

# Cabinet Agenda

**Monday, 4 November 2019 at 6.00 pm**

Council Chamber, Muriel Matters House, Breeds Place, Hastings, East Sussex, TN34 3UY

For further information, please contact Democratic Services on 01424 451484 or email: [democraticservices@hastings.gov.uk](mailto:democraticservices@hastings.gov.uk)

		Page No.
1.	Apologies for Absence	
2.	Declaration of Interests	
3.	Minutes of Last Meeting	1 - 10
4.	Housing Renewal Financial Assistance Policy <i>(Andrew Palmer, Assistant Director Housing and Built Environment)</i> <i>(Cabinet Decision)</i>	11 - 32
5.	Housing Renewal Enforcement Policy <i>(Andrew Palmer, Assistant Director Housing and Built Environment)</i> <i>(Cabinet Decision)</i>	33 - 60
6.	Notification of Additional Urgent Items	61 - 62
	<b>Exclusion of the Public</b>	
	To resolve that the public be excluded from the meeting during the consideration of the items of business listed below because it is likely that if members of the public were present there would be disclosure to them of “exempt” information as defined in the paragraphs of schedule 12A to the Local Government Act 1972 referred to in the relevant report	
7.	Potential Commercial Property Purchases (Part 2) <i>(Peter Grace, Assistant Director, Financial Services and Revenues)</i> <i>(Cabinet Decision)</i>	63 - 72

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# Agenda Item 3 Public Document Pack

## CABINET

7 OCTOBER 2019

Present: Councillors Chowney (Chair), Forward (Vice-Chair), Batsford, S Beaney, Evans, Fitzgerald, Rogers, Lee and Patmore.

### **199. APOLOGIES FOR ABSENCE**

None.

### **200. DECLARATION OF INTERESTS**

Councillor	Minute	Interest
Forward	208	Prejudicial – Owns a property close to the site

### **201. MINUTES OF LAST MEETING**

**RESOLVED** – that the minutes of the Cabinet meeting held on 2<sup>nd</sup> September 2019 be approved as a true record.

**RESOLVED** the chair called over the items on the agenda, under rule 13.3 of the council's constitution, the recommendations set out in minutes number 202, 203, 205, 208, and 209 were agreed without being called for discussion.

### **202. UPDATE ON THE SOCIAL LETTINGS AGENCY**

The Assistant Director, Housing and Built Environment submitted a report outlining the revised business case for the Social Lettings Agency.

The report was presented by the Assistant Director and the Strategic Housing and Projects Manager.

The Social Lettings Agency (SLA) was set up with the primary purpose of helping to improve access to good quality, well managed, accommodation in the private rented sector. Households are accommodated in properties leased by the council from private landlords.

The revised model for the SLA has 3 main elements; expanding the private sector leasing scheme as an alternative to emergency accommodation, property management services for council-owned temporary accommodation and property management services for properties owned by Hastings Housing Company.

Councillor Batsford proposed approval of the recommendations, seconded by Councillor Fitzgerald.

The Chair agreed to vote on each recommendation separately, as shown in the resolution below.

**RESOLVED**

## CABINET

7 OCTOBER 2019

- 1. That Cabinet supports the revised business case for the Social Lettings Agency and the next steps to implement the new model (by 7 for, to 2 against).**
- 2. Cabinet approves the investment strategy for the Social Lettings Agency (by 7 for, to 2 against).**
- 3. To continue to explore options to generate additional income through the social lettings agency, including providing management services to other local authorities (by 7 for, to 2 against).**
- 4. To approve capital funding of £2,575,000 for additional investment in temporary accommodation (unanimously).**

### Reasons for the decision:

The purpose of the SLA is to improve access to good quality, well managed accommodation in the private rented sector for homeless households. The council needed to review the business case for the SLA, following changes to government funding for temporary accommodation and revised growth forecasts for the councils Housing Company.

Under the new model, the existing private sector leasing scheme will be expanded, to help reduce the council's use of emergency accommodation. The SLA will continue to provide management services for council-owned temporary accommodation. The SLA will also manage one of the properties owned by Hastings Housing Company, with the expectation that this role will be expanded in the future, as and when the company acquires more properties.

### **203. POLLING PLACES REVIEW 2019**

The Director of Corporate Services and Governance submitted a report on the findings and evaluation of the recent review and the Acting Returning Officer's subsequent recommendations.

The Electoral Administration Act 2006 (Section 16, EAA 2006) introduced a duty for all UK parliamentary polling districts and polling places to be reviewed by the end of 2007 and thereafter to be reviewed periodically.

The polling district boundaries in 6 of the 16 wards were reviewed in order to achieve, where possible, a more equal number of electors. This will mean a number of polling station changes for electors within the borough.

The wards affected are:

- Ashdown (A1, A2, A3)
- Gensing (G1, G2, G2A)
- Old Hastings (J1, J2)
- St Helens (L1, L2)
- Silverhill (M1, M1A, M2, M2A, M2A, M2B)

## CABINET

7 OCTOBER 2019

- Wishing Tree (P1, P1A, P2)

Under rule 13.3 the recommendations of the report were agreed without being called for discussion.

### **RESOLVED**

**1. To recommend that Council adopts the Acting Returning Officer's recommendations (as appended to this report) and publish the results of the review.**

**2. Delegate authority to the Director of Corporate Services and Governance to amend any decisions made under this review with regard to polling places or polling stations, should there be an urgent or necessary need.**

#### Reasons for the decision:

The council must regularly review the division of its parliamentary constituency area (within the borough boundary) into polling districts and the places where electors are asked to vote. The council must comply with the requirements of the Electoral Administration Act 2006 (Section 16, EAA 2006) and complete regular reviews of all polling districts and polling places. The council has a duty to ensure that the most suitable premises are used as polling places with regard to the needs of the electorate, subject to availability.

#### **204. LAND AT WHITWORTH ROAD**

The Assistant Director, Financial Services and Revenues submitted a report to seek approval to proceed with marketing the land at Whitworth Road.

The land is allocated for Employment B use classes in the Local Plan: site reference LRA8 - Land in Whitworth Road, The Ridge West.

