

WELWYN HATFIELD COUNCIL  
CABINET HOUSING PANEL – 26 JUNE 2017

## **REPORT ON THE INTRODUCTION OF NEW STATUTORY ENFORCEMENT POWERS FOR PRIVATE SECTOR HOUSING**

### **1.0 EXECUTIVE SUMMARY**

- 1.1 The Private Sector Housing Team is responsible for enforcing various legislation to ensure property standards and maintaining the mandatory licensing scheme for eligible Houses in Multiple Occupation.
- 1.2 The enforcement powers that are available to the team are predominately under the Housing Act 2004. These include the service of a variety of formal Notices and the instigation of prosecution.
- 1.3 The Housing & Planning Act 2016 introduced a range of measures to enhance the existing powers including;
- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences
  - Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences.
  - Database of rogue landlords and property agents convicted of certain offences.
  - Banning orders to prevent 'Rogue' Landlords and letting agents operating
- 1.4 This report sets out the current enforcement powers and the new powers.
- 1.5 The Government have made it clear that local housing authorities must develop and document their own policy to determine what type of enforcement powers is appropriate and how they determine the level of civil penalty and that they should decide on a case-by-case basis in line with that policy.
- 1.6 The Government have also indicated that they will issue further guidance to assist local authorities in the drafting of their policies and, subject to this and benchmarking with other neighbouring Local Authorities, a draft document will be produced and brought back to members for consideration.

### **2.0 Financial Implication(s)**

- 2.1 This report is for information only but the revenue from civil penalties, and in some cases Rent Repayment orders, are retained by the council.
- 2.2 There is no effective way of predicting the amount of revenue that these measures will generate, but the government have made it clear that any monies recouped are ring fenced for Private Sector Housing Enforcement activity.

### **3.0 Recommendation(s)**

3.1 That the Committee note the content of the report.

3.2 Members note that a further report will be brought back later in the year, setting out the proposals for a policy which will include the use of the new powers and the mechanism for calculating the appropriate level of civil penalty where applicable.

### **4.0 Legal Position**

4.1 The Housing Act 2004 already provides a broad range of duties and powers for local councils to assist them in their enforcement actions including:

- The service of Formal Notices to require improvements to properties to reduce or eliminate risks to the occupiers.
- Licensing of Houses in Multiple Occupation (HMO)
- Regulations prescribing management in HMOs

4.2 There are presently two main sanctions that are available to the council for breaches of the legal standards; the necessary works can be undertaken and the costs incurred by the council recharged and/or the offenders can be prosecuted.

4.3 The Housing and Planning Act 2016 enhances the existing powers and in particular introduces the ability for the council to impose a civil financial penalty and/or apply for rent repayment orders.

4.4 These two powers became available on the 6<sup>th</sup> April 2017, they are not retrospective and do not apply to offences committed before this date. The other additional powers are scheduled to be introduced in October 2017

### **5.0 Background**

5.1 The private rented sector is an important and growing part of our housing market, housing 4.3 million households in England. The percentage of households who are living in privately rented accommodation in the Borough has increased from 6% (2001 census) to over 14% (BRE stock modelling 2015). This is in part due to the social rented housing reducing and increasing house prices/significant reduction in mortgage finance, leading to a reduced owner occupation sector.

5.2 The borough has a significantly higher proportion of HMOs than the national average. The Stock Condition Modelling exercise undertaken by the Building Research Establishment in 2015 found that there were 2341 HMOs, representing 7.0% of the private sector housing stock in Welwyn Hatfield, compared to the national average of 2%.

5.3 At the time of writing there are 336 licensed HMOs and a further 44 applications being processed. This high number is unique within Hertfordshire.

5.4 The Government has stated they want to support the majority of landlords who provide decent well maintained homes, and avoid unnecessary regulation. However there are a small number of criminal landlords who knowingly rent out unsafe and substandard accommodation. The Government has indicated their commitment to

crack down on these landlords and disrupt their business models and has therefore introduced additional and enhanced enforcement powers for local authorities.

- 5.5 The Housing and Planning Act 2016 introduced enhanced powers available to councils, particularly aimed at the control of rogue landlords and in particular the ability for the council to impose a civil financial penalty and/or apply for rent repayment orders
- 5.6 The council will be able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004;
- Failure to comply with an Improvement Notice
  - Offences in relation to licensing of Houses in Multiple Occupation
  - Offences of contravention of an overcrowding notice
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation
- 5.7 The maximum civil penalty that can be imposed is £30,000 per offence. The amount of penalty is to be determined by the local housing authority in each case. In determining an appropriate level of penalty, we must have regard to the Government's guidance. The decision to issue a civil penalty and the amount imposed can be appealed by the landlord to the First Tier Property Tribunal.
- 5.8 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed. A rent repayment order is an order made by the First-Tier Property Tribunal requiring a landlord to repay a specified amount of rent.
- 5.9 Rent repayment orders are being extended to cover the following situations:
- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
  - Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
  - Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
  - Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
  - Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.
- 5.10 The application for a rent repayment order is made to the First Tier Property Tribunal and can be made by the council or the tenants. If the rent was paid by the tenants themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenants with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on a proportional basis. The amount of rent to be repaid is set by the Tribunal and can be up to 12 months of the total amount of rent paid for the property as a whole.

5.12 It should be noted that the only offences for which Civil Penalties and Rent Repayment orders can be used is non-compliance with an Improvement Notice and those in relation to HMO Licensing.

## **6.0 Policy Implication(s)**

6.1 The Government has made it clear that local housing authorities must develop and document their own policy to determine when to prosecute and when to issue a civil penalty and/or apply for rent repayment orders and they should decide which option it wishes to pursue on a case-by-case basis in line with that policy.

6.2 DCLG has issued two generic guidance documents which the council must have regard to. They have indicated that they will issue further guidance to assist Local Authorities in determining the amount of civil penalty that is appropriate.

6.3 The council has a Corporate Enforcement Policy which is currently under review. This is overarching and details the remit and approach to which all council enforcement officers should have regard to. The additional powers will be included in the revised document.

6.4 Each service area has a bespoke Annex of the corporate document which details the specific enforcement powers and policies available to them. Following the publication of further government guidance and bench marking with other local authorities the Private Sector Housing document will be updated to include the protocol for determining when to use the new powers and set penalty levels. A report will then be brought back detailing recommendations for the new policy.

## **7.0 Risk Assessment**

7.1 The risks associated with not delivering these services appropriately would have implications on resident health and safety, reputation and legal challenge. The risks will be quantified on the council's Risk Register.

## **8.0 Equality and Diversity**

8.1 This report is for information only and therefore an Equality Impact Assessment (EIA) is not required.

8.2 There will be an EIA undertaken for the new policy

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Title: Report on the introduction of new statutory enforcement powers for private sector housing

Date: 30<sup>th</sup> May 2017

### **Background papers:**

DCLG - Civil penalties under the Housing and Planning Act 2016  
Guidance for Local Housing Authorities – April 2017

DCLG - Rent repayment orders under the Housing and Planning Act 2016  
Guidance for Local Housing Authorities – April 2017