

Committee:	Cabinet	Date:	Thursday, 29 November 2018
Title:	Environmental Health (Housing) Civil Penalty Notice Policy		
Portfolio Holder:	Councillor Susan Barker, Portfolio Holder for Environmental Services		
Report Author:	Marcus Watts, Environmental Health Manager - Protection mwatts@uttlesford.gov.uk Tel: 01799 510595	Key decision:	No

Summary

1. The Environmental Health (Protection) Service is responsible for enforcing legislation to ensure property standards are maintained. These duties extend to the mandatory licensing scheme for eligible Houses in Multiple Occupation.
2. Enforcement powers that are available to the team are predominantly derived from the Housing Act 2004. These include the service of a variety of formal notices and the instigation of prosecution.
3. In a report to Cabinet on 18 October 2017, titled 'Review of Enforcement', Cabinet were asked to approve a number of draft corporate enforcement policies. As part of the review, further service areas were identified including an enforcement policy for private sector housing.
4. The Housing & Planning Act 2016 introduced a range of measures to enhance the existing powers including the ability for the Council to issue Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.
5. Within the Statutory Guidance published in April 2018, the Government made it clear that local housing authorities must develop and document their own policy to determine when it is appropriate and how to determine the level of civil penalty and that they should decide on a case-by-case basis in line with that policy.
6. This report seeks approval to use civil penalties as laid out in the Housing and Planning Act 2016 as further tools to assist the Council in improving standards within the private rented sector.
7. The proposed policy and financial penalty matrix have been produced having regard to Government Guidance.

Recommendations

8. That Cabinet:

- a. agree that the council use new enforcement powers contained in the Housing and Planning Act 2016 allowing the Council to impose civil penalties
- b. approve the policy set out at Appendix A

Financial Implications

9. There is no effective way of predicting the amount of revenue that these measures will generate. However, the Government have made it clear that any revenue from civil penalties should not only be retained by the Council, but be ring-fenced for Private Sector Housing enforcement activity.

Background Papers

10. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - Ministry of Housing communities and Local Government - Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities – April 2018

Impact

11.

Communication/Consultation	The enforcement policy will be promoted on the Councils website and landlord forum events.
Community Safety	Effective enforcement policies aim to promote community safety in an effective and proportionate manner
Equalities	Equalities issues are addressed in the corporate enforcement policy. The Private Sector Housing Enforcement Policy is in keeping with this document approved by Cabinet on 17 th October 2017
Health and Safety	None direct, other than that the policy is relevant to the Council's approach to enforcing health and safety in private sector housing
Human Rights/Legal Implications	The policies are designed to ensure that the Council carries out its enforcement role lawfully and proportionately having regard, amongst other things, to human rights
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

12. The private rented sector is an important and growing part of our housing market, housing 4.3 million households in England. Within Uttlesford 14% of households are rented from a private landlord (2011 census data).
13. The Government has stated they want to support the majority of landlords who provide decent well maintained homes, and avoid unnecessary regulation. However, there are a small number of criminal landlords who knowingly rent out unsafe and substandard accommodation. The Government has indicated their commitment to crack down on these landlords and disrupt their business models and has therefore introduced additional and enhanced enforcement powers for local authorities.
14. The Housing Act 2004 already provides a broad range of duties and powers for local Councils to assist them in their enforcement actions including:
 - The service of Formal Notices to require improvements to properties to reduce or eliminate risks to the occupiers.
 - Licensing of Houses in Multiple Occupation (HMO)
 - Regulations prescribing management in HMOs
15. There are presently two main sanctions that are available to the Council for breaches of the legal standards; any required works can be undertaken by the Council and the costs incurred recharged and/or the offenders can be prosecuted.
16. The Housing and Planning Act 2016 enhances the existing powers and in particular introduces the ability for the Council to impose a civil financial penalty up to £30,000 per offence.
17. The penalties will be treated as debt and if unpaid the Council we seek to recoup in the way it does with unpaid invoices. The Regulations do not allow unpaid penalties to be placed as a legal charge but an alternative would be to apply for a county court judgment.
18. The Council will be able 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
 - Offences in relation to licensing of Houses in Multiple Occupation
 - I. Failure to Licence
 - II. Failure to comply with Licence conditions
 - Offences of contravention of an overcrowding notice
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation

19. The maximum civil penalty that can be imposed is £30,000 per offence. The amount of penalty is to be determined by the local housing authority in each case. In determining an appropriate level of penalty, regard to the Government's guidance must be made. The decision to issue a civil penalty and the amount imposed can be appealed by the landlord to the First Tier Property Tribunal.
20. In 2017 following a fire at a HMO, the Council successfully prosecuted a landlord of an HMO for offences under the Housing Act 2004. There is one prosecution pending. These are criminal offences and therefore the burden of proof is on the council to demonstrate that the offences were 'committed beyond reasonable doubt' and that the defendant did not have a 'reasonable excuse'. This means that evidence needs to be collected in accordance with the Police and Criminal Evidence Act (PACE) 1984 in a prescribed, detailed and methodical manner and therefore such cases are resource intensive.
21. Whilst the new Civil Penalties are an alternative to prosecution the same evidential proof will still be required and should the subject be minded to appeal, the Council would need to present a case to the tribunal in the same way as a criminal trial.
22. The Government has made it clear that local housing authorities must develop and document their own policy to determine when to prosecute and when to issue a civil penalty.
23. To ensure that there is clarity and the Council can demonstrate fairness within the process, a Matrix system has been designed and included within the Policy that will allow a penalty charge to be made in line with the level of the offence. In creating the Matrix, levels of fines achieved during prosecution cases and costs to the Council awarded in these cases were taken into consideration. The Matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty the Council must consider:
 - Severity of the offence
 - Culpability and track record of the offender
 - The harm caused to the tenant
 - Punishment of the offender
 - Deterring the offender from repeating the offence
 - Deterring others from committing similar offences
 - Removing any financial benefit the offender may have obtained as a result of committing the offence
24. The guidance requires that offenders are deterred from repeat offending. With this in mind the charge is doubled for a second offence and doubled again if more than one hazard, breach of regulations or licence condition was on the notice or a Management Regulations letter has not been complied with. If a third offence is committed, the charge is set within an incremental range allowing for the most serious repeat offenders to receive the maximum fine of £30,000.

25. The proposed policy is contained at Appendix A to this report. In preparing the civil penalty matrix detailed in Appendix 1 and 2 of the Policy the Council is required to take into consideration statutory guidance released in April 2018.
26. On 18th October 2017, Cabinet adopted an overarching Corporate Enforcement Policy which details the approach to which all Council enforcement officers should have regard to when considering action. The proposed Private Sector Housing Policy should be regarded as an extension of this Policy.

Risk Analysis

27.

Risk	Likelihood	Impact	Mitigating actions
There are few risks identified for not adopting the policy. Officers would look to sanctioning offenders through the courts. There are risks associated with the non delivery of enforcement services, both on resident health and safety and reputational risk to the Council	1 – Low	3 - Impact arises in the event of non – enforcement services	Maintain service level & adoption of policy

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.