

Private Sector Housing Enforcement Policy 2020 - 2025

For Cabinet on 3 December 2020

Summary

Lead Member: Cllr Carol Mackonochie

Lead Director: Paul Taylor, Director of Change and Communities

Head of Service: Gary Stevenson, Head of Housing, Health and Environment

Report Author: Sue Oliver, Environmental Health Officer

Classification: Public document (non-exempt)

Wards Affected: All

Approval Timetable	Date
Management Board	21 October 2020
Portfolio Holder	08 October 2020
Cabinet Advisory Board	11 November 2020
Cabinet	03 December 2020

Recommendations

Officer / Committee recommendations as supported by the Portfolio Holder:

1. That the Private Sector Housing Enforcement Policy is adopted by Cabinet.
2. Following the annual review of the Policy, if there have been any changes in legislation or Government guidance, then power to amend the policy as necessary is delegated to the Head of Housing, Health and Environment.

1. Introduction and Background

- 1.1. Local authorities are required by the Government's Regulators' Code to publish clear service standards, setting out what can be expected by those that are regulated. This includes an enforcement policy, explaining how non-compliance with private sector housing legislation will be responded to.
- 1.2. The current Private Sector Housing Enforcement Policy is out of date as the range of powers available to local authorities to improve housing has significantly increased in recent years. This updated Enforcement Policy sets out the full range of enforcement options contained in legislation and ensures consistency of approach in line with the Regulators' Code, so that businesses know what to expect.

2. Role of Private Sector Housing Team

- 2.1 The role of the Private Sector Housing team is to maintain and improve housing conditions in all property tenures in particular the private sector, by ensuring compliance with the legislative framework. This Enforcement Policy will apply to those responsible for property in all tenures, particularly the private rented sector. In 2016, 17% of housing in the borough was privately rented.
- 2.2 The collective term "businesses" is used throughout the policy, and includes landlords, owners, leaseholders, freeholders, managing and letting agents, property licence holders, and registered social landlords. The policy also applies to owner-occupiers, although enforcement action would only be taken in very rare circumstances where there is an imminent risk of serious harm.
- 2.3 The Private Sector Housing team actively works with businesses to advise on and assist with compliance. In most cases, businesses comply with advice and recommendations, and often approach the Council for advice and information, which is welcomed. However, there is a minority of businesses where it is necessary to take enforcement action, and the detail on what action the Council can take, and when it will be taken is set out in the Enforcement Policy.

3. Content of the Policy

- 3.1. The Policy sets out how the Council will undertake enforcement action as follows:

- a) Targeted - at properties and businesses that pose the greatest risk, including businesses that evade regulation, and where properties cause risks to people's health and safety.
- b) Proportionate - reflecting the nature, scale, and seriousness of any breach.
- c) Fair and objective - based on the individual circumstances of the case.
- d) Consistent - based on transparent policy.
- e) Accountable - undertaken in a responsible manner in accordance with legislation and Government guidance.

General principles about proportionality of action will be followed, for example where appropriate advice and information will be given, before resorting to enforcement action.

3.2 The range of enforcement options is contained in legislation, and the types of action that can be considered are summarised on page nine of the Policy, and the detail on each type of action is set out in the pages that follow. As well as the service of statutory notices, work in default, prosecution, and licensing of houses in multiple occupation, we now have additional powers which include:

- a) civil penalty notices – used as an alternative to prosecution with a financial penalty of up to £30,000, where there has been a failure to comply with an improvement notice, or offences in relation to houses in multiple occupation.
- b) monetary penalty (penalty charge) – this relates to two specific breaches, firstly the requirement for a managing /letting agent to belong to a Redress Scheme (a body that looks into complaints made by a tenant) with a charge of up to £5,000 for non-compliance, and secondly the requirement for smoke and carbon monoxide alarms in privately rented properties with a charge of up to £5,000 for non-compliance.
- c) financial penalty – can be applied if businesses do not have the electrical installations in their properties inspected and tested every five years with a penalty of up to £30,000.
- d) banning orders – an application may be made to the First-tier Tribunal to request that a landlord or property agent is banned from letting housing and/or property management where they have been convicted of certain Housing Act and criminal offences.

3.3 The financial penalty in section 3.2 c) is applied under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. This is new legislation, and the Council is required to have a policy to set out how the appropriate level of a financial penalty will be determined, if this is necessary. Government guidance is clear that local authorities may wish to consider the policy previously developed for civil penalties under the Housing and Planning Act 2016 and associated guidance. To ensure consistency of approach and clarity for landlords, the same principles and framework set out in the Council's Civil Penalty Policy 2019 for determining the amount of a financial penalty have been incorporated in the Electrical Safety Standards Policy.

- 3.4 The Private Sector Housing team has built good relationships with businesses and we have confidence that they will usually act quickly to resolve matters without the need for enforcement action. The ability to charge for the service of a notice has assisted this approach. However, in some circumstances there is a need to consider enforcement action in line with the Private Sector Housing Enforcement Policy to ensure the health and safety of tenants and occupants, and to improve standards in the private sector.