The Council has received proposals to develop the land, but the uncertainty around development costs does not make it attractive for the Council to develop the site itself.

Under rule 13.3 the recommendations of the report were agreed without being called for discussion.

### **RESOLVED**

**1. To add the land to the Council's Land and Property Disposal Programme.**

#### Reasons for the decision:

This land is not straight-forward to develop, and is considered surplus to Council requirements.

## CABINET

7 OCTOBER 2019

Adding the land to the Land and Property Disposal Programme will allow the Council to progress with marketing to hopefully achieve a sale of the freehold.

### **205. ACQUISITION OF LAND IN ORE VALLEY**

The Assistant Director, Financial Services and Revenues submitted a report to seek approval for Hastings Borough Council to take ownership of areas of green space in the Ore Valley.

The report was presented by the Director of Corporate Services and Governance and the Estates Manager.

In July 2017 Cabinet resolved to take ownership of the Former Power Station site and green space in the Ore Valley from Hastings & Bexhill Renaissance Ltd (HBRL) subject to the outcome of due diligence.

HBRL are now marketing the site inviting offers.

The land comprises 2 parcels of land east and west of Broomgrove Road and measuring approximately 3.66 hectares and 1.27 hectares.

Due diligence has been undertaken and both the Council and HBRL wish to proceed with the transfer of the green space land as it is intended that HBRL is wound up.

It was noted that the Council may consider looking at ways to protect the land from future development.

Councillor Chowney proposed approval of the recommendations, seconded by Councillor Evans.

#### **RESOLVED (unanimously):**

- 1. To purchase the freehold of the land.**
- 2. To fund the initial repairs and maintenance costs from the Council's reserves (Ore Valley Reserve), estimated at some £57,000 (excluding VAT).**
- 3. The Director of Operational Services considers options for the long term management and maintenance arrangements of this area of land and brings forward a further report if necessary.**
- 4. The Ore Valley reserve is used to fund the ongoing maintenance and inspection costs of the land transferred until the long term arrangements are in place.**

Reasons for the decision:

## CABINET

7 OCTOBER 2019

To enable the social and economic regeneration of Ore Valley and the surrounding area.

There are significant responsibilities in owning land, and the initial costs of making the land accessible can be funded from a reserve set aside for this particular purpose. The Assistant Director, Financial Services and Revenues submitted a report to seek approval for Hastings Borough Council to take ownership of areas of green space in the Ore Valley.

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It was noted that the Council may consider looking at ways to protect the land from future development.

Councillor Chowney proposed approval of the recommendations, seconded by Councillor Evans.

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### Reasons for the decision:

To enable the social and economic regeneration of Ore Valley and the surrounding area.

## CABINET

7 OCTOBER 2019

There are significant responsibilities in owning land, and the initial costs of making the land accessible can be funded from a reserve set aside for this particular purpose.

The potential transfer of responsibilities for the land to a “conservation group” could help to enhance and protect the biodiversity of the area, particularly given the very limited resources that the Council has and expects to have in the future.

Until such time as the long term future of the site is secured there will be regular inspection and maintenance costs incurred e.g. trees, paths, drainage, signage, and particularly fences.

### **206. CHURCHFIELD BUSINESS CENTRE**

The Assistant Director, Financial Services and Revenues submitted a report to seek an increase in the budget for Churchfields Business Centre.

At Cabinet on 4 March it was agreed to include Sidney Little Road Business Incubator Hub (now known as Churchfields Business Centre) within the Capital programme with an estimated budget, including fees, of £2.8m. This was subject to Local Growth Funding of £500,000 which has since been granted.

The consultants have worked up detailed designs and the estimated costs are now £3.3m.

Under rule 13.3 the recommendations of the report were agreed without being called for discussion.

### **RESOLVED:**

**To agree to increase the budget from £2.8m to £3.3m subject to receiving £300,000 funding from Connecting Hastings and Rother Together (CHART) Programme – Community led Local Development (CLLD).**

Reasons for the decision:

As outlined in the body of the report the overall cost of development has increased at detailed design stage.

### **207. OLD TOWN HALL**

The Assistant Director, Financial Services and Revenues submitted a report to seek approval for Hastings Borough Council to consider the disposal of the Old Town Hall, High Street, Hastings.

The report was presented by the Director of Corporate Services and Governance and the Estates Manager.

## CABINET

7 OCTOBER 2019

The property became vacant in October 2018 as the lease was surrendered due to the tenant encountering financial difficulties.

Dyer & Hobbis were appointed to market the property for lease in November 2018. There has been very little interest and only one offer received to date which was well below the revised guide rent.

If the Council retain the building there are various costs that will need to be met over and above the day to day holding costs.

Councillor Chowney proposed approval of the recommendations, seconded by Councillor Forward.

### **RESOLVED (unanimously):**

#### **Dispose of the Old Town Hall**

##### Reasons for the decision:

The property is considered surplus to Council requirements and has significant holding costs.

In the absence of interest in renting the building at a commercial rental, the Council has considered a number of options. These have included disposal, refurbishment, rental for alternative use and to seek a change of use from Planning. The property is listed as an asset of community value.

#### **208. CORNWALLIS STREET CAR PARK - POTENTIAL DEVELOPMENT**

Councillor Forward left the chamber during discussion of this item due to a prejudicial interest.

The Assistant Director, Financial Services and Revenues and the Assistant Director, Regeneration and Culture submitted a joint report to consider the potential development of a hotel on Cornwallis Street car park.

The report was presented by the Director of Corporate Services and Governance, the Assistant Director, Regeneration and Culture and the Estates Manager.

The Council has been approached by a developer/hotel chain for the redevelopment of the Cornwallis Street car park with a new hotel.

A conditional offer has been made (subject to board approval, planning, and contract) for an 80 room hotel on the site on the following basis:

- 80 bed hotel and restaurant
- 25 year lease
- Substantial rent

## CABINET

7 OCTOBER 2019

The council has an obligation to test the market and ensure best value. It is proposed that in order to minimise timescales the Council will undertake initial surveys of the site.

The Assistant Director highlighted that Hastings has fewer serviced beds than neighbouring seaside towns and the development would support growth in the local tourism economy.

It was noted that the site is allocated for residential development within the Development Plan (Site Ref HTC2).

Councillor Chowney proposed approval of the recommendations, seconded by Councillor Rogers.

### **RESOLVED (unanimously):**

- 1. Agree to market the site, in accordance with EU procurement rules, on the basis that the Council develops the site for a hotel operator and lets the site on a long lease (20 years or more). The works only to commence once lease terms are agreed.**
- 2. Agree to include the potential development of the site, at an estimated cost of £7m within the Capital programme when determining the Capital Programme, Capital Strategy, and Treasury Management Strategy as part of the 2020/21 budget setting process.**
- 3. Agree to undertake the surveys required now for the subsequent development of the site at an estimated cost of up to £30,000 - funded from the General Reserve.**
- 4. Agree to appoint an external legal firm now to draw up the procurement documents and necessary legal documentation at an estimated cost of up to £40,000 - funded from the General Reserve.**

### **Reasons for the decision:**

The site is within the local development plan, earmarked for residential and retail.

The site presents a significant opportunity to further economic development and tourism within Hastings and St Leonards and to attract a major hotel within the town centre has been an aspiration for the Council for some time.

A viable option has been presented to the Council for a development and if the Council wishes to take the opportunity, it will need to move quickly. The EU procurement rules are complex, as will be the lease arrangements, and therefore external expertise in this instance is required.

## CABINET

7 OCTOBER 2019

### **209. CONSTITUTIONAL AMENDMENTS**

The Chief Legal Officer submitted a report to recommend amendments to the Council's Constitution.

The Council's Constitution is the basis for the Council's Corporate Governance. It needs amending on a regular basis either as a result of discussions at Working Arrangement Group and/or changes in legislative provisions or working practices.

The proposed amendments are as a result of updating and tidying up of the Constitution. Changes are being proposed to Parts 1, 2, 4, 6, 8 and 9 of the Constitution.

Under rule 13.3 the recommendations of the report were agreed without being called for discussion.

#### **RESOLVED:**

**To recommend that the amendments to the Council's Constitution be adopted by Full Council.**

Reasons for the decision:

The Council's Constitution is the basis for the Council's Corporate Governance.

### **210. MUSEUM COMMITTEE RECOMMENDATIONS**

The Assistant Director, Regeneration and Culture submitted a report to seek approval for the recommendations of the Museum Committee meeting held on 9 September 2019.

Cabinet is required to consider the recommendations of the Museum Committee as the Committee has no formal decision making powers and acts as an advisory committee of Cabinet.

Under rule 13.3 the recommendations of the report were agreed without being called for discussion.

#### **RESOLVED:**

**That Cabinet note and approve the recommendations of the Museum Committee meeting held on 9 September 2019.**

Reasons for the decision:

The Museum Committee has no formal decision making powers and acts as an advisory committee to Cabinet.

**CABINET**

**7 OCTOBER 2019**

(The Chair declared the meeting closed at. 7.21 pm)

# Agenda Item 4



**Report to:** Cabinet

**Date of Meeting:** 4 November 2019

**Report Title:** Housing Renewal Financial Assistance Policy

**Report By:** Andrew Palmer  
Assistant Director Housing and Built Environment

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## Purpose of Report

The Housing Renewal Financial Assistance Policy sets out the financial tools available to the Council for providing housing renewal help to households in the Borough. This report introduces a revised policy for 2019.

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## Recommendation(s)

- 1. Cabinet is asked to approve the revised Housing Renewal Financial Assistance Policy 2019 at Appendix 1.**
- 2. Delegated authority is given to the Assistant Director Housing and Built Environment in consultation with the Lead Member to introduce new types of assistance that enable existing and new sources of funding to be targeted at eligible clients**

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## Reasons for Recommendations

To be able to respond promptly to freedoms provided by the provision of Disabled Facilities Grant funding through the Better Care Fund delegated authority is requested to develop and adopt new types of financial assistance for housing renewal.

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## Introduction

1. The Housing Renewal Financial Assistance Policy sets out the financial tools available to the Council for providing financial assistance to households in Hastings for housing renewal. The Council is required to have such a policy under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.
2. Disabled Facilities Grants (DFGs) are also included in this policy and are given to vulnerable clients to enable them to remain in their own home and remain independent.

## Housing Renewal Loans

3. Given the limited resources available for Housing Renewal when the Housing Renewal Financial Assistance Policy was reviewed in March 2013 it was proposed to only offer loans for housing renewal. These loans were to be delivered through the councils existing partnership with Parity Trust (previously South Coast Money Line). This new policy continues this approach.
4. Parity Trust is a not for profit organisation established in May 2000 which has Community Development Finance Institution (CDFI) status. The core objective of Parity Trust is to deliver fair finance for vulnerable groups via loan or equity release products to help people improve/carry out repairs to their homes.
5. Loans have been administered recently for essential roofing works to a property and for modernisation of a property. In the past loans have been provided to bring empty homes back into use however with the availability of other affordable finance this has become less popular through Parity Trust.

## Disabled Facilities Grant Funding and the Better Care Fund

6. From April 2015 funding for Disabled Facilities Grants (DFGs) ceased being paid directly to local housing authorities from DCLG and instead DFG funding forms part of the wider Better Care Fund (BCF) paid to health and social care authorities who then allocate to housing authorities.
7. Whilst DFG funding is not specifically ring fenced in the BCF the DFG allocations for housing authorities are set out by central government and social care authorities are required to pay the identified allocation to housing authorities unless otherwise agreed between the authorities. The DFG allocation for Hastings in 2019/20 is £ 1,812,584.
8. The nature of allocating DFG through the BCP means councils are able to use the DFG funding more flexibly as long as the expenditure meets the principles of the Better Care Fund. The main change to the policy is set out in paragraph 5.15 of the policy under discretionary disabled facilities assistance. The additional types of discretionary assistance are introduced to embrace the increased flexibility set out above and includes provision for use of the DFG allocation to fund 'discretionary' works which would prevent clients from being admitted to (or released from) hospital as a result of their housing conditions (for instance as a result of a fall).

