

Report to the Council

Committee: Council

Date: December 2021

Subject: Community and Regulatory services Portfolio Holder

Portfolio Holder: Councillor Aniket Patel

Recommending:

That the report of the Community and Regulatory services Portfolio Holder be noted.

Regulatory services:

Environmental Health: Private Sector Housing and Grants

First Tier Tribunal

I am pleased to update Members, following my previous report to Council, that our Environmental Health Officers in the Private Sector Housing Team successfully defended an appeal about enforcement action taken against a rogue landlord in a recent First Tier Tribunal Property Chamber Hearing.

Officers had issued a total of 9 Civil penalty notices relating to 3 separate properties for the offences of operating an unlicensed house in multiple occupation (known as an HMO) and for the failure to comply with HMO management regulations relating to fire safety. The Housing and Planning Act 2016 allows Local Authorities to issue Civil penalties as an alternative to prosecution.

The Judge agreed with the Council that the appellant was guilty and upheld the decision. The penalties were reduced to reflect the Tribunal's view that the offences were a joint enterprise.

The case centred around two individuals who, masquerading as tenants, rented 3 large family houses in Buckhurst Hill and Chigwell. They then advertised the rooms on spareroom.co.uk and sub-let the rooms creating large unlicensed HMOs, using the "rent-to-rent" business model; resulting in minimum outlay and maximum profit.

Extensive investigation work by EHOs along with the collaboration of property owners, managing agents and sub-tenants, resulted in a significant amount of evidence sufficient to prove the offences to the criminal burden of proof, beyond a reasonable doubt. The criminal activity would have netted them approximately £112k per annum had the operation been allowed to continue. The good work of officers meant that once it was discovered, the illegal activity was quickly stopped.

Our enforcement policy takes a zero tolerance to this type of offending. Landlords are offered every opportunity to access free and comprehensive advice from our experienced EHOs and we welcome engagement with landlords to help them secure compliance with Housing standards legislation to provide good quality accommodation for tenants.

It was clear in this case that these individuals had identified EFDC as rich pickings and they thought they could continue undetected. It was due to the positive working relationships officers have with our reputable managing agents and landlords that helped identify and crack down on these offences.

Our financial penalty charging matrix (approved in June 2018 Decision Ref: HSG-003-2018/19) calculates the amount of penalty, taking into account the seriousness of the offences, and the amount of Local Housing allowance, along with the size of the property. The Council's policy allows a 50% early payment discount, much like a parking ticket. Meaning the original £30,000 maximum fine would be reduced to £15,000.

As these offences were committed jointly, the Tribunal's decision was to firstly apply the 50% early payment discount, and then reduce the penalty by a further 50% to reflect the joint liability.

The fines were set at £31,500.00 - £7,500 per unlicensed property (total £22,500) and £9000 in total for the HMO management regulation offences.

So whilst at first glance it would appear disappointing that the Tribunal didn't fully uphold the penalties issued – they tried to apportion a level of fairness to acknowledge it was a joint enterprise, where one of the parties has vanished behind a limited company.

Empowering private renting tenants living in inadequate accommodation

I am pleased to report on an initiative to help empower private renting tenants who are living in substandard conditions.

The Housing and Planning Act 2016 introduced the ability to the First Tier Tribunal to issue a Rent Repayment order where a landlord has committed a housing related offence. A Rent Repayment Order (RRO) requires the landlord to repay rent paid by a tenant or to repay the Local Housing Authority any universal credit paid for a property where an offence has been committed.

There are 6 relevant Housing offences; including illegal eviction or harassment, failure to comply with an improvement notice or prohibition order, operating an unlicensed HMO and renting in breach of a banning order.

A RRO must be applied for within 12 months of the relevant offence, but the First Tier Tribunal must be satisfied of the offence beyond reasonable doubt, which is the criminal burden of proof. It is unlikely that most tenants would have the time, knowledge or confidence to make a successful application for an RRO.

Officers are looking to empower tenants to apply for RROs in appropriate cases, and it is also a further penalty to rogue landlords who exploit vulnerable people for their own financial gain, by failing to comply with Housing law.

I am pleased to advise that we are entering into a Service Level Agreement with a non profit organisation called Justice for Tenants which allows tenants to be fully supported during the RRO application process by expertly trained staff. They are very skilled in this area and currently have a 98% success rate. This service is at no cost to the Council and it allows tenants to apply for an RRO immediately, without having to rely on EHOs to prove their prosecution case before they can start the claims process. In addition, where all or part of the rent is included as part of Universal Credit, any reward will be proportionally directed to

the Council. Justice for Tenants receive 30% of the amount awarded. This work encourages an information sharing partnership providing a strong deterrent for offending landlords.

