

WELWYN HATFIELD BOROUGH COUNCIL
CABINET HOUSING PANEL – 5 MARCH 2018
REPORT OF THE EXECUTIVE DIRECTOR (HOUSING AND COMMUNITIES)

**ADOPTION OF NEW STATUTORY ENFORCEMENT POWERS FOR PRIVATE
SECTOR HOUSING FOLLOWING CONSULTATION**

1 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 predominantly under the Housing Act 2004. These include the service of a variety of formal Notices and the instigation of prosecution proceedings.
- 1.3 The Housing and 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.
- 1.3 An earlier report of 30th October 2017 made members aware of the council's proposed policy to determine when it is appropriate and how to determine the level of civil penalty.
- 1.4 Members approved the policy and procedure for calculating the level of financial penalty, set out at Appendix A, subject to consultation with key stakeholders.
- 1.5 Members of our Landlord forum and Managing Agent partners were invited to make comment on the Policy and procedure documents; in total this was sent to over 400 recipients.
- 1.6 We received eight responses, the majority of which were against the imposition of the new powers on the basis of being fundamentally opposed to the powers themselves, however there were some minor errors that were brought to our attention which have been amended in the final draft. A summary of the responses are collated in the Appendix to this report. No further responses have been received following the Council responses.

2 Recommendation(s)

- 2.1 That Cabinet Housing Panel members note the responses to the consultation.
- 2.2 That Cabinet Housing panel members recommend to Cabinet that the policy and procedure for calculating the level of financial penalty set out at Appendix A is formally adopted.

3 Explanation

- 3.1 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.
- 3.2 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
- 3.3 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.
- 3.4 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.
- 3.5 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.

Implications

4 Legal Implication(s)

- 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 amends the Housing Act 2004 to enhance the existing the enforcement powers available. In particular, it introduces the ability for the council to impose a civil financial penalty of up to a maximum of £30,000 per offence.
- 4.4 This power became available on the 6th April 2017, it is not retrospective and does not apply to offences committed before this date.
- 4.5 The penalties are recoverable as recoverable as a civil debt and if unpaid the council we seek to recoup in the way it does with unpaid invoices. The legislation does not allow unpaid penalties to be placed as a legal charge but an alternative would be to apply for a county court judgement.
- 4.6 The Council must also always have regard to any guidance given by the Secretary of State about the exercise of its functions under the legislation.
- 4.7 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 is contained in the Appendix to this report.
- 4.8 DCLG has issued a generic guidance document which the council must have regard to – (contained within the background papers)
- 4.9 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.

5 Financial Implication(s)

- 5.1 There is no effective way of predicting the amount of revenue that these measures will generate. However, under the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017, any revenue from civil penalties should not only be retained by the council, but be ring-fenced for Private Sector Housing enforcement activity

6 Risk Management Implications

- 6.1 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

7 Security & Terrorism Implication(s)

- 7.1 None associated with this report

8 Procurement Implication(s)

8.1 None Associated with this report

9 Climate Change Implication(s)

9.1 None associated with this report

10 Link to Corporate Priorities

10.1 The subject of this report is linked is linked to a statutory requirement, under Schedule 9 of the Housing and Planning Act 2016

11 Equality and Diversity

11.1 An initial screening has been undertaken which showed that a full assessment was not required as no negative impact was identified on any of the protected groups under Equalities legislation in connection with the proposals that are set out in this report.

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30th January 2018

Background papers to be listed (if applicable)



Civil_Penalties_guidance.pdf

Appendices to be listed



Financial Penalty
Matrix . Final.xlsx



Civil penalty
procrdure note.docx



summary of
responses from con: