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London boroughs’ management of the private rented sector

Briefing Paper

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Introduction

The private rented sector (PRS) is a growing and increasingly complex part of the housing market. Problems associated with the sector are familiar and can include poor property quality and management, affordability issues and insecurity of tenure. Welfare Reform – including caps on benefit payments and the freeze on local housing allowance (LHA) rates – has undermined the sustainability of private renting for many low-income households and created problems for local authorities seeking to use the PRS to prevent and alleviate homelessness. All these problems have particular characteristics in London and contexts for dealing with those problems have changed.

This particular report focuses on local authority interventions in the private rented sector, and concludes that each London borough would benefit from:

- developing procedures and activities to extend its ability to manage the private rented sector by
- co-ordinating its wide range of enforcement powers.

This briefing is based on research indicating that London boroughs' officers saw substantial obstacles to the creation of effective strategic approaches. Understanding the obstacles and the nature of their impact is a first stage in addressing possible solutions.

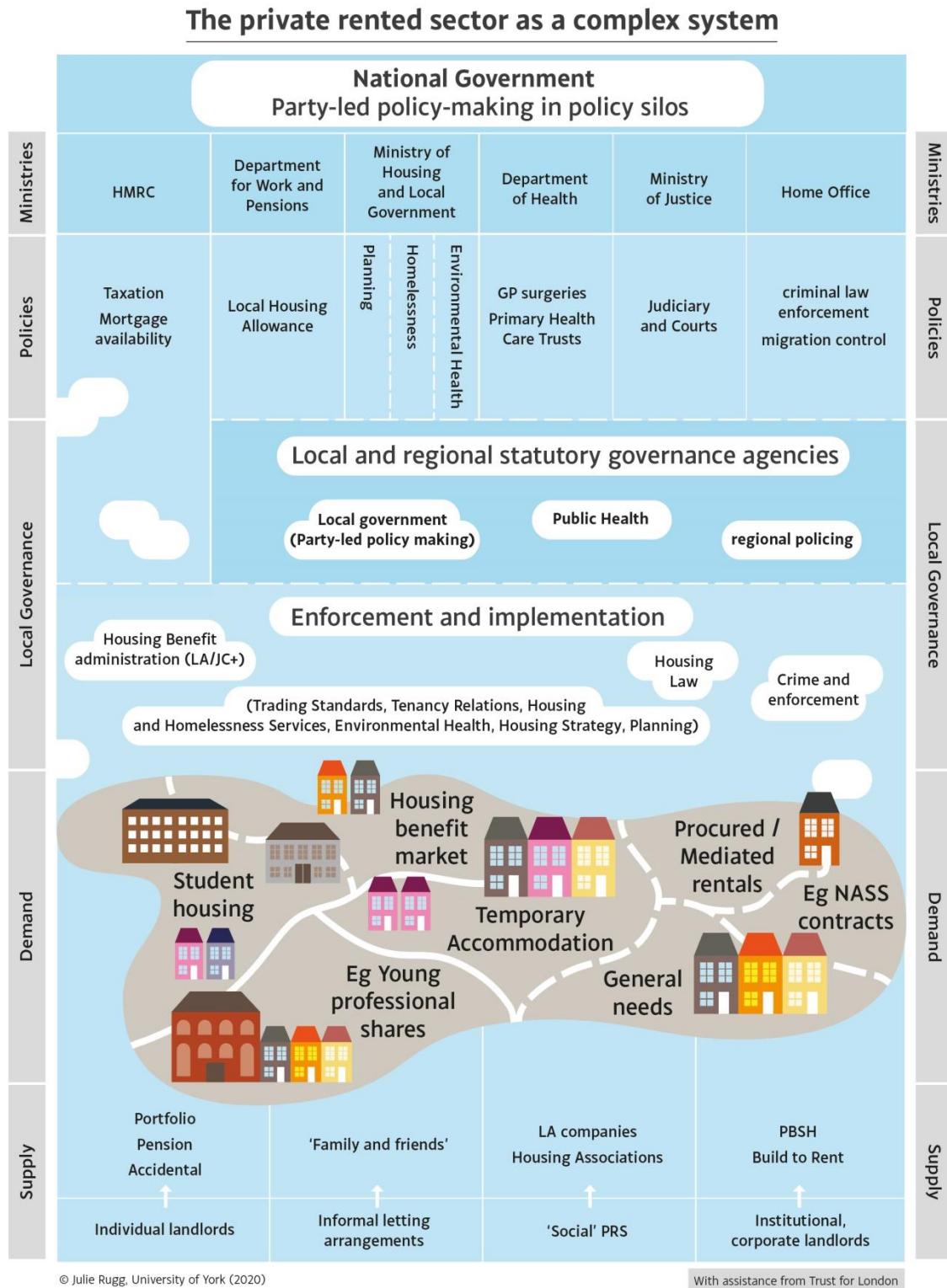
Success is possible. The research also found that some boroughs were able to work towards a more strategic approach. This short report shares learning across boroughs, based on a combination of methods including: desk-based analysis of borough strategy documents and interviews with individual officers; focus groups within boroughs; three large focus groups that each included a range of officers across multiple authorities; and a briefing meeting with a selection of London housing charities. It should be noted that data for this report was collected confidentially, and no individual borough will be named in this briefing paper.

