

**Report to:** Cabinet

**Date of Meeting:** 9 January 2017

**Report Title:** Housing Renewal Enforcement Policy

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### **Purpose of Report**

The purpose of this report is to recommend for approval an updated Housing Renewal Enforcement Policy. The enforcement policy has been updated following a review of the previously approved policy (CAP – 17 November 2014) and the need to update it with new provisions introduced by the Housing and Planning Act 2016.

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### **Recommendation(s)**

The revised Housing Renewal Enforcement Policy (December 2016) is approved.

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### **Reasons for Recommendations**

The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords. These new powers included the provision for local authorities to issue financial penalties for certain housing offences. In order to be able to issue financial penalties the Council is required to have a policy for determining the level of penalty.

## Introduction

1. At its meeting of the 2 April 2013 Cabinet approved a Corporate Enforcement Policy. This corporate policy is an umbrella policy which covers all Council enforcement activity. Following this, on the 17 November 2014 CAP approved a revised, service specific, Housing Renewal Enforcement Policy (August 2014). This policy is reviewed by officers on an annual basis and adjusted to include minor revisions.
2. As a result of the introduction of new provisions in dealing with rogue landlords as brought about by the Housing and Planning Act 2016 a fuller overhaul of the policy has been undertaken.
3. An opportunity has also been taken to streamline the policy by referencing other documents (such as the Regulators Compliance Code, the Enforcement Concordat and the Councils Equalities Policy) wherever possible rather than reproducing them in full. The previous enforcement policy is available on the Council website at [http://www.hastings.gov.uk/housing/improvement/housing\\_renewal\\_enforcement\\_policy/](http://www.hastings.gov.uk/housing/improvement/housing_renewal_enforcement_policy/).

## Housing and Planning Act 2016

4. The Housing and Planning Act 2016 received royal assent on the 12 May 2016. Part two of the Act is concerned with rogue landlords and property agents and introduces;
  - Civil penalties of up to £30,000
  - Extension of Rent Repayment Orders
  - Banning orders for most prolific offenders
  - Database of rogue landlords/property agents
  - Tougher fit and proper person test for landlords of licensed properties
  - Sharing data on tenancy deposit schemes with local authorities
5. The majority of these new provisions are expected to be commenced in April 2017 with the remainder in October 2017.
6. The new civil penalties allow local authorities to set a financial penalty as an alternative to prosecution for Housing Act 2004 offences (housing conditions and housing licensing). The maximum financial penalty will be £30,000 for each offence and the authority will need to apply the criminal standard of proof.
7. Local authorities will be able to retain income from the new financial penalties to use for housing related purposes, however in order to use the penalty it is required to have an adopted enforcement policy. The appendix to the Enforcement Policy sets out the principles the Council will follow when issuing financial penalties.

## Housing Renewal Enforcement Policy (Revision 2017)

8. A revised and updated Housing Renewal Enforcement Policy can be found at Appendix 1. The appendix to the revised policy details the principles in determining financial penalties for housing offences.

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### Wards Affected

All

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### Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	Yes
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	Yes
Organisational Consequences	No
Local People's Views	No
Anti-Poverty	No

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### Additional Information

Appendix 1 – Housing Renewal Enforcement Policy (Revision 2017)

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## APPENDIX 1 – HOUSING RENEWAL ENFORCEMENT POLICY (REVISION 2017)

### 1. Introduction

- 1.1. The Housing Renewal Team of Hastings Borough Council aims to support the local economy and promote continuing growth whilst making sure that there is a balanced housing market that provides for a range of individual needs and income levels. The Council is committed to fair and effective enforcement, which protects both the economic interest and health and safety of the public, businesses and the environment.
- 1.2. The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way to ensure that compliance is achieved for the benefit of all.
- 1.3. This document sets out the enforcement policy for the Council's Housing Renewal Team when dealing with non-compliance of laws enforced by this Service. It is an appendix to the overarching Hastings Borough Council Corporate Enforcement Policy which was adopted by Cabinet in April 2013. A copy of which can be downloaded at [www.hastings.gov.uk](http://www.hastings.gov.uk) or available on request.
- 1.4. The content of the Housing Renewal Enforcement Policy has been written having regard to;
  - **The Regulators Compliance Code** – which promotes proportionate, consistent and targeted regulatory activity through transparent and effective dialogue and understanding between regulators and those they regulate. Regulators must have regard for this code when developing policies and procedures that guide their regulatory activity. A copy of the code is available on request or may be downloaded from <https://www.gov.uk/government/publications/regulators-code> . In certain situations we may decide that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
  - **The Enforcement Concordat** – The concordat is a voluntary, non - statutory code of practice which Hastings Borough Council has signed up to. It sets out principles with regards to good enforcement practice. The principles cover: Standards of Service and Performance, Openness, Helpfulness, Proportionality, Consistency and Complaints about Service. A copy of the Enforcement Concordat: Good Practice Guide is available on request or may be downloaded from <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/enforcement/page46822.html>

