

Executive Report

Ward(s) affected: All

Report of Director of Service Delivery

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Date: 7 January 2020

## **Extension of Private Rented Sector Enforcement Powers**

### **Executive Summary**

The report advises the Executive of new legislative powers for Regulatory Services Housing Standards team to improve housing standards in the private rented sector, which enable financial penalties to be imposed as an alternative to prosecuting offenders. The Executive is asked to approve a proposed charging structure for these penalties and to delegate authority to the Regulatory Services Manager to determine the amount of any financial penalty in accordance with the charging structure.

### **Recommendation to Executive**

That the Executive:

- (1) Approves the charging structure for financial penalties imposed in accordance with the powers introduced by Section 126 of the Housing and Planning Act 2016 as set out in Appendix 1.
- (2) Delegates authority to the Regulatory Services Manager to implement the charging structure and make any necessary arrangements to ensure the procedure is process driven with a consistent approach.

### Reason for Recommendation:

To enable the Council to exercise the powers introduced by Section 126 of the Act to impose financial penalties as an alternative to prosecution for certain offences under the Housing Act 2004.

**Is the report (or part of it) exempt from publication? No**

## **1. Purpose of Report**

- 1.1 The report sets out a legislative change, which affects the private rented sector and recommends the adoption of a charging policy for levying financial penalties in respect of offences.

## **2. Strategic Priorities**

- 2.1 The private rented housing sector has expanded in recent years and now accounts for around 20% of the residential sector in our Borough. Enabling residents to have access to safe and suitable homes that are compliant with housing standards supports the objectives of the current Housing Strategy. Protecting the most vulnerable people from some of the worst housing conditions will inaugurate the community-based aims of the Councils Corporate Plan 2018-2023.
- 2.2 The new enforcement provisions will provide an additional tool to regulate standards of accommodation in the private rented sector.
- 2.3 Advice, education and cooperation is the primary approach that we would take in order to secure improvements in housing standards before invoking the more formal enforcement route.

## **3. Background**

- 3.1 The Housing and Planning Act 2016, part of which came into force on 6 April 2017, makes available greater powers to local authorities to improve conditions in the private rented sector and drive out “rogue landlords”.
- 3.2 The Council operates a statutory mandatory licensing scheme for Houses in Multiple Occupation (HMOs). This involves the licensing of privately rented houses comprising of five or more tenants, from two or more households. The licensing process requires an assessment of each of these dwellings for fire safety, amenity provisions, room sizes and management.
- 3.3 In October 2018 the definition of a mandatory licensable HMO changed from five or more persons in a property of at least three storeys, to a definition that only considers the number of occupants. This means that since October 2018 single and two storey dwellings with 5 or more persons were legally required to be licensed. Prior to the legislative changes, the borough had an HMO population of 152. Since October 2018 the council’s HMO population has increased to over 600.
- 3.4 Housing is a key determinant to health and there is a well-established evidence base that identifies HMOs as having some of the worst housing conditions to be found. HMOs provide affordable accommodation for a diverse range of society from migrants, young professionals to students including some of the most marginalised and vulnerable persons.
- 3.5 Amidst a national housing shortage and high housing costs in the Borough, HMOs are likely to become a realistic option for more and more people. The new

legislative changes have emerged as an opportunity for regulatory services to protect the most vulnerable from the worst housing conditions.