The briefing paper begins with a brief overview of governance of the private rented sector.

Regulation and governance in the private rented sector

It would be difficult to create a physical representation of the PRS as a complex system, since this system would need in some respects to be three-dimensional. Figure 1 represents a simplified diagram focusing on regulation and governance of the sector. The PRS is generally understood as a market: more nuanced readings of the market understand the range in tenant demand and the substantial variation in landlord types. Policy interventions in the market take place at national and local levels, and in both cases tend to be highly siloed: in particular, there are major disconnects between homelessness, enforcement and planning roles. These disconnects can be either exacerbated or ameliorated by effective strategic co-ordination at local authority level.

Figure 1: Complexity in the regulatory framework for the private rented sector



Why take a strategic approach?

There are multiple advantages to taking a strategic approach on proactive management of the PRS:

- Strategies define where resources are best placed to secure effective outcomes and synergies across service delivery;
- Pursuing a strategic approach allows questions to be asked about the importance of particular outcomes, and whether the resources used to achieve those outcomes represent value for money; and
- Strategic approaches ensure that there is focussed effort across borough departments to achieve similar objectives, and expenditure is not counterproductive, wasteful or leads to multiplication of effort.

Problems with the PRS from London boroughs' perspectives

Officers reported experiencing a number of problems with engaging with and managing the PRS.

- Welfare Reform has impacted on tenants' and local authorities' 'purchasing power' in the PRS. A decrease in the number of landlords willing to let to tenants on low income has led to intensive pressure and competition for property at the lower end of the market. Local authorities reported that they were, as a consequence, more likely to tolerate unfit property in order to meet their obligations under the Homelessness Reduction Act.
- The rapidly-changing nature of the rental market, and the variability of the market across London, creates problems for individual boroughs in arriving at successful strategic approaches. London boroughs do not always have access to up-to-date information about the PRS in their area. Available information is often focussed on rent levels and property types. Little information is available on the *patterns* of supply and demand in distinctive sub-markets within the PRS.
- Even where there is effective co-ordination *within* boroughs on a range of interventions, local strategies can be undermined by other London boroughs' actions outside their own boundaries. In particular, across London, temporary accommodation (TA) procurement teams vary considerably in the quality of properties they deem acceptable and there is variation in TA procurement incentives.
- Further, the patchy nature of PRS licensing across London creates pockets of lower-level enforcement. Boroughs that have been slow to enact legislation were finding that the problems in their local PRS were accelerating beyond measure.
- Indeed, there was a sense from many officers that the PRS in London is in many ways out of control. The local authorities that have been slow to take up more active enforcement may well find that enforcement harder to achieve in the longer term because they are already 'on the back foot'.