### 2. Human Rights and Equality Issues

- 2.1. Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.
- 2.2. Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender. For a copy of Hastings Borough Councils full equalities policy please go to [www.hastings.gov.uk](http://www.hastings.gov.uk)

### 3. Purpose and Methods of Enforcement

- 3.1. The Housing Renewal Team expects full voluntary compliance with the law. We will help owners of housing to meet their legal obligations by providing clear and concise information about what they need to do comply. However, we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, against those who flout the law or act irresponsibly.
- 3.2. Enforcement includes any action aimed at ensuring compliance with the law. The range of action that will be considered include;
  - 3.2.1. **Informal Action** – will be considered where one or more of the following circumstances apply; there is no legislative requirement to serve formal notice or order and the circumstances are not serious enough to warrant formal action; past history suggests informal action will achieve compliance; there is confidence in the management or the individual; the consequences of non-compliance will not pose a significant risk to occupiers or others.
  - 3.2.2. **Serve a Statutory Notice / Order** – This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice or order.

In relation to Part One offences under the Housing Act 2004 service of statutory notices / orders will be based on the hazards found and how serious they are deemed to be. This is assessed using the Housing Health Safety Rating System. The Housing Renewal Team has a legal duty to take the most appropriate course of action available in relation to category 1 hazards. This is where the risk to health and/or safety is high

There is a power for the Housing Renewal Team to deal with category 2 hazards. This is where the risk to health and/or safety is not so significant. The Housing Renewal Team will exercise this power in the following circumstances;

- Where the hazard relates to a failure of the Decent Home Standards

- Where there are category 1 hazard(s) also present at the residential unit of accommodation
- Where the category 2 hazard is progressive and will likely become a category 1 hazard unless preventative action is taken.
- Where there are a number of category 2 hazards which would present a hazard to occupiers as they moved room to room
- In other exceptional circumstances outside the scope of supplement and procedures at the discretion of the Housing Renewal Manager

Notices will include reasonable time limits having regard to the seriousness of the defects and/or contraventions.

The notice/order will contain all required information as specified by the relevant Act or Regulation. All appropriate persons will be notified of the formal action, e.g. tenants, mortgagees etc. The types of notice/order that can be issued by the Housing Renewal Team under the Housing Act 2004 include;

- Hazard Awareness Notice – notice advising the person on whom it is served of a category 1 and/or category 2 hazard at the property.
- Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the hazards found.
- Prohibition Order – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property.
- Emergency Prohibition Order – same as a prohibition order but the order will take effect immediately.
- Demolition Order – an order requiring the demolition of the property.
- Declaring a Clearance Area – an area which is to be cleared of all buildings.

Other legislation is available to the Housing Renewal Team, for example the Environmental Protection Act 1990 which allows to the service of an Abatement Notice. Regardless of the legislation used the principles of this policy will be followed

**3.2.3. Take Emergency Remedial Action** – this will be considered where there is an imminent risk of serious harm. The Housing Renewal Team will take the action necessary to mitigate and/or remove this risk and

formal action will be taken by the Housing Renewal Team to recover the full costs incurred.

**3.2.4. Suspend, revoke or refuse to renew or grant a licence or authorisation** – e.g. under the Selective Licensing Regime or Houses of Multiple Occupation Licensing. This will be considered where licensing conditions are not being met.

Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and other Local Housing Authorities.

A Public Register of licensed HMOs, dwellings with interim/final/empty dwelling management orders and HMOs with temporary exemption Notices in force and will be available, upon request, for public inspection at the appropriate Council office, in line with the requirements of the legislation and guidance. If a copy of the register, in full or part is requested by a member of the public, this may be subject to a reasonable fee to cover administration costs

**3.2.5. Formal (Simple) Caution** – used to deal quickly and simply with less serious offences and to divert them away from the courts. There must be sufficient evidence of guilt to give a realistic prospect of conviction and the offender must formally admit to the offence. Simple cautions will be issued in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders (Nov 2013) in consultation with the Councils Legal Services.

