



CABINET

Subject Heading:

Private Sector Housing Enforcement Policy Revision

Cabinet Member:

Councillor Mugglestone, Lead Member for Environment

SLT Lead:

Neil Stubbings, Strategic Director of Place

Report Author and contact details:

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Policy context:

The revised policy supports the New (Place) Vision Objectives, in making Havering a great place to live, invest and stay.

The original Private Sector Housing Enforcement Policy was approved by Cabinet in December 2017 following the decision taken at Cabinet to establish a property licensing scheme in October 2017.

The policy has been reviewed and updated to keep pace with changes to legislation, enforcement options and updated fees and charges to ensure that it remains current and fit for purpose.

Financial summary:

The Private Sector Enforcement team is a small team with only three staff and is a net cost to the general fund.

The proposed new policy does slightly increase the scope of the team and so may create additional work. However, it is expected that it will be possible to absorb this within the team, so no additional resources are required.

Potentially the new policy may create additional income from Civil Penalty

Notices. This has not been written into the budget as the level is currently unknown. It will be monitored through our normal budget monitoring processes.

Is this a Key Decision?

Yes, the policy will have a significant effect on two or more wards, as it will enable enforcement action against unlicensed properties in selective licencing designated areas.

When should this matter be reviewed?

Not applicable

Reviewing OSC:

Places Overview and Scrutiny Sub Committee

The subject matter of this report deals with the following Council Objectives

Place - A great place to live, work and enjoy

SUMMARY

The original Private Sector Housing Enforcement Policy was approved by Cabinet in December 2017 following the decision taken at Cabinet to establish a property licensing scheme in October 2017.

The policy has been reviewed and updated to keep pace with changes to legislation, enforcement options and updated fees and charges to ensure that it remains current and fit for purpose. This Cabinet Report seeks approval for those updates.

RECOMMENDATIONS

Cabinet is requested:

1. To agree the revised Private Sector Housing Enforcement policy in Appendix 1.

REPORT DETAIL

1. The Private Sector Housing (PSH) Enforcement Policy sets out a broad overview of the principles and processes of how the Council will deal with breaches of housing law and other public health legislation. Its aim is to ensure the law is applied fairly and consistently; and that health and housing standards are protected within the borough by:
 - Improving landlord professionalism and changing behaviour by providing a deterrent for non-compliant landlords;
 - Eliminating financial gain or benefit from non-compliance;
 - Providing transparent and consistent regulation within the private rental market;
 - Promoting professionalism and resilience within the private rented sector.

2. The Policy (see Appendix 1) defines;
 - How we will investigate alleged offences;
 - Key principles of enforcement (consistency, proportionality, openness, transparency and accountability);
 - How persons and individuals can engage with the Council i.e. complaints, feedback or compliments;
 - Any associated charges;
 - Any associated publicity.

The following additions/revisions have been made to the policy:

3. **Minimum Energy Efficiency Standards** (para 3.20)- From 1 April 2018, the MEES Regulations have made it unlawful for commercial landlords to grant a new tenancy, or to extend the lease of a property with an energy performance certificate (EPC) rating below “E” (known as a sub-standard property), unless an exemption applies, and has been validly registered.

4. If a private sector landlord continues to rent a property with an EPC rating of F or G, a Compliance Notice and a Penalty Notice may be issued to the landlord, with a maximum penalty of £5,000.

5. **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** - Requires all Landlords of privately rented accommodation to ensure every electrical installation in the residential premises is inspected and tested by a qualified person at intervals of not more than 5 years; and to ensure the first inspection and testing is carried out before the tenancy commences in relation to a new specified tenancy; or by 1 April 2021 in relation to an existing specified tenancy.

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6. A remedial notice must be served where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations. The notice must be served within 21 days of the decision that the landlord has not complied with their duties.
7. If a local housing authority has reasonable grounds to believe a landlord is in breach of one or more of the duties in the Regulations and the report indicates urgent remedial action is required, the local housing authority may, with the consent of the tenant or tenants, arrange for a qualified person to take the urgent remedial action and recover their costs.
8. Otherwise, we must serve a remedial notice requiring the landlord to take remedial action within 28 days. Should a landlord not comply with the notice the local housing authority may, with the tenant's consent, arrange for any remedial action to be taken themselves.
9. Landlords have rights to make written representation and appeal against remedial action. The local housing authority can recover the costs of taking the action from the landlord and may also impose a financial penalty of up to £30,000 on landlords who are in breach of their duties.

Reducing the term (length) of a Property Licence.

10. Planning permission is required for most HMOs that are occupied by 3 or more unrelated persons forming two or more households. The Council introduced two Article 4 Directions. The Directions were confirmed on 3 November 2015 and came into force on 13 July 2016. This means that permitted development rights to change use from a dwelling (C3) to a small HMO (C4) no longer apply to all dwellings within the previous Wards of Brooklands, Romford Town, Heaton and Gooshays whilst direction Notice 2 took away the PD rights for all dwellings except for detached dwellings within the rest of the Borough, except Brooklands, Romford Town, Gooshays and Heaton Wards.
11. It should be noted a sui generis HMO (7 or more persons) will always require planning permission. It is a landlord/owners responsibility to obtain all relevant permissions to use the property as an HMO. There is a breach of planning law if an HMO does not hold planning permission if it requires it. The Council has noted, however, that it is often the case that an owner will seek an HMO licence and commence the use but omit to apply for, let alone have been granted the prerequisite planning permission.
12. To allow owners and landlords time to remedy this breach and so they are compliant with the legal requirements of Property Licensing, in such circumstances where planning permission is not held, Private Sector Housing will typically issue only a one-year licence. All one-year licenses will be charged at full fee.

