hoists etc)".

4.11.1 Advice received from the DWP which has been issued to all local authorities and Housing Associations, states that "when applying the size criteria and determining whether or not a property is under-occupied, the only consideration should be the composition of the household and the number of bedrooms as designated by the landlord, but not by measuring rooms.

4.11.2 In determining whether or not a room is a bedroom, the landlord may consider a number of factors, but one of these must be whether or not a room is large enough to accommodate at least a single bed. Where this is not the case, the landlord should re-assess whether or not that room should be classified as a bedroom and ensure that the rent correctly reflects the size of the property. If a bedroom is regarded as too small to accommodate a standard single bed, re-classification and a reduction in rent would be considered. This rule would have to be applied to all properties of the same type and not only to those tenants affected by the bedroom tax.

4.11.3 Where rooms are designated as bedrooms landlords should classify it as such notwithstanding that the tenant may argue that it has been habitually used for something else (such as storage).

4.11.4 Lord Freud's letter, received by the Council in June (Appendix 2), stresses how seriously re-designation in this instance will be viewed and points out the consequences if this information is ignored. Advice received from the Council's Benefits Manager states they will not be able to re-assess Housing Benefit claims due to re-designation of properties if one of the bedrooms is used for medical storage. The only eligible instance would be where there is evidence that a room cannot be classified as a bedroom such as it is too small. The rent would have to be reduced to reflect this. Re-classification could be applied to physical changes which impact on the bedroom and would include an approved conversion or a disabled passenger lift.

4.11.5 A number of appeals have been successful in relation to the housing benefit size criteria (bedroom tax) however appeals do not amend the regulations. Each appeal is considered on its own merits and a successful appeal does not amend the regulations and does not necessarily set a precedent for any further appeals. A number of these appeals are also being challenged by the DWP. (Appendix 3)

4.11.6 The Council Benefits department administers housing benefits on behalf of the DWP and must comply with regulations and guidance from the DWP. Lord Freud has informed local Authorities that:

"where it is found that a local authority has re-designated properties without reasonable grounds and without reducing rents, my Department would consider either restricting or not paying their Housing Benefit subsidy".

4.11.7 Tenants who use rooms for the storage of medical equipment e.g. dialysis machines may be entitled to a Council Tax disabled band reduction. When considering whether a reduction should apply the Council has to decide whether the person with the disability would find it

impossible or extremely difficult to live in the dwelling, or whether their health would suffer, or the disability become severe, if the extra feature were not available in the dwelling. To qualify for a reduction, the extra room need not be specially built, but can be an existing room used specifically for the person with the disability. If a home is eligible, the bill is reduced to that of a property in the valuation band immediately below the current band shown on the valuation list. For example, if a tenant's home is eligible and their home is a band D; their bill will be reduced to that of a band C dwelling.

4.11.8 Re-designation of properties would have financial implications and result in loss of rental income. Whilst undertaking face-to-face visits, our Tenant Support Officers are currently assessing bedrooms to establish if they are capable of accommodating a standard single bed. At this time, the full extent of any re-designation in these circumstances cannot be determined, but such re-classification would also need to be applied to all other similar properties regardless of whether the tenant was affected by under-occupation in order to comply with equalities legislation.

4.11.9 In view of the current DWP rules and the advice provided by Lord Freud, officers would not recommend re-classification of properties where a bedroom is being used for the storage of medical equipment. This would leave the authority open to challenge by the DWP and would also fail to comply with the equalities legislation.

4.12 Develop step-by-step procedures for dealing with arrears so that the processes being followed are open and transparent to all.

4.12.1 A report will be submitted to Caerphilly Homes Task Group showing step-by-step procedures after Council has considered the proposals contained within this report.

4.13 Introduce a Tenancy Review Panel to scrutinise proposed evictions prior to progressing cases to court and make recommendations to the Chief Housing Officer.

4.13.1 Please see attached Appendix 4 showing draft Terms of Reference of the panel.

4.14 Regular updates on the impacts of the Welfare Reform are to be presented to the Caerphilly Homes Task Group and the Policy & Resources Scrutiny meetings

4.14.1 In addition to the above recommendations which were accepted by the Policy & Resources Scrutiny Committee, officers are currently considering a further review of the Allocations Scheme. The existing policy awards five points for each bedroom a property lacks (i.e. over occupation) the proposition is to increase the points awarded which would give the application greater priority. This may assist in releasing smaller properties for under-occupiers to move into and make best use of the Council's housing stock.

