

## Decision by Portfolio Holder



**Report reference: HSG-003-2018/19**

**Date of report: 05-June-2018**

**Epping Forest  
District Council**

**Portfolio: Housing**

**Author: Sally Devine (Ext 4149) Democratic Services: J Leither**

**Subject: Enforcement and Service Standards: Private Housing**

**Decision:**

**(1) That the Enforcement and Service Standards: Private Housing, attached as Appendix 1 to this report be approved;**

**(2) That the new Financial Penalty Notice Matrix for certain Housing Act 2004 related offences at Appendix A to the above Standards be applied when issuing civil penalties as an alternative to prosecution;**

**(3) That a new fee structure for the licensing of houses in multiple occupation (HMO), attached as Appendix 2 be introduced;**

**(4) That the Council's Fees and Charges Schedule be amended with immediate effect to reflect the use of financial penalties for certain enforcement, changes to the fee structure for HMO licensing and inclusion of charges for works in default; and**

**(5) That the new fees and charges be reviewed annually as part of the corporate Review of Fees and Charges.**

**ADVISORY NOTICE:**

***A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest.  
A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.***

I have read and approve/~~do not approve~~ (delete as appropriate) the above decision:

Comments/further action required:

Signed: Cllr S-A Stavrou

Date: 6<sup>th</sup> June 2018

*Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:*

None

*Dispensation granted by Standards Committee:  
Yes/No or n/a*

N/A

**Office use only:**

Call-in period begins: 7<sup>th</sup> June 2018

Expiry of Call-in period: 13<sup>th</sup> June 2018

**Initialed as original copy by  
Portfolio Holder:**

***After completion, one copy of this pro forma should be returned to Democratic Services IMMEDIATELY***

**Reason for decision:**

Following the enactment of new legislation the Council has the ability for the first time to use financial penalties to deal with certain housing in privately rented properties. These additional enforcement tools, together with a financial penalty matrix for Housing Act related offences, need to be reflected in the Council's Enforcement and Service Standards: Private Housing.

Further to this, new regulations recently extended the scope of mandatory HMO licensing and it is therefore appropriate to review the existing procedure and fee structure for new licence applications and renewals.

As a result of the above changes it will be necessary to update the Council's Fees and Charges Schedule to reflect new enforcement and HMO licence charging provisions. At the same time it is appropriate to include the charges imposed for carrying works in default, previously omitted. These fees and charges will then be reviewed annually.

**Options considered and rejected:**

Not to include the new enforcement powers into the Council's Enforcement and Service Standards: Private Housing – but this would limit officers to the existing enforcement options of prosecution and the provision of a simple caution currently available to them and could expose the Council to the accusation of fettering its discretion.

Not to review the fee structure for HMO licensing – but this would expose the Council to the accusation of applying a fee structure that is not proportionate and unfair to landlords falling within the extended scope of licensing.

**Background Report:**

1. The Council's Housing Strategy 2017-2022 and the Corporate Enforcement Policy (currently under review) set / will set out an overarching strategic approach to the delivery of private sector housing services within the Epping Forest District. The proposed Enforcement and Service Standards: Private Housing attached as an appendix to this report replaces the existing Private Sector Enforcement Policy and explains more specifically the steps that officers will take when responding to private sector housing service requests and the considerations that will be taken when deciding appropriate enforcement action. It also includes new enforcement options available to officers as a result of recently introduced legislation that has extended the scope of powers to the Council for dealing with non-compliant landlords and substandard properties.

2. The Housing and Planning Act 2016 has introduced a range of measures to supplement existing powers designed to crack down on the criminal element in the private rented sector, the so called 'rogue landlords'. New civil penalties have been introduced for certain offences under the Housing Act 2004 and the existing provision to apply for Rent Repayment Orders to recover rent from non-compliant landlords has been extended in scope. In addition, Banning Orders are introduced as an ultimate sanction to prohibit the worst landlords and agents from operating in the rental business at all and a national Rogue Landlord Database, accessed by all local

authorities, will now provide a database of landlords who have committed a banning order offence.

