

## BOROUGH OF KETTERING

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<b>Report Originator</b>	John Conway – Head of Housing	<i>Fwd Plan Ref No:</i> A16/050	
<b>Wards Affected</b>	All	20 <sup>th</sup> September 2017	
<b>Title</b>	<b>PRIVATE SECTOR HOUSING ENFORCEMENT POLICY</b>		

**Portfolio Holder: Councillor Mark Rowley**

### **1. PURPOSE OF REPORT**

- 1.1 To seek approval of the draft Private Sector Housing Enforcement Policy 2017 attached to this report.

### **2. BACKGROUND INFORMATION**

- 2.1 This Private Sector Housing Enforcement Policy relates specifically to the enforcement activity of the Council's Private Sector Housing Team. The Council's Private Sector Housing Renewal Strategy was adopted in February 2012 for the period 2012-2015. A review of the policy was delayed due to impending changes in legislation. These changes have now taken place but further changes in national policy are expected over the next 12 months at which time the Private Sector Housing Enforcement Policy will again be revised and brought back to Executive Committee for approval.
- 2.2 The Housing Act 2004 provides the Council with statutory powers and duties to regulate private sector housing and ensure that it is well managed, properly maintained, safe and habitable. To do this we request information, carry out inspections, process licence applications, assist in bringing empty properties back into use, encourage and promote good practice, provide owners and landlords with advice and information, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.
- 2.3 As part of the Council's regulation of private sector housing conditions, it is necessary from time to time to serve legal notices on property owners requiring them to undertake certain repair works. The Housing Act 2004 enables the Council to charge recipients for these notices to compensate for the time spent in their preparation and service. The Council has previously not charged for the service of notices, unlike many authorities locally and nationally. However, with the private rented sector continuing to grow and therefore the number of complaints expected to rise, it is now seen as the right time to introduce a charge to encourage co-operation from landlords and to recover our costs.
- 2.3 There have been a number of significant changes to the environment in which we deliver our private sector housing services. These are summarised below:

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- There has been a rapid increase in the number of private rentals across the Borough in recent years, as many new buy-to-let landlords have entered the market, often with just one or two properties in their portfolios. Private lets have increased from 7% of the local housing market in 2001 to more than 15% in 2011. The North Northamptonshire Strategic Housing Market Assessment 2012 estimated the true extent of private renting to be more than 20% of the Borough's total housing stock.
- Over the last four financial years, the Private Sector Housing team have received an average of 165 complaints per year from private or housing association tenants that require local authority intervention.
- There has been a significant growth in the number of Houses in Multiple Occupation (HMO) providing accommodation for a variety of groups such as young professionals unable to buy/rent on their own, migrant workers and those single people reliant on welfare benefits unable to access alternative housing.
- We estimate that there are 236 HMO's in Kettering Borough, and the number of licensed (or pending licensing) HMO's has grown from 5 in 2012 to 36 in 2017.
- Since 2012, the Private Sector Housing Team has worked proactively with internal and external partners, including Northamptonshire Fire and Rescue Service, to identify and complete a rolling inspection of HMO's to ensure their compliance with amenity and space standards and that they are free from serious hazards. We have inspected 111 new HMO's in 2016/17, up from 59 in 2014/15. The team are regularly approached by prospective HMO landlords to offer advice and guidance on the suitability of potential properties as HMO's.

### **3. CONSULTATION AND CUSTOMER IMPACT**

- 3.1 The Private Sector Housing Enforcement Policy sets out how the Council will apply the national legislation in Kettering Borough. The Council seeks to take an informal advice and assistance approach in the first instance with formal action only taken when this is unsuccessful or the severity of the offence is such that informal action is inappropriate.
- 3.2 An Equality Impact Assessment is not required as the proposal does not have the potential to impact on people with protected characteristics.

### **4. POLICY IMPLICATIONS & USE OF RESOURCES**

- 4.1 Since the Private Sector Housing Renewal Strategy 2012-15 was adopted in February 2012, the Government has introduced a number of new items of

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legislation with more to follow in 2018. Some of the new legislation requires the Council to formally adopt a tariff of financial penalties before they can be used by officers.

4.2 All proposed amendments are included in the revised Private Sector Housing Enforcement Policy document attached to this report. Some changes simply reflect legislative changes since the previous Private Sector Housing Renewal Strategy, which are provided for information, whereas others have associated tariffs for fines that require approval. The main changes are summarised as follows:

- **Introduction of charges for Housing Act 2004 Notices** – The Council has a statutory duty to investigate complaints of disrepair in the private sector. Where severe hazards are identified, the Council has a duty to take appropriate enforcement action. The Housing Act 2004 allows local authorities to charge for any enforcement action that is carried out by way of the serving of improvement notices, prohibition orders, hazard awareness notices, taking emergency remedial action and making an emergency prohibition or demolition order. The Council typically serves a Housing Act enforcement notice every 1-2 months. In 2015/16, 12 notices were served, with 6 being served in 2016/17 and 7 so far in 2017/18. It is proposed to charge a fixed fee of £250 for notices served under the Housing Act 2004 Part 1. This fee has been calculated to represent the average cost to the Council of serving a notice. The level of fee reflects the pay grade of the officers undertaking the work and covers the time spent inspecting a property along with writing and serving a Housing Act Notice. We will monitor the costs and average time spent on Housing Act Notices between now and the next review to ensure that this fee remains appropriate. It is considered that a fixed fee is easier to administer and more transparent for landlords. The aim of introducing a charge is to hopefully avoid the need to serve a notice in the first place, but where the person responsible refuses to engage with the Council, the officer's time can be covered when an enforcement notice is required.
- **Recovery of costs for works undertaken in default of a statutory notice** – Once a notice has been served, should the recipient fail to comply with the property improvements stated within the notice, the Council can undertake works in default and seek to recover the full costs incurred in undertaking works in accordance with the relevant statutory provisions. It is proposed that the Council charges an additional administration fee of £125 or 20% of the cost of works in default, whichever is greater, when works in default are completed. The reason for this is to encourage landlords to comply with the notice and also to recover the costs associated with officer time arranging any works in default.
- **Issuing penalties under the Smoke and Carbon Monoxide Alarm Regulations 2015** - Under the Smoke and Carbon Monoxide Alarm Regulations 2015, which came into force in October 2015, local authorities