## Seconded Occupational Therapists

9. Throughout 2018 officers from East Sussex County Council (ESCC) and the East Sussex districts and boroughs have worked together to develop an innovative scheme whereby Occupational Therapists are seconded into housing. In Hastings we have one seconded Senior Practising Occupational Therapist and two seconded Occupational Therapy Assistants. Alongside the funding of these three posts the DFG allocation is also being used to fund a shared (with other East Sussex district and boroughs) Occupational Therapist Practice Manager to provide medical supervision for the project.
10. The 'in-house OT' project has already reviewed the workflow of the DFG. This review has resulted in the (albeit small) waiting list for DFG being cleared. In addition to the improving the local delivery of DFG the project has already created a number of added benefits such as;
  - Being involved in the design of new build projects to advise on lifetimes homes standards
  - Being able to access equipment, telecare and minor adaptations to reduce the need for ongoing services and reduce the risk of falls
  - Reviewing housing bandings where there is a dispute regarding physical disability housing need
  - Developing pathways with hospital teams, ensuring referral to housing at the earliest possible time
11. In November 2018 the Ministry of Housing, Communities and Local Government published an independent review of the DFG. The 'in-house' OT project puts us ahead of the curve in relation to a number of the recommendations of the review. It is planned to expand the project over time as it develops; discussions are already underway with colleagues in Children's Services in relation to the DFG process for disabled children

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### Wards Affected

All

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### Implications

Relevant project tools applied? Yes/No

Have you checked this report for plain English and readability? Yes/No

Climate change implications considered? Yes/No

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

Equalities and Community Cohesiveness – Policy takes into account equalities issues, in particular in relation to access to services for disabled people.

Crime and Fear of Crime (Section 17) - None

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Report Template v29.0

Risk Management - None  
Environmental Issues - None  
Economic/Financial Implications – Policy takes into account DFG grant allocation through Better Care Fund  
Human Rights Act - None  
Organisational Consequences - None  
Local People’s Views - None  
Anti-Poverty - None

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### **Additional Information**

Appendix 1 – Housing Renewal Financial Assistance Policy 2019

Independent review of DFG - <https://www.gov.uk/government/publications/disabled-facilities-grant-and-other-adaptations-external-review>

East Sussex Better Care Fund Narrative Plan - <https://democracy.eastsussex.gov.uk/documents/s16417/Appendix%201%20-%20East%20Sussex%20HWB%20Integration%20and%20Better%20Care%20Fund%20Narrative%20Plan%202017-19%20...pdf>

Parity Trust – <https://paritytrust.org.uk/>

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### **Officer to Contact**

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01424 451357

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## **Housing Renewal Financial Assistance Policy 2020 – 2023 (Revision 2.0 – October 2019)**

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### **Contents**

To be included at Final

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## **1. Introduction**

- 1.1 Under the Regulatory Reform Order on Financial Assistance the council has a general power to provide assistance for the purpose of repairing, improving, acquiring, demolishing, adapting, or providing housing accommodation in the borough. The council can offer this assistance in the form of grants or loans. This Policy sets out what assistance the council is able to offer; who can apply, whether it is a loan or a grant, what it can be used for and any conditions attached to taking the assistance.

### **The condition of the private housing stock in Hastings and St Leonards**

- 1.2 The 2016 Housing Stock Condition Survey commissioned by the council estimates that 25.7% of the private sector housing stock fails the governments Decent Homes Standard, which is higher than the national average of 21.8%. The main reason properties fail the Decent Homes Standard relates to failures in thermal comfort and occupants at risk of excess cold.
- 1.3 The survey also identified that around 24% of households in the borough contain a household member with a long-term limiting illness or disability.
- 1.4 In drawing up this policy, it is recognised that Hastings Borough Council is one of the most deprived Local Authority areas in the country, and that housing conditions are worse than the national average. Unemployment rates and levels of benefit dependency are higher than the national average. This impact upon a homeowner's ability to repair and maintain their property.

## **2. Policy Objectives**

- To improve the condition of the private sector housing stock by:
  - Improving housing to meet the Decent Homes Standard
  - Improving the energy efficiency of housing
  - Increasing the use of renewable energy technology and technology to conserve water use
- To decrease fuel poverty within private sector housing

- To bring empty homes back into use
- To promote and foster an environment of self-sufficiency through the recycling of money used to fund financial assistance
- To enable people to sustain and remain in their homes through disabled adaptations.

### **3. Financial Resources Available:**

- 3.1 The Council has approximately £70,000 available per annum from previous regional housing board regeneration funding. Funding is available for the next three years (up to March 2023) for loans through Parity Trust towards housing related activities, e.g. repairs.
- 3.2 For Disabled Facilities Grants the funds available for 2019/20 are £1.8 million provided to the Borough Council by East Sussex County Council via the Better Care Fund. The funding for DFG's is to form part of a review of the Better Care Fund in the 2019 autumn spending review.
- 3.3 With the exception of Mandatory Disabled Facilities Grant, financial assistance measures are discretionary. The Council will not approve any assistance, or commit spending on any assistance / property when the budget available has been exhausted. Consequently, the Council reserves the right to defer approval and / or payments, in line with the statutory framework. This is to ensure that budgets are managed effectively.
- 3.4 Funds may be used for other schemes / assistance (for instance pertaining to flexible assistance corresponding with the outcomes of the Better Care Fund), at the discretion of the Assistant Director Housing and the Built Environment, or their authorised nominee and subject to a cost benefit analysis, where that scheme / assistance has a direct benefit to the objectives of this policy. Any changes will be made in line with the council's adopted financial rules.
- 3.5 The Council may from time to time utilise special funding from Central Government, or other sources aimed at specific subjects, to target issues of local and national concern in accordance with any special conditions, e.g. replacement of inefficient boilers. Any special terms and conditions applicable to such initiatives will be appended to this policy, as they will not significantly alter the Council's primary approach to the subject.

