

DECISION-MAKER:	CABINET			
SUBJECT:	PRIVATE SECTOR HOUSING ENFORCEMENT POLICY			
DATE OF DECISION:	29 JUNE 2009			
REPORT OF:	CABINET MEMBER FOR HOUSING AND LOCAL SERVICES			
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STATEMENT OF CONFIDENTIALITY

NOT APPLICABLE

SUMMARY

The Private Sector Housing Enforcement Policy has been updated to take account of new legislation and guidance and has been subject to a public consultation. The aim of the policy is to ensure that regulation and enforcement of housing standards is consistent, risk-based, targeted and proportionate. This will result in a 'light touch' being used where appropriate and actions being targeted to a statutory minimum at the worst problems, in the worst properties, which are operated by the worst landlords.

RECOMMENDATIONS:

- (i) To approve and adopt the draft Private Sector Housing Enforcement Policy, attached at Appendix 1.
- (ii) To delegate authority to the Head of Housing Solutions to make minor or necessary revisions to the policy as the need arises, following consultation with the relevant Cabinet Member.

REASONS FOR REPORT RECOMMENDATIONS

1. The existing enforcement policy needs to be amended to reflect current legislation and guidance. Enforcement policies across the council have recently been reviewed or are in the process of being reviewed to ensure they are line with the corporate enforcement policy, approved on 17 September 2007.
2. Enforcement action provides the means to target the worst housing conditions in the city. An up-to-date enforcement policy is necessary to ensure appropriate and justifiable enforcement decisions are made and to provide consistency of approach across the service. Members of the public also need to know what to expect from the service when poor conditions are identified in private housing. To ensure that the policy remains up to date, minor changes may need to be made as a result of new legislation or guidance.

- 3 Should there be any appeals against council enforcement action, or if any prosecution action is taken by the Council, it will be necessary to show that the Council has an enforcement policy and that it was adhered to at all stages.

CONSULTATION

- 4 Consultation on the draft Private Sector Housing Enforcement Policy ran from 16 March 2009 to 20 April 2009.
- 5 A number of relevant groups and/or individuals were consulted directly, as well as members of the public. A letter advising of the consultation was posted and/or e-mailed out to external consultees. Internal consultees were e-mailed with information and a briefing took place for Housing Needs staff. Information was available on the City Council website, on both the Private Sector Housing pages and the main consultation pages. An online survey was available on the Private Sector Housing web pages, as part of the consultation process. In addition, a focus group was held for landlords which enabled them to provide more detailed feedback. The consultation responses were generally supportive of the need for a new policy and the specific matters therein.
- 6 The landlord focus group generated a number of comments. Many of these related to procedural issues rather than policy. However, the policy related comments were:
- Focus only on serious issues rather than trivial ones/ prioritise cases and focus on the worst properties;
 - Trust landlords to do work when requested, without the need to visit and check for completion;
 - Where poor conditions are found in a property, check other properties owned or managed by the same person;
 - Consistency of approach among officers;
 - Tenants who don't speak English as their first language should still have to contact the landlord before calling in the Council, as should those in an emergency situation;
 - The council should not provide a service to vexatious complainants or where there is found to be no reason for a complaint; and
 - The policy would benefit from a summary at the beginning so people know what it is about, without having to read through the whole document.
- 7 One response was received via the online survey, which agreed with the policy but made no suggestions or additional comments. A further, hand written, response to the survey was submitted at the landlord focus group. The comments received duplicated some of those made by the landlords at the focus group, and some additional procedural comments were made.
- 8 Legal Services has been consulted throughout the process. Comments received from other individuals and organisations duplicated those already mentioned.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 9 The alternative option considered was to retain the enforcement policy that was approved in 2005, with minor amendments. It would not then require a full Cabinet decision, but could be delegated to the Head of Housing Solutions to approve the changes.
- 10 It is not recommended that this option is progressed as the main legislation on which Private Sector Housing takes enforcement (Housing Acts) has changed significantly, with many of the Housing Act 2004 powers coming into force in April 2006. In addition, more recent legislation and guidance has been published with regard to consistency, the impact of local authority intervention on economic progress, reasons for inspections and proportionate sanctions. These changes are considered to be major changes and therefore, the 2005 policy could not be amended to reflect these new additions and needed to be re-written.

