

Slough Borough Council

Report to: Customer and Community Scrutiny Panel

Date: 6th July 2022

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Ward(s): All

Part I

For comment & consideration

Housing Regulation Enforcement, Licensing and Civil Financial Penalties Policies

1. Purpose of report

To seek the Committee's views, comments and recommendations on the following draft policies relating to regulation and enforcement in private sector housing;

- Housing Regulation Enforcement Policy
- Revised Protocol for Civil Financial Penalties
- Property Licensing Decisions Policy

2. Recommendation(s)/proposed action

The Committee is requested to review and comment on the proposed policies and to recommend any amendments they wish to be considered for inclusion in the final versions which will be presented to Cabinet for consideration in due Course.

3. The slough joint wellbeing strategy and the JSNA

3a. Slough wellbeing strategy priorities

Housing is widely recognised as a key determinant of health and wellbeing. The Local Authority Health Profile for Slough published early in 2020 by Public Health England highlighted a number of areas where the health of people in Slough is worse than the England average. Research suggests that a number of these areas can be linked to poor housing conditions:

- Early deaths from cardiovascular disease- damp and cold homes have been linked to an increased risk from respiratory and cardiac conditions and in turn to excess winter deaths.
- Rate of hip fractures- Falls are most likely to occur in the home. Disrepair in residential properties for example to floors, stairs and handrails can increase

the risk of falls on level surfaces, stairs and those associated with baths and showers

- Hospital admissions for violence- Research by the Police Federation identified a link between the levels of violence in communities and prevalence of houses in multiple occupation
- Rates of T.B. which are almost 4 times the UK average- TB and other infectious diseases can spread more easily where conditions are overcrowded and/ or unsanitary.

In addition there is emerging evidence of a link between an increased risk of Covid 19 and over-crowded housing.

As well as the impact on health, unsafe, unsuitable or insecure housing can also have a long term impact on a child's academic attainment and life chances. Shelters report 'Chance of a lifetime- The impact of bad housing on Children's lives' (2006), highlighted that children who grow up in poor housing are more likely to be unemployed or to experience poverty in adulthood.

The impact of housing on health and well-being is recognised in the Slough Wellbeing Strategy 2020-25 which makes the improvement 'of the life chances of residents by focussing on areas such as housing...' a key ambition under *Priority 3: Strong, healthy and attractive neighbourhoods*.

The thorough and effective enforcement of standards in privately rented properties can directly support this ambition by identifying and improving poorly maintained and badly managed privately rented homes.

4. Other implications

(a) Financial

It is foreseeable that the implementation of the policies could lead to a marginal increase in the amount of enforcement activity which may in turn increase the demand for legal support services. However, this demand and any associated increase in costs will be offset by improvements in the quality of information and evidence gathered by officers; and in the robustness of their decision making. This will both deter erroneous legal challenges and allow legal support services to deal with cases more swiftly and efficiently.

Income received from any civil financial penalties issued under the revised Protocol for Issuing Civil Financial Penalties can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

(b) Risk management

<i>Recommendation from section 2 above</i>	<i>Risks/Threats/ Opportunities</i>	<i>Current Controls</i>	<i>Using the Risk Management Matrix Score the risk</i>	<i>Future Controls</i>
	<p>Health and Safety: <i>When carrying out regulatory activities that involve the assessment of physical hazards and regular contact with the public there will always be some risk to the health and safety of staff and residents. However, as the policies which accompany this report are designed to help improve the delivery of statutory functions relating to housing conditions and management in the private rented sector, it is likely that the adoption of the policies will reduce the risk to the Health and Safety of Slough Residents.</i></p>	<p><i>Comprehensive risk assessments are in place and are kept under regular review to ensure risks to residents and staff are minimised.</i></p> <p><i>Team take a risk based approach to their interventions ensuring that properties most likely to present serious risk of harm are inspected first.</i></p>	<p>6 <i>Marginal impact- low probability</i></p>	<p><i>The adoption of the policies will improve the regulation of the private rented sector in Slough, resulting in improved property management and a reduction in the number and severity of hazards in residential dwellings. They will also make the enforcement decision making process more efficient and robust, leading to a faster resolution for residents suffering in poor quality homes.</i></p>