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are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations. These are that a working smoke alarm is required on each floor of the living accommodation upon tenancy commencement and a working carbon monoxide detector in any room containing a solid fuel burning appliance. Whilst we have been enforcing where appropriate, we have not been able to fine landlords without a formally approved tariff of fines. If a property is found to lack the necessary alarm(s) the Council must serve a notice on the landlord. The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements of the regulations are met and can issue a civil penalty of up to £5,000. The Council's Statement of Principles (Appendix A in the PSH Enforcement Policy) sets out the principles that the Council will apply in exercising its powers to require a relevant landlord to pay a financial penalty. It is proposed that a fine of £2,500 is applied for a first offence and that an early payment within 14 days will attract a discount of 50% making it £1,250. For subsequent offences the penalty charge will be £5,000 to deter continued non-compliance and an early payment will attract a discount of 50% making it £2,500. The proposed tariff of fines has been set to ensure compliance with this legislation, and the proposed discount to save on the administrative costs of debt collection.

- **Issuing penalties under The Redress Schemes for Lettings Agency Work and Property Management Work** – Since October 2014, it is a legal requirement for all lettings agents and property managers in England to join one of three government approved redress schemes aimed to regulate and resolve disputes between landlords, lettings agents and tenants. The Council periodically checks compliance. The requirement is enforced by the Council through a fine of up to £5,000. The Enforcement Policy proposes that Kettering Borough Council adopts the maximum fine of £5,000 and describes our process for issuing fines.
- **Introduction of powers to prevent Retaliatory Eviction under the Deregulation Act 2015** - From 1st October 2015 where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict the tenant for 6 months. The Enforcement Policy clarifies the proper process tenants of private landlords should take if they need to report any disrepair or poor conditions to their landlord.
- **Complaints about disrepair from tenants of housing associations and owner occupiers** - From time to time, the Council's Private Sector Housing Team receive complaints from housing association tenants regarding the conditions of their property. Whilst the Housing Act 2004 is tenure neutral, the policy seeks to clarify the process that we would expect

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housing association tenants to follow with their landlord prior to the Council's formal involvement. This is because housing associations are equipped to address issues of disrepair within their own properties and tenants should first exhaust these avenues to remedy their disrepair issues before the Council will intervene.

- **Emergency Remedial Action under the Housing Act 2004** - In emergency situations, where it is not possible to contact the relevant person and gain their cooperation, enforcement action may be taken immediately without notice for example, where there is an imminent risk of serious harm to the health and safety of occupiers or others. The Enforcement Policy now sets out the circumstances when the Private Sector Housing Team will undertake this action.

### **5. FINANCIAL RESOURCE IMPLICATIONS**

- 5.1 Whilst the imposition of charges for enforcement notices and works in default is not meant as an income generation method, it does enable the council to recover costs for the time officers spend in issuing these notices. This will see income being generated for a service that otherwise would not be able to recover the costs incurred.
- 5.2 Should a landlord fail to comply with a notice to install a smoke / carbon monoxide alarm, the council will be obliged to arrange installation. The costs of doing this are minimal and can be recovered through the works in default procedure.
- 5.3 Since the previous Private Sector Housing Renewal Strategy was adopted in 2012, the Council has completed Works in Default on one occasion at a cost of £995. Although costs are ultimately recoverable, there is a need to consider establishing a small capital budget for undertaking Works in Default. This issue will be addressed during the budget planning process for 2018/19.

### **6. HUMAN RESOURCE IMPLICATIONS**

- 6.1 None at this stage.

### **7. LEGAL IMPLICATIONS**

- 7.1 The introduction of charging for Housing Act notices is provided for within Section 49 of the Act and must first be approved by members before they can be introduced.
- 7.2 A person served with a notice and the charge for the notice has a right to an internal review and then an appeal to the Residential Property Tribunal. Their

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right to appeal can be on the decision to serve a particular notice and/or the amount of charge. The Residential Property Tribunal can uphold the notice and the charge, vary it or quash it altogether.

- 7.3 The legislative framework governing Private Sector Housing Enforcement is continuing to change. Therefore as further changes and guidance are introduced, we will look to incorporate these in any revised policy next year. Likely future changes include the introduction of Civil Penalties and Banning Orders under the Housing and Planning Act 2016, enforcing minimum energy efficiency standards in the private rented sector and future changes to mandatory HMO licensing where it is expected that all large HMO's will require a licence, regardless of the number of storeys.

### **8. RECOMMENDATION**

- 8.1 It is recommended that the Executive Committee agrees to adopt the draft Private Sector Housing Enforcement Policy with immediate effect.

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#### Background Papers:

Title of Document: Private Sector Housing Enforcement Policy 2017

Date: August 2017

Contact Officer: Carly Hohn Housing Solutions Manager; Dan Hannam, Private Sector Housing Manager

#### Previous Reports/Minutes:

Ref:

Date: