

# **Management Committee**

## **Tuesday 6 June 2017**

### **Implementation of the Housing and Planning Act 2016**

## **For Recommendation To Council**

### **Portfolio Holder(s)/ Brief holder**

Housing

### **Senior Leadership Team Contact:**

S Hill, Strategic Director

### **Report Author:**

Housing Improvement Manager / Monitoring Officer

### **Statutory Authority**

Housing Act 2004

Housing and Planning Act 2016

Local Government Act 1972; Local Government Act 2000

### **Purpose of Report**

1.To inform members of provisions within the Housing and Planning Act 2016 extending the council's powers and duties to regulate the Private Rented Housing Sector, to provide relevant powers to deal with such matters together with associated legal proceedings and seek to secure a consistent approach across the DCP area.

### **Recommendations**

Members recommend to Full Council that:

- (a) the Officer Scheme of Delegations as set out in Constitution be amended in relation to the powers of the Head of Housing and the Corporate Manager – Legal as set out in Appendix 1 to this report, with power delegated to the Monitoring Officer to make such changes and any consequential changes to the Constitution he considers appropriate to facilitate the incorporation of these provisions; and
- (b) authorise the Head of Housing in consultation with the Corporate Manager – Legal to develop, and publish, any relevant procedures for the purposes of implementing the delegations above, including if considered appropriate, revising the Enforcement Policy and its 'Statement of Principles' incorporating civil penalties, applications for Rent Repayment Orders and banning orders for prescribed offences.

## Reason for Decision

3 The council's intervention in the Private Rented Housing Sector is dictated by legislation that bestows both duties and powers upon the local authority. Implementation of those duties and powers requires adoption and publication of policies and principles to which the council commits and the appropriate delegation of powers. The council's Enforcement Policy and its supporting 'Statement of Principles' relating to the imposition of financial penalties, must take account of new provisions within the Housing and Planning Act 2016 relating to regulation of the sector.

## Background and Reason Decision Needed

4. The Housing and Planning Act 2016 introduced new provisions to support local authorities in their regulation of the Private Rented Housing Sector, including:

- a) Introducing Financial Penalties (FP) for a range of Housing Act offences
- b) Extending the circumstances permitting Rent Repayment Orders (RRO) to be sought.
- c) Introducing Banning orders for the most prolific offenders
- d) Introducing a Database of rogue landlords / property agents
- e) Enabling Tenancy Deposit data sharing.

The principal legislation covering a local authority's regulation of the Private Rented Housing Sector is the Housing Act 2004. The act details conditions which, if present, require a local authority to take action and prescribes the options for intervention.

5. The Housing and Planning Act 2016 introduces additional provisions to improve regulation of the sector. The provisions follow recently introduced legislation to address retaliatory evictions by landlords and consultation on the extension of criteria for mandatory licensing of Houses in Multiple Occupation which is likely to be introduced later in 2017.

### 5. Financial Penalties

With effect from 6th April 2017 local authorities are able to impose FPs as an alternative to prosecution for the following offences;

- a) Section 30 - Failure to comply with Housing Act Improvement Notices
- b) Section 72 - Licensing of HMOs
- c) Section 95 - Discretionary licensing of houses under Part 3 of the Housing Act 2004.
- d) Section 139 (5) - Housing Act 2004 Overcrowding provisions
- e) Section 234 - Failure to comply with HMO Management Regs

6. FPs are introduced as an alternative to prosecution by the local authority, and can be imposed upon either a landlord or letting agent. The maximum FP that can be charged is £30,000 and **Income received from FPs can be retained by the LA to finance the Council's enforcement work.**

7. The government has produced a guidance note covering issues such as the burden of proof that a council should meet before setting a FP, the method of determining the appropriate amount, and the charging procedure. Any landlord / letting agent in receipt of a FP has a right of appeal to the First Tier Tribunal.

8. Should two or more FPs be imposed upon any person the council may choose to publish details of that person on the database of rogue landlords.

#### 9. Rent Repayment Orders

With effect from 6th April 2017 the range of offences which lead to a local authority being able to consider applying to the First Tier Tribunal for a RRO against a landlord has been extended to include::

- a) Criminal Law Act 1977 – violence for securing entry;
- b) Housing Act 2004 – failure to comply with improvement notice;
- c) Housing Act 2004 – failure to comply with prohibition order etc.;
- d) Housing Act 2004 – control or management of unlicensed HMO;
- e) Housing Act 2004 – control or management of unlicensed house;
- f) Protection from Eviction Act 1977 – eviction or harassment of occupiers.

