

<b>CABINET MEETING –18 JUNE 2019</b>  <b>EXECUTIVE SUMMARY SHEET – PART 1</b>	
<b>Title of Report:</b>	Private Sector Housing Enforcement Policy
<b>Author(s):</b>	Executive Director of Neighbourhoods
<b>Purpose of Report:</b>	To seek Cabinet approval of the Private Sector Housing Enforcement Policy for the regulation of housing and housing management standards in the private rented sector and the delegation of enforcement powers under related legislation.
<b>Description of Decision:</b>	<p>Cabinet is asked to:</p> <ul style="list-style-type: none"> <li>(i) Approve the adoption of the Private Sector Housing Enforcement Policy annexed to this report.</li> <li>(ii) Grant delegated authority to the Executive Director of Neighbourhoods, in consultation with the Assistant Director of Law and Governance, to approve minor modifications and updates to the policy.</li> <li>(iii) Grant delegated authority to the Executive Director of Neighbourhoods to exercise the functions of the Council under the Housing and Planning Act 2016, The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, The Efficiency (Private Rented Properties) (England and Wales) Regulations 2015 (as amended) and the Tenant Fees Act 2019 insofar as they relate to housing conditions and the management of housing.</li> </ul>
<b>Is the decision consistent with the Budget/Policy Framework?</b>	<b>Yes</b>
<b>If not, Council approval is required to change the Budget/Policy Framework.</b>	
<b>Suggested reason(s) for Decision:</b>	<p>It is essential that the Council reviews private housing to ensure that good management and housing standards are improved or maintained within the sector and that it acts effectively, using the powers available to it to regulate the sector. The Enforcement Policy ensures that decisions made in the exercise of these powers are consistent and transparent. A Penalties Matrix, as contained in the Policy, is also required in order for the Council to impose financial penalties under the Housing and Planning Act 2016 and therefore be able to make use of the full range of powers available to it.</p>

**Alternative options to be considered and recommended to be rejected:**

There are no alternative options to consider as it is essential for enforcement purposes that the Council has a policy as to how enforcement powers will be fairly and consistently applied.

**Impacts analysed;**

Equality ☒ Privacy ☒ Sustainability ☒ Crime and Disorder ☒

**Is the Decision consistent with the Council's co-operative values?      Yes**

**Is this a "Key Decision" as defined in the Constitution?      Yes**

**Is it included in the 28-day Notice of Decisions?      Yes**

**PRIVATE SECTOR HOUSING POLICY**

**Report of the Executive Director of Neighbourhoods**

**1. Purpose of the Report**

- 1.1 To seek Cabinet approval of the Private Sector Housing Enforcement Policy for the regulation of housing and housing management standards in the private rented sector and the delegation of enforcement powers under related legislation.

**2. Description of Decision**

- 2.1 Cabinet is asked to:
- (i) Approve the adoption of the Private Sector Housing Enforcement Policy annexed to this report.
  - (ii) Grant delegated authority to the Executive Director of Neighbourhoods, in consultation with the Assistant Director of Law and Governance, to approve minor modifications and updates to the policy.
  - (iii) Grant delegated authority to the Executive Director of Neighbourhoods to exercise the functions of the Council under the Housing and Planning Act 2016, The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, The Efficiency (Private Rented Properties) (England and Wales) Regulations 2015 (as amended) and the Tenant Fees Act 2019 insofar as they relate to housing conditions and the management of housing.

**3.0 Introduction/Background**

- 3.1 Private rented housing plays a significant part in the housing provision within Sunderland, making up 26% of the City's housing stock. Whilst much of this housing is in good condition and well managed, the conditions in the private rented sector nationally tend to be less satisfactory than any other occupancy type.
- 3.2 The Council has a statutory duty to deal with unsatisfactory housing that presents health and safety hazards to the occupiers. The proposed enforcement policy outlines the Council's approach to ensuring that standards are met and seeks to ensure that good practice is maintained and that all properties let as residential dwellings throughout Sunderland are of good quality and are well managed.

- 3.2 The Policy (Appendix 1) summarises the relevant legislation and the types of enforcement available to the council, ranging from verbal warnings and statutory notices to legal action including prosecution. It is not an exhaustive list and is not intended to be a definitive interpretation of the legislation, nor provide a full statement of the law. Instead, the policy clearly sets out our approach to enforcement and is designed to be fair to responsible landlords but capable of dealing with uninformed or rogue landlords in order to maintain and improve conditions within this sector.

#### **4.0 Current Position/Recent Legislation**

- 4.1 In recent years, changes to legislation have conferred upon local authorities the power to enforce penalty charges as a tool to tackle non-compliance in some cases, and as an alternative to prosecution.
- 4.2 Penalty charges introduced by The Smoke and Carbon Monoxide Alarms (England) Regulations 2015 are already in use within the City. They have been included in this policy to ensure transparency of all powers and to ensure that all penalty charges issued in relation to private sector housing are in a single reference tool.
- 4.3 The Housing and Planning Act 2016 has also already been adopted. The Act allows local authorities to maintain a Database of Rogue Landlords and Property Agents and permits local authorities to apply for rent repayment orders and banning orders against landlords in certain instances and to impose a civil financial penalty of up to £30,000 for breaches of the latter as well as for certain offences under the Housing Act 2004, including the offences of overcrowding, failure to licence an HMO or breach of improvement notices etc.