	<p>Legal/Regulatory <i>Regulation and enforcement by their nature pose regulatory and legal risks as their implementation necessitate support from HB Law and other support services placing additional demands on those services. There is always a risk of successful legal challenges against action taken by the Council.</i></p>	<p><i>Enforcement decisions taken in line with statutory and local guidance and protocols and signed off by manager at level commensurate with the risk associated with the decision. E.g. prosecution signed off at Group Manager/AD level.</i></p>	<p>8 <i>Marginal Impact-significant probability</i></p>	<p><i>The policies and revised protocol which form the basis of this report are designed to improve the transparency and consistency of regulatory decision making in respect of private sector housing. The drafts have already been reviewed by HB Law and their recommendations incorporated. ... Should the policies be finalised and approved, regulatory decisions will be made with a clear and published rationale which should allow legal challenges to be dealt with more efficiently.</i></p>
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(c) Human rights act and other legal implications

The policies have been devised having regard to all relevant legislation, statutory guidance and the Council's Enforcement and Regulatory Services Enforcement Policy which conforms to the human Rights Act 1998. The policies have also been scrutinised by HB Law.

(d) Equalities impact assessment

An equalities impact assessment has been undertaken in relation to the proposed policies and is attached in the supporting documents. The Assessment

acknowledges the need for further data collection in relation to the impact of enforcement in the private sector and sets out a set of actions to address this.

(e) Workforce

The proposed policies relate to business as usual activities and therefore there are no specific workforce implications associated with the report.

5. Supporting information

The Legislative and Regulatory Reform Act 2006 and the Regulators Code (BRDO, 2014) require the Council to uphold certain principles in the exercise of its regulatory functions; in particular to be transparent, accountable, proportionate and consistent.

In pursuance of those principles Slough Borough Council devised its Regulatory and Enforcement Services Enforcement Policy (updated in 2020), to which officers with relevant delegated authority must have regard when taking enforcement decisions. This policy broadly sets out the general principles underpinning the Council's approach to enforcement and regulation, and is flexible enough to be applied across the full range of functions undertaken by officers in regulatory and enforcement roles.

However, it has become increasingly apparent that the wide range of regulatory and enforcement tools available to those regulating private sector housing, and the implementation of discretionary property licensing schemes in Slough in 2019, necessitates the introduction of a more narrowly focussed, sector specific suite of policies. These policies should complement rather than replace the existing generic Regulatory and Enforcement Service Policy.

Furthermore, the housing regulation team's existing protocol for issuing civil financial penalties for housing offences, which was approved by Cabinet in 2017 <https://democracy.slough.gov.uk/ieListDocuments.aspx?CIId=109&MIId=5758&Ver=4> requires revision; as despite being utilised to issue appropriate sanctions to a number of offenders (some of which were detailed in a report to this Committee on 6th July 2022), the protocol does not sufficiently take account of the differing levels of culpability and seriousness in offending behaviour in Slough.

As a consequence, the housing regulation team has drafted two new policies, and revised one existing policy relating to the regulation of private housing in Slough. In drafting the documents the housing regulation team has sought and incorporated the views of relevant services across the Council that may be affected by the implementation of the policies, including:

- Housing Demand
- Planning and Building Control
- Trading Standards
- Food and Safety
- Resilience and Enforcement
- Community Safety

A brief description of the policies and further information about how they will contribute to the delivery of the Council's statutory functions, while upholding the principles of transparency, accountability, proportionality and consistency is

provided in this report; with the draft policies themselves contained within the Background Papers.

a) Housing Regulation Enforcement Policy

This policy aims to provide a framework for decision making across the full range of private sector housing activities including;

- Addressing housing conditions using the Housing Health and Safety Rating System and enforcement tools under Part 1 of the Housing Act 2004
- Licensing of houses of multiple occupation and other houses under Parts 2 and 3 of the Housing Act 2004
- Implementing Part 4 of the Housing Act 2004 relating to Interim and Final Management Orders and Interim and Final Empty Dwelling Management Orders
- Investigating cases of alleged unlawful eviction or harassment under the Protection from Eviction Act 1977
- Enforcing minimum safety standards in privately rented accommodation as set out in the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020; The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

It is the Council's intention that this policy fulfils the requirement to maintain policies relating to the Council's use of the Rogue Landlord Database, Rent Repayment Orders and Banning Orders as set out in the following statutory guidance:

- Rent repayment orders under the Housing and Planning Act 2016 Guidance for Local Housing Authorities' (Department for Communities and Local Government now Department of Levelling up, Housing and Communities (DLUHC), 2017)
- Database of rogue landlords and property agents under the Housing and Planning Act 2016: Statutory guidance for Local Housing Authorities (Ministry of Housing, Communities and Local Government (now DLUHC) , 2018)
- Banning Order Offences under the Housing and Planning Act 2016: Guidance for Local Housing Authorities (Ministry of Housing, Communities and Local Government (now DLUHC), 2018)

The policy provides an overview of the powers available to officers working in private sector housing, and sets out in general terms, the circumstances in which those powers will be exercised. The policy is flexible enough to allow officers and managers to use their professional judgement; ensuring that proportionality, fairness and consistency are at the fore front of decision making. The policy also reflects the Council's overarching commitment to taking a risk based approach to all its regulatory activities; as set out in the Enforcement and Regulatory Services Enforcement Policy.