Obstacles to effective strategic approaches

Officers identified a number of important barriers to taking and sustaining a strategic approach to managing the PRS.

Political will

- Local authority officers are directed by elected councillors, whose decision-making could be swayed by their political ideologies. So, for example, councillors could be focussed on other priorities – for example, on expanding the supply of social housing – and not see the PRS as meriting policy attention. In other cases, councillors might have ideological objections to intervening in the housing market, and regard ‘over-regulation’ as being detrimental to the PRS. In both cases, it could be difficult to secure councillor support for strategizing policy around the rental sector.
- Cuts in local authority funding mean that local authorities are prioritising their statutory duties; strategic housing-market management is not a statutory function.
- Local authorities may choose not to act beyond strictly defined statutory enforcement obligations or to look beyond the minimum required in fulfilment of statutory homelessness prevention functions.
- Without a political and departmental director-level willingness to take a strategic approach, borough officers found it impossible to co-ordinate – for example, information sharing – even when there could be clear gains from this approach.

Intelligence sharing

- Effective enforcement action relies on robust intelligence, both on properties that are being let and on individuals and organisations engaged in letting property.
- Strategic co-ordination of information on properties and on landlords is desirable. Local authorities finding out which properties are let and licensable can be time-consuming and often requires data co-ordination, for example, through use of council tax records. Similarly, information identifying landlords and letting agents is not easy to collect and this hampers investigative activity.
- Intelligence is not always shared effectively between services within a local authority: for example, homelessness staff are not always aware of which houses in multiple occupation (HMOs) have been or should be licenced; and homelessness staff themselves do not always share information on problematic landlords and letting agents with enforcement staff and Trading Standards (TS) teams.

- Boroughs do not readily share intelligence, which means that multiple boroughs might be pursuing costly legal action against the same individual or organisation.
- Concerns about data protection can inhibit the sharing of information on individuals, which indicates that staff have not been briefed adequately about how their actions may or not breach data protection legislation.

Depletion of resources, skills and local knowledge

- A number of PRS-related services have been hit particularly hard by a combination of central government funding cuts to local authorities, and welfare reform measures. This includes cuts in the number of environmental health professionals, particularly at higher and more highly skilled grades. TS teams and planning offices have also been affected: both these teams have wide remits where housing is unlikely to be an immediate priority.
- There has also been a loss of posts that have traditionally provided a 'knowledge/skills exchange' function, at the interstices between services. Examples include:
 - *Tenancy relations officers*: who enforce the requirements of the Protection from Eviction Act 1977 and who have often acted as a conduit between environmental health teams and homelessness officers, and also offer broader legal support around tenancy law; and
 - *Housing Benefit administration including fraud investigators*: replaced by a central government service. These officers have in the past been essential in taking on more complex organised landlord/tenant fraud, benefiting from and contributing to local market intelligence, and awareness of illegal activity such as rent-to-rent scams or fraudulent 'exempt accommodation' where landlords may receive direct payments for housing vulnerable tenants, without delivering the required support.
- Experienced staff are often being replaced by agency staff; across London there is a shortage of officers with environmental health and housing training. Both professions have been depleted over successive years, which means that the availability of education and training resources for those officers has also atrophied.

Retaining momentum

- There are problems where successful initiatives may lapse with changes in appointment at senior levels. Boroughs are not always progressing towards more strategic operation; it is also evident that, in some boroughs, effective practices are breaking down with the loss of pivotal posts/officers.

Legislative confusion

The current legislative framework presents officers with two major sets of problems.

