

22 April 2018

Wards: All

Private Housing Enforcement Policy 2018-22 and associated Fees & Charges Policy

Report of the City Manager, Neighbourhoods & Housing

This item is not exempt

This is a key decision. The matter is in the Forward Plan 0003/18

1. Purpose of the Report and Summary

- 1.1 The Council's existing Private Housing Enforcement Policy 2012-16 sets out how the Council uses all available legislation to ensure that the private housing stock within the city of Hull is safe, well managed, maintained in good repair, promotes good health and wellbeing, is not overcrowded and does not pose a statutory nuisance.
- 1.2 There have been a number of legislative changes affecting private housing including the Deregulation Act 2015, the Housing & Planning Act 2016 and the extension of mandatory licensing of Houses in Multiple Occupation (HMOs). The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 was laid before Parliament in February 2018. The existing policy has therefore been reviewed to consider all of these changes and associated regulations. Information regarding the proposed policy changes has been circulated to Members, the Humber Landlords Association (and other landlords with properties within Hull) and resident groups for feedback. There has been a 'drop in' information session at the Guildhall in February 2018 and a meeting with the Humber Landlords Association was held on 11th April 2018.
- 1.3 The proposed policy (shown at Appendix 1) has been reviewed having regard to the Better Regulation Delivery Office Regulators Code statutory guidance and the Housing, Health & Safety Rating Enforcement Guidance. An Equalities Impact Assessment regarding the proposed policy changes has also been undertaken (shown at Appendix 2). In addition to the legislative changes, the Council also proposes to remove the informal stage within the current policy for landlords who are not accredited with the Council

and make a charge for certain services it provides.

1.4 The Council's Private Housing (Environmental Health) service discharges the Council's statutory functions in relation to housing hazards and housing conditions which are prejudicial to health. The service also administers a landlord accreditation scheme, 'Hull Accredited Landlord Scheme' (HALS) which has been subject to a review through a Task & Finish Group during 2016-17, the period that new legislative changes have been introduced. It is proposed that further work is undertaken to review the detail of any changes to the scheme before it is introduced, including the option to charge an annual fee. This work will be undertaken in consultation with the Task & Finish Group which consisted of the Chair of the Humber Landlords Association, regional National Landlords Association representative and a small number of accredited landlords.

1.5 The Council is able to charge a fee for certain statutory functions under the Housing Act 2004 to recover the costs incurred of delivering the function. These functions include:-

- Service of statutory notices
- Mandatory licenses for houses in multiple occupation (HMOs)
- Undertaking works in default of the property owner
- Empty Dwelling Management Orders

The Council has reviewed its HMO licensing fees and these are included with the Council's Fees & Charges Policy (shown at Appendix 3). The cost of licensing has to be cost neutral to the authority. There are other services which the Council has the discretion to charge for and the Council's Fees & Charges Policy sets these out also.

1.6 This report provides a summary of the legislative considerations and seeks approval of the Council's Private Housing Enforcement Policy 2018-22 and associated Fees & Charges Policy. This report also seeks delegated approval in relation to the review of the Hull Accreditation Scheme and the setting of an annual fee to landlords.

2. Recommendations

2.1 That the Council's Private Housing Enforcement Policy 2018-22 and associated Fees & Charges Policy 2018-19 are approved as per Option 2.

2.2 That delegated authority is given to the City Manager, Neighbourhoods & Housing in consultation with the Portfolio Holder for Housing to make any minor amendments to the

Council's Private Housing Enforcement Policy 2018-22 subject to any legislative changes, and to review and publish the Fees & Charges Policy on an annual basis or more frequently if required.

2.3 That Cabinet considers acceding to the request that the implementation date for the scheme be deferred pending the update of the current Accreditation scheme.

2.4 That delegated authority is given to the City Manager, Neighbourhoods & Housing in consultation with the Portfolio Holder for Housing to review and agree the conditions of the Council's Accreditation Scheme for landlords and to make any subsequent amendments to the scheme as may be necessary, including the option to set a fee.

