

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

**COMMUNITY SCRUTINY COMMITTEE – WEDNESDAY, 5
APRIL 2023**



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| Title of Report | PRIVATE SECTOR HOUSING POLICIES | |
| Presented by | Paul Sanders Head of Community Services | |
| Background Papers | <u>Microsoft Word - Environment Directorate Enforcement Policy - amended 25.09.06.doc (nwleics.gov.uk)</u> | <u>Microsoft Word - Environment Directorate Enforcement Policy - amended 25.09.06.doc (nwleics.gov.uk)</u> |
| Financial Implications | <ul style="list-style-type: none"> Financial penalties offer an alternative to legal action The income from financial penalties is difficult to predict but will be reviewed annually as part of the budget process Capacity in the team is limited and in order to become a more proactive service, in January 2023, Cabinet responded to the Fuel Poverty Working Group's recommendations and approved the use of the Disabled Facilities Grant funding to provide additional officer resources. This is subject to approval by the Better Care Fund Accountant Income from financial penalties is retained by the Council for housing standards enforcement | |
| | Signed off by the Section 151 Officer: Yes | |
| Legal Implications | No direct legal implications arising from the report | |
| | Signed off by the Monitoring Officer: Yes | |
| Staffing and Corporate Implications | Additional Officer resources are required and this has been approved by Cabinet in January 2023, subject to the Better Care Fund Accountant approval | |
| | Signed off by the Head of Paid Service: Yes | |
| Reason Agenda Item Submitted to Scrutiny Committee | To present to Scrutiny Committee the Council's approach to housing enforcement, including the Housing Enforcement Policy and more specific enforcement powers through civil penalties for certain housing offences, to ensure that there is transparency for owners, landlords, agents and tenants of private sector and social housing properties. | |
| Recommendations | COMMUNITY SCRUTINY ARE REQUESTED TO COMMENT ON THE FOLLOWING DRAFT HOUSING | |

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| | <p>POLICIES AHEAD OF CONSIDERATION BY CABINET ON 25 APRIL 2023</p> <ul style="list-style-type: none"> • HOUSING ENFORCEMENT POLICY • REFRESH OF THE GENERAL ENFORCEMENT POLICY • CIVIL PENALTY POLICY • MINIMUM ENERGY EFFICIENCY STANDARDS • CARBON MONOXIDE & SMOKE ALARMS • ELECTRICAL SAFETY |
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1.0 BACKGROUND

- 1.1 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 September 2014.
- 1.2 The Council is now looking to introduce an overarching private sector Housing Enforcement Policy that sits under the General Enforcement Policy and to consider new ways of dealing with offences by way of civil penalties for example. The General Enforcement Policy has also been updated as part of this work to ensure that it is up to date.
- 1.3 The Housing Enforcement 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.
- 1.4 Authorised officers within the Environmental Protection 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.
- 1.5 The Environmental Protection Team work with a number of different teams across the Council but one of the main teams is Housing Choices. The teams work together when there is a possibility that people may become homeless either through the action of a landlord or enforcement action via the Council. The teams have also worked very closely recently managing the Ukraine work. On some occasions the relationship between the hosts and guests can break down. Therefore, a re-match may be required and the teams work closely to manage any homeless situation.

2.0 Housing Enforcement Policy

- 2.1 The draft Housing Enforcement Policy aims to:
 - Demonstrate transparency of enforcement with respect to private sector housing, caravan sites and park home sites within the district by setting out legal requirements 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 North West Leicestershire have a home that is safe, secure, dry and not overcrowded.
- Improve the condition and energy efficiency of homes in the private rented sector and raise housing standards 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.

2.2 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.

2.3 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.

2.4 The Environmental Protection Team will respond to enquiries and complaints about substandard, unsafe, problematic and empty housing and where standards are not met enforcement action may be taken.

2.5 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.

2.6 There has been an increase in the number of housing related enquiries received by the team over the past five years, with the most significant increase over the duration of the Covid pandemic, as more people were at home for longer periods. More recently, there has been a prioritisation of how the Council respond to reports of damp and mould in the private rented sector. There has also been an increase in demand within the team for housing standard inspections as part of the Homes for Ukraine scheme. 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.

2.7 Table one – housing complaints received by the team over a five year period

| Year | Number of Complaints received |
|---------|-------------------------------|
| 2021-22 | 123 |
| 2020-21 | 134 |
| 2019-20 | 157 |
| 2018-19 | 120 |
| 2017-18 | 104 |

2.8 There are currently 97 licenced Houses in Multiple Occupation across the district.

2.9 The refreshed General Enforcement Policy can be found in Appendix A.

2.10 The draft Housing Enforcement Policy can be found in Appendix B.

3.0 Civil Penalties Policy

3.1 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.

3.2 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.

3.3 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.

