
REPORT TO:	HOUSING AND COMMUNITY SERVICES COMMITTEE	AGENDA ITEM: 9
DATE OF MEETING:	8th MARCH 2018	CATEGORY: RECOMMENDED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	MATT HOLFORD – ENVIRONMENTAL HEALTH MANAGER	DOC:
SUBJECT:	CIVIL PENALTIES UNDER THE HOUSING AND PLANNING ACT 2016	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: HCS02

1. Recommendations

- 1.1 That Members approve the proposed charging framework for the use of civil penalties for housing offences under the Housing and Planning Act 2016.

2. Purpose of Report

- 2.1 To advise members of the availability of a new civil penalty sanction for housing offences under the Housing and Planning Act 2016.
- 2.2 To seek approval from Members on the proposed use of the power within South Derbyshire and of the Councils proposed policy on the use of the power.

3. Background

- 3.1 The private rented sector is a rapidly expanding segment of the housing market in South Derbyshire. The number of people living in the private rented sector increased from 1,817 (5.5%) of the local housing market in 2001 to 5,459 (14.5%) in 2014 and is set to continue to increase. Rates of non-decency are higher in the private rented sector (23.5%) than the owner occupied sector (15.1%). An estimated 8% of private sector homes exhibit a Category 1 hazard, which is defined as posing a serious risk of harm to occupants – and this percentage is higher for private rented properties.
- 3.2 South Derbyshire District Council has a legal duty to ensure that the condition of the private sector stock, both rented and owner occupied, is compliant with the 2004 Housing Act. This function is delivered by the Private Sector Housing team within Environmental Health.
- 3.3 Most private landlords provide a valuable contribution to the housing market and behave responsibly. However, as demand for housing increases nationally, so a small number of private landlords have sought to exploit the increasing demand by knowingly renting out unsafe and substandard accommodation.

- 3.4 The business model of these landlords is to under-invest in their properties and to absorb the costs of criminal fines issued under the Housing Act as part of their normal business costs. Due to the relatively high profits offered through renting private sector properties and the relatively low fines on conviction for housing offences this has proved to be a lucrative, but immoral operating model.
- 3.5 The importance of the private rented sector means that we must do as much as we can to build confidence in this sector and to ensure that punitive measures with real teeth are in place to prevent poor practice.
- 3.6 The government has stated its intention to crack down on these landlords and disrupt their business model. The Housing & Planning Act 2016 introduced a range of measures to meet this commitment.

4. Housing and Planning Act 2016 ('the Act')

- 4.1 Part 2 of the Act introduces a range of new powers to deal with 'rogue landlords'. Section 126 and Schedule 9 of the Act introduces financial penalty as an alternative to prosecution under the 2004 Housing Act.
- 4.2 The Act enables local housing authorities to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:
 - Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of Houses in Multiple Occupation (section 72);
 - Offences in relation to licensing of houses under Part 3 of the Act (section 95);
 - Offences of contravention of an overcrowding notice (section 139)
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).
- 4.3 The maximum civil penalty is £30,000. However, the amount of penalty must be determined by the local housing authority based on the specific circumstances in each case. In determining an appropriate level of penalty, local housing authorities should have regard to statutory guidance which sets out the factors to take into account when deciding on the appropriate level of penalty.
- 4.4 A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and then prosecute for the same offence.
- 4.5 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before seeking to apply a civil penalty the authority must satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction i.e. that the case can be proved 'beyond all reasonable doubt'.
- 4.6 Statutory guidance states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty. If members are willing to approve the principle of the use of civil penalties, then the following section of the report outlines the policy the Council proposes to adopt in order to calculate such a penalty in any given case.
- 4.7 The Council already has a [Corporate Enforcement Policy](#) which was approved by Committee in November 2016 and is a public document. If members approve the principle of using civil penalties and the policy by which they are applied, then this will be included in a revised version of the Corporate Enforcement Policy.

5. Civil Penalty Calculation

- 5.1 There is no explicit guidance on how to calculate a penalty within the £30,000 maximum threshold. A number of urban authorities, for whom unfit private rented properties are a far greater problem in South Derbyshire, have developed a model which has been in use for the past year. This model has also been adopted by other councils in Derbyshire.
- 5.2 In order to provide consistency across the region and to enable the Council to offer a robust position in the event of an appeal, members are recommended to adopt the same model.
- 5.3 The proposed calculation process is described in Appendix 1. In summary it requires the investigating officer to firstly establish that the use of a civil penalty is proportionate to the offence; secondly to determine the scale of the offence having regard to culpability and harm; and finally to consider extenuating circumstances which need to influence the final penalty.
- 5.4 Under the terms of the existing Corporate Enforcement Policy (section 10), where an investigating officer has concluded that an offence should be dealt with by prosecution, this must be approved in writing by the Strategic Director (para 10.4). It is proposed that a similar process should be adopted for the decision to issue a civil penalty. The enforcement decision template described in para 10.2 of the Enforcement Policy will be adapted to accommodate this. At the same time a copy of the proposed penalty will be sent to the Legal Services team to ensure that they are also satisfied that the burden of proof of 'beyond all reasonable doubt' has been met.

6. Financial Implications

- 6.1 Minor beneficial. The private sector housing stock in South Derbyshire is generally good and we very rarely find ourselves having to serve legal notices on our landlords to achieve compliance with the Housing Act 2004. By way of illustration, over the past 3 years the Council has issued two legal notices which would have resulted in a civil penalty being issued. We do not therefore anticipate that this policy will generate significant income.
- 6.2 We would propose to reinvest any excess revenue generated from civil penalty sanctions into the housing renewal support service for the private sector stock.

7. Corporate Implications

- 7.1 The proposals align with the "People" Corporate Plan theme and specifically with aim PE3 "Use existing tools and powers to take appropriate enforcement action".

8. Community Implications

- 8.1 Beneficial.

9. Conclusion

- 9.1 The reports seeks Member approval to adopt new powers to issue civil penalties to landlords who fail to comply with housing law in the private rented sector. It also provides a framework by which any civil penalty sanctions will be calculated.
- 9.2 The implementation of the proposals will provide a new form of regulatory sanction which is likely to have a significant influence within the private sector landlord community.

9.3 The authority already has well tested checks and balances to ensure that our regulatory powers are used appropriately. By applying the same principles to the new powers we can be confident that they will be implemented in a balanced manner.

10. References

10.1 “Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”, DCLG, April 2017.

10.2 South Derbyshire District Council Corporate Enforcement Policy, November 2016.