- FIRST, there is inconsistency across, for example, building control, planning and enforcement on issues such as definitions (for example, of 'house in multiple occupation') and property standards. In some instances, boroughs were licensing properties as HMOs, where the property had not yet secured planning permission. Some legislative requirements carried weak enforcement powers, for example, around energy efficiency ratings, or legislation to counter retaliatory eviction.
- SECOND there were issues in the market where the legislation had simply not caught up with the scale of change. This included problems around:
 - office-to-residential development under permitted development rights and the poor nature of planning controls;
 - difficulties in defining illegalities around rent-to-rent schemes;
 - letting agents operating wholly on-line;
 - the blurred boundary between short-term lets, service apartments, and longer rental agreements in terms of tenants' rights;
 - weak tenancy protection under property guardianship arrangements and the physical unsuitability of some guardianship properties to residential use; and
 - 'exempt' properties such as hostels ostensibly supplying support services to vulnerable tenants but where officers lacked the resources to test whether indeed that support was being delivered.
- Some landlords and letting agents clearly exploited the gaps and grey areas between legal enactments. These businesses were well able to afford legal representation to defend the exploitation of loopholes. This increased the cost to boroughs of taking particular cases to court.
- Boroughs did not have immediate access to staff able to engage with new legislative requirements. New legislation could be valuable, but required a different skillsets from officers: for example, a more legalistic approach to evidence gathering to take advantage of civil penalties, or more detailed 'case working' approaches as required by the Homelessness Reduction Act (HRA).

Five steps to a strategic approach

The experiences of London boroughs indicated that it was possible to move towards a more coherent approach to managing the PRS. The remainder of this report outlines five key stages:

1. Define a broad objective for intervention;
2. Understand what is known about the local PRS;
3. Audit local authority interventions in the market across all services;
4. Audit regulatory powers currently in operation and powers that may be under-used; and
5. Assess the strategic shortfall.

1. Define a broad objective for intervention

- Borough statements can almost always justify more effective strategic PRS management *particularly* given the substantial growth of the PRS across London.

For example, a borough strategic commitment to the health and wellbeing of local residents meant that officers could justify its PRS management activity through reference to improvement in broader health and public health outcomes. Similarly, borough statements relating to equality of opportunity also provided a robust foundation for strategic approaches that referred to poverty, homelessness and housing insecurity, which in turn created a sound rationale for access to police and criminal justice resources to deal with more intransigent criminality in the PRS.

- Identifying higher mutual goals and shared objectives between services is a first step in understanding where joint working might be most effective. This understanding then embeds the goals rather more effectively than relying on short-term initiatives or time-limited funding to foster cross-service collaboration.

2. Understand what is known about the local PRS

- Understanding what is known about the PRS is not necessarily the same as undertaking a major audit of the sector. Local authority experience of introducing a licensing regime as defined under the Housing Act 2004 indicates that gathering data to support an application is an onerous and expensive task. Where local authorities have already undertaken this work, implementing a licensing regime can be an effective framework for co-ordinating strategic practice, since it creates the means, resources and a clear objective for on-going intelligence gathering on properties and individuals.
- Where local authorities have not undertaken such an exercise, it is still valuable to understand what data are already available within the local authority without necessarily seeking to collect additional material.
- Information should be collated on properties, landlords *and* local rental markets. Most often, information-gathering is focussed on properties, and occasionally might include reference to landlords and letting agents. Analysis rarely includes market information beyond the collection of rental data.
- Audit should collate everything that is known about the local rental market, including awareness of sub-niche markets and all the known types of provider. This includes scale (how big is the market; what is the relative size of different parts – for example, how big is the housing benefit (HB) market? Is there a student market and how is that need being met? What is the scale of operation of new build to rent suppliers and office-to-residential development, and the applicable rent levels and the current location and type of demand being met by that supply) and *narrative* accounts characterising the market, for example recent growth in letting agents and short-term lettings, and how particular interventions may be impacting on supply.
- AT THE SAME TIME there should be an awareness of ‘who knows what’ within the borough. Which parts of the local authority routinely collect which kinds of

data? How far it might be possible to create robust data linkages for example through use of unique property reference numbers and licence numbers relating to individual landlords. A market intelligence team could collate data that would be valuable across a range of services. Creating protocols for information sharing is an opportunity to develop effective dialogue across service silos.

- Awareness of ‘who is doing what’ extends to the activities of other London boroughs that might be making TA placements in the borough, and the reach and local impact of more substantial interventions, for example, GLA initiatives including Capital Letters, and the Rogue Landlord and Agent Checker.
- This auditing process will indicate what is known but also where there are gaps in information.

3. Audit local authority interventions in the market across all services

- Each borough should audit its services currently in operation that touch on the PRS, including:
 - the mode of intervention and objectives for that intervention;
 - the resources expended on that intervention; and
 - performance indicators.This kind of audit may well indicate where interventions might actively contradict each other, and where more effective co-ordination would be likely to lead to cost savings and improved performance indicators. For example, TA usage could decline with more effective enforcement action against non-compliant landlords who are more likely to resort to illegal eviction.
- Logging the services that are currently involved can indicate which services may well be marginalised or operating in silo. For example, homelessness/housing options and environmental health enforcement teams may be located in different directorates. Does the divide create a gap which means that other services might therefore be less effective?
- The audit might also indicate where there is a skills deficit. For example, there may be a deficit around tenancy relations work on enforcement, homelessness and housing rights. It may be that this post could be filled via enforcement funding or HRA funding or indeed a combination.
- Finally, auditing service intervention should attempt to arrive at an estimate of the overall scale of borough resources applied to governance of the PRS, which in many London boroughs is now a substantial tenure. Auditing promotes a realistic assessment of both the scale of problems in the market and the scale of resource currently being applied to interventions in that market.
- Consideration should be given to non-local authority agencies that should be part of strategic discussions (See Box 1, below). For example, how far is local policing drawn into enforcement work? Are GPs aware of, for example, licensing regimes or homelessness prevention work, and the possible beneficial health

impacts of working with those policies? Does the local authority deliver services in partnership with the third sector?

4. Audit regulatory powers currently in operation and powers that may be under-used

- It is useful for officers to be more clearly aware of the regulatory powers held in services *across* the local authority. This information gives a better overview of where greater powers might sit in terms of statutory authority to intervene on particular issues. For example, landlords who are non-compliant on property quality issues may well be non-compliant in terms of deposit protection, and in this case it may be more appropriate and straightforward for the borough for TS to take the lead in bringing a prosecution.
- Local authorities have powers which have been augmented by the increased involvement of TS in regulating letting agents, the extension of powers under selective licensing programmes and the ability to impose civil penalties. Some local authorities are working to ensure more effective co-ordination of officer resource so that greater powers can be brought to bear: for example, in having TS check tenancy documentation where enforcement action has been taken against a landlord on poor property quality.
- This task of auditing should include assessment of any particular regulatory powers that are currently being under-used, to ensure that there is a strong rationale for limited or non-take up of those powers.
- There is a 'missing link' with regard to housing benefit fraud detection, which has not featured in local authority discussions although it is recognised that Local Housing Allowance (LHA) fraud is an element of criminality in the PRS.
- There is increasing interest in the incidence of active and even organised criminality in the PRS, with police interest for example where enforcement action discloses evidence of trafficking or drug offenses. The Controlling Migration Fund has provided resources for closer partnership working for some boroughs.

5. Assess the strategic shortfall

- The task of auditing means that it becomes possible to evaluate the current management of the PRS, assess whether that management could be more effective and isolate the problems requiring attention. It may be that more effective co-ordination might well be addressed by the creation of an overall strategic objective. If the issue of staff resource/deskilling issues is the primary problem, audit activities can generate information on possible efficiencies/savings/improved outcomes to justify additional expenditure.

Local authorities are not necessarily well placed to commit substantial resources to the task of auditing. At the very least, regular meetings between key staff across the relevant departments is a starting point: these steps can provide a focus for discussion.

The role of the third sector

The third sector is an essential partner in any strategic approach, and three key roles were identified.