### **4. Mandatory Assistance**

#### **Mandatory Disabled Facilities Grant (DFG)**

- 4.1 The mandatory Disabled Facilities Grant (DFG) is set out in the Housing Grants Construction and Regeneration Act 1996 as amended by the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

#### **Eligibility**

- 4.2 All owner-occupiers, tenants, licensees and occupiers are eligible for the grant provided that they are able to satisfy the criteria in Sections 19 to 22 of the 1996 Act. Landlords' may apply for a grant on behalf of a disabled tenant but must satisfy the same requirements. Tenants of Housing Associations (HA's) are eligible to apply for mandatory DFGs, but in these situations, the council will firstly investigate the HA's ability to carry out the necessary work, or other options, such as transfer to more appropriate accommodation for the disabled person. Applications for DFGs will be considered where an offer of tenancy has been made by an HA and accepted in principal. Occupants of park homes and houseboats can also apply for DFGs.
- 4.3 As part of an application for a mandatory DFG, a test of resources must be carried out in order to assess the amount, if any, that the applicant must contribute to the cost of the works. The means test applies to the disabled person and any partner. The applicant is required to provide information about all sources of income and all savings, and to provide evidence to support the information given.
- 4.4 Applicants in receipt of certain benefits may not be subject to the full means testing and will not be required to pay any initial contribution towards the grant, unless the grant exceeds the maximum value. In addition, means testing will not apply if the disabled person is a child that meets the defined criteria.
- 4.5 The means test is set out in regulation and subject to change when new regulations are issued by central government.

### **Eligible Works**

- 4.6 These fall into a number of categories:
- Adaptations to aid access into and around the dwelling
  - Ensuring the safety of a disabled person
  - Provision of suitable bathroom facilities, sleeping facilities, heating and access to lighting and power
  - Provision of suitable kitchen facilities or adaptation of existing kitchen
  - Adaptation to enable the disabled person to care for dependent residents
- 4.7 The council must be satisfied that it is reasonable and practicable to carry out the relevant works having regard to the age and condition of the dwelling, or building. The council must also be satisfied that the works are necessary and appropriate to meet the needs of the disabled person, and this is achieved through consultation with the Occupational Therapists and Sensory Impairment Workers employed by East Sussex County Council.

### **Amount of Assistance**

- 4.8 The maximum amount of grant is set by statutory instrument. The current statutory limit on the amount of mandatory DFG is £30,000.

## **5. Discretionary Assistance**

*Note: All the following types of assistance are discretionary and as such are subject to capital funds being available. For this reason the provision of this assistance may be limited or discontinued at any time*

### **Discretionary Disability Relocation Assistance**

- 5.1 Where adaption of an existing home is not considered to be reasonable or practicable assistance will be considered to help enable an applicant to move to a more suitable property. This will be where it is more cost effective than adapting their current home to make it suitable for present and future needs. The new property may need some adaptation. This applies only where works requiring a mandatory DFG are necessary, and includes moving into another Local Authority area as well as within Hastings. All re-housing options will be carefully considered and discussed with the disabled person and others concerned, including Social Services and health professionals, family and friends.
- 5.2 This assistance will be funded from the DFG capital budget.

#### **Eligibility**

- 5.3 Applicants must be the owner of the property or a private rented tenant, and the disabled person must be registered, or registerable disabled. For each case a cost benefit analysis will be undertaken taking into account the potential cost of adapting the existing property and of adapting any future property in relation to the amount of eligible assistance.

#### **Eligible Works**

- 5.4 The discretionary assistance will cover costs incurred in relocating to the new property, up to a maximum of £10,000. This will include estate agents' fees, solicitors' fees, stamp duty, the relocation of specialist equipment for the disabled person, and removal costs. It would not include allowances towards and furnishings or fittings (other than those considered specialist equipment).

#### **Amount of Assistance**

- 5.5 Maximum of £10,000 less any determined contribution from the test of resources.

#### **Conditions**

*In addition to general terms and conditions;*

- 5.6 Applicants will be subject to the DFG statutory test of resources unless in receipt of one of the "passport" benefits. However, if the property to which the applicant

is relocating requires adaptations and the applicant will be making a mandatory disabled facilities grant application in respect of that property and they will be liable for a contribution towards the cost of adaptation work, no deduction shall be made for any contribution in respect of this relocation assistance. The means test will only be applied in this case in respect of the mandatory DFG.

- 5.7 No further discretionary assistance for the same purpose will usually be payable from five years of the completion of the purchase of the new property, unless there are exceptional circumstances. Any such assistance will be fixed against the property as a charge, repayable with compound interest (set at a rate equivalent to the Consumer Price Index) upon disposal of the property.

### **Discretionary Disabled Facilities Grant “top-up” Assistance**

- 5.8 The maximum amount of mandatory DFG was set by statute in 2008 at £ 30,000. Since this time there has been a general increase in build costs for adaptations such that in some instances £ 30,000 is insufficient to provide adaptations to meet the needs of the disabled person and their family.
- 5.9 This assistance will be funded from the DFG capital budget.

#### **Eligibility**

- 5.10 As per mandatory DFG

#### **Amount of Assistance**

- 5.11 Maximum £ 20,000 subject to equal matched funding provided by East Sussex County Council Adult Service or the East Sussex Children’s Integrated Therapy Service or other source.

#### **Conditions**

*In addition to general terms and conditions;*

- 5.12 Any top up assistance awarded over the mandatory DFG limit will be registered as a local land charge in full in addition to the charge registered as part of the mandatory DFG funding. The charge will be secured against the property for 10 years (as per the mandatory DFG charge).

### **Discretionary Disabled Facilities Assistance**

- 5.13 Use of the DFG allocation through the Better Care Fund at the Councils discretion to support innovative projects in the borough to improve the lives of disabled residents.
- 5.14 This assistance will be funded from the DFG capital budget.

