

BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

2 JULY 2020

HOUSING ENFORCEMENT AND LICENSING POLICY 2020

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Summary

Following a review of technical and legislative amendments a revised Housing Enforcement and Licensing policy, enacting the relevant provisions of the Housing Act 2004 and Housing and Planning Act 2016 was approved by Cabinet on 12 May 2020. The previous Housing Enforcement Policy had been agreed by Cabinet in September 2009.

This report seeks Members' views on the policy.

1. Budget and Policy Framework
 - 1.1 Considering and approving the Housing Enforcement and Licensing Policy 2020 is a matter for the Cabinet. As the policy does not form part of the Policy Framework there is no requirement under the Constitution for Overview and Scrutiny to be consulted in advance of approval by Cabinet. However, it is still open to O&S to scrutinise the policy. Pre-decision scrutiny had been planned for the April meeting of this Committee which, of course, had to be cancelled due to the Coronavirus pandemic. On this occasion the Committee is therefore being asked to scrutinise the policy post approval and forward any comments to Cabinet.
2. Background
 - 2.1 In Medway, the private rented sector provides a home for over 18,000 households.
 - 2.2 Although Medway has some excellent landlords and letting agents, there are criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and or unsafe.
 - 2.3 The Council operates its Private Sector Housing Team on a responsive basis. Complaints raised by tenants will be investigated and initial attempts will be made to resolve the complaint informally. Enforcement action will be taken if the Council is not satisfied that the issue has been resolved, if the property

presents a severe risk to tenant safety or if the landlord has a history of non-compliance.

- 2.4 The policy sets out enforcement criteria regarding private rented sector housing and the range of legislative tools that the Council can use to improve conditions.
- 2.5 The Government has pledged to crack down on rogue landlords and introduced several measures, under the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords.
- 2.6 The Housing Enforcement and Licensing Policy is required to reflect the powers that have been given to local authorities under the Housing and Planning Act 2016 to impose civil penalties of up to £30,000 as an alternative to prosecution and the extension of rent repayment orders.
- 2.7 The introduction of civil penalties and banning orders, together with the extension of rent repayment orders, to include a wider range of offences, will help the Council to 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.
- 2.8 The Policy relates to regulatory functions of the Council's Private Sector Housing Team and sets out the way in which the Council intends to secure effective compliance with legislation whilst minimising the burden to the Council, individuals, organisations and business, which includes.
 - Housing conditions in the private rented sector and private ownership
 - Landlords' obligations in the private rented sector
 - Houses in Multiple Occupation
 - Licensable HMOs.
- 2.9 The new Housing Enforcement and Licensing Policy aims to ensure:
 - Good quality, healthy housing for households renting in the Private Sector and to prioritise action to those homes which present the greatest risks to Health and Safety
 - Houses in Multiple Occupation (HMO) are safe and well managed and all relevant Management Regulations are adhered to.
 - All licensable HMOs are licensed and comply with the current licence conditions and all relevant Management Regulations.
- 2.10 The policy and associated activity also supports shared objectives and joint working with the Medway Task Force. Collaboration between these areas is already yielding positive results and providing a multi organisational approach to tackling challenging properties in Medway. The policy will provide more tools to allow this work to continue and strengthen.

3. Advice and analysis

3.1 The Housing Enforcement and Licensing Policy 2020 responds to the key changes to the legislation referred to below whilst providing the legal basis for general enforcement activity.

3.2 The key changes to legislation are set out below with reference to the relevant section of the policy.

Under the Housing and Planning Act 2016;

- Civil penalties (Appendix 1 - Enforcement Policy page 23 and appendix 2)
- Extension of rent repayment orders (Appendix 1 - Enforcement Policy page 64 and appendix 3)
- Database of rogue landlords and property agents (Appendix 1 – Enforcement Policy page 75 and Appendix 5)
- Banning orders (Appendix 1 - Enforcement Policy page 69 and Appendix 4 of the policy)
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015, (Appendix 1 – Enforcement Policy page 42)

3.3 HMO licensing - the policy sets out supplementary private rented sector housing enforcement activities including the licensing of houses in multiple occupation.

3.4 HMO licensing reform which came into effect April 2018 extended the scope of Mandatory licensing to include all HMO properties which are less than three storeys high.

3.5 A second statutory instrument, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of licenses) (England) Regulations 2018, introduces new conditions that must be included in licenses that have been granted under Part 2 of the Act.

- Mandatory national minimum sleeping room sizes; and
- Waste disposal provision requirements.

New Legislation

3.6 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 come into force from 1 June 2020 for all new specified tenancies and for all existing specified tenancies 1 April 2021.

3.7 A private landlord who grants or intends to grant a specified tenancy must;

- ensure that the electrical safety standards are met during any period when the residential premises
- are occupied under a specified tenancy.
- ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and

- ensure the first inspection and testing is carried out—before the tenancy commences in relation to a new specified tenancy; or by 1 April 2021 in relation to an existing specified tenancy.