3. The Council can now impose a Civil Penalty of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004. The maximum civil penalty will be issued for only the most serious cases and following MHCLG guidance, a 'civil penalty matrix' has been produced to assist private sector housing officers in determining the most appropriate penalty to impose. This will offer transparency, facilitate a consistent approach and assist in defending any subsequent appeals at Tribunal. The Civil Penalty Matrix has been incorporated as Appendix A of the proposed Council 'Enforcement and Service Standards: Private Housing'.

4. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 prohibits a landlord from letting a sub-standard property (this being a property with an Energy Performance Certificate of F or G rating) for new tenancies started or renewed after 1 April 2018 and for *all* tenancies after 1 April 2020, subject to certain exemptions. The local authority is the enforcing authority and the Council may issue financial penalties for failing to comply with the Regulations, up to a maximum of £5000. The specific enforcement action that may be taken by the Council and the maximum penalties that may be imposed under these new powers are detailed in the Enforcement and Service Standards.

5. Until now, mandatory licensing applied only to the larger shared properties (HMOs) of 3 storeys or more with five or more people. As part of the Government's objective to deal with rogue landlords, mandatory HMO licensing has been extended to include all HMOs of any storey. Landlords of HMOs that are included within the new criteria have until October 2018 to apply for a licence, after which they will be committing an offence for operating without a licence. The exact number of additional properties in the District that will fall within the new scope for HMO licensing is not known and, whilst it is difficult to predict accurately, a desktop review and street survey by officers estimates an additional 30-40 properties.

6. It is appropriate now to review the Council procedures and charges for HMO licensing taking into account the additional number of properties (and therefore officer time involved) and the range of property sizes involved. In determining the fees to be charged a council should cover its costs in administering the licensing scheme without incurring a financial profit. A new fee structure is therefore proposed that takes account of the costs to the Council in administering the scheme and uses a risk based approach towards property standards and management that rewards good landlords with well-run properties and encourages compliance.

7. Agreement is sought for the revised HMO Fees and Charges for 2018-19, attached as Appendix 2 to this report, to be introduced with immediate effect, which will be reviewed annually and will be subject to annual increases as part of the Council's annual Review of Fees and Charges.

8. The carrying out of works in default is included in the existing Enforcement Policy together with an explanation of when such action may be relevant. The Council currently recharges its costs back to the owner but this has not previously been documented in the Fees and Charges Schedule.

Agreement is sought to amend the Council's existing Fees and Charges Schedule to include:

- (i) The costs of undertaking works in default - which will depend on the actual cost of the works, the Council's reasonable expenses and whether the works are being carried out by agreement or not;
- (ii) The revised HMO licence fees for new applications and renewal; and
- (iii) Civil Penalties for certain Housing related offences including financial Penalties for letting sub-standard properties in breach of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

### **Resource Implications:**

9. The new enforcement powers, including the administration of civil penalties, will be carried out by existing staff within the Private Sector Housing Team of the Communities Directorate. The impact on the team depends on the frequency of use of the sanctions, which is currently difficult to predict.

10. Unlike prosecutions where the fines are retained by the Court system, the income received from civil penalties can be retained by the Council, provided it is used to further its statutory functions in relation to enforcement activities in the private rented sector. However, the potential as an income generator by the Council cannot be a justified consideration for the use of civil penalty notices as an alternative to prosecution. It is difficult to predict the likely amount of income the Council will receive annually as this will depend on the frequency in which civil penalties are imposed and the outcomes of appeals against them. Used correctly, it is expected that the effect of the threat of a civil penalty will, in most cases, result in a landlord taking corrective action so that the fine does not need to be imposed and no further officer time is required.

11. The effect of the Rent Repayment Order (RRO), where applicable, will allow the Council to recover from the landlord the amount of rent paid out as Housing Benefit/ Universal Credit up to a maximum 12 month period following the offence being committed.

12. The fees charged for the administration of the HMO licensing scheme are designed to be cost neutral. The initial findings suggest additional 30-40 properties will require licensing in the first year and the licence generally requires renewing every 5 years. Depending on a risk rating for each property this is likely to equate to an income to the Council of approximately £4,860-£6,472 per annum which will be used to resource the additional work (to be carried out by the existing Private Sector Housing Team). Therefore, there will be no additional cost to the Council.