**3.2.6. Issue a Civil Sanction** – The Housing Renewal Team may decide to use a civil sanction in conjunction with or instead of the principle legislation it enforces. This may be considered where persons/businesses have saved costs or gained an unfair advantage through non-compliance with the law. Options available include;

- Fixed Monetary Penalty – may be considered for low level, minor instances of regulatory non-compliance. It will not be considered for more serious cases of non-compliance. A "notice of intent" will be provided to the relevant party with all information required to be provided by law, including the right to make written representations or objections. See appendix 1 for further information.
- Discretionary Requirements - can be imposed on their own or in conjunction with each other. They may be considered in response to mid to high level non-compliance with the aim of addressing offences where a greater degree of flexibility may be required. Discretionary requirements include issuing a variable monetary penalty (see appendix 1), requiring the relevant party to take certain steps to ensure the offence does not continue or reoccur,

requiring the relevant party to take steps to ensure that the position is in as far as possible restored had the offence not been committed. A “notice of intent” will be provided to the relevant party with all information required to be provided by law, including the right to make written representations or objections.

- Stop Notices – these notices perform two related functions. Firstly to prohibit an activity already in process and the second to prohibit an activity which is likely to be carried out in the future.
- Enforcement Undertakings – a formal agreement between the Council and the relevant party to undertake specific actions to avoid the future commission of the offence

3.2.7. **Penalty Charge Notices** – under various legislation the Housing Renewal Team enforce there is the ability to issue penalty charge notices to address non-compliance. How these notices will be issued and the level of penalty imposed is detailed in the Statement of Principles at Appendix 1 of this policy

3.2.8. **Prosecute** – may be considered for more serious offences. It aims to punish wrongdoing, to avoid a reoccurrence of the offence and to act as a deterrent to others. The Housing Renewal Team will take account of the Code for Crown Prosecutors

([https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/)) and will only prosecute where;

- There is sufficient admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction

AND

- We believe that it is in the public interest to do so.

The following factors will be considered in deciding whether or not to prosecute:

- Social, physical or economic, environmental or personal health and safety effect of the offence in order to quantify the serious nature of the offence,
- Failure to comply with the requirements of an improvement, enforcement, or prohibition notice
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.
- Excessive or persistent breaches of regulatory requirements,
- Foreseeability of the offence and the circumstances leading to it,



- Intent of the offender, individually and/or corporate body,
- History of offending,
- Attitude of offender,
- Deterrent effect of a prosecution on the offender and others,
- Culpability of the offender,
- A history of similar offences.
- Carrying out operations without a relevant licence,
- Failure to comply or to comply adequately with formal remedial requirements,
- Obstruction of an authorised officer

The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Housing Renewal Team will decide how important each factor is in the circumstances of each case and go on to make an overall assessment

**3.2.9. Rent Repayment Order** – if a landlord has been convicted of an offence under The Housing Act 2004 for failing to comply with an improvement notice, failing to comply with a prohibition order, being in control or managing an unlicensed HMO or house the Council has a power to consider an application to the First Tier Tribunal for a rent repayment order. A notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations

**3.2.10. Works in Default** – may be considered as an alternative to, or in addition to prosecution. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the Courts. This will include where applicable, administration costs and officer time. The Financial Rules and Financial Operating Procedures of the Council will be fully adhered to. Where appropriate the costs will be placed against the property as a Charge. The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

## **4. Proceeds of Crime**

**4.1.** The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. The Housing Renewal Team will use this legislation where appropriate and in consultation with legal services

## **5. Delegation & Decision Making**

- 5.1. Decisions about the most appropriate enforcement action to be taken will be made in line with this policy and based on professional judgement, legal guidelines and advice, statutory codes of practice and priorities set by the Council and/or Central Government
- 5.2. The Assistant Director for Housing and Built Environment has the delegated authority in accordance with the councils Scheme of Delegation to Officers within the Councils constitution to take certain action under a range of legislation, e.g. the service of enforcement notices. The Assistant Director Housing and Built Environment appropriately delegates these powers to other Officers.
- 5.3. A decision to instigate a prosecution will be taken by the Housing Renewal Manager (as delegated by the Assistant Director Housing and Built Environment) in consultation with the Chief Legal Officer

## **6. Costs of Enforcement**

- 6.1. The Council is able in certain circumstances to charge for enforcement action, e.g. service of an improvement notice. What can be charged for will depend on the type of action taken. Examples include; costs associated with determining whether to serve a notice, costs involved in identifying any action required and costs associated with serving a notice. When costs are to be charged an invoice will be sent to the relevant party outlining the amount to be paid, what it covers and the payment terms. The charge levied will only cover the cost of the enforcement action to the authority.
- 6.2. This is a separate payment and is not the same as a penalty charge which is issued as an enforcement mechanism to address non-compliance.

## **7. Appeals**

- 7.1. Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate
- 7.2. Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant First Tier Tribunal (Property Chamber). Further details on this process are contained in the relevant notice/order.
- 7.3. All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served.
- 7.4. The Council will rigorously defend any appeals where the notice/order has been correctly served.

