

Report Title: Housing Enforcement Policy

Portfolio Holder: Councillor Ainsley Arnold, Housing, Planning and Regeneration

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. Cheshire East Council is committed to proactively ensuring compliance to create the right conditions for the private rented sector to thrive. To this end, we seek to encourage and support good landlords by demonstrating through our actions that poor standards of property management and letting out substandard accommodation will not be tolerated.
- 1.2. Legislative changes which are effective in 2018 provide a further opportunity for the Council to strengthen its message to poor landlords by introducing banning orders, a national database of rogue landlords, minimum energy efficiency standards for new tenancies and extending the licensing of Houses in Multiple Occupation (HMOs) to more properties.
- 1.3. The Cheshire East Enforcement Policy and service specific enforcement policies were approved by Cabinet in July 2016 and a subsequent amendment to the Housing Enforcement Policy was approved by the Cabinet member for Housing, Planning and Regeneration in August 2017. To be able to utilise the new powers conferred on it through the Housing and Planning Act 2016 and the Energy Efficiency (Private Rented Property) Regulations 2015, the Council must amend its existing policy to set out how our powers will be used.
- 1.4. This report outlines the changes in the legislation and seeks to amend the Housing Enforcement Policy.

2. Recommendations

- 2.1. It is recommended that the Portfolio Holder approves the amended Housing Enforcement Policy.

3. Reasons for Recommendations

- 3.1. There is a statutory requirement for Cheshire East Council to have an appropriate enforcement policy in respect of the regulatory services that it provides.
- 3.2. Challenging poor quality housing is a priority in the Housing Strategy 2018-2023. Regulation and enforcement are key activities in ensuring that landlords provide good quality, safe accommodation that is well managed.

4. Other Options Considered

- 4.1. There is the option to continue to carry out any enforcement activity in line with the Housing Enforcement Policy approved in 2017. However, this would not afford us the option of applying for banning orders and making entries on the rogue landlords database which serve to protect tenants and drive rogue landlords out of the sector, nor secure improvements to the energy efficiency of private rented properties.

5. Background

- 5.1. The Cheshire East Enforcement Policy was approved by Cabinet in July 2016 and applies to all regulatory services delivered by the Council including Environmental Health, Trading Standards, Planning, Building Control, Licensing, Housing, Antisocial Behaviour, Waste and Littering, Parking, the Blue Badge Scheme and Public Rights of Way.
- 5.2. The Enforcement Policy provides guidance to businesses, residents and officers on the range of options that are available to achieve compliance with legislation enforced by each of the services. The Enforcement Policy comprises of an overarching policy of enforcement which is supplemented by appendices for each of the specific regulatory service areas. This arrangement allows for clearer detail on statutory guidance and code of practice that may be specific to individual service area and which must be considered as part of their regulatory effort.
- 5.3. The Housing Enforcement Policy, appended to the main Cheshire east Enforcement Policy, was amended in August 2017 to include civil penalties of up to £30,000 and rent repayment orders for certain housing offences which came into force during 2017. Further powers are effective in 2018, for which our approach must be set out in our Enforcement Policy, namely:

- Banning orders to prevent landlords and agents who have committed certain offences from letting properties, effective from 6 April 2018;
- The power to make an entry to a national database of rogue landlords, effective from 6 April 2018;
- A minimum level of energy efficiency for rented properties affecting new tenancies from 1 April 2018;
- A revised definition of HMOs that require a licence, effective from 1 October 2018.

5.4. Banning Orders

5.4.1. A banning order, introduced through the Housing and Planning Act 2016, bans a landlord from letting housing in England and engaging in letting agency or property management work for a minimum period of 12 months following certain housing, immigration and serious criminal offences that are committed on or after 6 April 2018. There is no statutory maximum period for a banning order; the length of the banning order is determined by the First-tier Tribunal, however the Council must make a recommendation on the term of the banning order and set out its reasons.

5.4.2. There are 54 different banning order offences which include a range of housing offences, including failing to comply with an improvement notice or a prohibition order, offences in relation to HMO licensing and management, and contravention of an overcrowding notice. It is the responsibility of the local authority to apply for a banning order regardless of who the enforcing authority is for a relevant offence, therefore it is imperative that enforcement agencies share relevant information about any convictions that are secured.

5.4.3. Non-statutory guidance sets out a range of factors to consider when deciding whether to apply for a banning order, including the severity of the offence, previous offending, the harm caused to the tenant, and the sufficiency of the banning order in acting as a punishment to the offender as well as a deterrent to others. Government guidance is that banning order should be used for the most serious offenders.

5.4.4. A breach of a banning order could result in a prosecution or a civil penalty of up to £30,000. Further civil penalties could be applied for every six months, or part of that period, that they continue to breach the banning order.

5.5. Database of Rogue Landlords

5.5.1. The Rogue Landlord Database is a national initiative introduced through the Housing and Planning Act 2016 to improve the tracking of rogue landlords who have committed banning order offences operating across multiple local authority areas. When a banning order has been made, we have a statutory duty to make an entry on the database.

5.5.2. Where a person is guilty of a banning order offence at a time when they were a residential landlord or property agent, but following full consideration of the circumstances it is decided not to apply for a banning order, we may use a discretionary power to make an entry on the national database. This will ensure that all local authorities can access information to build up a full picture of the activities of individual landlords or agents.

5.5.3. Similarly, where a person has received two or more civil penalties in respect of a banning order offence within a twelve month period, again we may use a discretionary power to make an entry on the national database.

5.6. Minimum Energy Efficiency Standards

5.6.1. The Energy Efficiency (Private Rented Property) Regulations 2015 are designed to tackle the least energy-efficient properties – those rated F or G on their Energy Performance Certificate (EPC). EPCs are rated A to G, where A is the best performing properties, and G is the worst properties. The Regulations establish a minimum standard for the private rented sector, affecting new tenancies from 1 April 2018.

5.6.2. Properties with poor energy efficiency impose unnecessary costs on tenants and the wider economy, including health and social care where poor housing conditions cause or exacerbate poor health.

5.6.3. The minimum energy efficiency standards present us with an opportunity to engage with landlords to drive improvements in rented housing and where they fail to comply with the legislation, we can impose a financial penalty of up to £5,000.

5.6.4. Certain exemptions apply, including properties that are not legally required to have an EPC (such as places of worship or listed buildings), and where all possible improvements are made but the EPC is still F or G. Landlords must self-register the details of exempted properties on a national exemptions register. False or misleading information on the register can result in a financial penalty of up to £1,000.

5.7. HMO Licensing

- 5.7.1. Under existing legislation, a HMO should be licensed if there are 5 or more occupants (living in two or more separate households) and the property is set out over 3 or more storeys. From 1 October 2018, any HMO with 5 or more occupants will require a licence, regardless of the number of storeys. Valid applications must be made prior to 1 October 2018; it will constitute an offence by the landlord if the property is operated after that date without a valid application having been made.
- 5.7.2. There are an estimated 600-650 HMOs in Cheshire East, of which 51 meet the current definition for a licence. We estimate that up to 500 extra HMOs could require a licence when the changes come into effect, however it is anticipated that there may be some landlords that will reduce occupancy levels to below 5 people to negate the need for a licence, so the exact number of HMOs to be licensed is yet unknown.
- 5.7.3. The Policy has been amended to reflect the change in the licensing regime, and detailing a stronger 'fit and proper person' test. Applicants will be expected to submit a Disclosure and Barring Service check at their own expense as part of their licence application.
- 5.7.4. The Policy makes clear the enforcement options that we will consider for any licensing offences, including prosecution, civil penalty of up to £30,000, rent repayment order, banning order and/or an entry on the database of rogue landlords.
- 5.7.5. The legislation and requirements for HMOs are complex areas. In order to provide clarity and promote good practice in the sector, the Policy has been updated to incorporate a guide for landlords to understand the amenities, property standards and management standards that are required of them.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. The Housing and Planning Act 2016 introduced discretionary powers for local authorities to apply for banning orders for landlords or agents who have committed prescribed banning order offences on or after 6 April 2018. Guidance issued by the Ministry for Housing, Communities and Local Government (MHCLG) states that local housing authorities are expected to develop and document their own policy on when to pursue a

banning order and should decide which option it wishes to pursue on a case by case basis in line with that policy.

6.1.2. MHCLG have prepared statutory guidance for local housing authorities in relation to the database of rogue landlords. Authorities must have regard to the guidance in deciding whether to make an entry in the database under section 30 the Housing and Planning Act 2016, and the period to specify in a decision notice under section 31 of the Act.

6.1.3. Under The Energy Efficiency (Private Rented Property) Regulations 2015, every local authority is the enforcement authority for their area and will be responsible for enforcing compliance with the minimum level of energy efficiency provisions within their geographic boundaries. A duly authorised officer may carry out the enforcement activities and issue compliance notices and penalty notices where applicable. There is no legal requirement to publish our policy for enforcement action, but inclusion of our approach within the Housing Enforcement Policy is good practice and promotes transparency in the way that we carry out our enforcement activities.

6.1.4. Local authorities have a duty under Part 2 of the Housing Act 2004 to license HMOs in its area which fall within the prescribed definition and to take all reasonable steps to secure that applications for licences are made to them.

6.2. Finance Implications

6.2.1. Income received from a penalty notice served under the Energy Efficiency Regulations can be retained by the local housing authority provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector.

6.2.2. The power to require a fee that takes into account all costs incurred by the local housing authority in respect of HMO licensing is contained in section 63 of the Housing Act 2004. Fees and charges to landlords are cost neutral to cover the cost of considering the licence application and monitoring compliance with licence conditions throughout the term of the licence.

6.3. Policy Implications

6.3.1. The publication of a Housing Enforcement Policy ensures that we are compliant with our statutory responsibilities and sets out a framework by which duly authorised officers may carry out enforcement activities.

6.4. Equality Implications

6.4.1. The aim of the Housing Enforcement policy is to outline a transparent and consistent approach to housing enforcement across Cheshire East. As a consequence there are no equality implications.

6.5. Human Resources Implications

6.5.1. No extra resources are needed to implement the amended Policy; these powers can be used as an alternative or to complement existing powers.

6.6. Risk Management Implications

6.6.1. Publication of a Policy which sets out clear criteria provides a robust framework to ensure that decision about enforcement are made in a fair, consistent and equitable manner.

6.6.2. Failure to adopt an enforcement policy can increase the risk of legal challenge and adverse scrutiny. Care has been taken to ensure that the Council is not unduly constrained in taking the appropriate regulatory action. If a policy is too restrictive then this could be detrimental to fair and effective regulation; conversely there is a need to provide detail to allow individuals and business to understand what they might expect as a result of non compliance.

6.7. Rural Communities Implications

6.7.1. The private rented sector in Cheshire East is predominantly in our principal and market towns, with limited supply in rural communities. The use of our enforcement powers will be applied fairly across all our communities.

6.8. Implications for Children & Young People

6.8.1. The Policy will protect the health and wellbeing of children and young people living in the private rented sector.

6.9. Public Health Implications

6.9.1. The provision of decent accommodation can have significant health benefits for residents. Poor housing can impact on a person's mental and physical health. Licensing of HMOs will ensure that residents have access to good quality housing and that they are protected from significant harm.

7. Ward Members Affected

7.1. All wards.

8. Access to Information

8.1. Appendix one – Service Specific Enforcement Policy for Housing

8.2. Appendix two – Amenities and facilities standards in HMOs

9. Contact Information

9.1. Any questions relating to this report should be directed to the following officer:

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