Before the use of penalty charges permitted under this legislation can come into effect, local authorities are required to produce a penalties matrix, that clearly sets out the relevant considerations as to the level of the penalty for particular offences, this has been included in the Policy.

The Council's penalty matrix sets a tariff band based on the seriousness of harm of risk to the tenant and the landlord's culpability. This tariff can then be increased due to the landlord's previous track record and financial benefit obtained from committing the offence.

- 4.4 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 requires Letting Agents and Property Managers to be a member of a government approved redress scheme for dealing with complaints in connection with those areas of work. Enforcement is by way of the imposition of a monetary penalty.

- 4.5 The Efficiency (Private Rented Property) (England and Wales) Regulations 2015 require domestic private rented properties to have a minimum Energy Performance Certificate (EPC) rating of E. As from 1<sup>st</sup> April 2018, the Regulations have allowed local authorities to issue financial penalty notices at certain properties where the minimum EPC rating is not achieved.
- 4.6 The Tenant Fees Act 2019 seeks to prohibit certain payments being demanded from tenants, or prospective tenants by landlords, letting agents or third parties. The Act also requires the justification of costs for certain payments and introduces caps on deposit payments by tenants. Failure to comply with these requirements may result in the Council issuing a financial penalty or commencing prosecution proceedings in the Magistrates' Court.
- 4.7 Any income generated from the issue of civil penalties is to be retained by the local authority and will be spent on improving private sector housing working practices.
- 4.8 Although not a statutory requirement, a copy of the proposed Policy was placed on the Council's website for consultation between 18<sup>th</sup> April 2019 and 24<sup>th</sup> May 2019 and the following representations were received:
- Further clarification requested on level of deposit permissible under the Tenants Fees Act in relation to rents below £50,000 per annum. The policy has been amended to provide more clarity in this respect.
  - A number of service requests were submitted relating to existing poor properties and these have been recorded for investigation and appropriate action.

In addition, direct consultation was undertaken with the local bodies representing local landlords – the National Landlords Association were interested to comment on any proposals to implement Selective Licensing in the city however they were advised that there are no current plans to do so however the policy does include all relevant provisions should the Council determine such action necessary.

- 4.9 Once adopted, the Policy will be kept under regular review and also as the need arises, as a result of factors such as changes to legislation, to ensure that it remains relevant and properly reflects local need and current legislation and guidance.

## **5.0. Reasons for the Decision**

- 5.1 It is essential that the Council reviews private housing to ensure that good management and housing standards are improved or maintained within the sector and that it acts effectively, using the powers available to it to regulate the sector. The Enforcement Policy ensures that decisions made in the exercise of these powers are consistent and transparent. A Penalties Matrix, as contained in the Policy, is also required in order for the Council to impose financial penalties under the Housing and Planning Act 2016 and therefore be able to make use of the full range of powers available to it.

## 6.0 Alternative Options

- 6.1 There are no alternative options to consider as it is essential for enforcement purposes that the Council has a policy as to how enforcement powers will be fairly and consistently applied.

## 7. Impact Analysis

- (a) **Equalities** – the Council have legal requirements under Section 149 of the Equality Act 2010. These are often collectively referred to as the general duties to promote equality, with particular regard to persons sharing the relevant protected characteristics-age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is considered that the Council's Enforcement Policy complies with this duty as the impact on individuals and businesses is equality neutral, being the same whether or not the individual or any person involved with the business has a protected characteristic.
- (B) **Sustainability** – This proposal is intended to assist responsible businesses.

## 8. Other Relevant Considerations / Consultations

- i. **Co-operative Values** – at Annual Council in May 2015, it was resolved that the following statement be included in the constitution to reflect the values of the 'Co-operative Council'.

*Sunderland City Council is a co-operative council and in being so, will act ethically in all its actions whilst adhering to and actively promoting its co-operative values of self-help, self-responsibility, democracy, equality, equity and solidarity. These values will underpin its decision making and actions.*

- ii. **Legal implications** – The Assistant Director of Law and Governance has advised on this proposal and her comments have been incorporated in the report.
- iii. **Financial implications** – Regulating the private rented sector is a statutory duty for all local authorities, and consequently has financial resource implications. A major change is the introduction of financial Civil Penalties which the Council may impose as an alternative to prosecution in respect of some offences. Income received from imposing a Civil Penalty must be retained by the Council and used to fund its private sector housing enforcement functions. It is expected that adopting the policy will incur additional costs as a result of administering Civil Penalties, which are anticipated to be covered by the income generated.

- iv. **The Public / External Bodies** – There is no statutory requirement to consult on this proposal. However, the views and comments on the proposed Policy have been sought from stakeholders, landlords and the public, giving them the opportunity to consider and provide comments on the draft Policy.

## **9. List of Appendices**

- 9.1 Appendix 1 – Draft Private Sector Housing Policy

## **10. Background Papers**

[Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities](#)



# Appendix 1

## Draft Private Sector Housing Policy