## 8. Complaints

8.1. Hastings Borough Council provides a well-publicised, effective and timely complaints procedure. The procedure is accessible on the Council website at [http://www.hastings.gov.uk/my\\_council/complaints/policy/](http://www.hastings.gov.uk/my_council/complaints/policy/). Alternatively it can be made available on request via the following contact methods;

- Community Contact Centre, Hastings Town Hall, Queens Square, Hastings, East Sussex, TN34 1TL
- Tel: 01424 451066

8.2. The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal

## 9. Review

9.1. This Enforcement Policy shall be reviewed and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest. A review shall take place annually should take place annually should no other changes have occurred

## **Appendix 1 – Statement of Principles – Determining the Amount of a Penalty Charge**

Section 3 of the Housing Renewal Enforcement Policy sets out the enforcement options available to the Housing Renewal Team when addressing non-compliance with housing legislation. All notices will include information on the reason for the penalty charge, the amount, how it can be paid, and any information required by statute. Depending on the legislation being enforced there are different penalty charges applicable.

### **Types of Penalty Charge**

- Fixed Penalty Notice (The Regulatory Enforcement and Sanctions Act 2008)
- Variable Penalty Notice (The Regulatory Enforcement and Sanctions Act 2008)
- Penalty Charge Notice (The Smoke and Carbon Monoxide Alarm Regulations 2015)
- Penalty Charge Notice (Section 249A) The Housing Act 2004 introduced by (The Housing and Planning Act 2016)

### **Determining the Amount of a Penalty Charge**

Where the Council is satisfied it has evidence of regulatory non-compliance and the breach allows for the Council to require the offender to pay a penalty charge the amount will be determined using the following principles.

- Consideration will first be given to the application of the maximum penalty charge allowable for the offence in question.
- The specific circumstances of the offence(s) will then be considered to assess whether applying the maximum penalty is reasonable and proportionate. Whilst each situation will be viewed individually the following factors will be considered;
  - The seriousness of the offence (within the context of issuing a penalty charge)
  - The level/amount of non-compliance found
  - Financial benefit gained by offender of the non-compliance
  - Financial loss to others as a result of offender's non compliance
  - Attitude of offender
  - Maximum criminal fine a magistrate's court could impose having consideration to any relevant sentencing guidelines

The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Housing Renewal Team will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

- Any mitigating factors will then be considered (if applicable). Where present, each applicable mitigating factor is awarded a percentage reduction. Where a factor is not present or there is insufficient evidence, the score will be 0%. These percentage scores are then added together and applied to the maximum penalty applicable for the offence. The normal maximum deduction that can be applied will be 90%.
  - Internal failed preventative measures – in case of national agents / landlords / businesses, where a local office acted outside the corporately adopted procedures or the offence occurred locally. 20% reduction.
  - Good cooperation with the Council – in cases where the offender has cooperated fully with the Council in investigating the offence. 20% reduction.
  - Immediate and voluntary remediation – when the offence was brought to the attention of the offender they immediately rectified any breach(s). 20% reduction.
  - No previous history of non-compliance with the other housing legislation – if this is a first breach of any housing related legislation. 10% reduction.
  - Any relevant personal circumstances. 10% reduction.
  - Undue financial hardship – if fine would cause the offender undue financial hardship such that it might not be able to continue to operate. 10% reduction.

In any case it will be the responsibility of the recipient to provide sufficient evidence to support their presentations.

## **Rights to Make Representations**

The recipient of a penalty charge notice has the right to make written representation regarding the notice. Full details of this process and timescales are detailed on the notice. Any representations to the penalty charge will be considered by the Housing Renewal Manager. The Housing Renewal Manager will review the penalty charge in line with the mitigating factors. All representations will be considered on their own merit.

## **Appeals**

In the case of a penalty charge notice issued under The Smoke and Carbon Monoxide (England) Regulations 2015 or under Section 249 A of the Housing Act 2004 recipients may appeal to the First-tier tribunal if they remain unhappy with a penalty charge notice following a review of their written representations to the Housing Renewal Team. An appeal can only be made on specific grounds which are;

In the case of an Appeal under the Smoke and Carbon Monoxide (England) Regulations 2015

- the decision to confirm or vary the penalty charge notice was based on an error of fact;
- the decision was wrong in law;
- (the amount of the penalty charge is unreasonable;
- (the decision was unreasonable for any other reason.

Or in the case of an appeal against penalty charge notice under section 249A

- (a) the decision to impose the penalty, or
- (b) the amount of the penalty.

### **Non-Payment of Penalty Charge**

If any notices are not paid within the specified period following issue, or where applicable following a review procedure, the Council will pursue non-payment of the penalty through a Court order process.