4.15 It is further proposed that a seminar will be held for Members in April 2014 to provide a further update on the Welfare Reform Act and the progress made in relation to the recommendations contained within this report.

5. EQUALITIES IMPLICATIONS

5.1 The ongoing High Court appeal from Disability groups around the effects the under-occupancy has on disabled families and their carers is being monitored, as the outcome of the appeal could affect how this Council and others have to deal with certain cases where disability and/or medical equipment is stored in a room that could be classed as an extra bedroom under any under-occupancy review. This could change what was covered in 4.11 above, but until the legal challenge is completed and an outcome known, this report notes the current situation with which the Council must comply.

5.2 The Equality Impact Assessment undertaken on the notice of motion around a No Eviction policy is attached for information.

6. FINANCIAL IMPLICATIONS

- 6.1 Where there are financial implications linked to implementing a number of the recommendations in this report, it is considered that these can currently be managed within existing budgets.

7. PERSONNEL IMPLICATIONS

- 7.1 Additional staff have been appointed to provide support and advice to tenants.

8. CONSULTATIONS

- 8.1 Comments from consultees have been incorporated within this report.

9. RECOMMENDATIONS

- 9.1 Members are asked to consider whether they are prepared to support the Notice of Motion as set out in paragraph 2.2 of this report.
- 9.2 That the following recommendations are approved, and future reports be presented to Caerphilly Homes Task Group on their implementation/progress:
- Waive limited breaches of tenancy to assist with transfers, for example certain levels of arrears and property condition.
 - Award tenants affected by the under-occupancy rules additional points to assist their transfer to more suitable accommodation.
 - Pursue opportunities to increase the use of the private sector for suitable alternative properties.
 - Continue to provide practical/financial support to those tenants who wish to downsize, for example signposting, debt and financial management advice, assist with applications for DHP, energy advice, referral to voluntary sector for assistance, assistance to move home, fast-track referral to Job Centre Plus.
 - Increase the provision of one and two-bed properties on future new developments in conjunction with RSL partners.
 - In limited circumstances, convert vacant properties into smaller units of accommodation where appropriate and to do so, e.g. houses into flats.
 - Introduce support for tenants who are in arrears to attend money management workshops/ one-to-one sessions.
 - Consider re-classifying some properties where appropriate and review rooms, which are classified as bedrooms, but are unable to accommodate the size of a standard single bed.
 - Develop step-by-step procedures for dealing with arrears so that the processes being followed are open and transparent to all.
 - Introduce a Tenancy Review Panel to scrutinise proposed evictions prior to progressing cases to Court and make recommendations to the Chief Housing Officer.
 - Regular updates on the Welfare Reform impacts to be presented to the Caerphilly Homes Task Group and Policy & Resources Scrutiny meetings.

- Award tenants affected by overcrowding, additional points to assist their transfer to more suitable accommodation.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To comply with the Council's Constitution.
- 10.2 To mitigate against the impact of the under-occupancy rules and assist those tenants affected as far as reasonably possible, whilst complying with the regulations and guidance provided by the DWP.

11. STATUTORY POWER

- 11.1 Housing Act 1985. Section 24 of the Act

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Consultees: Stuart Rosser, Interim Chief Executive.
Cllr Gerald Jones, Deputy Leader & Cabinet Member for Housing.
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David Regan, Lead Officer (Benefits & Finance) – WRA.
Dan Perkins, Head of Legal & Democratic Services.
Gail Williams, Monitoring Officer/Principal Solicitor.
David A. Thomas, Senior Policy Officer (Equalities & Welsh Language).
Cllr Colin Mann

Background Papers:

Policy & Resources Scrutiny Committee Report 1st October 2013 – Notice of Motion – 'Bedroom Tax'
Minutes of the Special Caerphilly Homes Task Group Meeting – 28th August 2013
Policy & Resources Scrutiny Committee Report 24th July 2013 – Notice of Motion – 'Bedroom Tax'

Appendices:

Appendix 1 of 4 Equalities Impact Assessment – No Eviction Policy
Appendix 2 of 4 Lord Freud's letter – Re-designation of Properties
Appendix 3 of 4 Housing Benefit – Urgent Bulletin – 23rd September 2013
Appendix 4 of 4 Draft Terms of Reference Tenancy Review Panel