#### **Eligible Works**

5.15 Assistance to assist disabled residents and their families including but not limited to;

- Fast track minor adaptations grant – to undertake minor adaptations before someone ends up in acute care (for instance as a result of a fall) or to enable expedited hospital discharge – maximum amount of assistance – £ 5,000
- Lifetime homes grant – providing homes to Lifetimes Homes standard (<http://www.lifetimehomes.org.uk/pages/lifetime-homes.html>) often increases the cost of new development by 10%. Assessed on the basis of need and demand to provide funds to ensure disabled homes are brought forward on sites – amount of assistance – 10% of the build cost of the development capped at 5% of the total DFG budget.
- Feasibility studies – to determine whether works are practicable. If a mandatory DFG is approved the discretionary assistance will be included in the mandatory grant and will not be an additional amount – maximum amount of assistance - £ 5,000
- Fuel poverty relief – to top up funding available through the Energy Company Obligation (ECO) (the government energy efficiency scheme) where available ECO is insufficient to undertake major measures to alleviate fuel poverty for households vulnerable to cold through their disability. – maximum amount of assistance - £ 5,000
- Assistive technology and innovation fund – for bespoke projects to pilot assistive technology or other innovations to improve the lives of disabled residents and their families – maximum amount of assistance for individual projected capped at 5% of the DFG budget
- Removal of means test for internal stairlift only applications – falls are the largest cause of emergency hospital admissions for older people therefore the removal of the need to means test will significantly increase the installation time for stairlifts – maximum amount of assistance - £ 5,000

#### **Amount of Assistance**

5.16 The maximum amount of assistance will be dependent on the type of assistance being provided.

#### **Conditions**

5.17 As per mandatory DFG

#### **Discretionary Housing Renewal Loans**

5.18 Hastings Borough Council works with Parity Trust, a trusted ethical loans partner, to administer a small fund for housing loans. Availability and accessibility of loans is

strictly administered by the Council and Parity Trust and are only approved where the applicant can afford to repay.

### **Eligibility**

5.19 The qualifying conditions for the assistance are that the applicant:

- Is aged 18 years, or more, and
- Is an owner, a tenant (for certain forms of loans only), or has a right to exclusive occupation of at least five years, and
- Has a duty, or power to carry out works (if applicable)

### **Eligible Works**

5.20 Loans can be used to assist people needing the following types of help:

- Meeting the financial contribution to a mandatory Disabled Facilities Grant
- Topping up a Mandatory Disabled Facilities Grant, where the grant does not cover all the costs
- Assisting someone move house, where their home cannot be adapted for their disability needs
- Urgent repairs to a home (owner/occupiers only)
- Renovating homes (owner/occupiers only)
- Assisting in bringing long term empty homes back into use
- Improvements to the energy efficiency of a home (including whole house retrofit and renewable energy technologies)
- Other types of help may be considered, dependant on circumstances at the discretion of the Housing Renewal Manager

### **Amount of Assistance**

5.21 The amount of assistance is dependent on the affordability of the loan as determined by Parity Trust.

### **Conditions**

5.22 See general terms and conditions provided by Parity Trust

## **6. Enquiries about Assistance**

6.1 Enquiries about any of the forms of assistance in the policy, and information about how to apply, should be made to;

Housing Renewal  
Muriel Matters House  
Breeds Place  
Hastings  
East Sussex  
TN34 3UY.  
email [housingadmin@hastings.gov.uk](mailto:housingadmin@hastings.gov.uk)

## **7. Comments about the Policy**

7.1 Any comments about this policy should be made to:

Housing Renewal Manager  
Housing Renewal,  
Muriel Matters House,  
Breeds Place,  
Hastings,  
East Sussex.  
TN34 3UY  
email [housingadmin@hastings.gov.uk](mailto:housingadmin@hastings.gov.uk)

## **8. Appeals about Decisions**

8.1 Appeals about how the policy is operated in individual cases, for example where assistance is refused, will be considered by the Assistant Director Housing and the Built Environment, or his authorised nominee.

## **Appendix 1 – The Application Process**

### **Making an Application for Assistance**

The following conditions apply:

- All applications for assistance shall be made on the appropriate Council application form and be accompanied by all relevant supporting documents
- The minimum age for applicants' is 18 years at the date of application and in the case of joint applications, at least one must be over 18 years at the date of application
- In making an application, the applicant will give us permission to verify such given information with other Council services, or other statutory agencies
- Tenants, as defined within this policy may make applications, where they are eligible for assistance, but the Council will require written consent from the owner of the property before approving the grant/assistance
- Work (where applicable) must be carried out in accordance with any schedule provided by the Council
- Work covered by an insurance claim, or work that should have been covered, will not be eligible for grant/assistance/loan
- The council will not normally approve any application for grant/assistance/loan if the relevant works have started before the application is approved, unless the Officer dealing with the grant/assistance/loan has already carried out an inspection and agrees in writing that the works may commence, due to risks to the health and safety of the occupants. This condition can be waived at the discretion of the Housing Renewal Manager
- Assistance will only be approved for the benefit of applicants' who are able to provide evidence of a valid National Insurance Number (where applicable)

### **Means testing**

Where applicable, as part of an application for assistance within this policy a test of resources will be carried out in order to assess the amount, if any, that the applicant will contribute to the cost of the works. The means test will be the same as that applied to mandatory DFGs. The applicant(s) is/are required to provide information about all sources of income and all savings and to provide evidence to support the information given.

### **Fees**

Fees and charges associated with grant/assistance will be paid as part of the provision of assistance/grant, subject to the maximum amounts of grant/assistance. These include:

- Fees charged by Home Improvement Agency

- Private architects', or surveyors' fees
- Charges for planning permission, or building regulations approval
- Charges relating to Party Wall Act 1996 awards
- Fees relating to structural reports
- The costs of any electrical report carried out by a appropriately qualified electrician, required by the Council, to establish what electrical works are necessary
- Land Registry fees

The Council will determine which fees are eligible for assistance, the level of the fees and whether they are properly incurred.

The maximum fee level is 25% of the eligible assistance value, which includes agent's fees. The Housing Renewal Manager retains the discretion to waive this maximum in exceptional circumstances.