3.8 The policy provides a foundation for enforcement activity that captures changes to legislation. This will ensure that enforcement action remains robust allowing the Council to continue tackling poor standards of accommodation in the privately rented sector.

4. Diversity Impact Assessment (DIA)

4.1 The policy describes a range of interventions aimed at safeguarding and improving the health and safety and wellbeing of people living in private sector.

4.2 In developing this policy, no adverse impact associated with the protected characteristics was identified.

4.3 The Housing Enforcement and Licensing Policy will help improve housing conditions and the life chances of people, including those with protected characteristics it will therefore have a positive impact on Equality and Diversity.

4.4 A DIA has been undertaken in relation to the policy and is attached at Appendix 2 of this report.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Policy implementation	If the policy is not implemented, the Council will not meet the legal requirements. The Council will be unable to issue civil penalties or rent repayment orders without a Housing Enforcement and Licensing Policy in place which will limit the Council's powers to improve housing conditions.	Implement the policy or establish amendments to policy and implement.	D2
Policy Relevance	New legislation or guidance could determine change is required.	Regular contact with Central Government, Housing Technical Groups, will ensure we know of any changes early, to make the necessary changes	D2

Changes to immigration law	UK entry clearance - certain areas may change subject to the details of withdrawal and transition agreement as the UK exits the European Union	Assess as and when details become available.	B3
Resources	Substantial increase in the number of investigations is likely to result in a corresponding pressure on the existing staffing resources.	Assess staff and training need to determine where additional support is needed to grow own enforcement officers. Consideration of incentives and different ways of working.	B2

6. Consultation

- 6.1 The consultation opened on 12 February 2020 and closed on 10 March 2020. We received 17 completed responses to the consultation, with most respondents identifying themselves as private landlords.
- 6.2 The consultation and draft policy were published on Medway Council's website online and on the Council's pages on social media. Paper copies of the consultation were made available upon request.
- 6.3 In order to alert stakeholders to the consultation, an email was circulated to all representatives of Landlords Associations, Registered Providers and other relevant agencies such as the Citizens Advice Bureau, Shelter, Landlords associations, and the Kent Fire and Rescue Service. In addition to this approx. 70 emails were sent out to private sector landlords and lettings agents.
- 6.4 88% of respondents agreed with the Council's approach in dealing with new requests for service.
- 6.5 88% of respondents agreed with the Council's approach on when not to provide a service.
- 6.6 70% of respondents agreed that the Council is providing adequate training and advice to private landlords.
- 6.7 82% of respondents agreed with the Council's approach in levying a penalty charge, for failure to comply with Legislation.
- 6.8 The draft policy was brought to the attention of the Landlords Focus Group and the feedback was positive.

7. Cabinet

7.1 Cabinet considered the policy at its meeting held on 12 May 2020. The record of the decision is set out below.

Background:

This report provided details of the proposed Housing Enforcement and Licensing Policy which had been revised following a review of technical and legislative amendments, enacting the relevant provisions of the Housing Act 2004 and Housing and Planning Act 2016. The Policy set out enforcement criteria regarding private rented sector housing and the range of legislative tools the Council could use to improve conditions.

The new Housing Enforcement and Licensing Policy aimed to ensure:

- Good quality, healthy housing for households renting in the Private Sector and to prioritise action to those homes which presented the greatest risks to Health and Safety;
- Houses in Multiple Occupation (HMO) were safe and well managed and all relevant Management Regulations were adhered to;
- All licensable HMOs were licensed and complied with current licence conditions and all relevant Management Regulations.

The draft Policy had been consulted on and details of the outcomes were set out at section 7 of the report. The Deputy Leader and Portfolio Holder for Housing and Community Services proposed a change to the wording of the Policy, at section 7.1, which was amended to read; "People immigrating to the UK, who require a visa, must provide evidence to the Home Office that the housing they propose to move in to would be free from any category 1 & 2 hazards".

A Diversity Impact Assessment had been undertaken and was attached at Appendix 2 to the report.

Decision number:

Decision:

55/2020

The Cabinet agreed to adopt the Housing Enforcement and Licensing Policy, as set out in Appendix 1 to the report, subject to the rewording at section 7.1 of the Policy, as detailed above.

Reasons:

The Housing Enforcement and Licensing Policy 2020 responds to the key changes to the legislation, whilst providing the legal basis for general enforcement activity.

8. Financial implications

8.1 There are no additional financial implications outside existing budget provision associated with this report.

8.2 The Housing and Planning Act 2016 specifies that all of the income that a local authority receives from the imposition of Civil Penalties and the recovery of Housing Benefit/Universal Credit through Rent Repayment Orders can be retained by the local authority to further its statutory enforcement functions in relation to the private rented sector.

9. Legal implications

9.1 When discharging the duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities
- The Code for Crown Prosecutors

10. Recommendation

10.1 The Committee is asked to scrutinise the Housing Enforcement and Licensing Policy, as set out in Appendix 1 to the report, and forward any comments to Cabinet.

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Appendices

Appendix 1 Housing Enforcement and licensing policy

Appendix 2 Diversity Impact Assessment

Background papers

None