If approved and implemented the policy will contribute to a culture of openness and accountability in the housing regulation team; providing residents, property

owners and others with the information they need to challenge the Council's decision making if they feel it has been flawed.

If approved, the final iteration of the policy will be published on Slough Borough Council's website and will be referenced by officers undertaking regulatory or enforcement activities in the context of private sector housing.

In the event the enforcement policy is not approved for implementation, housing regulation will continue to rely solely on the generic Regulatory and Enforcement Services policy in making its decisions. However, this will not only constrain the use of certain enforcement tools such as rent repayment and banning orders, but will also reduce officer confidence, limiting the volume of enforcement activity generally.

b) Property Licensing Decisions Policy

This policy sets out the principles which underpin decisions relating to property licensing, including:

- Granting or refusing to grant an HMO licence under Section 64 of the Housing Act 2004
- Granting or refusing to grant a Selective licence under Section 88 of the Housing Act 2004
- Deciding whether or not to revoke or vary an HMO or Selective Licence under Sections 69/70 or 92/93 of the Housing Act 2004
- Deciding whether to issue a temporary exemption notice under section 62 or 86 of the Housing Act 2004
- Determining whether or not to issue an HMO designation under section 255 of the Housing Act 2004

To date these decisions have been made having regard to the Council's enforcement policy and on the basis of the limited criteria set out in the legislation. However, there are matters not listed specifically in the legislation which the Council can consider relevant in making their decisions, such as historic conduct of the proposed licence holder or manager with respect to maintenance of properties, engaging with the Council and their response to complaints about ASB and Nuisance. This policy sets out the Council's expectations in regards to these matters and how breaches or failures in property management will be treated when determining whether a person(s) are 'fit and proper' to hold a licence or manage a property.

Without this policy there is a risk that decisions relating to property licensing will be successfully challenged, undermining the effectiveness of the licensing schemes. Furthermore, officers may be resistant to taking a robust approach without a written and published policy to support their decisions.

c) Revised Policy and Protocol for issuing Civil Financial Penalties for certain Housing Act Offences

The Council's original '*Policy and Protocol for issuing Civil Penalties for Certain Housing Offences*' was approved by Cabinet in 2017. Since then it has been used to issue 7 Civil Financial Penalties, details of which were presented to the Place and Community Scrutiny Committee on 6th July 2022.

However, having applied the protocol in a number of cases the housing regulation team is of the view that the penalty 'bands' used by officers to calculate the level of financial penalty, are insufficiently flexible and do not adequately differentiate between the different levels of offending behaviour or between the size and scale of the operators in the sector.

For example, under the current protocol an offence which presents little risk of harm, committed by a landlord with one property who is deemed to have 'medium' culpability will attract a fine with a starting point of £7500. If a large operator, like an estate agent commits a similar offence, it will attract a fine with the same starting point of £7500. Although the current protocol does allow for the fine to be adjusted to reflect the financial assets of the offender, the amount by which the fine can be varied is limited and as such it would be more appropriate to have a range of different 'starting points' depending on the scale of the offender's operation.

The 'Revised Policy and Protocol for Issuing Civil Financial Penalties for Certain Housing Act offences' that accompanies this report seeks to address the shortcomings of the existing policy through the introduction of offender categories which are determined based on the number of properties 'operated' by the offender. In addition, the policy retains the option of reducing or increasing the fine to reflect the existence of mitigating or aggravating factors, but rather than specifying a fixed adjustment for each factor, it allows for an overall adjustment to be made which in the judgement of the officer reflects the mitigating and aggravating factors in their entirety.

The revised Protocol was devised having full regard to 'Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities' which was published in 2017 by the then Ministry of Housing, Communities and Local Government.

6. Comments of other committees

This report has not been considered by any other committee

7. Conclusion

This report provides a brief summary of three documents essential to the successful delivery of the Council's statutory duties relating to the regulation of private housing; particularly private rented housing in Slough. The views, comments and recommendations of the Committee are sought in relation to each of the documents.

9. Background papers (*This is compulsory*)

1. Proposed Housing Regulation Enforcement Policy (draft)
2. Proposed (Revised) Protocol for Issuing Civil Financial Penalties under the Housing and Planning Act 2016 (draft)
3. Proposed Licensing Decisions Policy (draft)
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