- 3.6 Regulatory Services are currently proactively tackling unlicensed HMOs in the Borough by analysing internal data and searching property & room rental advertising websites. The 2011 Census data quantified the private rented sector at 9,000 properties, a figure that is likely to have significantly grown since. From an initial sample of 200 suspected HMOs found advertising on property websites, 30 have either licensed with us due to our proactive involvement or been subject to enforcement visits.
- 3.7 Of the initial sample, 15% required licensing and indicates that the Council is unlikely to be aware of all licensable HMOs operating within the Borough. These dwellings are controlled by a landlord who is either unaware or negligent of their legal duties. As such these dwellings are likely to be the most non-compliant with housing standards and are likely to be putting their residents at risk.
- 3.8 Each potentially unlicensed dwelling investigated can take up to 10 hours of officer time, and double this if a case goes to prosecution. Currently there is no way to recover the costs spent on identifying unlicensed HMOs and/or taking formal enforcement action, unless the Council is awarded costs by the court.
- 3.9 The framework to issue Civil Penalties Notices (CPN's) will enable the amount of each Penalty Notice issued to be recovered and ring fenced by the authority to for further enforcement of HMOs.
- 3.10 The Act amends the Housing Act 2004 and allows the Council to impose a financial penalty ("a civil penalty"), where it is satisfied, beyond reasonable doubt that a landlord has committed a relevant offence under the Housing Act 2004.
- 3.11 A relevant offence is
  - Section 30 – Failure to comply with an Improvement Notice.
  - Section 72- Offences relating to the licensing of Houses in Multiple Occupation (HMOs).
  - Section 95 – Offences relating to breach of Licensing of Houses under Part 3.
  - Section 139(7) - Breach of an overcrowding notice.
  - Section 234 – Breach of Management Regulations in respect of Houses in Multiple Occupation (HMOs).
- 3.12 The charging of a civil penalty is an alternative to prosecution, which is time consuming and expensive. A civil penalty is intended to act as a deterrent to and punishment for non-compliance.
- 3.13 The proposed civil penalties charging structure (See Appendix 1) will provide consistency of approach and assist officers to determine the appropriate penalty on a case by case basis. The charging structure has been developed in accordance with the guidance issued to local authorities by Department of Communities and Local Government in April 2017 "Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities".

- 3.14 A significant number of local authorities have adopted the new Civil Penalty Notices, enabling them to better regulate housing standards under Part 1 & 2 of the Housing Act 2004.
- 3.15 The charging structure takes into account the following criteria set out in the abovenamed guidance. These should be considered when determining the appropriate level of penalty:
- a) severity of the offence
  - b) culpability and track record of the offender
  - c) the harm caused to the tenant
  - d) punishment of the offender
  - e) deterring the offender from repeating the offence
  - f) deterring others from committing similar offences
  - g) removing any financial benefit the offender may have obtained from committing the offence.
- 3.16 Where the person fails to pay the civil penalty, the Council may recover it as if it were an order of the County Court.
- 3.17 The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 enable Local Authorities to use the money received from civil penalties to support the cost of our Private Sector Housing enforcement work.

#### **4. Use of Civil Penalties**

- 4.1 Investigations and inspections relating to property conditions are undertaken in accordance with the Corporate Regulatory Enforcement Policy approved by the Executive on 2 January 2018. Any subsequent enforcement action will also be taken in accordance with the principles set out in the enforcement policy.
- 4.2 Civil penalties will also be used for non-compliance with HMO licensing provisions, such as operating without a valid HMO licence. Where the Council has used resources to identify such properties landlords will likely be issued with a civil penalty.
- 4.3 The purpose of the civil penalty is to both act as a deterrent to noncompliance with housing standards or licensing requirements and where officers have spent time identifying the properties the cost of the investigation can be recovered.
- 4.4 The use of civil penalties will be utilised for low-high level offences. Where the offence is serious and significant, prosecution will be considered as the alternative. Low level offences such as identifying well managed yet unlicensed HMOs operating without a licence are currently taking up vast amounts of time to get to the prosecution stage. The time spent producing an evidence file takes officers away from responding to service requests and undertaking licence inspections, delaying officers from identifying and tackling potentially serious hazards to health throughout the Borough.

- 4.5 Low to high level offence CPN's will send a clear message and act as a financial deterrent to others that the Council will not tolerate non-compliance with housing law. The Council will communicate via social media when enforcement action achieves compliance with the law, to encourage private sector housing reports from members of the public. The Council will also use social media to promote proactive interventions that support private sector housing duty holders to achieve ongoing compliance with the law.
- 4.6 The Council understands that most landlords and property managers want to comply with the law. The Council will continue to publish information that will support private sector housing duty holders to achieve compliance with the law and help tenants to understand their rights.
- 4.7 The issuing of a CPN will follow Guildford Borough Council's enforcement policy and as such a graduated approach will be taken. The landlord will have received prior warning that failure to comply may result in a civil penalty which will be in addition to the statutory "Notice of Intention to Issue a Civil Penalty".
- 4.8 The person who is served a civil penalty notice can appeal both the amount of penalty and the issuing of the notice to the Residential Property Tribunal.