3. Reasons for Recommendations

3.1 The Deregulation Act 2015 has introduced provisions designed to protect tenants against unfair eviction where they have raised a legitimate complaint about the condition of their home. These provisions also require that landlords provide all new tenants with information about their rights and responsibilities as tenants. They provide that a landlord cannot serve a section 21 Housing Act 1988 (as amended) notice where an Improvement Notice has been served by the Council under sections 11 or 12 of the Housing Act 2004 for housing hazards and have complied with certain legal responsibilities. It has also introduced a new standard form that landlords must use when evicting a tenant under the 'no fault' (section 21) procedure. This has made it more straightforward for landlords to evict a tenant where it is legitimate to do so. These provisions apply to all new assured shorthold tenancies that started on or after 1 October 2015.

3.2 Under the current Private Housing Enforcement Policy 2012-16 the Council takes informal action with a landlord where there is no imminent risk or conditions prejudicial to health and where there is no history of non-compliance from the landlord. A letter and schedule of works is sent to the landlord identifying those Category 1 and Category 2 housing hazards (under the Housing, Health & Safety Rating System, Housing Act 2004) which need to be addressed and requiring the landlord to confirm when the works will be undertaken. The Council has a statutory duty to deal with Category 1 hazards and a discretionary power to deal with Category 2 hazards. Under the current policy it states that the Council will take action in relation to significant Category 2 hazards. This is also proposed in the new policy. Having an informal action does not then afford the tenant any protection against unfair eviction, this is only afforded with a section 11 notice (Category 1 hazards) or section 12 notice (Category 2 hazards). It is therefore proposed that the informal stage is withdrawn from the

policy for instances where Category 1 or significant Category 2 hazards exist. An exception to this scenario could be in relation to a landlord accredited by the Council, however, there must be robust arrangements in place to ensure this does not result in unfair eviction and that the landlord removes any identified hazards. The Council is able to make a charge for the officer time taken to prepare and serve the notice. This charge is made to the landlord.

3.3 The Housing & Planning Act 2016 and subsequent regulations have introduced the following:-

- Civil penalty notices
- Rent repayment orders
- Rogue landlord database
- Banning Orders

In relation to civil penalty notices statutory guidance has been issued which requires local housing authorities to develop and document their own policy on when to prosecute and when to issue a civil penalty. The Council's policy (Decision Record CMNH-D-2018-1098) in relation to civil penalty notices has been developed through Yorkshire & Humber working groups. The Council's policy is shown at Appendix 4.

3.4 From April 2017 the scope for tenants or local authorities to apply for a rent repayment order has been expanded. Rent repayment orders allow a tenant (or where the tenant is receiving housing benefit or universal credit, the relevant local authority) to apply to a Tribunal for up to 12 months' worth of rent to be refunded. They can apply when certain offences, such as failing to comply with an improvement notice or breaches of a licensing scheme, have been committed. From April 2018, it will also be possible to apply for a rent repayment order where a landlord has breached a banning order. Rent repayment orders can only be issued to landlords, not letting agents.

3.5 From April 2018 local authorities will also be able to apply to the First Tier Tribunal to apply for a banning order preventing a landlord or a letting agent from continuing to operate. Banning orders will be issued for a minimum period of 12 months and there is no maximum. They are intended to provide a new tool to enable local authorities to tackle repeat offending. Banning orders will only be issued where specific offences have been committed. These fall into three broad categories:

- housing offences – such as failing to comply with an improvement notice or an overcrowding notice or breaches of a licensing scheme
- immigration offences – letting to someone who is not

qualified to rent a property in this country due to their immigration status

- other criminal offences – certain other criminal offences, such as fraud, the production, possession or supply of illegal drugs or certain violent or sexual offences. The offence must have taken place at the property or relate to the individual's role as a landlord/letting agent.

3.6 From April 2018, a new national database of 'rogue' landlords will be established. The database is intended to be used mainly by local councils and should improve data-sharing between authorities, making it more difficult for landlords to commit repeated offences in different areas. Any landlord or letting agent who is subject to a banning order will be added to the database. In addition landlords or agents who have received two or more civil penalties in the last 12 months may be added, at the local authority's discretion.

3.7 Following consultation the Ministry of Housing, Communities & Local Government has introduced further regulations to extend the scope of mandatory licensing for houses in multiple occupation (HMOs). At present landlords are required to obtain a licence from their local authority to let a HMO anywhere in England if it is:

- comprised of three or more storeys, and
- there are five or more people, from two or more separate households living there with shared facilities.

The changes have removed the three storey requirement and introduced minimum space standards for bedrooms. This will mean that some flats, including those that are situated above shops, will also require a licence in future if they are occupied by five or more people, from two or more separate households.