13. Should the licence holder have failed to regularise the use of the HMO in planning terms after the one-year term ends the licence will expire.

Offences in relation to licensing of houses under Part 3 of The Housing Act 2004.

14. **Revision** - Failure to licence or other licensing offences under the Council's Selective Licensing Scheme, has been included in Appendix 1 (4); specifying that the Council may serve notices imposing a civil penalty as an alternative to prosecution of up to a maximum of £30,000.
15. The previous cabinet decision delegated powers to make any minor amendments to the enforcement policy to the equivalent of the Strategic Director of Place in consultation with the Lead Cabinet Member for Housing. It is considered the amendments and revisions are major and therefore must be approved by Cabinet.

REASONS AND OPTIONS

Reasons for the decision:

To assist the Council's enforcement action and statutory obligations under The Housing and Planning Act 2016, The Housing Act 2004 and other associated public health legislation to support the operation of the borough's property licensing schemes and enforcement of housing standards in the private rented sector. The revised policy reflects broader changes to the legislation relating to Private Sector Housing Enforcement.

In summary the existing policy has been updated to include the following:

- Minimum energy efficiency regulations (known as MEES regulations)
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Amended enforcement options – removal of wording specifying HMOs to include all types of property licences, addition of interim management order, final management order, and compulsory purchase orders.
- Reducing the term (length) of a Property Licence where correct planning permission has not been obtained, and is required, this will be a ground for reducing the term to a 1-year licence.
- Including failure to licence or other licensing offences under the Council's Selective Licensing Scheme, has been included in Appendix 1 (4); specifying that the Council may serve notices imposing a civil penalty as an alternative to prosecution of up to a maximum of £30,000 in respect of the relevant offences.

Other options considered:

To not have an enforcement policy in place could lead to both an inconsistent approach to enforcement decisions and leave the authority open to legal challenge.

This is a standard policy review to ensure that the Private Sector Housing Enforcement Policy remains current and fit for purpose.

IMPLICATIONS AND RISKS

Financial implications and risks:

1. The Private Sector Enforcement team is a small team with only three staff and is a net cost to the general fund.
2. The proposed new policy does slightly increase the scope of the team and so may create additional work. However, it is expected that it will be possible to absorb this within the team, so no additional resources are required.
3. Potentially the new policy may create additional income from Civil Penalty Notices. This has not been written into the budget as the level is currently unknown. It will be monitored through our normal budget monitoring processes.

Legal implications and risks:

1. The Council has a statutory duty as a Local Housing Authority to enforce relevant housing legislation and update the existing Private Sector Housing Enforcement Policy with any changes to associated legislation.
2. The revised policy sets out a useful framework in which officers of the Council will operate when considering the most appropriate course of enforcement action against landlords, letting and managing agents for failure to comply with legislation including the use of informal and formal action and the imposition of financial penalties as an alternative to prosecution. The policy sets out what action the Council can take and the reasons why.
3. The Waltham Forest LBC v Khan [2017] UKUT 153 (LC) case ruled it is legitimate for a local housing authority to have regard to the planning status of a house when deciding whether or not to grant a licence and when considering the terms of a licence.
4. Civil Penalties under The Housing and Planning Act 2016 may only be imposed for offences committed under The Housing Act 2004 after 6th April 2017. Regard must be had to the Statutory Guidance under Schedule 9 (12)

of the said Act in the exercise of their functions. Income received from a civil penalty 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, as set out in Regulation 3 of the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

5. The Police Crime Sentences and Courts Act 2022 proposes to introduce a new cautions framework which has two types: community cautions where a breach of conditions can result in a fine and diversionary cautions where breach of conditions can result in a prosecution for the original offence. It is not yet known when these provisions will be in force and if they will be applicable to public authorities. This will be kept under review.
6. The amended policy may be challenged by way of judicial review. The risk of challenge is low.

Human Resources implications and risks:

- No changes to Human Resources implications and risks

Equalities implications and risks:

1. An Equalities Impact Assessment was conducted when the original policy was adopted and has been included as a background paper to this report.
2. This policy is relevant to all equality groups in Havering and the overall impact has been assessed as positive. All private tenants, particularly those living in HMOs in the areas covered by the licensing scheme, will be positively affected by robust enforcement action where non-compliance is identified. Generally, the effect of this policy is to ensure consistent and appropriate action is taken where landlords blatantly flout their legal obligations and put their tenants at risk.
3. We will consider equalities impacts arising from enforcement decisions by ensuring our approach is proportionate and we will seek to mitigate any adverse equalities impacts where possible.

Health and Wellbeing implications and Risks

The proposal will impact positively on:

- Quality availability and affordability of homes and housing.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

- The impact on carbon emissions
- Offsetting carbon emissions
- Preparing for the impacts of climate change

Council can investigate breaches of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended (also known as the MEES regulations), but also having other legislation available, such as the powers under Part 1 of the Housing Act 2004. These regulations are designed to tackle the least energy efficient properties, being those rated F or G on their energy performance certificate (EPC). This will also help to alleviate fuel poverty, reduce carbon emissions and contribute to other Council targets around climate change action.

BACKGROUND PAPERS

1. Private Sector Housing Enforcement Policy approved December 2017
2. Cabinet Report approved December 2017
3. Equality Impact Assessment – December 2017

APPENDICES

Appendix 1 - Private Sector Housing Enforcement Policy - updated March 2024
Appendix 2a: Financial Penalty Matrix – Penalty Amounts
Appendix 2b: Financial Penalty Matrix – Decision Making