## **5. Consultations**

- 5.1 The proposed charging structure was sent for consultation to the HMO (Houses in Multiple Occupation) Stakeholder Group, which has representatives from the University of Surrey, local residents, groups, letting agents, landlords, the Academy of Contemporary Music and the Council.
- 5.2 One response was received from the University of Surrey Lettings which was supportive of the proposal.
- 5.3 One response from a local letting agent which was also supportive of the Council's approach to the proposal and the circumstances when a civil penalty may be issued.

## **6. Equality and Diversity Implications**

- 6.1 There may be circumstances where Officers will be dealing with landlords and agents for whom English is not their first language. In such circumstances Officers will ensure the legal requirements and consequences of non-compliance are fully understood. Where necessary appropriate translation services will be used to ensure the requirements are fully understood.

## **7. Financial Implications**

- 7.1 There are no additional resource implications as a result of this legislation.
- 7.2 The amount of a civil penalty is not prescribed, and each penalty notice is to be assessed case by case. The framework in Appendix 1 was generated by the MHCLG and is designed to enable officers to identify the most appropriate level of fee, based on the severity of the offence.

- 7.3 Where a civil penalty charge is recovered, the Council can use the money to fund private sector housing enforcement work, which is within our current service provision and therefore no additional expenditure resulting from implementing the new charging structure. However, such charges are unlikely to be regular or significant. These additional funds will enable the authority to continue to enforce unlicensed HMOs in borough operating illegally. The work to find these unlicensed properties is costly and time consuming, CPNs will enable a simple and effective deterrent to those landlords operating outside of the law. CPNs can also be used for non-compliance with housing legislation statutory notices.
- 7.4 Recovering debt from unpaid CPN's has been covered by the MHCLG guidance for Local Authorities. Where the landlord or property agent fails to pay a civil penalty, the local housing authority should refer the case to the county court for an order of that court. If necessary, the local housing authority should use county court bailiffs to enforce the order and recover the debt.

## **8. Legal Implications**

- 8.1 The Housing and Planning Act 2016 extends the enforcement powers available to the Council to regulate housing conditions in the private rented sector.
- 8.2 The imposition of a civil penalty is an alternative to prosecution for certain offences under the Housing Act 2004. The Act requires the Council to take into account guidance issued by the Secretary of State when determining the amount of any civil penalty. The charging structure takes into account the criteria referred to in the guidance. Approval of the structure will therefore enable the Council to make sound determinations.
- 8.3 All enforcement action will be taken in accordance with the Council's adopted regulatory enforcement policy.

## **9. Human Resource Implications**

- 9.1 There are no human resource implications.

## **10. Summary of Options**

- 10.1 The Council has a statutory duty to enforce the Housing Act 2004 and any subsequent Regulations. It now has the option of imposing financial penalties as an alternative to prosecution. Before imposing a financial penalty, the Council needs to take into account the statutory guidance issued by the Secretary of State, and can choose to take either of the following options
- Option 1 - To implement the civil penalty charging structure, which has been produced in accordance with the statutory guidance.
  - Option 2 - Not to utilise the power to issue civil penalties and to continue with the current enforcement provisions.
- 10.2 Option 1 is preferred, as imposing financial penalties will be quicker and more cost effective than prosecution whilst acting as both a punishment and a deterrent. The option of issuing penalties will be both proportionate and effective in dealing with

lower level offences. The ability to retain any penalty will help to offset our enforcement costs. The Council will also retain the option of prosecution in appropriate cases.

## **11. Conclusion**

- 11.1 The legislation adds to the tools that exist to improve housing standards. It is expected, that the majority of landlords and agents in the Borough will meet their obligations and responsibilities. Where there is non-compliance, officers will continue to use a combination of informal and formal means to secure compliance in accordance with the Council's Regulatory Enforcement Policy.
- 11.2 The new powers will be a useful enforcement option in appropriate circumstances.

## **12. Background Papers**

[Housing and Planning Act 2016](#)

[Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Authorities](#)

Corporate Regulatory Enforcement Policy

## **13. Appendices**

Appendix 1: Housing and Planning Act 2016 Civil Penalties Fee Structure