Environmental Health: Public Health and Air Quality

Covid

I am pleased to advise that our Covid Marshals continue to be active across the district, distributing Lateral Flow Tests and giving positive messaging and information about vaccination. They also continue checks that residents that have tested positive and have been notified by the NHS, are self-isolating as required. Following the recently introduced requirements for wearing face masks in certain establishments, the marshals will be providing information to the businesses concerned, distributing face mask posters on request and supporting business where possible. The direction from Government is to support business in compliance and use enforcement as the last sanction.

The Environmental Health Team have engaged the Health and Safety Executives 'Spot Check' scheme. Funded by Govt Covid money the HSE set up a Spot Check scheme to check on the controls businesses had for covid. The scheme for EFDC is targeting businesses on trading estates who would not have received as much focus as those businesses on the High Street. Using a variety of data sources 161 businesses were identified for intervention. The businesses initially receive a phone call, if not satisfactory it escalates to a site visit and if still not resolved refers back to EFDC Env health team to visit and where necessary a more formal approach is taken.

I am pleased to report that to date 56 businesses have been completed with a satisfactory outcome.

Licensing

Market Policy

Members will be aware of the Consultation on the Councils proposed Market Policy ending on the 6th December.

The purpose of the policy is to create a market trading environment that compliments the surrounding area and retail offer, is sensitive to the needs of all users of or town centres and provides a diversity of choice for consumers. It seeks to encourage and stimulate investment from local traders and to create a quality and sustainable offer to our residents and visitors.

The policy has been written with a view to supporting the following objectives:

- Recognise the importance and contribution of markets to the wellbeing of the local economy;
- Enhance the economic diversity of the area;
- Protect and, where possible, enhance the amenity and character of the District and local communities within it;
- Offer opportunity for local traders and businesses;
- Provide traders with guidance and clarity;
- Encourage residents to spend locally on their High Streets and support their local business community;
- Ensure coherence with Council policies and relevant legislation; and
- Promote fairness, transparency and consistency.

A number of responses have been received and certain modifications to the policy are being proposed, particularly in relation to charity and community-based markets, to ensure that they will not be subjected to unnecessary financial and administrative burden, and these have been positively received.

During the consultation, conversation has taken place with Epping Town Council regarding the powers given to those with Charter Market status. These conversations are ongoing and legal opinion is being sought regarding this position, before proposed report submission to Overview and Scrutiny Committee and the April 2022 Cabinet.

Building Control:

The Local Authority Building Control (LABC) conference was attended by two members of the Building Control team where they learnt more about the changes coming to the competency and licensing requirements for Building Control Surveyors as they transition to a new titled role of Building Control Inspectors. LABC has secured government funding to provide structured training to all Local Authority Building Control Inspectors in key areas such as fire safety, enforcement and public safety at sports grounds, however challenges exist in resourcing the service while upskilling the team. Registrations of interest have been presented by the team in training pathways which are currently being assessed. I am pleased to report that Epping Forest Council has two members of the team who have undertaken competency assessments and validation in fire safety in High Risk Residential Buildings which will remain valid through this transitional phase.

Income through fees and charges dropped in October to approximately 80% of the equivalent pre-pandemic level seen in October 2019 but remained an improvement of approximately £4000 on October 2020. November 2021 income of £44,580 inclusive of Partnership working was roughly aligned to performance in 2020 and is not back to pre-pandemic levels expected at around £50,000 for the month. December 21 income of £28,502 is broadly comparable with a pre-pandemic December.

Building Control attended a dangerous structure reported by Essex Police following a vehicle impact into one of the Council's own housing assets in Waltham Abbey on the 30th November. The building was assessed to be at imminent risk of partial collapse with residents unable to access or egress until made safe. Building Control's emergency works contractor attended and worked through the evening to implement shoring and removal of debris. Further assessment by Building Control confirmed the building was suitable for occupation by residents by 9PM that evening. I am pleased to report that this was an excellent example of collaborative working between Building Control and Housing colleagues that resulted in our tenants not being overly inconvenienced.

Work to implement the new digital Planning and Building Control software system is currently at the data migration planning stage. The current forecast date to go live is expected in May 2022.