

# Harborough District Council

## Report to the Scrutiny Panel for Performance

Meeting of 23<sup>rd</sup> June 2022



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| <b>Item Number:</b>      | <b>7</b>  |
| <b>Title:</b>            | <b>Housing Enforcement Policies and Financial Penalties</b>   |
| <b>Status:</b>           | Public  |
| <b>Key Decision:</b>     | No  |
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| <b>Portfolio Holder:</b> | Cllr Whelband   |
| <b>Appendices:</b>       | <ol style="list-style-type: none"><li><b>Appendix A – Housing Enforcement Policy</b></li><li><b>Appendix B – Housing Enforcement Civil Penalties Policy</b></li><li><b>Appendix C – Minimum Energy Efficiency Standards Policy</b></li><li><b>Appendix D – Smoke and Carbon Monoxide Policy</b></li></ol> |

### Executive Summary

The Housing Enforcement Policy will complement the Council's approved generic enforcement policy and sets out clearly the Council's approach to enforcement to reduce the risk of successful challenge.

Formal enforcement action is only considered as a last resort or where there is a serious and imminent risk to tenants and officers will work with landlords in the first instance to resolve issues informally.

The Housing Enforcement Policy and financial penalties do not impose any additional regulatory burden on private landlords as they should already be compliant with the various legislative requirements.

The introduction of Civil Penalties and other financial penalties provides a wider range of tools to the Council when considering the most appropriate course of action to take where there has been a breach of relevant legislation and landlords have not complied with an enforcement notice served on them.

### Recommendations

**For the Performance Scrutiny Panel to consider the draft Housing Enforcement Policy and to consider the introduction of civil penalties and**



**other financial penalties for private housing as set out in Appendix A – D of the report.**

**Reasons for Recommendations**

**To consider the draft Housing Enforcement Policy and financial penalties policies before being considered for approval by Cabinet.**

**1. Purpose of Report**

- 1.1.1 To present to Scrutiny Panel the Council's approach to housing enforcement to ensure that there is transparency for owners, landlords, agents and tenants of private sector and social housing properties through the Housing Enforcement Policy and more specific enforcement powers including the introduction of civil penalties for certain housing offences.

**2. Background**

- 2.1 The Council has a statutory duty to enforce a wide range of legislation, with regulatory functions being delivered by several service areas across the council. To ensure there is transparency and consistency in the approach to enforcement across the council there is a General overarching Enforcement Policy which was approved by Cabinet in December 2015.
- 2.2 The council is now looking to introduce an overriding private sector housing enforcement policy that sits under the Generic Enforcement Policy and to consider new ways of dealing with offences by way of civil penalties for example
- 2.3 Whilst the council will always try and work with landlords, there are occasions where more formal action is required. The policy sets out the approach of the council to housing enforcement and it sets out what owners, landlords, their agents and tenants can expect from officers and reduces the risk of successful challenge.
- 2.4 Authorised officers within the Environment Team have both statutory duties and discretionary powers to undertake enforcement action, using a range of legislation to address issues arising at rented properties, caravan sites and mobile home sites.
- 2.5 None of the policies within this report increase the regulatory burden on landlords who should already be compliant with the legislation but provide officers with alternative means of enforcement for those few landlords in the district who are not willing to comply with existing legislation.

### **3. Detail**

#### **Housing Enforcement Policy**

3.1 Whilst the Council will try to work with landlords informally to ensure they are compliant with the various pieces of legislation covering the private rental of properties, there is on occasion, the need to take more formal action to remove an immediate issue or where landlord do not engage or do not undertake any improvement works required informally for example.