With the introduction of banning orders (see below) the intention seems to currently be to extend this power to cover breaches of such orders as well

10. RROs enable a local authority or a tenant to secure the repayment of rent paid during the period of a prescribed offence (for a maximum period of 12 months). In the case of the local authority the amount to be reclaimed would relate to Housing Benefit payments made while in the case of a tenant the amount reclaimed would be the rent paid personally by that tenant.

11. RROs are issued upon application to the First Tier Tribunal and while prosecution for the offence is not a prerequisite for a RRO application, should there have been a successful prosecution the Tribunal will not revisit the facts of the case, but merely consider the appropriate amount for repayment. Interestingly, the act requires a local authority to consider an application for a RRO should it have secured a prosecution for a prescribed offence.

12. Applications submitted without a prosecution for a prescribed offence having been secured will require the local authority to meet the same burden of proof as would be expected by the courts and to convince the Tribunal that payment meets the 'public interest' test.

13. The government has produced a guidance note for local authorities detailing the intention behind RROs and procedures for implementation. **Income received from RROs can also be retained by the LA to finance the Council's enforcement work.**

#### 4. Banning Orders and Database of Rogue landlords

The act also introduces a provision enabling local authorities to apply to the First-Tier Tribunal to serve a banning order preventing a landlord or property agent from letting properties. Such an application would be permitted as a consequence of conviction for prescribed housing related offences.

15. The range of banning order offences that have been proposed include; illegally evicting or harassing tenants, failure to comply with Housing Act improvement notices, gas safety offences, and letting to someone who is disqualified from renting because of their immigration status. Banning orders are set to be introduced from October 2017 in relation to residential lettings and will be recorded on a national database of rogue landlords which local authorities will be obliged to update.

#### 16 Enabling tenancy deposit data sharing.

With effect from 6<sup>th</sup> April 2017, Tenancy Deposit Protection schemes are required to provide specific information they hold on tenancies to local authorities requesting upon request. The information can only be sought in connection with functions under enforcement provisions within the Housing Act 2004. The information available includes:

- a) Addresses of properties privately rented
- b) Addresses of landlords letting the properties
- c) Addresses of letting agents managing the properties
- d) Number of deposits registered at the rented property.

Landlord names will not be shared.

17. Local authorities already have powers under the Local Government Finance Act 1992 to collect information on tenure for council tax purposes. The Housing Act 2004 allows that information to be used for housing functions under Parts 1-4 of the act (enforcement work). Access to the tenancy deposit protection scheme information will compliment information already available to the council and assist in the effective regulation of the private rented housing sector.

#### 18. Enforcement

Responding to service requests relating to poor housing conditions within the private rented sector is a key function of the DCP's Housing Improvement Team. While many issues are resolved with the co-operation of the landlord, more formal procedures do need to be adopted should that co-operation not be forthcoming. The three councils each have a corporate Enforcement Policy detailing the high level principles that are to be applied. The WDWP also have a service specific policy providing more detail of the procedures that a landlord and tenant can expect the council to follow upon receipt of a service request. Consistent application of both the Housing Act and the new Housing and Planning Act provisions, with service procedures and standards publicly available, is a key objective of the Housing Department. The procurement of a new software system for Environmental Health and Housing services is providing another incentive to develop common working practices across the three councils.

19. Member support for implementing the new provisions and developing consistent working practices and procedures across the DCP area is sought.

## **Implications**

### **20. Corporate Plan**

**Financial** Receipts secured through the imposition of Civil Penalties and Rent Repayment Orders may be retained by the local authority to finance the council's enforcement work.

**Equalities** Any enforcement policy adopted should be subject to an EqIA.

**Human Resources** Income secured through the imposition of Civil Penalties and Rent Repayment Orders may be retained by the local authority to finance the council's enforcement work.

