

North Tyneside Council Report to Cabinet 7 April 2014

ITEM 6(i)
Council Properties With
Bedrooms Less Than 50
Sq Ft In Size

Portfolio(s): Housing and Environment

Cabinet Member(s): Councillor JLL
Harrison

**Report from Service
Area:**

Housing

Responsible Officer:

Ian Conway, Head of Housing

(Tel: 0191 643 7501)

Wards affected:

All

PART 1

1.1 Purpose:

The purpose of the report is to seek authority from Cabinet to re-designate 55 homes within the housing stock to ensure the Authority is accurately describing the properties within its ownership. The properties have either:

- a bedroom that is less than 50 square feet in size; or
- had adaptations carried out which prevent a bedroom being used for the purpose it was originally intended.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) authorises the Head of Housing, in consultation with the Cabinet Member for Housing and Environment, to re-designate the properties outlined in this report to accurately describe the number of bedrooms in the property; and
- (2) authorises the Head of Housing, in consultation with the Cabinet Member for Housing and Environment to re-set the rent for the re-designated properties at the current rent or the target rent for a smaller property, whichever is the lowest backdated to the 1st April 2013 when the new housing benefit regulations regarding the removal of the spare room subsidy came into effect.

1.3 Forward Plan:

28 days notice of this report has been given and it first appeared on the Forward Plan that was published on 17 February 2014.

1.4 Council Plan and Policy Framework

This report relates to the following priorities in the 2013 - 2017 Our North Tyneside Plan:

Our Places will:

- Be places that people like living in and will attract others to either visit or live
- Have more quality affordable homes

1.5 Information:

1.5.1 Background

As a result of the removal of the spare room subsidy tenants who are deemed to be under occupying their home are subject to a reduction in housing benefit entitlement.

Prior to the removal of the spare room subsidy the designation of the number of bedrooms within an Authority property had no bearing on the housing benefit entitlement of the tenant; and had a minimal impact upon the level of rent charged through the application of the national rent formula.

Given the impact of the removal of the spare room subsidy upon individual tenants who may be in receipt of housing benefit, and may therefore be subject to a reduction in their housing benefit entitlement, it is important that the Authority ensures that its homes are accurately designated.

Officers have identified two situations which may appropriately give rise to the need for re-designation of homes in the Authority's ownership. These are:

- (1) the accuracy of the original designation of the property in relation to the number of bedrooms; and
- (2) where significant adaptations have been carried out within a property which affect the facilities and bedrooms within it.

1.5.2 Bedrooms

Government guidance in Housing Benefit / Council Tax Benefit Circular A4/2012, in relation to the definition of a bedroom, explains "We will not be defining what we mean by a bedroom in legislation and there is no definition of a minimum bedroom size set out in regulations. It will be up to the landlord to accurately describe the property in line with the actual rent charged."

Part X of the Housing Act 1985 sets out the statutory overcrowding standard. Within this Part, Section 326 provides that when assessing whether or not a household is statutorily overcrowded, using the space standard provided by the Act, rooms of less than 50 square feet should be disregarded. The space standard is only relevant to the assessment of statutory overcrowding.

The Authority is required under Section 332 of the Housing Act 1985 to provide details of statutory designations relating to overcrowding and the permitted number of persons allowed to live within a dwelling based upon the number of bedrooms within it.

In a recent review of the designations made by the Authority pursuant to Section 326 of the 1985 Act, 21 of the Authority's homes have been identified that have a room which has been designated as a bedroom but which is less than 50 sq ft.

Of these 21 properties there are currently only 5 tenancies affected by the removal of the spare room subsidy. The re-designation of these properties, in relation to the number of bedrooms that the properties have to prevent statutory overcrowding, will ensure that those tenants living in these properties who are under-occupying their homes by just one bedroom, will no longer suffer a loss of housing benefit by the withdrawal of the spare room subsidy.

In addition by the re-designation of these properties, it will mean that the rent charged and any future housing benefit claims will be calculated based on the correct information.