3.8 Currently there are 330 HMOs in the city subject to mandatory licensing which is estimated to rise by an additional 650 with the changes. The Private Housing (Environmental health) service has reviewed its mandatory licensing fees to be introduced from October 2018. The fees will be cost neutral to the authority. Landlords need to apply for a license for the 1st October 2018.

3.9 In February 2018 Cabinet endorsed (minute 110) a planning policy position in relation to the Proceeds of Crime Act where evidence suggests that the breach of legislation has given rise to significant financial gain. This approach is also confirmed within the Private Housing Enforcement Policy 2018-22.

3.10 The proposed policy supports the priorities within the Hull Housing Strategy 2017-2020 to improve housing standards in the private sector and supports the City Plan in safeguarding vulnerable

households.

4. Impact on other Executive Committees (including Area Committees)

4.1 The Private Housing Enforcement Policy 2018-22 (and associated Fees & Charges Policy) will apply citywide and therefore each ward will be impacted depending upon the numbers of private rented accommodation in their area and houses in multiple occupation (HMO) subject to licensing. The majority of HMOs subject to the 2018 licensing changes will be in the Wyke area, within the existing Article 4 planning area.

5. Background

5.1 The Council's existing Private Housing Enforcement Policy 2012-16 was approved by Cabinet on 1st October 2012 (Cabinet minute 37) along with the Empty Property Policy and Private Housing Strategy. These documents have been reviewed and developed into the Private Housing Enforcement Policy 2018-22 and associated Fees & Charges Policy which is citywide.

5.2 There are approximately 20,000 privately rented properties in the city and this number continues to rise. A private housing stock condition survey undertaken in 2010 indicated a total of 88,000 private dwellings in the city (included registered providers). Much of Hull's private housing stock is Victorian and terraced. Legislation including the Housing, Health & Safety Rating System (HHSRS), Environmental Protection Act 1990 and the Building Act 1984 is tenure neutral.

5.3 The Private Housing (Environmental Health) service receives approximately 1,800-2,000 service requests per annum. Each service request is triaged subject to risks/hazards. An Environmental Health Officer or Enforcement Officer will inspect the property having regard to the HHSRS (this is a risk based approach consisting of 29 hazards) and assessing whether any conditions are prejudicial to health or a nuisance. The officer will then determine whether any enforcement action is required depending upon the severity of the hazard, or whether there is a duty or discretion to act, and the occupant/s i.e. whether the property is occupied by a vulnerable group. For the purposes of enforcement Registered Housing Providers are also included.

5.4 The service in the main delivers a reactive service apart from mandatory licensing and inspections of properties owned by accredited landlords (to monitor the quality of accommodation within the scheme). The service also operates a self-regulation landlord scheme separate to accreditation which it proposes to discontinue and review the existing accreditation scheme.

- 5.5 The current policy of sending a letter with an informal schedule of works to the property owner originates from the Housing Act 1985. Under previous legislation if the Council considered enforcement may be appropriate, it had to first make its intentions known to the person or persons thought to be responsible. In most cases before issuing an Enforcement Notice under the Housing Act 1985 the Council had to first issue what was called a 'Minded To' Take Action Notice.
- 5.6 The requirement for the Council to serve 'Minded To' notices was removed with the introduction of the Housing Act 2004. This informal stage was still practised under the current 2012-16 policy, however, it is proposed that the new policy removes this stage due to the provisions within the Deregulation Act 2015. It is proposed that there will be an exception to this where a landlord is accredited. On developing the accreditation scheme, it will consider how this is robustly monitored.
- 5.7 The person on whom a statutory notice is served has the right of appeal to the First Tier Property Tribunal. The person can appeal against the notice itself i.e. the Council's requirements within the notice and also has a right of appeal against the financial charge that the Council has made for the service of the notice.

6. Issues for Consideration

- 6.1 Some of the proposed changes are as a result of legislative changes – these are:-
- Civil penalty notices (although not the levels of charge)
 - Banning Orders
 - Rent repayment orders
 - Rogue landlord database
 - Mandatory HMO licensing (although not the level of fees)

The proposed changes that are as a result of the Council's consideration are:-

- Fees & Charges Policy (including civil penalty charges and HMO licensing fees)
- Removal of the informal stage unless the landlord is accredited
- Review of the Hull Accredited Landlords Scheme – conditions, including fee.

