

Bath & North East Somerset Council		
MEETING	Planning, Housing and Economic Development Panel	
MEETING	5 <sup>th</sup> September 2017	
TITLE:	Private Rented Sector Enforcement	
WARD:	All	
AN OPEN PUBLIC ITEM		
<b>List of attachments to this report:</b>  Housing Enforcement Activity;  Draft Housing Services Enforcement Policy 2017;  Draft Housing and Planning Act 2016 Financial Penalties Policy.		

## **1 THE ISSUE**

1. This report sets out the current enforcement priorities of Housing Services and gives the level of activity within each area. We work with tenants, landlords and letting agents to improve housing conditions, and the safety and management of rented homes in B&NES. Through the publication of information on good practice and guidance, property inspections and follow up schedules of work we aim ensure that the safety and management of our rented housing stock complies with housing law.
2. For those individuals and organisations who do not comply with housing legislation, our Enforcement Policy sets out the principles of good enforcement practice and how Housing Services will apply these principles.
3. The draft updated Enforcement Policy 2017 includes reference to new relevant legislation and also explains how Housing Services proposes to implement Financial Penalties for certain offences under the Housing and Planning Act 2016.

## **2 RECOMMENDATION**

The Housing and Economic Development Panel is asked to note and comment on the report and attached draft policies.

### **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 The maintenance of acceptable housing standards is a statutory function of the Council under the Housing Act 2004. This policy underpins this enforcement work. There are no additional resource implications due to the proposed changes to this policy.
- 3.2 The Housing and Planning Act 2016 requires that the value of any financial penalties obtained as a result of sanctions for Housing Act 2004 offences is used to fund further enforcement work. Therefore it is anticipated that some income will be generated as a result of the use of financial penalties which will contribute to the funding of the Council's Housing Standards and Improvement Team.

### **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The Council have a statutory duty to investigate and take follow up action in response to complaints from tenants about the condition of their homes.
- 4.2 The Council also have a statutory duty to licence, with appropriate conditions, larger Houses in Multiple Occupation known as Mandatory licensed HMOs, and take enforcement action where legal standards are not met.

### **5 THE REPORT**

- 5.1 Currently the Housing Services enforcement priorities are concerned with the safety and management of rented homes with in B&NES. Resources are targeted towards:

- Investigation and follow up action in response to complaints from tenants about the condition of their homes;
- Compliance, inspection and improvement of Mandatory licensed HMOs; and
- Compliance, inspection and improvement of Additional licensed HMOs.

The tables below provide a summary of recent enforcement activity and results. It includes 19 prosecutions in the magistrates over the last 5 years for failure to comply with housing law.

#### **Revised enforcement policy**

- 5.2 Bath and North East Somerset Council Housing Services will aim to be open, act proportionately, and be consistent and helpful in its approach to enforcement. We will also consider the impact of regulatory intervention on businesses and the business community in accordance with the Regulators' Compliance code. In particular we aim to:

- Provide information to aid compliance with legislation;
- Use a risk based approach targeting enforcement action;

- Engage and communicate effectively; and
- Support compliance and growth

The updated Housing Services Enforcement Policy 2017 is attached as an appendix to this report and provides guidance on the types of enforcement action taken by the Council to promote compliance with housing legislation. The policy also refers to rights of appeal and the Council's complaints procedure.

5.3 Having recently reviewed the existing policy a number of revisions are proposed to take account of policy updates and changes to legislation including:

- Financial Penalties for some offences covered by the Housing Act 2004;
- A clarification of the circumstances when a criminal prosecution will be recommended for non-compliance with Housing law.

### **Financial Penalties**

5.4 The policy refers to the new sanction of a financial penalty, which is to be considered as an alternative to prosecution for some Housing Act 2004 offences. A financial penalty may typically be appropriate for offences where the offender has not co-operated with the Council or where there is a serious or flagrant breach of the law and a significant financial penalty is the most effective and appropriate sanction. The penalty must be used as an alternative to prosecution and therefore the same level of proof of evidence is required and should be in the public interest.

To determine the level of fine appropriate for an offence, it is proposed that the Council consider the culpability of the offender and level of harm or potential harm resulting from the offence. A higher culpability and level of harm results in a higher penalty. The Council's policy on the level of fine to suit the circumstances of the case is attached as an appendix to this report.

The penalty can range from £50 to £30,000 depending on the severity of the offence and is issued by the Council direct to the offender. An appeal to the First Tier Tribunal is available on the justification and amount of penalty. The Council must follow a written policy to determine the value of the penalty and the Council must be able to prove the offence beyond reasonable doubt as in the Magistrates or Crown Court.

### **Prosecution in the Court**

5.5 Prosecution of the offender in the Magistrates or Crown Court is more likely to be appropriate for repeat offenders not co-operating with the Council or where the seriousness of the offence is such that it is necessary to draw attention to the need for compliance with the law.

### **HMO Licensing**

5.6 Housing Service currently licence approximately 500 larger Houses in Multiple Occupation (HMOs) under the Housing Act 2004 Mandatory HMO Licensing Scheme. Also under the same legislation, 1000 HMOs which fall within the Councils Designated Additional HMO Licensing Area.

- 5.7 The scope of mandatory HMO licensing is expected to expand later this year to include all HMOs with 5 or more occupants which could increase the number in B&NES significantly. An investigation is also under way to determine whether there is a still case for Additional HMO Licensing going forward. This will be the subject of a further report in the near future.

## **6 RATIONALE**

- 6.1 The comments of the panel will be considered as part of the consultation on the revised Enforcement Policy 2017.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 None

## **8 CONSULTATION**

- 8.1 Consultation on these policies with landlords, letting agents and other local authorities is proposed, further detailed consultation is proposed with the Cabinet Member for Housing, the Policy Development and Scrutiny Panel, and the West of England Landlords Panel.

Stakeholders consulted are likely to include Landlords Associations, Managing Agents, the Universities, and Registered Providers of social housing.

## **9 RISK MANAGEMENT**

A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance. The risk of unreasonable or disproportionate enforcement action was identified. The revised policy includes a short consultation period before a decision on the type of enforcement action is taken. This will assist in the mitigation of the risk.

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<b>Background papers</b>	<i>There are no background papers identified for this report</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

The tables below provide a summary of recent enforcement activity and results.

### **Licensable HMOs**

Mandatory Scheme	500
Additional Scheme	1024
Of which required additional conditions	875
Inspection of all licensed HMOs	100%

### **Sanctions for non-compliance**

2011/12 – 2017/18	Failure to comply with Improvement Notice	Failure to comply with HMO Management Regulations	Failure to licence a licensable HMO
Prosecutions	5	6	8
Simple Cautions	0	1	33