

BABERGH DISTRICT COUNCIL AND MID SUFFOLK DISTRICT COUNCIL

TO:	Babergh & Mid Suffolk District Councils Overview and Scrutiny Committee	REPORT NUMBER: JOS/22/46
FROM:	Cllrs Lavinia Hadingham and Jan Osborne Cabinet Members for Housing	DATE OF MEETING: 20/02/2023
OFFICER:	Deborah Fenton Director for Housing	KEY DECISION REF NO.

PRIVATE SECTOR HOUSING ENFORCEMENT & CIVIL PENALTIES POLICY

1. PURPOSE OF REPORT

- 1.1 To discuss and receive feedback (before Cabinet approval is sought) on the proposed new private sector housing enforcement policy including the use of civil penalties as an alternative to prosecution.

2. OPTIONS CONSIDERED

2.1 OPTION 1

- 2.2 Overview & Scrutiny to make comment on the new policy and a recommendation to Cabinet to adopt the new private sector housing enforcement policy including the use of civil penalties as an alternative to prosecution. Also, to agree a fair charging regime to recover the costs of housing enforcement action taken by the Council.

2.3 OPTION 2

- 2.4 The Council could decide not to adopt a private housing enforcement policy. This would leave it having to rely on the corporate policy which does not include the specific approaches required in the complex housing regulatory regime. There would be a greater risk of a successful challenge to any formal action taken either by legal appeal or judicial review.

- 2.5 The Council could decide not to approve the use of the civil penalty powers as part of the enforcement policy. This would mean that some powers could not be used, limiting the Council's impact on improving housing standards. Reliance would be solely on prosecution. Any fines would not be recoverable and lengthy proceedings in Court would be required. Other than its legal costs, the Council cannot currently retain any fines imposed in Court through prosecutions.

- 2.6 Not approving the use of the civil penalty powers and other financial penalties referred to in the enforcement policy would lead to the Council failing to make the most efficient use of enforcement resources available and would limit the enforcement options available for privately rented properties.

- 2.7 The Council could decide to continue to offer a free service to non-compliant landlords by not charging for enforcement action taken in the service of statutory notices. There is a strong argument that where non-compliant landlords do not comply with the law and the Council must intervene, the landlord should be

responsible for the costs incurred by the Council having to act where minimum legal requirements are not being met.

3. RECOMMENDATIONS

- 3.1 Option 1 - Overview & Scrutiny to make comment on the new policy and a recommendation to Cabinet to adopt the new private rented sector housing enforcement policy including the use of civil penalties as an alternative to prosecution. Agree a fair charging regime to recover the costs of housing enforcement action taken by the Council.
- 3.2 To recommend that Cabinet approve and authorise the use of civil penalty and financial penalty powers provided by the Housing and Planning Act 2016 (Appendix 2), Electrical Safety Regulations (Appendix 3) and Energy Efficiency (Private Rented Property) Regulations (Appendix 4).
- 3.3 To recommend to Cabinet the proposed charges for relevant housing enforcement action based on officer time taken and that any revenue arising from civil penalties will be retained within the service to meet the legal or administrative costs and expenses incurred under the relevant housing law.

REASON FOR DECISION

To ensure that the Council has a consistent and effective policy to tackle poor conditions in private sector housing.

To make full use of housing enforcement powers available, including civil penalties and ensure effective enforcement.

To recover enforcement costs incurred.

4. KEY INFORMATION

- 4.1 Private sector housing contributes towards meeting housing need in the district. The Council has responsibility to ensure that reasonable standards are provided for residents living in private housing, particularly in the rented sector which accounts for around 17% of the housing stock in the districts.
- 4.2 We offer a service to residents requiring help and those in need. This includes informal advice, signposting, grants and responding to service requests. Much of our work is focussed on ensuring minimum standards are provided by landlords in their rented properties. We work with them to ensure that safe and healthy homes are provided for tenants. Sometimes, where an informal approach fails or where dangerous and unsafe conditions are encountered, we must use enforcement powers to improve conditions.
- 4.3 A specific private housing enforcement policy is required to complement the overarching corporate enforcement policy and to use civil penalty powers. This is so that we can include changes in the law to use effective and targeted enforcement.
- 4.4 The new policy would set out our range of approaches depending on different circumstances. This includes the way in which the Council secures compliance with

the law relating to residents, landlords and business. This is in relation to privately rented homes, those in multiple occupation and empty homes. Recent civil penalty powers are available to regulate housing standards including electrical safety, smoke and carbon monoxide requirements and minimum energy efficiency standards.