DETAIL

- 11 The new draft policy takes a slightly different approach to enforcement than the previously approved policy. In accordance with the Regulator's Compliance Code and associated legislation, the council will engage with property owners and agents on an informal basis initially, in order to try and secure improvements without the need to serve legal notices. However, if the landlord has a history of non-compliance, it will not be necessary to engage initially, or if reasonable progress is not made within the informal period, then notices will be served. Emergency enforcement action will also be taken where there is an imminent risk to the health and safety of the occupiers and the landlord is not contactable, is not willing, or is unable to carry out the necessary works straightaway.
- 12 Enforcement action will be more targeted to ensure that landlords and agents who persistently breach regulations and who provide a poor standard of accommodation, are tackled as a priority. Compliant landlords will receive less attention and intervention.
- 13 The draft policy is consistent with the corporate enforcement policy and other council policies, especially where similar legislation is enforced. In addition, it takes a similar approach to other council policies where different powers are available within other teams, to deal with similar problems.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

- 14 There are no capital resource implications

Revenue

- 15 It is anticipated that any costs associated with implementation of the amended policy or changes in working practices can be met within existing resources.

Property

- 16 There are no property implications.

Other

17 There are no other implications.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

18 The draft Private Sector Housing Enforcement policy is in line with the corporate enforcement policy. The main piece of legislation which provides the powers to undertake enforcement action in relation to private housing is the Housing Act 2004, Parts 1 to 4. Other legislation under which Private Sector Housing can take enforcement action includes the Environmental Protection Act 1990, section 80; The Prevention of Damage by Pests Act 1949, section 4; the Public Health Act 1936, section 17; the Local Government (Miscellaneous Provisions) Act 1982, section 29, and several others.

Other Legal Implications:

- 19 The draft Private Sector Housing enforcement policy may be considered to have implications for property owners and occupiers under the Human Rights Act 1998, Part 1, Article 8 (Right to respect for private and family life) and Part 2, Article 1 (Protection of property). However, infringement of these rights can be justified due to the health and safety risks involved.
- 20 There may be implications under the Race Relations Act 1976 (as amended), Parts 1 and 3, due to the fact that landlords within the City come from many different ethnic origins. However, the policy will be applied equally to all landlords, property owners and agents, regardless of their race, colour or nationality. An Equalities Impact Assessment (EIA) of the revised policy has not revealed any significant impacts on any particular communities.
- 21 The draft policy may have implications under the Disability Discrimination Act 1995, Part 3, as action may be taken to prohibit all or part of a property occupied by persons who have a disability which is covered by the Act. The policy will be applied equally to all so that there is no unfair or unlawful discrimination. An Equalities Impact Assessment of the revised policy has not revealed any significant impacts on any particular communities.
- 22 Improving property conditions has an impact on the external appearance of the property and often on the property security as well. This is likely to have an impact on crime and disorder, as well maintained and secure properties are less likely to be the target of crime and anti-social behaviour. (Crime and Disorder Act 1998 – section 17).
- 23 There may be implications under the Freedom of Information Act 2000, Parts 1 and 2. The enforcement policy itself is a public document once it has been approved, as are any legal notices which have been served. However, requests for information relating to the type of enforcement action considered and taken, including informal action, may be received from any members of the public.

- 24 The draft Private Sector Housing enforcement policy is in line with the corporate enforcement policy and takes into account the Crown Prosecution Service Code of Practice. Recent legal case law has indicated that criminal prosecutions may fail if a local authority either does not have a clear enforcement policy or fails to adhere to its policy.

POLICY FRAMEWORK IMPLICATIONS

- 25 The proposal to approve the draft Private Sector Housing Enforcement policy is in line with the City Performance Plan, Medium Term Plan and Community Safety Strategy and supports objectives contained in the Housing Strategy.

SUPPORTING DOCUMENTATION

Appendices

1.	Draft Private Sector Housing Enforcement Policy (incorporating amendments from consultation)
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Documents In Members’ Rooms

1.	None
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Background Documents

Title of Background Paper(s) Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	List of consultees	N/A
2.	Consultation letter	N/A
3.	Survey questionnaire	N/A
4.	Summary of comments from landlord focus group	N/A
5.	Equality Impact Assessment	N/A

Background documents available for inspection at: Private Sector Housing
Southampton City Council
Southbrook Rise
4-8 Millbrook Road East
Southampton
SO15 1YG

FORWARD PLAN No: HL03236 **KEY DECISION?** YES

WARDS/COMMUNITIES AFFECTED:	ALL
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