

East Herts Council Report

Executive

Date of Meeting: 6th October 2020

Report by: Councillor Peter Boylan – Executive Member for Neighbourhoods

Report title: Policies for Enforcing Standards for Private Sector Landlords

Ward(s) affected: All

Summary

RECOMMENDATIONS FOR Executive:

(a) That the proposed new policies relating to housing standards enforcement and the adoption of the powers introduced in the Housing and Planning Act 2016 be recommended to Council for adoption.

1.0 Proposal(s)

- 1.1 It is proposed that the new policies covering the areas below, are recommended by the Executive to Council for adoption:
 - 1.1.1 Issuing of Civil Penalties
 - 1.1.2 Applications for Rent Repayment Orders
 - 1.1.3 Applications for Banning Orders, and
 - 1.1.4 Use of the Rogue Landlords and Property Agents database
- 1.2 It is proposed that the Executive reviews the draft policies prior to recommendation to Council for adoption.

2.0 Background

- 2.1 The Housing and Planning Act 2016 (“the Act”) introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the private rented sector.
- 2.2 Guidance produced by the Ministry for Housing, Communities and Local Government (MHCLG) supports officers in the use of the measures and states the expectation that Local Housing Authorities will develop and document their own policy on aspects of their use.
- 2.3 Any amounts received through civil penalties or rent repayment orders can be retained by the Authority for use in relation to private sector housing enforcement activities.

Policy 1 Issuing of Civil Penalties

- 2.4 The introduction of civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences will allow enforcement against those landlords who seek to manipulate or ignore the legislation and provide substandard, non-compliant and/or unsafe residential properties.
- 2.5 The legislation requires that both the decision to use civil penalties as opposed to prosecution and the level of civil penalty charged are decided on a case by case basis and that the level is not set as a fixed fee. The policy together with the associated financial penalty matrix, which has been developed with other authorities in Hertfordshire and Bedfordshire, will help ensure the council uses civil penalties consistently and in a transparent way. Among other things, the penalty matrix considers the culpability of the offender together with the actual or potential harm caused to the tenants.
- 2.6 Whilst the level of proof remains the same as in a criminal case, providing an alternative to prosecution through the courts will improve the efficiency of our

housing standards enforcement.

- 2.7 Policy 1 included in the document at Appendix 1 explains the factors that will be considered in determining both whether to impose a civil penalty and the level of that penalty. The financial penalty matrix uses these factors in the setting of the penalty.

Policy 2 Applications for Rent Repayment Orders

- 2.8 A Rent Repayment Order is an order made by the First-tier Tribunal (part of the Ministry of Justice Courts and Tribunals Service) requiring a landlord to repay a specified amount of rent where the landlord has been convicted of or has committed one of the specified offences.
- 2.9 The maximum amount that can be recovered is capped at 12 months' rent. Where the landlord has been convicted of one of the specified offences the tribunal must award this maximum however, where the landlord has not been convicted, the Council will consider a series of factors to determine the amount that we will seek to recover.
- 2.10 Policy 2 included in the document at Appendix 1 gives the outline process to be followed and explains the factors that will be considered in determining both whether apply for a rent repayment order and the level rent we will seek to recover.

Policy 3 Applications for Banning Orders

- 2.11 Banning Orders are intended to be used for the most serious offenders and have the effect of banning a landlord or property agent from renting out property for a specified period of time. An application for a banning order can be made to the First Tier Tribunal for offences committed after April 2018.
- 2.12 Banning orders can only be applied for where the landlord or agent has been convicted of a banning order offence as specified in regulations to the Act. These

include both housing related offences and others not directly related to housing, such as fraud, sexual assault, misuse of drugs, theft and stalking. If the council intend to apply, a notice of intention must be served within 6 months of the day that the landlord or agent is convicted.

- 2.13 Policy 3 included in the document at Appendix 1 gives the factors that will be considered in determining both whether to apply for a banning order and our recommendation to the First Tier Tribunal for the period of that banning order.

