

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

14 DECEMBER 2017

**REPORT OF
SENIOR
MANAGEMENT TEAM**

CABINET DECISION

Regeneration and Housing – Lead Cabinet Member – Councillor N Cooke

PRIVATE SECTOR HOUSING: THE HOUSING AND PLANNING ACT 2016 – RENT REPAYMENT ORDERS AND CIVIL PENALTY CHARGES

1. Summary

The private rented sector has grown significantly in recent years and nationally accounts for one in five households. Against this backdrop Government is keen to ensure that authorities have the necessary tools to ensure a quality private rented sector in their locality (in terms of both housing condition and management) and can effectively tackle rogue landlords.

As a Council we aim to support good landlords who provide decent well maintained homes, whilst taking a proactive approach to tackling rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard or unsafe. The Housing and Planning Act 2016 (which received Royal Assent on 12th May 2016 and was enacted in October 2016) introduces a range of new powers which have been given to local authorities. The purpose of this report is to update members on these new powers and to seek approval to adopt at a local level.

2. Recommendations

1. Cabinet are asked that:

- (a) the provisions of the Housing and Planning Act 2016 ('the Act') and the introduction of civil penalty charges for certain offences under the Housing Act 2004 be endorsed;
- (b) the power to apply for a banning order against certain persons convicted of a banning order offence to prohibit them from letting property for a specified period of time be endorsed;
- (c) the power to apply for a Rent Repayment Order for certain offences to seek recovery of rent paid by Universal Credit be agreed;
- (d) delegated authority be granted to the Director of Economic Growth and Development Services to enforce the provisions of the Act and that the Scheme of Delegation be amended accordingly.

2. Members are requested to delegate authorisation to the Director of Economic Growth and Development Services to prepare and agree a penalty fee structure in respect of the penalty charges in line with the Act and Statutory Guidance for relevant offences specified under the Act, in consultation with the Director of HR, Legal and Communications and Cabinet Member for Regeneration and Housing.
3. Cabinet are asked to agree that a fee structure be adopted to set penalty charges for certain specified offences under the Housing and Planning Act in accordance with Statutory Guidance.
4. Subject to the approval of recommendations 1 – 3, Cabinet are asked to approve the introduction of a Private Sector Housing Civil Penalty Policy (**Appendix A**), Rent Repayment Order Policy (**Appendix B**) and amendments to the Council's Enforcement and Regulatory Policy for Private Sector Housing (**Appendix C**).
5. The Director of Economic Growth and Development Services be authorised to make any necessary amendments to the above policies, should this be required, once further regulations have been introduced.

3. Reasons for the Recommendations/Decision

The Private Sector Housing Civil Penalty Policy, Rent Repayment Order policy and amended Enforcement and Regulatory Policy for Private Sector Housing sets out the Council's approach to Civil Penalties and Rent Repayment Orders, taking into account the statutory guidance set out by the Government under Section 41 and Schedule 9 of the Housing and Planning Act 2016.

The introduction of the above will help the Council tackle criminal, rogue and irresponsible landlords, improve standards in the private rented sector and ensure that private rented housing is safe, well managed and properly maintained.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code).

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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SUMMARY

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RECOMMENDATIONS

1. Cabinet are asked that:
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DETAIL

Background: Housing and Planning Act 2016

1. The Housing and Planning Act 2016 received Royal Assent on 12th May 2016 and was enacted in October 2016. There are 6 new measures introduced by the Act to help tackle rogue landlords and property agents:
 - Extension of Rent Repayment Orders
 - Civil Penalties of up to £30,000
 - Tenancy Deposit Protection Scheme data sharing
 - Banning Orders
 - A database of rogue landlords/property agents
 - A tougher fit and proper person test for landlords
2. On 6th April 2017, further new legislation was introduced meaning that regulations came into force with provisions for Rent Repayment Orders, Civil Penalty Charges and Tenancy Deposit Protection Scheme data sharing. The introduction of the measures is broadly welcomed across the sector by good private sector landlords, their representatives and local authorities.

An overview of the new powers

Extension of Rent Repayment Orders

3. A Rent Repayment Order is an order requiring a landlord to repay an amount of rent paid by a tenant or by a local housing authority in respect of Universal Credit or Housing Benefit under a tenancy.
4. Current legislation within the Housing Act 2004 allows the local housing authority to apply to the First- tier Tribunal for a Rent Repayment Order. This application can be made where a landlord or property agent has been convicted in court of letting certain accommodation without a licence where there is a requirement to have one. The Housing and Planning Act 2016 introduces new grounds to allow a tenant or local housing authority to apply for a Rent Repayment Order. An order can be applied for when the landlord or property agent has committed an offence, whether or not he/she has been convicted.
5. The same criminal standard of proof is required for a Rent Repayment Order to be approved as is required for prosecution in a Magistrates Court, that is, beyond reasonable doubt. There is a maximum of 12 months' rent recoverable subject to certain provisions.
6. Local authorities are expected to develop policies on when to apply for a Rent Repayment Order.

Civil Penalty Charges

7. Civil Penalty charges are a financial penalty as an alternative to prosecution in a Magistrates Court for offences committed by a landlord or property agent under the Housing Act 2004.
8. As with Rent Repayment Orders the same criminal standard of proof is required for a Civil Penalty as for prosecution in a Magistrates Court, that is, beyond reasonable doubt. The amount of the Civil Penalty charge is to be determined by the local authority but must not exceed £30,000.
9. Department for Communities and Local Government (DCLG) have issued guidance to accompany the legislation to assist local authorities consider and determine Civil Penalty charges. A number of factors are required to be considered to ensure Civil Penalty charges are set at an appropriate level on a case by case basis. At present officers are working with colleagues across the region with the aim of developing a consistent approach to determining charges.
10. Local authorities will be required to develop policies on when to prosecute and when to impose a Civil Penalty charge.