3.2 This draft Enforcement Policy aims to:

- Demonstrate transparency of enforcement with respect to private sector housing, caravan sites and mobile home sites within the district by setting out legal requirements, policies and principles that officers will follow when enforcing legislation.
- Ensure that all properties let as residential properties throughout the district, including those in private ownership, are of good quality and well managed.
- Ensure that all residents of Harborough have a home that is safe, secure, dry and not overcrowded.
- Improve the condition and energy efficiency of homes in the private rented sector through maintaining decency standards and raising them where possible.
- Ensure Houses in Multiple Occupation (HMO's) are safe and well managed, and all relevant Management Regulations are adhered to;
- Ensure Private Sector Housing is not left empty for an unreasonable period of time or becomes an eyesore and nuisance to neighbouring homes.

The policy applies to both individuals and businesses and should be read in conjunction with the Council's General Enforcement Policy which sets out the overarching parameters of enforcement.

3.3 The main objectives of the policy are to ensure that:

- Privately rented accommodation, including houses in multiple occupation ("HMO"), and accommodation provided by registered providers of social housing, are free from actionable hazards that affect the health and safety of the tenant, licensee or any visitor.
- Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements.
- Privately rented accommodation meets minimum energy efficiency ratings.
- All licensable properties are licensed, with licence conditions being met.
- Targeted action is taken to bring empty homes back into use.

- Owners or occupiers of privately owned accommodation or land do not cause a statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood.
- Caravan and mobile home sites are managed in compliance with site licence conditions and relevant statutory requirements. The domestic minimum energy efficiency standard regulations and assessments for hazards under the Housing Act 2004 do not apply to rented caravans or mobile homes as this property type falls outside the scope of these regulations.

3.4 The Environment Team will respond to enquiries and complaints about substandard, unsafe, problematic or empty housing and where standards are not met enforcement action may be taken. The team will always endeavour to work with landlords and tenants to try and resolve issues informally unless there are serious concerns regarding non-compliance.

3.5 Decisions will be made by competent and authorised officers, in accordance with legislation and by having regard to enforcement guidance as to the most appropriate course of action. In line with the policy, generally an incremental approach to enforcement will be implemented and where there is non-compliance after an informal approach has been made, formal action will be considered. However, where there are serious breaches of legal requirements, the council will consider formal action in the first instance to safeguard the health, safety and welfare interests of occupiers, visitors and members of the public.

3.6 There has been an increase in the number of housing related enquiries received by the team over the past 5 years, with the most significant increase over the duration of the Covid pandemic as more people were at home for longer periods. The specific Housing Enforcement Policy will ensure a fair and transparent approach to housing and should reduce the risk of successful challenge against any enforcement action if due regard for the policy has been taken in the decision-making process.

**Table 1** – housing complaints received by the team over a 5-year period

| Year    | Number of Complaints received |
|---------|-------------------------------|
| 2021-22 | 88                            |
| 2020-21 | 67                            |
| 2019-20 | 54                            |
| 2018-19 | 34                            |
| 2017-18 | 29                            |

There are currently 7 licenced Houses in Multiple Occupation across the district. A copy of the draft Housing Enforcement Policy can be found in Appendix A.

## Civil Penalties Policy

- 3.7 Serious offences and breaches of legislation have until now always been dealt with through the courts, but the reality is that such occurrences are rare. To take a prosecution the case must meet certain tests and action has to be in the public interest. Although the courts can give out fines to non-compliant landlords, the cost to the council both financially and in terms of time is great. Judges are required to make allowances for personal circumstances/mitigation and therefore cases can easily be lost on a technicality.
- 3.8 Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. The Housing and Planning Act 2016 provides powers that allow the Council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.
- 3.9 A civil penalty is a financial penalty that may be imposed in instances where there are breaches of legislation which is considered to be a criminal act. However, before imposing a civil penalty the council must be satisfied 'beyond all reasonable doubt' that a persons' conduct amounts to the relevant housing offence as defined by The Housing Act 2004.
- 3.10 A civil penalty can be imposed on a landlord or letting agent or both. The civil penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:
- Section 30 – Failure to comply with an Improvement Notice
  - Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)
  - Section 95 – Offences in relation to licensing of houses under Part 3 (Inc. Selective Licensing)
  - Section 139 – Offences of contravention of an overcrowding notice
  - Section 234 – Failure to comply with management regulations in respect of HMO
  - Breach of a banning order (section 21 of the Housing and Planning Act 2016)
  - Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- 3.11 When determining the level of the civil penalty the severity and harm of the offence must be considered as stated in Section 143(1) Criminal Justice Act 2020: "in considering the seriousness of any offence the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably cause". Harm includes actual harm caused as well as risk of harm.