13. It is difficult to predict the potential income from the enforcement of the new Energy Efficiency Regulations. A desktop study is currently being carried out to determine the number and location of 'sub-standard' properties and the Private Sector Housing Team intend engaging with the landlords of these properties to advise and assist in improving energy efficiency within their properties before considering any enforcement action.

### **Legal and Governance Implications:**

14. Producing Enforcement and Service Standards set within the context of an overarching enforcement policy is considered to contribute towards good governance.

15. The new enforcement powers within the Housing and Planning Act 2016 including Part 2: Rogue landlords and property agents in England and Schedules 1-3 and 9 all parts and schedules under the Housing Act 2004 relevant to private sector

housing enforcement have already been added to Annex A of the Private Sector Housing Schedule of Delegations within the Council's Constitution.

#### **Safer, Cleaner and Greener Implications:**

16. One of the main aims of the Council's Private Sector Housing function within the Housing Strategy 2017-2022 is to protect the health and safety of the residents of, and visitors to, private sector residential properties. The additional powers introduced under the Act will allow enforcement to be carried out more swiftly without relying on the Courts and the fines imposed are likely to be a more effective deterrent to criminal behaviour of landlords in the long term.

17. The civil penalty matrix will ensure that a consistent and fair approach is taken towards imposing fines so that the most serious offences and repeat offenders are dealt with most harshly and the use of banning orders when introduced will target the most criminal landlords and ensure they are prohibited from operating in the private rental business.

18. Successful enforcement of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 will reduce the number of poor energy efficient rented properties in the District thereby, reducing energy bills to occupiers, removing significant hazards of excess cold, improving comfort levels for occupiers generally and also reducing the overall carbon footprint for the environment

#### **Consultation Undertaken:**

19. There has been extensive national consultation by the former DCLG (now the Ministry of Housing Communities and Local Government - MHCLG) on measures to deal with rogue landlords and agents who let unsafe, overcrowded and badly managed properties on which this Council has also contributed

#### **Background Papers:**

None

#### **Impact Assessments:**

20. There will be increased revenue to the Council through an increased number of properties falling within the scope of HMO licensing. There will also be a potential for increased revenue through the use of new financial penalties as an alternative to prosecution and the potential for recovery of spent Housing Benefit/ Universal Credit where a landlord has committed a relevant Housing Act related offence.

21. The introduction of the new enforcement powers to crack down on 'rogue landlords' should have the effect of ultimately removing the criminal element in the private rented sector and in doing so, improve the professionalism of landlords generally and increase the number of safe affordable homes for people wanting to rent.

#### **Risk Management:**

22. There is the risk that the use of civil penalties will lead to successful appeals by landlords. It is predicted that, initially, there is likely to be an increased likelihood of appeals while landlords test the new legislation and the penalty levels are scrutinised. This risk will be mitigated by initially setting a fair penalty matrix that does not over penalise the landlord committing a first offence or an offence that is not overly serious.

The advice of our Legal Services will be sought in determining the appropriate course of action whilst officers become familiar with the processes and cases build up for comparative action.

23. A further risk will be an inability to collect the income from the penalties imposed. This risk will be mitigated by seeking the specialist advice of our Legal and Finance Services on the appropriate options which could include applying for county court judgements and a charging order to secure the debt against the defendant's interest in the property or forcing bankruptcy.

24. There is also the potential reputational risk to the Council that the public could perceive the use of the new civil penalty powers as an alternative to prosecution as a strategy for its own financial gain rather than for necessary enforcement. This risk will be mitigated by communicating to landlords and the public generally through the Council's website and other information media that the enforcement is targeting the worst offenders and that any income from civil penalties will only be used to support the Council's statutory functions in relation to the private rented sector.

25. However, the main risk relates to the Council not making use of the new powers that are now available, to safeguard the residents of the District.

**Equality Analysis:**

26. The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at Appendix 3 to the report.

**Key Decision Reference (Y/N): N**