

WELWYN HATFIELD COUNCIL  
CABINET HOUSING PANEL – 30<sup>TH</sup> OCTOBER 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 the ability for the council to issue Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.
- 1.5 An earlier report of 26<sup>th</sup> June 2017 made members aware that the Government have made it clear that local housing authorities must develop and document their own policy to determine when it is appropriate and how to determine the level of civil penalty and that they should decide on a case-by-case basis in line with that policy. This report advised that a proposed policy for implementation of the new power together with a mechanism for calculating the level of penalty would be brought back to members for consideration and these form an appendix to this report.
- 1.6 The policy and financial penalty matrix have been produced having regard to Government Guidance and subjected to benchmarking with other neighbouring Local Authorities. The documents have been adopted as templates for the Authorities that form the Hertfordshire and Bedfordshire Private Sector Housing Group.
- 1.7 The Civil Penalties are paid to and retained by council

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

- 2.1 There is no effective way of predicting the amount of revenue that these measures will generate. However, the Government have made it clear that any revenue from civil penalties should not only retained by the council, but be ring-fenced for Private Sector Housing enforcement activity.

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

- 3.1 That members endorse the policy and procedure for calculating the level of financial penalty set out at Appendix A and to recommend to Cabinet that this is submitted for consultation with key stakeholders.

3.2 Following consultation, the results of the consultation and the final draft policy document will be submitted to Cabinet for consideration and approval.

#### **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; any required works can be undertaken by the council and the costs incurred 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 up to £30,000 per offence.

4.4 This power became available on the 6<sup>th</sup> April 2017, it is not retrospective and does not apply to offences committed before this date.

4.5 The penalties will be treated as debt and if unpaid the council we seek to recoup in the way it does with unpaid invoices. The Regulations do not allow unpaid penalties to be placed as a legal charge but an alternative would be to apply for a county court judgement.

#### **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 360 licensed HMOs and two applications being processed.

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 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 team have instigated thirteen prosecutions in the last six years and presently have one case pending. These are criminal offences and therefore the burden of proof on us is to demonstrate that the offences were 'committed beyond reasonable doubt' and that the defendant did not have a 'reasonable excuse'. This means that evidence needs to be collected in accordance with the Police and Criminal Evidence Act (PACE) 1984 in a prescribed detailed and methodical manner and therefore such cases are resource intensive. We have been successful in securing convictions in all our cases to date which is testament to our evidence collection and presentation.

5.9 Whilst the new Civil Penalties are an alternative to prosecution we are still required to obtain the same evidential proof and should the subject be minded to appeal we would need to present our case to the tribunal in the same way as a criminal trial.

## **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, our proposed policy and financial penalty calculator contained at Appendix A to this report.

6.2 DCLG has issued a generic guidance document which the council must have regard to – (contained within the background papers)

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 implementation of these additional powers will be in addition to the revised document and be a standalone 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 An initial screening has been undertaken which showed that a full assessment was not required.

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

Date: 20<sup>th</sup> September 2017

### **Background papers**

Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities

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

### **Appendix**

Final Penalty Matrix

Equality Impact Assessment Screening

Civil Penalty Procedure Note