- 3.12 There is a right of appeal to a Civil Penalty. The person served with the Final notice has the right to appeal to the First Tier Tribunal against the decision to impose a penalty; or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.
- 3.13 Appeals can be very time consuming and costly for the Council, so we are considering including an early bird payment discount to encourage prompt payment. The council can offer a discount to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. The level of discount applied is based on the Court's national sentencing guidelines and the one third early payment amount mirrors the guidance.
- 3.14 Recovery of an unpaid Civil Penalty would be through the council's debt recovery process.
- 3.15 Where a civil penalty is appealed and the First Tier Tribunal confirms or varies the penalty, this decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. This may affect the landlord's ability to obtain financial credit due to the Register of Judgment Order made against the individual.

A copy of the draft Civil Penalties Policy can be found in Appendix B.

#### **Other financial Penalties.**

#### **Domestic Minimum Energy Efficiency Standards Regulations (MEES)**

- 3.16 Legislation has been introduced for the regulation of energy efficiency within the private rented housing sector. This imposes an obligation on private sector housing landlords to achieve a minimum energy performance within their properties, demonstrated by an Energy Performance Certificate a rating of at least E or to register a relevant exemption to the regulations. There are several different exemptions within the Regulations which a landlord could apply if they are relevant.
- 3.17 A domestic private rented property is deemed "sub-standard" where the energy performance indicator of the property is below the minimum level of energy efficiency of Band E. The energy bandings for a property go from A to G with A being the highest and G being the lowest.
- 3.18 The regulations apply to properties let through an assured tenancy, regulated tenancy or a domestic agricultural tenancy and the property is legally liable to have an Energy Performance Tenancy (EPC).
- 3.19 Within the regulations there is a cap on the expenditure landlords are required to invest to improve energy rating of their property. Landlords will

not be required to spend more than £3,500 (including VAT) on energy efficiency improvements. If a landlord cannot improve their property to EPC E for £3,500 or less, they should make all the improvements which can be made up to that amount, then register a relevant exemption.

3.20 If a local authority believes a landlord may be in breach, they may serve a compliance notice requesting information to help them decide whether a breach has occurred. They may serve a compliance notice up to 12 months after a suspected breach occurred. Failure to comply with a compliance notice may result in a financial penalty being applied.

3.21 In order to enforce the regulations, the Council needs to have a policy on the financial penalties to be applied should a landlord be found to be in breach of the following:

- In breach of the prohibition on letting sub-standard property or
- In breach of the requirement to comply with a compliance notice or
- Guilty of uploading false or misleading information to the Exemptions Register.

The council as the enforcement authority has the discretion to decide on the value of the financial penalties, up to the maximum limits set by the regulation. The proposed scale of financial penalties is set out in in table 2

**Table 2** – Proposed Scale of Financial Penalties under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

| Breach  | Max Financial Penalty            | Proposed Financial Penalty  |
|---|----------------------------------|---|
| A) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than three months | £2000 plus a publication penalty | £1000 plus a publication penalty for first offence at property (33% early payment discount)*<br><br>£2000 plus Publication penalty for subsequent offences at property (33% early payment discount) |
| B) Where the landlord has let a sub-standard property in breach of the Regulations for three months or more               | £4000 plus a publication penalty | £2000 plus a publication penalty for first offence at property (33% early payment discount)<br><br>£4000 plus Publication penalty for subsequent  |

|   |                                  |   |
|---|----------------------------------|---|
|   |                                  | offences at property (33% early payment discount)             |
| C) Where the landlord has registered false or misleading information on the PRS Exemptions Register | £1000 plus a publication penalty | £1000 plus a publication penalty (33% early payment discount) |
| D) Where the landlord has failed to comply with compliance notice                                   | £2000 plus a publication penalty | £2000 plus a publication penalty (33% early payment discount) |

\*early payment discount applies if penalty paid within 14 days of issue. The discount would be removed if an appeal against the notice is submitted. As before the level of discount mirrors the national sentencing guidelines.

