

WELWYN HATFIELD BOROUGH COUNCIL
CABINET HOUSING PANEL 7 MARCH 2022
REPORT OF THE HEAD OF COMMUNITY AND HOUSING STRATEGY

REPORT ON THE ADOPTION OF THE NEW BANNING ORDER POLICY FOR PRIVATE SECTOR LANDLORDS

1 Executive Summary

- 1.1 Part 2, Chapter 2 of the Housing and Planning Act 2016 enabled Local Authorities to pursue the imposition of banning orders through the First-tier Tribunal for a number of specified offences (see Appendix A), the duty to include persons with banning orders on a nationally held database, and the power to include persons convicted of banning order offences on the database.
- 1.2 This report sets out a proposal to introduce a policy about the use of banning orders. The proposed policy explains how the Council will use its powers to ban non-compliant landlords and managing agents from renting out properties within the private rented sector.
- 1.3 The proposed policy is attached at Appendix B.

2 Recommendation(s)

- 2.1 That members recommend to Cabinet that the final policy as set out at Appendix B is adopted. If this is unanimously agreed by the panel, the decision may be taken by the Executive Member under their delegated powers.

Explanation

- 2.2 The Council is committed to improving standards in the private rented sector. Working with landlords to improve their properties through both informal and formal action the recommendations will enable the Council to utilise additional legislative powers in driving up standards within the private rented sector.
- 2.3 These powers were introduced by Government to tackle rogue landlords and managing agents and are designed to benefit the increasing number of households that are living in private rented accommodation.
- 2.4 The Housing and Planning Act 2016 enables local authorities to apply to the First-tier Tribunal (FTT) to impose a banning order on a landlord or managing agent, following conviction for a 'banning order offence' (set out in Appendix A).
- 2.5 A landlord subject to a banning order is prevented from:
 - Letting housing in England
 - Engaging in English letting agency work
 - Engaging in English property management work; or
 - Doing two or more of those things (to ensure that any order is effective and to prohibit engagement in other related activities)

- A landlord subject to a banning order is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order
 - A landlord is prevented from transferring the property to certain persons whilst the banning order is in force.
- 2.6 A banning order must be for a minimum of 12 months but there is no maximum.
- 2.7 The First Tier Tribunal will set the banning period, but the Council is required to recommend a period as part of an application.
- 2.8 This policy gives due regard to the non-statutory guidance issued by the Ministry of Housing, Communities and Local Government, which sets an expectation that banning orders should be aimed at the most serious offenders.
- 2.9 Subject to agreement of the recommendation in this report, the council's Enforcement Policy will be updated accordingly when it is next reviewed.

Implications

3 Legal Implication(s)

- 3.1 Work will be required to develop administrative and legal procedures for applying to the First Tier Tribunal for banning orders.
- 3.2 Upon imposing a banning order, the landlord has the right to apply to the Tribunal to revoke or vary the banning order, to which the Council would need to respond.
- 3.3 The only potential legal implication regarding the inclusion of persons on the database would be if they appealed to the First-tier Tribunal and Legal representation was required, however given the likely frequency of including a person on the database the impact is anticipated to be low.

4 Financial Implication(s)

- 4.1 Application to the First-tier Tribunal has financial impact in terms of the Legal Team's staffing resources, possible fees, and cost orders against the Council, however given the likely frequency of making such an application the impact is anticipated to be low.
- 4.2 Any costs incurred in the application of a successful banning order are recouped from the banned party.

5 Risk Management Implications

The risks related to this proposal are:

- 5.1 The council must comply with its public sector equality duty imposed by s149 Equality Act 2010; namely to have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.2 Banning orders can be applied for if certain specified offences have been committed. The Act advises on the factors to be considered when deciding whether to pursue action under this legislation. The inclusion of persons on the

database is dependent on the offence committed and whether the local authority has the power or duty to include them.

- 5.3 The protected characteristics of the offender or victim is not a factor in deciding whether to act, nor will it affect/impact the outcome.

Likelihood Very Low; Impact Low. Risk Score Low

6 Security and Terrorism Implication(s)

- 6.1 None Noted

7 Procurement Implication(s)

- 7.1 None Noted

8 Climate Change Implication(s)

- 8.1 None noted.

9 Human Resources Implication(s)

- 9.1 The team are already resourced to ensure an effective balance between informal and formal actions. A protocol is in place with Legal Services to ensure resources are utilised efficiently.

10 Health and Wellbeing Implication(s)

- 10.1 Tackling poor and/or unsafe housing conditions in the Private Rented Sector will contribute towards the Councils vision of success health outcomes for the residents of WHBC. Housing is a determinant of health, and in order to ensure that each resident of WHBC has an equal life chance, and a life expectancy to reflect that of the national average the Council needs to utilise all legal and enforcement options available to drive standards up within the Private Rented Sector.

11 Communication and Engagement Implication(s)

- 11.1 The government has provided guidance and guidance provided by the Ministry of Justice that states details of all banning order offences will be published and held on a national register. Also subject to legal advice, the Council will consider publishing details of successful banning orders including the names of individual landlords/any business (managing or lettings agency). The Council will also consider making information on banned landlords available to a tenant where it is in the public interest to do so.
- 11.2 There is currently no legal requirement to formally consult on the introduction of this policy. Subject to the policies being approved we will clearly communicate to the Borough's Landlord and letting agent community that this policy is in place.

12 Link to Corporate Priorities

- 12.1 The subject of this report is linked to the Council's Corporate Priorities 'A sense of Community where people feel safe' and 'quality homes through managed growth specifically to the commitment 'we will provide high quality housing, thriving neighbourhoods and sustainable communities.

12.2 Producing a Banning Order Policy is a target within the Corporate Plan. The report is also linked to a statutory requirement under The Housing and Planning Act 2016 and the Housing Act 2004.

13 Equality and Diversity

13.1 The EqlA identified that there is the potential for positive impacts on all groups, because all groups will benefit from improvements to their domestic property.

Name of author	Jo Smith 07748 181148
Title	Private Sector Housing Manager
Date	9 th February 2022

Appendices to be listed:

- Appendix A: Specified Banning Order Offences
- Appendix B: Draft Banning Order Policy