Cabinet is therefore asked to grant authority to the Head of Housing, in consultation with the Cabinet Member for Housing and Environment, to approve the re-designation of the 21 properties identified to ensure that the Authority is accurately describing the number of bedrooms in these properties

1.5.3 Properties where bedrooms have been removed due to disabled adaptations

Where internal alterations to a property are carried out as a result of adaptations for a person with a disability which either removes a bedroom, or reduces the size of a bedroom to less than 50 sq ft it is considered that such properties should also be re-designated to ensure the Authority continues to accurately describe the number of bedrooms in compliance with Section 326 of the 1985 Act.

34 Authority properties have been identified where the internal layout of the properties have been changed as a result of significant disabled adaptations and may therefore need to be re-designated. For example, through floor lifts or internal redesign to allow for wheel chair mobility or hoists.

The tenants of 28 of these 34 properties are currently affected by the removal of the spare room subsidy.

However, as the properties are considered to be significantly adapted these tenants are currently in receipt of Discretionary Housing Payments (DHP) to cover the shortfall in housing benefit payments. If the re-designation is agreed then those tenants living in these properties whom are under-occupying their homes by just one bedroom, will no longer suffer a loss of housing benefit and it is therefore likely that the payment of Discretionary Housing Payments would no longer be required.

1.5.4 Rent Calculation

The rent charged for Authority properties is calculated using the rent formula that takes account of a number of elements including the previous rental debit charged, the national average rent, average income both locally and nationally, the relative property value (as at 1999) and the number of bedrooms. This calculation is undertaken for each property and gives a formula or target rent for that property.

At the present time most Authority properties have rent levels which are below the target rent for the property type.

For some property types the target rent for a 2 bedroom property is higher than the current rent for a 3 bedroom property, and similarly some 3 bed target rents are higher than the current rent on a 4 bedroom property.

It is considered appropriate that the Authority should set the rent level for the re-designated properties at the current rent level or the target rent level for a smaller property, whichever is the lowest. Whilst this would have a financial impact for the Authority it would be minimal.

If a property is re-designated in accordance with the provisions of Section 326 of the Housing Act 1985 as set out above, the applicable date of the change is considered most appropriately to be the 1st April 2013. Using the 1st April 2013 would mean the rent would be set to the appropriate level from the time the new regulations for housing benefit came into effect.

1.5 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1: Not to re-designate the properties

This would have no impact on the rent levels charged. The Authority may receive appeals against housing benefit entitlement decisions from tenants on the basis that they are being charged rent for a room that should not be designated as a bedroom.

Option 2: To re-designate the properties and charge the lower of actual or target rent for the revised property for 2013/14.

This would mitigate the implications of the removal of the spare room subsidy from the date of the introduction of this change in the Regulations. This option would benefit the individual tenants and minimise the financial impact upon the Authority and more rents would be at the required target level.

Option 2a: To re-designate the properties and charge the lower of actual or target rent for the revised property for 2013/14 and backdate the change 6 years.

This would mitigate the implications of the removal of the spare room subsidy from the date of the introduction of this change in the Regulations and beyond by a further 5 years to the statute barred date. This option would benefit the individual tenants and would significantly increase the administration and cost to the Authority, it would also require a substantial recalculation of housing benefit for current and former tenants and result in the loss of subsidy and more rents would be at the required target level.

Option 3: To re-designate the properties and charge an adjusted rent based upon the revised property type and the Authority's relative position with regard to restructuring its rents for 2013/14.

This would mitigate the implications of the removal of the spare room subsidy from the date of the introduction of the change in the Regulations. This option would also benefit the individual tenants but would increase the financial impact upon the Authority and the rents charged would not be at the required target level.

Option 3a: To re-designate the properties and charge an adjusted rent based upon the revised property type and the Authority's relative position with regard to restructuring its rents for 2013/14 and backdate the change 6 years.

This would mitigate the implications of the removal of the spare room subsidy from the date of the introduction of the change in the Regulations and beyond by a further 5 years to the statute barred date. This option would benefit the individual tenants but would significantly increase the administration and cost to the Authority, and would require a substantial recalculation of housing benefit for current and former tenants and result in the loss of subsidy and the rents charged would not be at the required target level.

1.6 Reasons for recommended option:

Option 2 is recommended for the following reasons:

1. It will ensure that the Authority is accurately describing the properties within the stock portfolio;
2. It will ensure that tenants incorrectly affected by the removal of the spare room subsidy, and any potential future claimants, will no longer be affected;
3. More rents would be set at the required target rent level; and
4. It will minimise the financial and resource implications for both the Authority and the affected tenants.

1.7 Appendices:

There are no appendices to this report

1.8 Contact officers:

Ian Conway, Head of Housing, tel. (0191) 643 7501
Paul Worth, Housing Operations Manager, North Tyneside Homes, tel. (0191) 643 7554
Ian Rice, Housing Income Manager, North Tyneside Homes, tel. (0191) 643 7729
Alison Campbell, Finance Business Manager, tel. (0191) 643 7038

1.9 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- (1) Welfare Reform Act 2012
http://www.northtyneside.gov.uk/pls/portal/NTC_PSCM.PSCM_Web.download?p_ID=551909
- (2) Letter from Lord Freud regarding re-designation of properties, 20th June 2013
http://www.northtyneside.gov.uk/pls/portal/NTC_PSCM.PSCM_Web.download?p_ID=551910

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

If Cabinet decides not to re-designate the properties this would have no financial impact on the Authority.

If Cabinet agreed to the recommended option 2 which is to re-designate these properties and re-set the rent for 2013-14 to the target rent for the revised property type (or the current rent whichever is lower) then this would represent a total loss of income to the Housing Revenue Account of £392.70 for 2013-14.

If Cabinet agrees to re-designate these properties and subsequently re-set the rent for 2013-14 only to the social rent level this would represent a total loss of income to the Housing Revenue Account of £2,364.36 for 2013-14.

If Cabinet agrees to re-designate these properties and re-set the rent to that which would otherwise have been charged for this property type and backdate this six years then this would represent a total loss of income to the Housing Revenue Account of £10,194.18.

2.2 Legal

There is no legal definition of a bedroom, and no requirement for the Authority to do anything other than to accurately describe the property with regards to the number of bedrooms.

There are ongoing legal challenges across the country with regards to the removal of the Spare Room subsidy, these are being heard predominantly at First Tier Housing Benefit Tribunals where the decisions taken only relate to the specific case and geographical locality. Therefore, these do not set legal precedent but it is expected that these decisions are used as guidance by future appeal tribunal judges and local authorities.

Part X of the 1985 Act sets out the statutory overcrowding standard. Section 326 of the Act provides that, when assessing whether or not a household is statutorily overcrowded using the space standard, rooms of less than 50 square feet should be disregarded. The space standard is only relevant to the assessment of statutory overcrowding.

Under the Limitations Act 1980 the time limits for the recovery of debt arising from a simple contract as in the case of a tenancy agreement is 6 years.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

The following parties have been consulted with regards to the contents of this report:

Head of Housing,
Housing Operations Manager,
Senior Client Manager,
Revenues, Benefits and Customer Services,
Housing Finance Coordinator,
Cabinet Member for Housing and Environment; and
Mayor's Welfare Reform Task Group

2.3.2 External Consultation/Engagement

No external consultation has been undertaken at this stage, although affected tenants have been visited as part of the fact finding exercise. These visits were undertaken to accurately measure and confirm the size of the bedroom in question.

2.4 Human rights

There are no Human Rights implications directly arising from this report.

2.5 Equalities and diversity

There are no Equalities and diversity implications directly arising from this report.

2.6 Risk management

Any associated risks will be considered as part of the investigation of options dependent upon the decisions taken by Cabinet. At this stage it is considered that there are no specific risks that need to be added to the Directorate Risk Register.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

PART 3 - SIGN OFF

- Chief Executive X
- Deputy Chief Executive X
- Head of Service X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Strategic Manager Policy, Partnerships, Performance and Communications X