7. Options and Risk Assessment

7.1 The following options are to be considered:-

Option 1 – Do nothing. The current Private Housing Enforcement Policy 2012-16 remains in place, however, it is outdated and does not reflect new legislative provisions.

Option 2 – Approve the recommendations as set out at 2.1, 2.2 and 2.4 of this report. Adopt the Private Housing Enforcement Policy 2018-22 and Fees & Charges Policy; delegation of authority to develop and introduce accreditation scheme. Recommendation 2.3 is in relation to the Humber Landlords Association's request to the Council to consider that the self-regulation scheme under the current policy is not removed pending the update of the current Accreditation scheme.

Option 3 –Vary the recommendations as set out at 2.1, 2.2 and 2.4 of this report following full consultation on the Private Housing Enforcement Policy 2018-22 and Fees & Charges Policy. Recommendation 2.3 is as described above.

8. Risk Assessment

8.1 Option 1 – the Private Housing Enforcement Policy 2012-16 does not reflect new legislative provisions and is therefore not clear to private landlords or residents as to the full range of enforcement tools available to the Council to improve housing conditions. Tenants are not protected from unfair eviction if informal letter and schedule served and not a statutory notice.

Option 2 – as there will be an increase in the number of statutory notices served there is the potential for the number of appeals to the First Tier Property Tribunal to increase. This will require Private Housing Officer and Legal Services resource. The Council can recover costs if successful. There could be legal challenge to the policy changes. The Council would only serve statutory notices where it is satisfied that there is a Housing Act 2004 Category 1 hazard (duty to act) or significant Category 2 hazard (discretion to act). Tenants are protected from unfair eviction as statutory notice served. For accredited landlords robust conditions within scheme and monitoring process to ensure tenants not unfairly evicted. There will be appeals against the civil penalty charges, however, these have been worked up having regard to the statutory guidance by Yorkshire & Humber local authority working groups to ensure consistency in approach. There is the potential for private landlords to challenge the proposed HMO licensing fees – the Private Housing (Environmental Health) service can demonstrate that the fees are cost neutral to the Council.

Option 3 – depending upon how the recommendations are varied the risks and mitigating circumstances will be any combination of the above.

9. Consultation

- 9.1 Members, the Humber Landlords Association, National Landlords Association, over 500 private landlords, registered housing providers and resident groups were invited to a 'drop-in' event held at the Guildhall on 21st February 2018. They were also sent a summary of the proposed changes and invited to feedback their responses to the Council by 16th March 2018. There were 48 attendees at the event, the vast majority being private landlords with properties in the city. Feedback from private landlords showed that there is disagreement to the removal of the informal stage and that they consider that there will be more appeals to the First Tier Tribunal with regards to the statutory notices being served and the financial charges being posed. Feedback received following the event is shown at Appendix 5.
- 9.2 The Humber Landlords Association (HLA) has made legal representations with regards to the proposed changes to be introduced by the Private Housing Enforcement Policy 2018-22. A meeting with the HLA was held by Council officers on 11th April 2018. The HLA's response indicated that they do not consider the Council's proposed policy to be in accordance with statutory guidance. In addition the HLA appeared to believe that the Council would issue a statutory notice on each occasion and argued that 'the service of statutory notice on every occasion as a matter of policy is unlawful (because it permits no exception) and is wholly disproportionate.' The HLA raised specific concerns in relation to the Council's proposals to remove the self-regulation scheme and to take enforcement action in the first instance in relation to housing hazards. The HLA also raised concerns in relation to the exercise Council's discretionary power to take enforcement action where category 2 hazards are determined and sought further definition from the Council as to what it classified as being 'significant'.
- 9.3 On consideration of the feedback and meeting with the HLA on 11th April 2018 the Council has made the following changes to the proposed Private Housing Enforcement Policy 2018-22:-
- Appendix 1, para 1.2 informal action – the policy has been amended to make clear that for 'insignificant' Category 2 hazards informal action may be considered
 - Appendix 1, section 3 paras 3.1 – 3.3 formal action - expanded to clarify factors that may be considered by officers to assist in the determination of significant category 2 hazards and the appropriate notice to a landlord and/or agent representative of the Council's

intention to visit the property and how a landlord may be engaged prior to formal notice being given.

- 9.4 Subsequent to that meeting, on 13th April 2018 the HLA wrote to recognise the progress achieved through the meeting, but asked that the Council defers its decision upon the proposed policy changes and that the removal of the self-regulation scheme pending the development of a revised Accreditation Scheme.