- 4.5 By adopting an enforcement policy, the Council can demonstrate greater transparency in its approach and service provision and offer a broader range of solutions to tackle poor housing conditions.
- 4.6 The inclusion of civil penalties in the policy gives the Council an alternative to prosecution in all but the most serious cases and enables us to issue penalty notices for non-compliance. This also offers the benefit of any monies recovered contributing towards funding of the service provision and being used to prioritise action towards a minority of bad landlords that flout the law.
- 4.7 It is proposed that the Council charges where enforcement action is taken to recover our reasonable costs incurred. This would be based on officer time taken.
- 4.8 The main legal sanction for non-compliance with housing law in the private rented sector has been criminal prosecution through the courts. This is a time consuming and resource-intensive process and results in the perpetrator having a criminal record, even for the less serious offences. An alternative approach is available in the form of Civil penalties. These powers do not remove the option of prosecution but complement it by providing an alternative, streamlined enforcement option. An outcome is achievable in a much shorter timescale, while reserving criminal prosecutions for the most serious contraventions.
- 4.9 Civil penalties cannot be issued unless the evidence has met the criminal standard of proof i.e. 'beyond reasonable doubt', the same level as for criminal prosecutions. In considering the decision to issue a Civil Penalty or not, the Council must also be satisfied that there is sufficient evidence upon which a criminal court could convict and that the action is in the public interest. If a Civil Penalty is decided upon, a prosecution cannot also be taken.

5. LINKS TO CORPORATE PLAN

- 5.1 The proposals are in line with the Housing Delivery Plan and strategies to deliver our housing vision for 'residents to be able to live in affordable and high-quality homes that enable them to build settled, safe and healthy lives, within sustainable and thriving communities'. In particular, the Homes and Housing Strategy and related Action Plan Strategic Aim 6: Best use is made of private sector land and private accommodation across the districts.
- 5.2 The proposals also relate to the Environment Delivery Plan (Housing). The enforcement policy includes action towards addressing the environmental performance of the private housing stock. By taking action to reduce carbon emissions and its regulatory regime with linkages to excess cold hazards in homes and fuel poverty is relevant.

6. FINANCIAL IMPLICATIONS

- 6.1 This appears to be a policy change without any significant financial implications

- 6.2 The use of enforcement powers to levy civil financial penalties against landlords as an alternative to criminal prosecution is not expected to require any additional staffing resources over and above the current establishment. Where penalties are successfully enforced this income will in the first instance be used to offset the costs associated with the enforcement of these powers and the recovery of the fine. Any surplus generated will be retained by the Council but must be used to further its statutory functions in relation to the private rented sector.
- 6.3 Historically, enforcement action is used as a last resort. Based on current enforcement levels, the level of income generated would be small.

7. LEGAL IMPLICATIONS

- 7.1 This report refers to the statutory guidance as set out in section 126 and schedule 9 of the Housing and Planning Act 2016. It also applies to civil penalties for electrical safety/carbon monoxide regulations. The body of the report also accurately reflects statutory requirements for imposing a civil penalty as an alternative to prosecution.
- 7.2 The Council's scheme of officer delegations should be updated and maintained to ensure the relevant officers can make use of the powers.
- 7.3 If Committee approves the recommendations, any enforcement taken under these new powers must be applied in a reasonable and proportionate manner. Civil penalties, as an alternative to prosecution, should only be imposed where the councils are satisfied that a prosecution for the specific offence would meet the evidential and public interest tests.
- 7.4 The Rent Repayment Orders and Financial Penalties (Amounts Recovered (England) Regulations 2017 specify that any monies recovered under these provisions can only be used by the Council to cover the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any enforcement functions in relation to the private rented sector. Any money not used for this purpose must be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.

8. RISK MANAGEMENT

- 8.1 Key risks are set out below:

Key Risk Description	Likelihood 1-4	Impact 1-4	Key Mitigation Measures	Risk Register and Reference*
Legal Challenge Failure to implement the private housing enforcement policy would lead to sole reliance on the corporate policy which lacks specific detail in this service area. This could increase the risk of successful legal appeal against	2-Unlikely	1-Minimal	Cabinet to agree adoption of the enforcement policy (para 3.1), which provides fairness, transparency and consistency and outlines the circumstances in which the Council acts	Operational Risk Register-Housing Solutions entry no.30

Council's actions taken at first tier tribunal or Court.				
Reputational Risk The Council could be criticised by Government or media for not making use of the full range of powers available to improve conditions in privately housing. Could also lead to aggrieved parties or tenants taking successful action by judicial review against council's decisions or by ombudsman.	3-Probable	2-Noticeable	Cabinet to approve and authorise the use of civil and financial penalty powers (para.3.2) and recovery of costs (para. 3.3)	Operational Risk Register-Housing Solutions entry no.31
Failure to use civil and financial penalty powers would reduce the options for action to improve poor conditions in the private rented sector.	4-Highly Probable	3-Bad	Cabinet to approve and authorise the use of civil and penalty powers (para.3.2)	Operational Risk Register-Housing Solutions entry no.32
Cost Recovery Failure to recover costs of enforcement action taken including civil and financial penalties.	3-Probable	2-Noticeable	To agree (para.3.3) to charge for housing enforcement action taken and for revenue arising from civil penalties to be retained within the service to meet the legal and administrative costs and expenses incurred.	Operational Risk Register-Housing Solutions entry no.33

**Name of risk register where risk is currently documented and being actively managed and its reference number*

8.2 The implementation of these policies is aimed at ensuring that the Housing Standards team have availability of the full range of powers to take action where necessary to tackle poor housing conditions. The policies seek to reduce risks and will only be used proportionately and fairly where action is justified. This will enhance the Council's reputation and reduce the risk of decisions being challenged. The Council will continue to work together with landlords to improve standards in the private rented sector. These powers will improve the Council's ability to deal with poor conditions, including any criminal activity. In the absence of these policies, tenants are less able to be assisted in achieving safe and healthy living conditions.

9. CONSULTATIONS

9.1 There is no statutory requirement to consult on the use of the enforcement powers. However, the government has widely publicised these powers through social media and contacted landlord associations and accreditation schemes directly informing them of these changes. If members agree to adopt these powers the Council will publicise this on the Council's website and other media channels.

10. EQUALITY ANALYSIS

- 10.1 An Equalities Impact Assessment is not required as this policy relates to implementing new legislation.
- 10.2 The new policy affects the entire private rented sector in all wards and is aimed at raising standards and improving safety within rented homes and there would be no negative impacts on any groups with protected characteristics. It also fits into the corporate enforcement policy principles of good regulation and the need for transparency and consistency when dealing with customers. The policy does not impact or exclude any of the protected characteristics as defined under the Equality Act 2010.

11. ENVIRONMENTAL IMPLICATIONS

- 11.1 The Council receives complaints and enquiries about poor conditions in the private rented sector including cold homes and dampness. Making the full use of its powers including ensuring rented properties are adequately insulated and heated will not only improve health of residents and reduce the likelihood of fuel poverty but also contribute to reducing carbon emissions.

Included in this report is the use of powers to assist in improving the thermal and energy efficiency of rented homes to meet minimum energy efficiency standards (MEES). The Council will encourage compliance with these requirements by working with landlords, but will only use enforcement where encouragement and advice have failed. The Council continues to provide support via its county wide MEES initiative and some financial assistance support to landlords. The proposals in this work contribute towards reducing climate change in domestic premises.

12. APPENDICES

Title	Location
(a) Appendix 1 - Private Housing Enforcement Policy	Attached
(b) Appendix 2 - Civil Penalties Policy	Attached
(c) Appendix 3 - Electrical Safety Standards Policy	Attached
(d) Appendix 4 - Energy Efficiency Regulations Policy for Private Rented Property	Attached

13. BACKGROUND DOCUMENTS

- 13.1 None other than relevant legislation and statutory guidance

14. REPORT AUTHOR

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