

Tonbridge & Malling Borough Council
COMMUNITIES and HOUSING ADVISORY BOARD

25 February 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 PRIVATE SECTOR HOUSING CIVIL PENALTIES POLICY

Summary

This report recommends the implementation of a private sector housing financial (civil) penalties policy under the Housing Act 2004, and Housing and Planning Act 2016. This will enable the Council to adopt an alternative approach to prosecution if a private landlord or agent fails to comply with certain housing offences or breaches a banning order. Implementation of financial penalties as an alternative to prosecution will allow the Council to re-use the income to self-finance (some of) our future targeted enforcement activity.

1.1 Introduction

- 1.1.1 The Council has a statutory duty to ensure all private sector homes in Tonbridge and Malling that come to their attention meet both minimum housing management and health and safety standards, and to deal with landlords and lettings agents through a wide range of statutory powers where those standards are not met. Residents should have access to a home that does not have a detrimental effect on their health, safety or well-being.
- 1.1.2 The Government aims to support good landlords who provide decent well maintained homes but is determined to crack down on rogue landlords and 'disrupt their business model'.
- 1.1.3 It is sometimes appropriate for the Council to punish those who contravene housing law and the sanction for such failures is usually prosecution in the criminal courts. However, the Housing and Planning Act 2016 introduced both a range of enforcement powers and financial (civil) penalties as an alternative to prosecution for certain housing offences to target those rogue landlords.
- 1.1.4 Section 126 and Schedule 9 of the Housing and Planning Act 2016 amended the Housing Act 2004 (Section 249A), empowering local authorities to impose financial (civil) penalties of up to £30,000 for certain housing offences.

- 1.1.5 Introduced as an alternative to prosecution, it requires the same burden of proof, specifically 'beyond reasonable doubt'. Local authorities must determine on a case by case basis which type of action to pursue based on the level of seriousness, whether it is to determine a significant financial penalty (or penalties if several breaches), rather than prosecution is the most appropriate sanction. The Council cannot take both actions against a landlord or agent for failing to meet the appropriate standard.
- 1.1.6 From 6 April 2017 local housing authorities have been able to impose a civil penalty of up to £30,000 as an alternative to prosecution for the following offences under the Housing Act 2004 where there is evidence beyond reasonable doubt of certain offences, that is failure to:
- comply with an Improvement Notice;
 - licence a house in multiple occupation ("HMO");
 - comply with the HMO licence conditions or occupancy requirements;
 - comply with an overcrowding notice in respect of a non-licensable HMO;
 - comply with the HMO management regulations.
- 1.1.7 The Housing and Planning Act 2016 also introduced a new offence of breaching a banning order and the power to prosecute or impose financial (civil) penalties of not more than £30,000; the extension of rent repayment orders to cover illegal eviction and a breach of a banning order; and a database of rogue landlords and property agents.
- 1.1.8 In exercising functions in respect of financial (civil) penalties a local housing authority must have regard to any statutory guidance, namely '*Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*'.
- 1.1.9 Before the Council can use financial (civil) penalties the guidance recommends that we develop and implement our own financial (civil) penalties policy which clearly sets out when we will prosecute, when we will impose a penalty and the level of financial penalty in each case.
- 1.1.10 The level of financial penalty must be just and proportionate, such as imposing a higher financial penalty for the worst offenders. In deciding the level of fine a local housing authority should consider the severity of the offence, culpability and track record of the landlord, the harm caused to the tenant, punishment of the offender and deterring the offender or others from repeating a similar offence. The guiding principle should also be to remove any financial benefit the offender may have obtained as a result of committing the offence.

