

Private Sector Housing Enforcement Policy - Consultation



Report to: Cabinet

Date: 12 October 2023

Portfolio Holder: Councillor Nicky Purse, Portfolio Holder for Sustainability and Environment

Lead Officer: Norah Nolan, Interim Assistant Director Environment
(01279) 446132

Contributing Officers: Steven Adams, Principal Environmental Health Officer
(01279) 446105
Sally Haggerstone, Interim Environmental Health Manager
(01279) 446165

Key Decision: No

Forward Plan: Forward Plan number I016275

Call In: This item is subject to call in procedures

Corporate Priority: Improve council services

Wards Affected: None specifically

Recommended that:

- A** Cabinet approves for consultation, with any necessary amendments, the draft Updated Private Rented Sector Housing Enforcement Policy as set out in Appendix A.
- B** Cabinet gives instruction for a 4-week period of consultation and to either:
 - i) Bring the draft Updated Private Sector Housing Enforcement Policy back to Cabinet on 30 November 2023 for approval provided no objections are received; or

- ii) If any objections are received to the proposed policy following the consultation period, that the decision be referred to the next meeting of this Cabinet on 15 February 2024.

Reason for decision

- A** The powers provided by the Housing and Planning Act 2016 and the Housing Act 2004 will enable the Authority to help improve the quality of private rented accommodation in Harlow and to act against landlords, letting agents and property managers who knowingly rent out unsafe and substandard accommodation.

Other Options

- A** No other options have been considered other than Statutory Legislation/Guidance.

Background

1. The Housing and Planning Act 2016 provides powers that permit local authorities to impose a civil penalty of up to £30,000 as an alternative to prosecution for a range of offences under the housing Act 2004, and where a landlord or property agent has breached a banning order under the Housing and Planning Act 2016.
2. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced the requirement to provide a smoke alarm installed on every storey of a property and a carbon monoxide alarm in any room containing a solid fuel burning appliance. Local authorities can impose a civil penalty of up to £5,000 where a landlord fails to comply with a remedial notice. A local housing authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.
3. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the Electrical Safety Standards Regulations') gives the Council the power to impose civil penalties of up to £30,000. It is for the Council to determine the level of any civil penalty up to this maximum.
4. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the Energy Efficiency Regulations') gives the Council the power to impose civil penalties of up to £5,000. It is for Harlow Council to determine the level of any civil penalty within certain individual maximum levels for different types of breaches.
5. The Redress Schemes for letting agency work and property management work (requirement to belong to a scheme, etc.) (England) Order 2014, introduce a fine of up to £5,000 where a lettings agent or property manager who should have joined a scheme has not done so.

Issues/Proposals

6. Recent legislation has introduced new civil penalties for Local Housing Authorities and associated charges.
7. Local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty, and on determining the appropriate level of civil penalty.
8. For the council this responsibility is with the Environmental Health Service, Communities and Environment.
9. The private rented sector is an important part of our housing market and there is a commitment to improving standards within it. Harlow Council want to support good landlords who provide decent, well-maintained homes, but will take action against those landlords who knowingly rent out unsafe and substandard accommodation.
10. The council's Private Rented Sector Housing Enforcement Policy outlines the councils' approach and how it will tackle poor housing conditions including Damp & Mould issues and address non-compliance with legislation. The current Private Sector Housing Enforcement Policy was adopted in 2003, the proposed draft policy subject to this report replaces this policy. Since adopting the previous policies there have been a number of significant changes to housing legislation.
11. The current private sector housing enforcement policy has been updated to incorporate the additional civil penalty powers and a draft of the updated policy has been produced for consultation.
12. The new Private Sector Housing Enforcement Policy aims:
 - a) To improve the standard of homes in the private sector;
 - b) To assess local housing conditions including damp and mould;
 - c) To reduce the number of properties with serious risks to health and safety;
 - d) To reduce the number of vulnerable households living in non-decent homes;
 - e) To improve the energy efficiency and warmth of homes and to help reduce fuel poverty;
 - f) To improve standards in private rented accommodation;
 - g) To improve the standards in HMOs (houses in multiple occupation);