**Consultation and Engagement** The council must publish its enforcement policy and any Statement of Principles adopted.

## **Appendices**

Appendix 1. Changes to Officer Scheme of Delegations

### **Background Papers**

- DCLG Guidance for local housing authorities, 'Rent Repayment Orders under the Housing and Planning act 2016'
- DCLG Guidance for local housing authorities, ' Civil penalties under the Housing and Planning Act 2016'.
- Corporate Enforcement Policy NDDC
- Corporate Enforcement Policy WDWP
- WDWP Private Sector Housing Policy.
- Statement of Principles

## **Footnote**

Issues relating to financial, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

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## Appendix

### Changes to Officer Scheme of Delegations

#### 1. Add the following delegated powers to the Head of Housing:

- (A) Power to undertake all action in relation to the imposition of a financial penalty where such an option is available pursuant to any relevant housing offence (as currently defined in the Housing Act 2004) including in particular but without prejudice to the generality of the foregoing:
- (a) determining whether or not the circumstances are such as to justify the imposition of a financial penalty;
  - (b) determining the appropriate amount of any such financial penalty;
  - (c) considering and determining the consequences of any written representations made in relation to any proposed or actual financial penalty;
  - (d) determining whether at any time to withdraw or vary a financial penalty;
  - (e) determining whether to seek recovery of any financial penalty; and
  - (f) issuing and serving any notices or other documentation in relation to the above,
- provided that no decision may be taken to impose a financial penalty or seek the recovery of any financial penalty without the prior approval of the Corporate Manager – Legal.
- (B) Power to undertake all action in relation to the obtaining and enforcement of a rent repayment order pursuant to the Housing Act 2004 provided that such power does not extend to determining whether to make such an application and / or enforce such an order without the prior approval of the Corporate Manager – Legal.
- (C) Power to undertake all action regarding securing and/or providing tenancy deposit information to the extent that such information can be secured whether pursuant to the Housing Act 2004 or otherwise.
- (D) Power to undertake all action in connection with a banning order and maintaining a database associated with any such order pursuant to the Housing Act 2004 including in particular but without prejudice to the generality of the foregoing:
- (a) determining whether to make, vary and/or remove any entry on a database;
  - (b) considering and determining the consequences of any written representations made in relation to any proposed or actual banning order or database; and
  - (c) the requiring of any information in relation to any of the above;
- provided that the above does not extend to the actual determination as to whether to apply for a banning order.

**2. Substitute and amend the existing delegated power of the Corporate Manager (Part A – delegation 2) to read as follows and delete the power of the Legal & Commissioned Services Manager as set out in Part B, Section 24, paragraph ii.**

*[N.B. the wording below does not all specifically relate to the content of the current report but rather seeks to integrate two powers that already exist whilst also making changes to clarify the powers and their application to the provisions covered in this report]*

To undertake all action in connection with authorising, instituting, prosecuting, defending, appearing in and settling any legal proceedings (including any appeal against action taken by or on behalf of the Council and proceedings in any tribunal, hearing, inquiry or any other forum involved in the consideration of legal proceedings) on behalf of the Council together with the undertaking of such preliminary or further work in relation to the same as the Corporate Manager - Legal deems appropriate, including in particular, but without prejudice to the generality of the foregoing:

- (a) the making of any determination in relation to the same including whether to commence and / or withdraw any such proceedings;
- (b) authorising the undertaking of any action in respect of any caravan, tent or other structure (whether of a permanent or temporary nature) that in the opinion of the Corporate Manager – Legal is unlawfully placed on any land;
- (c) the enforcement of any order or byelaw made, confirmed or obtained by or on behalf of the Council;
- (d) any determination associated with seeking and/or securing any orders in connection with:
  - (i) any orders in connection with any anti-social behaviour; and/or
  - (ii) rent repayment and/or banning orders;
- (e) the obtaining of any warrant;
- (f) the determination of whether to issue a caution (or other warning) subject in the case of the issue of any formal caution to prior consultation with such Head of Service as the Corporate Manager – Legal at his/her discretion considers appropriate,
- (g) any determination associated with the securing and enforcement of any injunction (including in connection with anti-social behaviour); and
- (h) the giving of any undertakings s/he considers appropriate in relation to the same;

but provided that in the case of a final determination as to whether to commence formal litigation action to seek to recover outstanding monies in excess of £10,000 secured pursuant to a planning obligation ( under s106 Town and Country Planning Act 1990 (as amended)), such determination is subject to such consultation with a relevant portfolio / brief holder as the Corporate Manager - Legal at her/his discretion considers appropriate.