- 1.1.11 The money recovered from the civil penalty fines can be used to fund further housing enforcement related activities.
- 1.1.12 The amount of fine is also not dependent on the decision of the court, which in housing cases is often low despite the level of fine being unlimited for many of the offences listed in 1.1.5.
- 1.1.13 Several Councils across Kent have already implemented or currently progressing a civil penalties policy including our neighbouring boroughs of Tunbridge Wells, Sevenoaks, Maidstone, Medway and Gravesham. Many of whom are choosing to follow the Thanet model for the financial penalty matrix, which Officers also agree with. This common approach across Kent maintains consistency for landlords and agents.
- 1.1.14 Under the Housing Act 2004 and the Housing and Planning Act 2016 the Tonbridge & Malling Borough Council Private Sector Housing Financial Civil Penalties Policy is contained in **Annex 1**, which may be used as an alternative to prosecution for the offences detailed in 1.1.6.
- 1.1.15 The Private Sector Housing team has been successful in a recent bid to the Ministry of Housing, Communities and Local Government (MHCLG) for funding under the Private Rented Sector Innovation and Enforcement Grant funding to fund a housing stock condition modelling exercise with particular emphasis on the private rented sector. This will provide us with up to date intelligence on the location of and conditions of the private rented sector properties in Tonbridge & Malling and allow us to pro-actively target the worst housing in the borough and those criminal landlords.
- 1.1.16 Implementation of financial penalties as an alternative to prosecution and all that involves will allow us to re-use the income to self-finance future targeted enforcement activity.

1.2 Legal Implications

- 1.2.1 As part of the civil penalty process the local housing authority, the Council, must give the landlord or agent notice of its proposal to impose a financial penalty. The notice must set out the amount of the proposed financial penalty, the reasons and information on the right of the landlord to make representation. The notice must be given within six months of the authority having sufficient evidence of the offence. Any representations must be made within 28 days from the date the notice was given. If the local housing authority decides to impose the notice it must give the person a final notice requiring the penalty to be paid within 28 days. This final notice must also give information on how the penalty can be paid, information on rights of appeal and the consequences of failure to comply with the notice.
- 1.2.2 On receipt of the final notice imposing a financial penalty a landlord can appeal to the First Tier Tribunal within 28 days of the decision to impose the notice or the

amount of penalty. The Tribunal has the power to confirm, vary the size of the penalty or cancel the civil penalty.

- 1.2.3 If the landlord or agent fails to pay the civil penalty the local housing authority should refer the case to county court for an order of the court.

1.3 Financial and Value for Money Considerations

- 1.3.1 The guidance states that 'Income from civil penalties cases can be retained by the local housing authority provided it is used to further the local housing authorities statutory functions in relation to their enforcement activities covering the private rented sector, as specified in the regulations'.

1.4 Risk Assessment

- 1.4.1 Without a financial (civil) penalties policy in place the Council is not able to impose financial (civil) penalties on private landlords as an alternative to prosecution, have more of an influence on the level of fine awarded and re-invest any civil penalty fines paid into further housing enforcement activities.
- 1.4.2 While it is not mandatory to include the use of financial (civil) penalties within our range of enforcement tools the Council could be criticised for not using all available enforcement options to tackle rogue landlords and improve the condition of private rented sector housing in the borough.

1.5 Equality Impact Assessment

- 1.5.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act, with no perceived impact to end users.

1.6 Policy Considerations

- 1.6.1 The proposed financial (civil) penalties policy links in with the Council's Corporate Strategy, Corporate Enforcement Policy, and the West Kent Housing and Homelessness strategy.

1.7 Recommendations

- 1.7.1 That Cabinet is **REQUESTED** to **ENDORSE** the Private Sector Housing Financial Civil Penalties Policy in **Annex 1**.
- 1.7.2 That Cabinet is **REQUESTED** to **DELEGATE** authority to the Director of Planning, Housing and Environmental Health, in consultation with the Cabinet Member for Housing to approve amendments to the policy to reflect any changes to the law affecting the enforcement of civil penalties under the Housing Act 2004, the Housing and Planning Act 2016 or other relevant legislation.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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Thanet District Council Policy for Imposing Financial Penalties under the Housing Act 2004 and Housing and Planning Act 2016 -1 April 2019

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