### **Cost and Reasonableness of Works**

The following applies where works are required as part of the assistance:

- The Council will consider the cost of all proposed work in the light of the eligibility of the work and the reasonableness of the cost, based on the quotations submitted
- Where the Council does not deem the quotations to be reasonable, the Council will approve a level of assistance for which it believes the works could reasonably be carried out. The level of any assistance approved may be the total cost of agreed works, or, where the applicants' financial assessment requires them to raise some funding of their own, the difference between the value of their own funding and the total cost of agreed works

### **Unforeseen Works**

Additional funding will only be provided above the original approval level in the event of unforeseen work being needed to allow completion of eligible works, or associated works, of a nature to protect the health and safety of occupiers, or evidence to show increases in costs to the contractor. The Council must be able to independently confirm any such increases, by means of inspection. No unforeseen works can commence until written confirmation from the Council has been received as to whether these works are reasonable in terms of cost, are truly unforeseen and whether the works are necessary.

In exceptional circumstances, this term can be waived where the Officer dealing with the grant/assistance agrees either verbally, or in writing, without necessarily carrying out an inspection that the works may commence, due to risks to the health and safety of the occupants.

A formal re-approval of assistance will be required before any payment above, or below, the originally approved level is paid.

## **Permissions and Consents**

The Council will not approve assistance unless the appropriate permissions and/or consents have been obtained, e.g. planning permission, listed building consent, building control approval, consent of the appropriate water company, etc.

## **Abortive Works**

This term relates to situations where an application for assistance has been aborted before works have been completed, e.g. where the applicant has died.

For Disabled Facilities Grants, consideration will be given to payment of a proportion of the grant assistance in line with current legislation and guidance and at the discretion of the Housing Renewal Manager.

## **Housing Associations**

With the exception of mandatory Disabled Facilities Grants, tenants of Housing Associations cannot apply for assistance under any other form of assistance contained within this policy. Housing Associations have a prescriptive duty of care to their tenants and have to meet certain standards and targets pertaining to condition of their properties, e.g. Decent Homes Standard, and are able to access other sources of funding due to their status. Therefore, it is the expectation that Housing Associations will conform to these duties on behalf of their tenants.

## **Contractor Issues**

It is the responsibility of the applicant to obtain quotes (where required). The legal and contractual relationship with regard to the works to be carried out is between the applicant and the contractor/agent, and not between the Council and the contractor/agent. All eligible works must be carried out by a contractor whose quote accompanied the application, unless an alternative quote is submitted and approved by the Council. Where the appropriate works undertaken must be insured, the contractor must provide a recognised warranty for any works.

The council may re-assess the amount of assistance if they are satisfied that, owing to circumstances beyond the control of the applicant, the eligible works could not be carried out on the basis of the amount of the quote originally approved, for instance, when a contractor becomes VAT registered prior to the commencement of any works. If a variation to the original scheme is required, the council will seek the applicants' consent to the variation.

If the eligible works are carried out by a member of the applicants' family, the council will make payment only for the cost of the materials used in carrying out the works. Family members will usually include husband, wife, parents, co-habitees, or their parents, children

and their partners, brother, sister, grandparents, grandchild, cousin, uncle, aunt, nephew, niece, or in-laws.

Where the applicant has his/her own building company, quotes will only be acceptable if it is a separate legal entity i.e. a limited company.

## **Buildings Insurance**

Applicants must maintain adequate buildings insurance throughout the applicable condition periods, unless they do not have an insurable interest in the property.

## **Payments**

The payment of any assistance is conditional upon the eligible works (where applicable) being carried out to the satisfaction of the relevant Council Officer and upon receipt by the Council of an acceptable invoice for the works carried out and any ancillary charges, or services, as well as any certification required for elements of those works, e.g. Gas Safe Certificate, Part P compliance Certificate, etc. All payments will be made direct to the Home Improvement Agency if the applicant is their client, or to a private agency e.g. a surveyor, or to the contractor. The applicant will be advised that a payment has been made, the amount, and the date of payment. The Council reserve the right to make a payment direct to the applicant in certain circumstances, for example, where there is a dispute over the standard and quality of work with the contractor.

The Council will consider requests for interim payments if they are requested before works commence, or in exceptional circumstances. However, it will not normally approve an interim payment of more than 90% of the cost of completed work and, in aggregate no more than 90% of the total approved cost of the work before final completion.

## **Maintenance**

Maintenance of a property is the owners' responsibility, and the council will take any lack of maintenance into account when considering eligible works.

## **Prevention of Fraud**

Information provided to the Council by applicants' as part of the application process will be checked thoroughly and may be shared with other departments of the Council and other organisations involved in any aspect of handling public funds to help prevent and detect fraud, or in investigation of other possible criminal activities.

The council will continue to implement our internal procedures to detect and prevent fraud throughout the assistance process. These procedures have regard to relevant statutory instruments and guidance.

## **Holiday and second homes**

Holiday residences and second homes (as defined by Council Tax) will not be provided with grants/assistance/loans.

## **Appendix 2 – Assistance Conditions**

### **Mandatory DFG Conditions**

Where the cost of the DFG exceeds £5,000, the Local Authority is able to place a charge against the property (limited to a maximum charge of £10,000); repayable if the property is sold within ten years. This applies only to owner/occupiers. The purpose of this is to allow for recycling of funds for DFGs. In each case the Council will take account of the individual circumstances of an applicant in deciding whether the charge should be made.

There is an expectation that the initial adaptation will meet the long term needs of the client, to prevent successive applications. However, it is accepted that further adaptations may be required for a disabled person who has a deteriorating condition. The council will make every attempt to expedite procedures and work to achieve interim solutions, where delays are inevitable.

There is no restriction on DFGs for the same property, and depending on the time lapse between applications, there is provision for any means tested contribution made on the first grant not to be taken into account on a subsequent application. This is five years for a tenants' application, and ten years for an owner-occupier's application.

### **General**

The conditions are a local land charge (a charge against the title of the property) for the duration of the condition period, which are binding on the applicant(s) for assistance and any successor(s) in title.

Before approving assistance the Council will need to see proof of ownership to enable property ownership to be confirmed, a copy of the proof of title should be obtained through Land Registry. Other forms of proof of ownership will be at the Council's discretion.

Applications initiated by a qualifying tenant must be accompanied by a tenants' certificate stating that the applicant is a qualifying tenant of the dwelling and that they or their partner intends to live in the dwelling as their only or main residence. In all circumstances, work to a property will require the owners' written authority.