Tenancy Deposit Protection Scheme Data Sharing

11. These proposals will help local authorities identify privately rented housing in their areas to assist undertaking their functions under the Housing Act 2004. Private sector landlord names will not be shared as these can be obtained from other sources.

Banning Orders

12. This power will enable local authorities to apply to a First-tier Tribunal for Banning Orders to prevent landlords or property agents from letting a house, engaging in letting agency work or in property management work.
13. A Banning Order will last a minimum of 12 months and can only be applied against someone who has been convicted of a Banning Order offence. The list of relevant offences have yet to be finalised, however it is envisaged that the list will include; relevant housing offences, immigration offences, serious criminal offences and other criminal offences.

Database of Rogue Landlords/Property Agents

14. The Government proposes to establish and operate a database of rogue landlords and property agent's. The database will only be accessible to local authorities and DCLG, although some anonymised data may be made public. The introduction of the database is intended to help local authorities keep track of rogue landlords and target enforcement action.
15. Local authorities will be responsible for making entries and maintaining the content of the database to share information and prevent rogue landlords and property agents trading illegally. There will be a duty on local authorities to enter on to the database anyone who is subject of a Banning Order. There is also a power to include a person convicted of a Banning Order offence, or who have been the subject of two Civil Penalties.

Regulations governing the database are now expected to come in to force in April 2018.

Tougher Fit and Proper Person Test for Landlords

16. Guidance is yet to be published regarding this matter but is expected to include matters around insolvency. Regulations are now expected to come into force in April 2018.

IMPACT OF THIS LEGISLATION LOCALLY (The Stockton-on-Tees context)

17. The Private Sector Housing team endeavours to be pro-active in dealing with rogue landlords and recent changes to the procedures for dealing with poor housing conditions, whilst having regard to the Corporate Regulatory Enforcement Policy and the Regulators Code, mean that formal action is instigated in a timely manner. Taking into account our previous experiences it is anticipated that the majority of landlords and property agents will be compliant and that it will be a small minority that are subject to the new enforcement powers. Nevertheless there is a need to be prepared to use the new powers when and where appropriate.
18. Since 2014 the Private Sector Housing team have dealt with over 900 cases relating to housing conditions in the private rented sector, this figure includes a proportion of targeted interventions in certain areas of the borough as part of the “driving up standards” initiative. Not all cases lead to intervention and in the majority of cases landlords are provided with the opportunity to resolve matters without the need for formal enforcement action.
19. In the same period the team served 35 notices or orders to deal with unsatisfactory housing conditions. On 3 occasions landlords failed to comply with the requirements of the notices and orders, this culminated in 2 successful prosecutions in the Magistrates Court and 1 formal caution. It is on these occasions where the Private Sector Housing team would have been in a position to implement the range of options contained within new legislation. **Appendix D** provides a case study providing a working example of the use of these new powers.

LEGAL IMPLICATIONS

20. Delegated authority will be required for the Director of Economic Growth and Development Services to enforce the provisions of the Act and the Scheme of Delegation will need to be amended accordingly.
21. The Director of Economic Growth and Development Services will require authorisation to prepare and agree a penalty fee structure in respect of the Civil Penalty charges in line with the Act and Statutory Guidance for relevant offences specified under Act in consultation with the Director of HR, Legal and Communications and Cabinet Member for Regeneration and Housing.

FINANCIAL IMPLICATIONS

22. At present there has been no final determination of how to decide Civil Penalty charges. However having considered the guidance published by DCLG the following approach would appear to be appropriate in respect of how to determine a fee and is outlined as follows:
 - a. Have regard to a pre-determined structure which takes into account the relevant statutory guidance:
 - b. This method would include considering the seriousness of the offence, having regard to the culpability and record of the offender, the harm caused to the tenant.
 - c. In addition the charge should look to punish the offender, deter the offender and others and ensure that any financial benefit that may have been obtained is removed.
23. The Housing and Planning Act 2016 allows the income from Rent Repayment Orders (where rent was paid from Housing Benefits or Universal Credit) and Civil Penalty charges to be retained by the local authority. The income can be used to further the local authority’s statutory functions in relation to their enforcement functions covering the private rented sector.

24. No budget provision has been made for 2017/2018 in respect of income that may be received through this process. As mentioned above, at this current time, it is expected that it will be a small minority that are subject to the new enforcement powers and any financial income will therefore also be minimal.

RISK ASSESSMENT

25. The introduction of the proposals detailed within the body of this report are likely to be low to medium risk and will therefore be managed through existing control mechanism.

COUNCIL PLAN THEMES

26. The proposed redevelopment directly supports the following Council Plan themes:

Environment and Housing: the policies will assist in maintaining and improving standards in the private rented sector in line with the Stockton Rental Standard

Health and Wellbeing: safe, well managed and properly maintained private sector housing will have a positive impact on the health and well-being of future residential occupiers.

CORPORATE PARENTING IMPLICATIONS

27. None

CONSULTATION INCLUDING WARD/COUNCILLORS

28. Consultation briefings have taken place with the Cabinet Member for Regeneration & Housing.

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Education related

None.

Background Papers

None

Ward(s) and Ward Councillors

All.

Property

As detailed within the body of the report.