4. Options Considered

- 4.1 Option 1 – agree to adopt the updated Private Sector Housing Enforcement policy attached at Appendix A. This will ensure that the Policy includes all private sector housing enforcement options contained in legislation and that it complies with the requirements of the Government’s Regulators’ Code, enabling the Private Sector Housing team to take enforcement action to ensure the health and safety of tenants and occupants, and improve standards in the private sector.
- 4.2 Option 2 – do nothing. Not adopting the Policy would mean that the Council would not be complying with the requirements of the Regulators’ Code. In addition, should enforcement action not included in the existing policy be taken, and/or where that action results in a court hearing, the Council would be liable to challenge from the business and their legal representatives for acting outside of the powers in the Enforcement Policy. This could result in the court not finding in the Council’s favour, reputational damage, and with the potential for costs being awarded against the Council.

5. Preferred Option and Reason

- 5.1 Option 1 – adopt the updated Private Sector Housing Enforcement Policy.
- 5.2 Having an up to date Policy enables the Council to be able to consider the full range of enforcement options when looking to ensure the health and safety of residents, together with compliance with the Government Code

6. Consultation on Options

- 6.1 Consultation on the Policy has been open during the month of September on the Council’s website, and relevant businesses were advised by email of the link to the website. No responses have been received from local businesses.
- 6.2 The Policy was sent to the National Residential Landlords’ Association to obtain comments from a landlords’ perspective. No response has been received.
- 6.3 The Policy was sent to the Tunbridge Wells Citizens Advice Bureau to obtain comments from an organisation that is contacted by tenants with housing issues. Feedback has been received from the Chief Executive who found the Policy to

be clearly stated, presented well and laid out with clear meaning, and open and transparent.

Recommendation from Cabinet Advisory Board

6.4 The Communities Cabinet Advisory Board were consulted on 11 November 2020 and agreed the following:

Insert text from Cabinet Advisory Board minute, or request text from Democratic Services Officer.

7. Implementation

7.1 Should the proposed Private Sector Housing Enforcement Policy be adopted by Cabinet as recommended, it will be added to the Council's website. Businesses (as defined in paragraph 2.2 of this report) will be advised.

8. Appendices and Background Documents

Appendices:

- Appendix A: Draft Private Sector Housing Enforcement Policy 2020 - 2025

Background Papers:

- None

9. Cross Cutting Issues

A. Legal (including the Human Rights Act)

The recommendations provide a comprehensive enforcement policy in respect of private sector housing enforcement.

The legal implications are set out in the body of the report and in particular on pages four and five of the draft policy, the policy scope, the Regulators' Code, and references to relevant legislation throughout. The draft policy has been prepared in accordance with legislation and relevant statutory guidance.

Approval of the policy is an executive key decision required by the Council's Constitution to be taken by Cabinet.

[Jayne Bolas, Principal Lawyer Corporate Governance and Contentious 08/10/2020]

B. Finance and Other Resources

No significant implications relating to Finance have been identified. There may be some income when a charge is made for the service of a notice, or income from a civil penalty notice, but there can be no certainty as to how often these powers are used so it is not anticipated that there will be a regular stream of income.

[Jane Fineman, Head of Finance and Procurement 20/10/2020]

C. Staffing

No staffing implications have been identified.

[Anita Lynch, HR Manager 19/10/2020]

D. Risk Management

No risk management implications have been identified.

[Sue Oliver, Environmental Health Officer 12/10/2020]

E. Environment and Sustainability

No environment and sustainability implications have been identified.

[Sue Oliver, Environmental Health Officer 12/10/2020]

F. Community Safety

The powers in the Policy will enable the Council to improve housing standards and this can have a positive impact on the local environment.

The powers include bringing empty homes back into use, as empty properties can have a negative effect on a local area.

The licensing of houses in multiple occupation ensures that these properties have adequate amenities, fire safety precautions and that rooms are of an adequate size for their occupants.

[Terry Hughes, Community Safety Manager 05/10/2020]

G. Equalities

The impact of the Policy has been analysed and does not vary between groups of people, as the enforcement action taken relates to the conditions at the property.

[Sue Oliver, Environmental Health Officer 12/10/2020]

H. Data Protection

There are no data protection implications.

[Sue Oliver, Environmental Health Officer 12/10/2020]

I. Health and Safety

The range of enforcement options available to the Council will ensure the health and safety of tenants and occupants in their homes.

[Sue Oliver, Environmental Health Officer 12/10/2020]

J. Health and Wellbeing

Good quality housing positively impacts on mental and physical health, wellbeing and life expectancy, whereas poor quality housing has detrimental effects on education and health. Good quality housing can also positively impact on connections with the local community through creating a secure home environment. Energy efficiency and fuel poverty remain key challenges across all tenures, and particularly impact lower income households.

By improving housing across all tenures, and working to remove hazards in properties, the health and wellbeing of occupants can be improved. The powers contained within the Policy provide enforcement options to improve poor living conditions, in particular for tenants in the private rented sector.

[Rebecca Bowers, Health Improvement Team Leader 08/10/2020]