Policy 4 Use of the database of rogue landlords and property agents

- 2.14 This been introduced as a tool to keep track of rogue landlords and property agents especially those operating across council boundaries. The database has been developed and is hosted by the MHCLG and Local housing authorities are responsible for maintaining the content of the database.
- 2.15 The authority is required to make an entry on the database where a person or organisation has received a banning order. We also have discretion to make entries either for a person or organisation who has been convicted of a banning order offence or where a person or organisation has received two or more financial penalties in respect of a banning order offence within 12 months. For either situation the offences must have been committed at a time when the offender was a residential landlord or a property agent.
- 2.16 Policy 4 included in the document at Appendix 1 gives the factors that will be considered in determining both whether apply make an entry onto the database and the period that the entry will remain on the database.

Consultation

- 2.17 Public consultation commenced on 6th August 2020 and

continued until 15th September. Known landlords and letting agents were advised of the consultation by email and it has been featured on the council's social media platforms. No landlords or agents made responses with one response received from a tenant. The tenant was supportive of the policies although raised some concerns about the potential impact of banning orders on existing tenants and the possibility of support to prevent homelessness. This concern has been noted but does not require a reframing of the proposed policies.

- 2.18 The proposed new policies relating to housing standards enforcement and the adoption of the powers introduced in the Housing and Planning Act 2016 were considered by members of the Overview and Scrutiny Committee on the 15 September 2020. The Committee made a number of suggestions to improve clarity and these have been incorporated.

3.0 Reason(s)

- 3.1 The statutory guidance for Civil Penalties and Rent Repayment orders expect policies to be developed and adopted by the Local Housing Authority for determining the use of these measures as does the non-statutory guidance for Banning Orders. Thus, it is here being recommended that the Executive consider the draft policies and endorse their presentation to Council for approval and adoption.

4.0 Options

- 4.1 In exercising its powers, the Executive has the options to:
- signal its contentment with the policies as currently drafted. If this approach is taken, this will be relayed to Council when it considers the final draft version or

- make amendments to the policies to be put to Council; or
- consider that there is an insufficient case for the policies, whether amended or not, to be put to Council for determination in which case the policies will not be put to Council for consideration.

5.0 Risks

If the policies were not adopted

- 5.1 Without these policies being adopted the council would still be able to take prosecutions against landlords who have committed an offence however this can be a time consuming process with costs to both parties. The council could face criticism for not using the alternative enforcement approaches and using court time unnecessarily.
- 5.2 If the council were unable to make Banning Orders this would allow the worst offenders to continue in the private sector rental market possibly causing harm to further vulnerable tenants.
- 5.3 The council would also lose the opportunity to recoup moneys towards the running costs of the enforcement work undertaken with respect of private sector housing

If the policies were adopted

- 5.4 Should the proposed revised policies ultimately be approved by Council, there are possible reputational risks where an offender challenges our use of these enforcement powers. These policies do however support transparency and consistency in our enforcement, we are required to have evidence at a criminal standard before they are used and there are appeal processes through the Tribunal Service for an aggrieved offender.

6.0 Implications/Consultations

- 6.1 The outcome of the public consultation is discussed in section 2 above.
- 6.2 There are no adverse implications arising from the adoption of these policies and they could allow the council to retain money received from civil penalties of rent repayment orders.

Community Safety

Yes/No

Data Protection

No

Equalities

Following a screening review it is agreed that there is no requirement to complete a full Equalities Impact Assessment as the audience for this is quite narrow

Environmental Sustainability

No

Financial

Yes – No comments or amendments made.

Health and Safety

No

Human Resources

Yes/No

Human Rights

No

Legal

Yes – Having a clear policy in place will help ensure consistency in the application of the law and offer an alternative to prosecution for

appropriate cases.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 Appendix 1 - East Hertfordshire District Council Policies on Additional Housing Standards Enforcement Powers

This document incorporates the four proposed policies together with a glossary of terms and links to key reference documents.

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