A local authority can impose more than one financial penalty if there have been multiple breaches up to a maximum of £5000 per property.

The draft Minimum Energy Efficiencies Standards Financial Penalties Policy/Statement can be found in Appendix C

### **Smoke and Carbon Monoxide (England) Regulations 2015**

- 3.22 The regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The regulations exclude registered providers of social housing. The duty requires that landlords ensure that:
- A smoke alarm is installed on each storey of premises where there is living accommodation
  - A carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel burning appliance
  - That checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts
- 3.23 Where the council believes that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord.
- 3.24 If the landlord then fails to take the remedial action specified in the notice within the timescale, the council can require the landlord to pay a penalty charge. The charge potentially made up of two parts, the punitive element (punishment) for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to any remedial works arranged and carried out by the council's contractors.

- 3.25 The council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served. Should a subsequent appeal be made it is proposed that the discount will be removed.

The proposed charges are as follows:

- £2,500 for the first breach to comply with a remedial notice: £1,675 for early payment (33% reduction)
- £5,000 for each subsequent breach to comply with a remedial notice: £3350 for early payment, (33% reduction)

The draft Smoke and Carbon Monoxide Financial Penalties/Statement can be found in Appendix D.

Early payment discount applies if payment is made within 14 days of the penalty notice being issued and will be suspended if an appeal against the notice is submitted and the amount of discount mirrors the Court's sentencing guidelines.

#### **4. Implications of Decisions**

##### **4.1. Corporate Priorities;**

Promoting health and wellbeing and encouraging healthy life choices  
Creating a sustainable environment to protect future generations

##### **4.2. Financial;**

Income received from financial penalties is retained by the Council if it is used to support statutory functions in relation to its private rented sector enforcement. There is currently insufficient information to be able to estimate the level of income that may occur from the introduction of any of the policies.

Any legal action can be costly and demanding on resources and the ability to consider an alternative to prosecution as a penalty for non-compliance is supported. Offering an early payment discount may reduce the risk of appeal against a civil penalty or other financial penalty notice which whilst reduces the income received by the council, would reduce the resource demands of the legal and environment teams to respond to any appeal.

##### **4.3. Legal;**

There are many statutory or discretionary pieces of legislation enforceable by the council. The housing enforcement policy provides open and transparent information on the Council's approach to housing enforcement and reduces the risk of legal challenge.

The civil penalties and other financial penalties policies widen the enforcement tools that are available to the enforcement officers to encourage compliance by landlords.

- 4.4. **Policy;**  
The council is not able to impose financial penalties without having an approved and published policy
- 4.5. **Environmental Implications including contributions to achieving a net zero carbon Council by 2030;**  
The Minimum Energy Efficiencies Standards Financial Penalties policy provides a regulatory framework for improving the energy efficiency in the private rented sector.
- 4.6. **Risk Management;**  
Having clear and transparent published policies will reduce the risk of successful challenge against any proposed housing enforcement action.
- 4.7. **Equalities Impact;**  
Initial Equality Impact Assessment has been undertaken and the assessment will be reviewed following the consultation process.
- 4.8. **Data Protection;**  
Not applicable
- 5. Summary of Consultation and Outcome**
- 5.1 Not applicable for this report however a consultation exercise will be undertaken prior to the approval of the final policies.
- 6. Alternative Options Considered**
- 6.1 Not applicable
- 7. Background papers**
- 7.1 None