

## BOROUGH OF KETTERING

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<b>Report Originator</b>	John Conway – Head of Housing	<i>Fwd Plan Ref No:</i> A18/014	
<b>Wards Affected</b>	All	19 <sup>th</sup> September 2018	
<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 2018 attached to this report.

### **2. BACKGROUND INFORMATION**

- 2.1 The Council's current Private Sector Housing Enforcement Policy was adopted in September 2017. At that time, further changes to national legislation were in the process of being adopted and it was agreed that the policy would be updated to include these changes during 2018.
- 2.2 The Council has statutory powers and duties to regulate private sector housing (contained within the Housing Act 2004 and the Housing and Planning Act 2016) and ensure that it is well managed, properly maintained, safe and habitable. To do this, we will 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 The current Private Sector Housing Enforcement Policy has had some success in raising standards in the private rented sector over the past twelve months:
- The Private Sector Housing team has served five notices for which landlords have been charged £250, bringing in a total income of £1,250 over the last 7 months.
  - The team also successfully prosecuted a local landlord for failing to adhere to an improvement notice who was ordered by Northampton magistrates to pay a fine of £7,000.00 plus costs and a victim surcharge.
- 2.4 Since the adoption of the current policy, the Government has introduced several initiatives to help local authorities in improving conditions in the private rented sector. The main changes are:

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- Civil Penalties
- Banning Orders
- Rent Repayment Orders
- HMO Mandatory Licence changes
- Minimum Energy Standards

### **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 makes informal action 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.
- 3.3 The introduction of the civil penalty matrix (Appendix B of the Private Sector Housing Enforcement Policy) was finalised following a consultation process with local landlords and letting agents. A total of 12 landlords and agents confirmed their attendance to two small landlord working groups, five attended on day one and three attended on the second day. The landlords were asked to put the matrix to the test using three different case studies. A number of suggestions were made in the working groups, and the matrix was amended to reflect those suggestions. Four further consultation events then took place and these focused on the changes that had been made following the initial consultation exercise. The feedback from the final consultations was 100% positive.

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

- 4.1 Since the current Private Sector Housing Enforcement Policy was adopted in September 2017, the new legislation requires the Council to adopt a tariff of financial penalties formally before they can be used by officers. The officers have therefore developed, over the last year, a matrix against which a Civil Penalty can be issued. This constitutes the main amendment to the current Private Sector Housing Enforcement policy.
- 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 Enforcement Policy, which are provided for information, whereas others have associated tariffs for fines that require approval. The main changes are summarised as follows:

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- **Civil Penalties** - Local Authorities have been given the power under Section 126 and Schedule 9 of the Housing and Planning Act 2016 to impose a civil penalty as an alternative to prosecution for offences committed under the Housing Act 2004 including;
  - Failure to comply with an Improvement Notice (section 30)
  - Offences in relation to licensing of Houses in Multiple Occupation (section 72)
  - Offences in relation to licensing of houses under Part 3 of the Act (section 95)
  - Offences of contravention of an overcrowding notice (section 139)
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation. A civil penalty can be issued as an alternative to prosecution for each separate breach of the regulations. The Council can determine the amount of penalty in each case: the maximum penalty is £30,000.

- **Banning Orders** - The Housing and Planning Act 2016 introduced a power for the first-tier tribunal to serve a banning order on a landlord or property agent. The order can only be made by the first-tier tribunal after a case is brought by the local authority. These orders will enable local authorities to effectively tackle rogue or criminal landlords and property agents.
- **Rent Repayment Orders** - Since 2004 councils have had the option of registering a Rent Repayment Order on landlords who have failed to license a licensable HMO. Through the Housing and Planning Act 2016 (Chapter 4 of Part 2) Rent Repayment Orders have been extended to cover a wider range of offences which are described below:
  - Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
  - Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
  - Breach of a banning order made under section 21 of the Housing and Planning Act 2016
  - Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and

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- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

The local authority has a duty to consider applying for a rent repayment order if they become aware that a landlord has been convicted of any of the above offences.

- **Mandatory Licensing** - The recent changes to mandatory HMO licensing means that all HMOs with 5 or more occupants now require a licence regardless of how many floors they have.

The fees for HMO licensing were reviewed by Kettering Borough Council, East Northamptonshire District Council, The Borough Council of Wellingborough and Corby Borough Council and it was agreed collectively that the fee would be standardised at a cost of £1,000.00 per licence.

There are currently 34 licensed HMOs in the Kettering borough. However, the changes to mandatory licensing means that the private sector housing team are expecting to see an influx of applications resulting in the amount of licences held within the borough potentially doubling.

A large proportion of the HMO licensing processes is administrative in nature so the Council, along with its counterparts in East Northamptonshire, Wellingborough and Corby agreed that the Central Licensing Admin Unit (CLAU) would incorporate HMO licensing into its portfolio of alcohol, premises, gambling and environmental health licensing. The CLAU has been processing licences for over 10 years. By providing a service in a joined-up and consistent way, utilising an existing well established service, it was felt that this was the most efficient way of dealing with an increase in licence applications. This would allow Private Sector Housing Officers to spend more time on the ground investigating properties and landlords rather than processing paperwork.

The HMO application fee was calculated using a detailed matrix to ensure that the councils were achieving full cost recovery and not subsidising the process. Each element that the CLAU undertake was included in the matrix to ensure an accurate end figure. The CLAU cost per application is £263.90, with the remaining balance being returned to the relevant authority twice a year as with all other licence application income.

- **Minimum Energy Standards-** The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, affecting new tenancies from 1 April 2018.

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The current domestic regulations are based on a principle of 'no cost to the landlord'. This means that landlords of F or G rated homes will only be required to make improvements to these properties where they can do so entirely using third party finance from one or more sources.

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

- 5.1 Whilst the introduction of Civil Penalties is not meant as an income generation method, it does enable the Council to retain any fines issued to be used within the Private Sector Housing function. In contrast, the Council does not benefit from fines issued by courts against landlords.
- 5.2 The changes to mandatory licencing will see more HMOs requiring a licence. The licence fee has been revised to £1,000 for a 5 year licence with a fee of £263.90 payable from within this to the CLAU. The Council will therefore receive marginally more income from each licence application. It is predicted that the number of applications will more than double and the assistance of the CLAU in the administration of the Licence application will increase the time available for Private Sector Housing Officers to inspect HMOs.

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

- 6.1 None at this stage.

### **7. LEGAL IMPLICATIONS**

- 7.1 The introduction of Civil Penalties is provided for within Section 126 and Schedule 9 of the Housing and Planning Act 2016. A Civil Penalty Matrix for establishing the appropriate level of fines, which is included in the attached Private Sector Housing Enforcement Policy at Appendix B Page 28, must first be approved by members before they can be used.
- 7.2 A person served with a Civil Penalty has a right to an appeal to the First-tier Tribunal. Their right to appeal can be on the decision to impose a penalty or the amount of the penalty. The First-tier Tribunal has the power to confirm, vary the size of the Civil Penalty imposed by the local authority or to cancel the Civil Penalty.

### **8. RECOMMENDATION**

- 8.1 It is recommended that the Executive Committee agrees the amendments set out in section 4.2 and adopts the revised Private Sector Housing Enforcement Policy attached to this report.

Background Papers:

None

Previous Reports/Minutes:

None