10. Comments of the Town Clerk (Monitoring Officer)

- 10.1 The Town Clerk acknowledges and supports the proposals, which are made partly in response to new legislation and guidance. To provide clarity and consistency, the Council should publish an enforcement policy. This must set out how we intend to enforce compliance in the private rented sector. Our enforcement approach should be informed by best practice from other regulatory and monitoring regimes and the following principles:

- proportionality;
- targeted;
- consistency;
- transparency;

Enforcement policies which fail to comply with the above principles are susceptible to greater scrutiny challenge in the courts. The Town Clerk is satisfied that the recommendations ensure that the Private Housing Service policies are reasonable and legally robust. Policies should be kept under review as we expect our approach on enforcement will evolve over time, particularly as legislation and guidance changes.

- 10.2 The difficulty with the current policy is that it does not take into account a number of legislative changes since the existing policy was formulated. It is important that the policy is updated to reflect current legislation and guidance.
- 10.3 In relation to the concerns raised by the Housing Landlords Association, Legal Officers attended the meeting with the Association and have provided advice throughout. The amendments proposed to the policy to take into account concerns expressed by the Association appear proportionate and allow a discretion to continue to take action short of formal enforcement in appropriate cases.
- 10.4 The request to defer the decision pending updating of the Accreditation scheme will be the subject of further advice at the meeting of Cabinet.

11. Comments of the Section 151 Officer

11.1 The s151 officer notes the Private Housing Enforcement Policy 2018-22 and associated Fees & Charges Policy. As set out in the report the fees charged for licencing can only recover the cost of providing the service and this should be kept under ongoing review to ensure this remains the case.

12. Comments of HR City Manager and compliance with the Equality Duty

12.1 There are no staffing or equality issues arising for the Council.

13. Comments of Overview and Scrutiny

13.1 This report is due to be considered at the meeting of the People and Communities Overview and Scrutiny Commission on Thursday 19 April, 2018. Any comments or recommendations agreed at the meeting will be forwarded to Cabinet for consideration alongside the report. (Ref: Sc5031).

14. Comments of Cllr Black, Portfolio Holder for Housing

14.1 There have been a number of changes in legislation which affects private housing in the city and the Council's Private Housing Enforcement Policy needs to reflect those changes. The Council recognises that the private rented sector plays an important role in providing a good choice of accommodation and its regulatory role needs to be directed to those not meeting the required housing standards. I therefore support the recommendations as set out in (option 2) 2.1, 2.2, and 2.4 of the report, and notes the request at 2.3 for Cabinet to consider.

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City Manager, Neighbourhoods & Housing

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Officer Interests: None

Background Documents: -

Appendix 1 - Private Sector Housing Enforcement Policy 2018 – 2022

Appendix 2 - Equality Impact Analysis

Appendix 3 - Private Sector Housing Fees & Charges Policy

Appendix 4 – Civil Penalties Policy

Appendix 5 - Summary of feedback regarding the proposals

Implications Matrix

This section must be completed and you must ensure that you have fully considered all potential implications

This matrix provides a simple check list for the things you need to have considered within your report

If there are no implications please state

I have informed and sought advice from HR, Legal, Finance, Overview and Scrutiny and the Climate Change Advisor and any other key stakeholders i.e. Portfolio Holder, relevant Ward Members etc prior to submitting this report for official comments	Yes
I have considered whether this report requests a decision that is outside the Budget and Policy Framework approved by Council	Yes
Value for money considerations have been accounted for within the report	Yes
The report is approved by the relevant City Manager	Yes
I have included any procurement/commercial issues/implications within the report	No Not applicable
I have considered the potential media interest in this report and liaised with the Media Team to ensure that they are briefed to respond to media interest.	Yes

I have included any equalities and diversity implications within the report and where necessary I have completed an Equalities Impact Assessment and the outcomes are included within the report	Yes
Any Health and Safety implications are included within the report	Yes
Any human rights implications are included within the report	Yes
I have included any community safety implications and paid regard to Section 17 of the Crime and Disorder Act within the report	No Not applicable
I have liaised with the Climate Change Advisor and any environmental and climate change issues/sustainability implications are included within the report	Yes
I have included information about how this report contributes to the City Plan/ Area priorities within the report	Yes