- Different types of third sector agency can contribute data and qualitative intelligence to the task of auditing the local PRS, on – for example – the incidence of illegal evictions. Third sector agencies are well acquainted, via their client groups, with the ‘lived experience’ of local authority interventions in the PRS and can often identify where services are not well co-ordinated.
- The third sector generally frames its services to meet needs that are not defined as statutory duties. Local authorities and charitable organisations face substantial resource restrictions, which indicate that a level of co-ordination would benefit both: for example, sharing information on unlicensed HMOs or developing services to support local authorities serving management orders.
- The third sector could play an active role in lobbying for strategic change at the local level by petitioning councillors and cabinet members directly. It is clear that without a ‘top-down’ directed remit for change, local authority officers find it very difficult to frame more strategic responses.

What role for cross-London co-ordination?

- Officers were often positive about cross-London interventions currently in place. Overall, there was general agreement on the value of the London Borough PRS Partnership meetings as a means of disseminating best practice. However, this meeting is focussed on linkages between environmental health professionals and trading standards teams. There is clearly a need for a forum which aims to foster strategic approaches across a wide range of services, in particular concentrating on forging better links between homelessness and enforcement services.
- The London Trading Standards (LTS) Letting Agents Working Group was also valued highly. It was recognised that some initiatives – for example, Capital Letters, the Rogue Landlord and Agent Checker, and inter-borough agreements on temporary accommodation – could be undermined by some boroughs’ lack of contribution or commitment.
- Officers felt that the GLA holding ‘Directors of Service’-level meetings might facilitate a better understanding within and between boroughs of the impact of not co-operating on particular initiatives.
- Overall, it was felt that the Greater London Authority (GLA) could play a more proactive role in supporting enforcement across boroughs. The GLA could create protocols to help local authorities engage with the Metropolitan Police and the Home Office to deal with serious crimes in the PRS, including trafficking and major fraud, which are likely to manifest across borough boundaries and which individual London boroughs are not equipped to investigate.

- Many officers felt that both the GLA and London Councils could be more proactive in collecting and circulating evidence of good practice by boroughs: there was a strong willingness to learn from peers facing similar challenges and constraints.

Box 1: Service intervention/strategic partners

Within the local authority

PLANNING

Understanding demand/supply side characteristics of the PRS; Housing Strategy; Article 4 Directions on property conversion to HMO usage; office to residential conversion/permitted development rights.

ENVIRONMENTAL HEALTH PROFESSIONALS

Eg Housing Act 2004 (including landlord/HMO licensing and tenancy deposit requirements); Housing and Planning Act 2016 (for example, on civil penalties). Applying HHSRS to improve property quality and implementing licensing regimes.

TRADING STANDARDS OFFICERS

Requirements on redress scheme membership, fees display and fees ban; ensuring probity in letting agent activity.

TENANCY RELATIONS OFFICERS

Casework relating to Illegal eviction and other legal tenancy support.

HOUSING OPTIONS/HOMELESSNESS PRACTITIONERS

Prevention work under the Homelessness Reduction Act including tenancy support; procuring property to meet temporary accommodation need; procuring property under Localism Act 2011.

ADULT AND CHILDREN SOCIAL CARE

Working with private landlords providing supported care placements in 'exempt' housing.

PUBLIC HEALTH

Preventing ill health and reducing health inequalities; linkages to housing quality.

Statutory

GPs/HOSPITALS

Signposting individual cases to the local authority where PRS housing property/problematic management may have detrimental health outcomes or people at risk of homelessness under the HRA.

POLICE

Supporting enforcement activity, for example, in problematic HMOs where it is likely that criminal activity is taking place eg trafficking, drug dealing; signposting where people are at risk of homelessness under the HRA.

FIRE AND RESCUE SERVICE

Promoting fire safety; 'safe and well' visits to older or disabled individuals at higher risk, eg in HMOs.

HMRC/TAXATION

Working with the local authority to ensure that landlords and letting agents are paying the correct tax.

Non-statutory

THIRD SECTOR HOUSING ADVICE/HOMELESSNESS

Housing advice and mediation work for complex cases

ACCESS SCHEMES/SOCIAL LETTINGS AGENCIES

Tenancy support, procuring properties for marginal groups who are homeless/at risk of homelessness.