- h) To work closely with private sector landlords towards improving conditions and the standard of management of private rented housing; and
 - i) To meet the council's statutory obligation.
13. In all instances where civil penalties are being considered as an alternative to prosecution, the council will still have to be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction, i.e., the standard of proof remains the same as if the decision had been taken to institute legal proceedings. The council needs to demonstrate beyond reasonable doubt that the offence has been committed before imposing a civil penalty. For this purpose, officers involved in cases will consult the Crown Prosecution Service Code for Crown Prosecutors and liaise with senior officers, managers, and Legal Services before any decision is made to impose a civil penalty.
14. To ensure civil penalties are used fairly and are set at an appropriate level, the following factors, as set out in the statutory guidance, first published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities) in April 2017, will be considered:
- a) Severity of the offence;
 - b) Culpability and track record of the offender;
 - c) Harm caused to the tenant;
 - d) Punishment of the offender;
 - e) Whether it will deter the offender from repeating the offence;
 - f) Whether it will deter others from committing the offence;
 - g) Whether it will remove any financial benefit the offender may have; and
 - h) Obtained as a result of committing the offence.
15. The updated Policy is aimed at the regulation of the private rented sector, which includes housing association properties and not those owned by Harlow Council.
16. Any income from civil penalties is retained by the local housing authority which imposed the penalty. Harlow council must use any income from civil penalties to further its statutory functions in relation to enforcement activity covering the private rented sector.
17. The consultation will be made available on the council's website and will be open to the public and all stakeholders to put forward their comments. All key stakeholders will be contacted directly and signposted to the consultation details on the council's website.

18. To continue with the existing Private Sector Housing Enforcement Policy, these policies are now outdated and do not cover all of the current new legal provisions available to the council.
19. Through conducting an open and transparent public consultation to seek views and making the policies publicly available will reduce the risk of challenge to the council's enforcement related decisions, and ensure resources are appropriately utilised when taking enforcement action.

Implications

Equalities and Diversity

An Equality Impact Assessment will be completed once the Policy has been through consultation and taken to Cabinet for adoption.

Climate Change

It is not possible to quantify the outcome of the updated Policy in relation to climate change impacts. Nevertheless, the fundamental purpose of the Energy Performance Regulations is to drive up energy performance of rented accommodation by setting a minimum energy efficiency level for such properties.

Whilst the Electrical Safety Standards Regulations are primarily focused on the electrical safety of rented properties, the energy efficiency is likely to be indirectly improved if the electrical installations are modern and effectively optimised from a safety perspective.

It is, therefore, reasonable to conclude that where enforcement powers are used to ensure compliance with both the Energy Performance Regulations and the Electrical Safety Standards Regulations, there will be a positive climate outcome, particularly in relation to energy and fuel consumption. There is a strong likelihood of significant improvements for tenants on low incomes, with associated co-benefits such as improved physical health and mental wellbeing.

It is acknowledged that enforcement of both the Energy Performance Regulations and the Electrical Safety Standards Regulations will not generate any potential opportunities for carbon offsetting or specific measures to improve resilience to climate related extreme weather events.

Communities and Environment

The proposed changes set out in the report and the Private Sector Housing Policy will ensure that residents living in private sector housing within Harlow are protected as far as possible from dangerous and unhealth living conditions by providing clear sanctions and measures by which Harlow Council can justifiably take enforcement action in privately rented, socially rented, owner occupied properties and Houses in Multiple Occupation (HMOs) Some of the measures may have implications for the environment and climate should they result in

improved energy efficiency, may help alleviate financial hardship and may also improve the health and wellbeing of residents in the town.

Author: Simon Freeman, Deputy Chief Executive and Director of Finance

Finance

The report and policy define instances where penalties can be served on owners/landlords and that these penalties, should they be imposed should be reinvested in to its statutory services relating to enforcement services.

Author: Simon Freeman, Deputy Chief Executive and Director of Finance

Governance and Corporate Services

The Council has a statutory duty as a Local Housing Authority to enforce relevant housing legislation. The Private Housing Lettings and Enforcement Policy sets out a useful framework in which officers of the Council will operate when considering the most appropriate course of enforcement action against landlords, letting and managing agents for failure to comply with legislation including the use of informal and formal action and the imposition of financial penalties as an alternative to prosecution, taking into account resources available. The policy sets out what action the Council can take and the reasons why.

Author: Simon Hill, Director of Governance and Corporate Services

Housing

We are in full support of the recommendations within the report. Improving standards within the PRS will enhance the lives of Harlow residents.

Author: Neil Euesden, Interim Director of Housing

Strategic Growth and Regeneration

The improvement of housing standards in the private rented sector will be an important part of Harlow's renewal. There is as much need to improve quality in the private rented sector as there is in the Council's own stock and in the construction of new homes. This new policy will be a key part of achieving that objective.

Author: Andrew Bramidge, Chief Executive

Appendices

Appendix A – Draft Private Sector Housing Enforcement Policy 2023 (Including Financial Penalty Policy/Statement of Principles for determining a penalty charge/Charging for Private Sector Housing Enforcement Services)

Background Papers

Private Sector Housing Enforcement Policy 2003

Glossary of terms/abbreviations used

None.