3.4 When determining the level of the civil penalty the severity and harm of the offence must be considered as stated in Section 63 Sentencing 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.

- 3.5 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.
- 3.6 The Council is considering the introduction of a lesser charge for early payment of the penalty to encourage prompt payment and this will also reduce the administrative burden on the Council.
- 3.7 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. In accordance with sentencing requirements, the reduction would be one third.
- 3.8 Recovery of an unpaid Civil Penalty would be through the Council's debt recovery process.
- 3.9 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.
- 3.10 Using civil enforcement as part of a graduated approach to enforcement means that prosecutions will be reserved for the most serious of cases where civil enforcement is not appropriate
- 3.11 A copy of the draft Civil Penalties Policy can be found in Appendix C.

4.0 Minimum Energy Efficiency Standards

- 4.1 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 with a rating of at least E.
- 4.2 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.
- 4.3 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 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.
- 4.4 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 two.
- 4.5 Table two – 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)* £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) £4000 plus Publication penalty for subsequent offences at property (50% 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 fourteen days of issue. The discount would be removed if an appeal against the notice is submitted.

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

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

5.0 Smoke and Carbon Monoxide (England) Regulations 2015

5.1 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

5.2 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. The remedial notice is a notice served under Regulation 5 of these regulations.

- 5.3 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 is 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.
- 5.4 The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within fourteen 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.
- 5.5 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)
- 5.6 Early payment discount applies if payment is made within fourteen days of the penalty notice being issued and will be suspend if an appeal against the notice is submitted.
- 5.7 The draft Smoke and Carbon Monoxide Financial Penalties/Statement can be found in Appendix E.

6.0 Electrical Safety Standards Process and Overview

- 6.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (ESSPRS) came into force on 1 June 2020 (although the requirements apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021). The regulations are designed to ensure electrical safety within the private rented sector in England by requiring landlords to have the fixed electrical installation within rented properties inspected at least every five years.
- 6.2 The aim of the legislation is to ensure that the electrical installation within rented properties is regularly checked and deficiencies are rectified in a speedy manner to minimise risk to the occupants. The provision of certification allows all parties to see evidence that this has occurred.
- 6.3 The Electrical Safety Standards Process and Overview can be found at Appendix F.

7.0 Financial

- 7.1 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. This is set out in Regulation 4 of The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 s.294A(7).
- 7.2 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. Due to the nature of enforcement work is it very difficult to predict income derived from financial penalties. However, the income that is generated through this approach will be reviewed every year as part of the budget setting process. Income from proactive enforcement work may lead to higher levels of income in the first instance and then as compliance improves the income is likely to stabilise. However, the Council takes a graduated

approach to enforcement and if compliance is secured through the informal route this would not lead to income through financial penalties.

- 7.3 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 this reduces the income received by the Council, it would also reduce the resource demands of the Legal and Environmental Protection Teams to respond to any appeal.
- 7.4 The capacity within the team is limited, with 1.2 FTE for housing standards enforcement work. Therefore, the service is mainly complaint led and reactive. As part of the Fuel Poverty Working Group recommendations, resources have been reviewed. In order to deliver a proactive service it has been identified that an additional full time Environmental Health Officer and an additional full time Technical Support Officer are required. In January 2023, Cabinet responded to the recommendations from the Fuel Poverty Working Group and approved the use of the Disabled Facilities Grant to fund these additional posts. This is subject to approval by the Better Care Fund Accountant.

8.0 Legal

- 8.1 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.
- 8.2 The Civil Penalties and other financial penalties policies widen the enforcement tools that are available to the Enforcement Officers to encourage compliance by landlords.

| Policies and other considerations, as appropriate | |
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| Council Priorities: | <ul style="list-style-type: none"> - Local people live in high quality, affordable homes - Our communities are safe, healthy and connected |
| Policy Considerations: | The Council is not able to impose financial penalties without having an approved and published policy. |
| Safeguarding: | Any safeguarding concerns raised through the work within the Environmental Protection Team are referred as appropriate |
| Equalities/Diversity: | An Equalities Impact Assessment has been completed for these policies. |
| Customer Impact: | None |
| Economic and Social Impact: | None |
| Environment and Climate Change: | <p>Environmental Implications including contributions to achieving Zero carbon Council by 2030</p> <p>The Minimum Energy Efficiencies Standards Financial Penalties policy provides a regulatory framework for improving the energy efficiency in the private rented sector.</p> |

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| Consultation/Community Engagement: | None required |
| Risks: | Having clear and transparent published policies will reduce the risk of successful challenge against any proposed housing enforcement action. |
| Officer Contact | <p>Paul Sanders Head of Community Services Paul.sanders@nwleicestershire.gov.uk</p> <p>Clare Proudfoot Environmental Protection Team Manager clare.proudfoot@nwleicestershire.gov.uk</p> |