Following completion of assistance, where conditions are attached, the applicant(s) shall, upon receiving a written request from the Council, reply in writing, within 21 days of the date of the request, stating how she/he is complying with any of the terms and conditions of the assistance enquired about. Failure to comply with this item will be deemed a failure of conditions, requiring total repayment of assistance plus compound interest at a reasonable rate determined by the Council.

### **Repayment condition**

This relates to the following forms of assistance:

- Disability Relocation assistance

In the case of any assistance for which part, or complete payment has been made, where the applicant disposes of the property then she/he shall repay to the Council on demand the amount of assistance that has been paid plus interest (set at a rate equivalent to Consumer Prices Index), as required by the deed agreement.

This condition for repayment of assistance set out above does not apply to:

- Exceptional circumstances at the discretion of the Assistant Director Housing and the Built Environment in consultation with the appropriate relevant Lead Member

### **Specific Conditions relating to equipment**

It is a condition of the assistance that the applicant shall notify the Council if and as soon as the equipment installed with assistance is no longer needed. Subsequently, the Council may, upon providing 21 days written notice access, the dwelling in order to inspect the equipment and, where appropriate, remove it. The Council will impose a condition that any specialised equipment such as a stair-lift may be recovered where it is no longer required. This condition will be removed from the land charge register once the equipment is removed or the property is disposed of. In practice, the equipment will be recovered by East Sussex County Council so that it can be reassigned to another person if this is practicable.

### **Terms of Repayment**

The council will usually demand full repayment of assistance in line with the repayment conditions set out above, or where there has been a breach of conditions. Before making any demand for repayment the Council will have regard to the relevant person(s) ability to repay when considering whether to require repayment, a waive of repayment, or entering an agreement to repay on terms, in accordance with Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

Repayment of assistance is subject to the Council making a demand from a 'relevant person', who has liability to repay the assistance, when the Council believes the assistance has become repayable. The 'relevant person' may be the original applicant for assistance, or any successor in title. The recipient will have an opportunity to make representations as to why the assistance should not be repaid prior to any enforcement action being taken. The following gives examples of the types of circumstances that would be considered, when exercising the Council's discretion not to make a demand, or to demand a lesser amount:

- Where there would be exceptional financial hardship
- A disposal to a disabled individual or to a family with a disabled person(s) where the existing disabled adaptations to the property meet their disability needs.
- A disposal where the proceeds are less than the amount of assistance that has to be repaid
- A transfer by a relevant person on death to another family member, who remains in occupation during the condition period(s)

- A disposal made to a Registered Provider

Where repayment of assistance is required and the applicant fails to make the necessary arrangements, the Council will seek to recover the money through the courts, which may involve obtaining a charging order, by registering the debt against the title of the property.

Applications not to repay assistance or to repay a lesser amount must be made in writing to the Housing Renewal Manager.

### Appendix 3 – Definitions within this Policy

Charge on the Local Land Register	Is where the Local Authority legally records a charge on the local land charges record. This charge does not recover any debt but goes with the land, so that on disposal of the land the charge is carried forward to the next owner, unless agreement is reached to settle the debt, plus compound interest at a reasonable rate determined by the Council, prior to sale, if not settled beforehand.
Charge against the Title of the land	Is where the Local Authority legally records a charge, against the title of the land and recovers the debt, plus compound interest at a reasonable rate determined by the Council upon its sale, if not settled beforehand.
Deed Agreement	Is a contract signed by all applicants' stating that that they abide by the conditions of the assistance.
Fuel Poverty	Is the recognised definition of fuel costs exceeding 10% of the disposable income once Housing Benefit/Local Housing Allowance has been taken into account.
Mandatory Disabled Facilities Grant	Is defined as per in the Housing Grants Construction and Regeneration Act 1996, as amended, or as in any successor statutory definition.
Means Tested Benefits	Is any income-based benefit received by an applicant, as defined and listed in a separate information sheet.
Member of a Couple	Means a member of a married or unmarried couple who are members of the same household. For the purpose of clarification, this includes same sex couples and civil partnerships
Member of a Family	Includes spouses, persons' who live together as husband and wife, parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews and nieces.
Partner	Means member of a couple.
Person with a disability/people with disabilities	He/she is registered as a person with a disability or, in the opinion of the Social Services Authority is registerable as a person with a disability. This definition recognises the fact that the majority of people will not be on a register.
Working Days	Means days excluding Saturdays and Sundays and statutory public holidays.
Owner	A person, or persons' that have an owners' interest in all the land on which the assistance is being proposed.

Leaseholder	Means a leasehold interest, where there is at least twenty years of the lease left to run.
Tenant	Means a tenant regardless of tenancy arrangements, e.g. registered, those with an assured shorthold tenancy, but excludes licences.

# Agenda Item 5



**Report to:** Cabinet

**Date of Meeting:** 4 November 2019

**Report Title:** Housing Renewal Enforcement Policy

**Report By:** Andrew Palmer  
Assistant Director Housing and Built Environment

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## **Purpose of Report**

Following an annual review of the Housing Renewal Enforcement Policy, as adopted by Cabinet on the 9 January 2017, substantive amendments are required which require further Cabinet approval.

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## **Recommendation(s)**

- 1. The revised Housing Renewal Enforcement Policy (Version 2.0) is approved.**
- 2. Cabinet are recommended to delegate future minor amendments to the Lead Member in consultation with the Assistant Director Housing and Built Environment and Chief Legal Officer**

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## **Reasons for Recommendations**

Due to the substantive changes proposed to the previously approved Housing Renewal Enforcement Policy Cabinet approval is required.

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## Introduction

1. The Housing Renewal Enforcement Policy is reviewed by officers annually and amended to include minor revisions. During the most recent review officers considered the recent Ministry of Housing Communities and Local Government guidance on rogue landlord enforcement and recent experience of the use of the new enforcement provisions introduced by the Housing and Planning Act 2016.
2. As significant amendments are required from the review Cabinet approval is required.

## Financial penalties for Housing Act 2004 offences

3. The Housing and Planning Act 2016 introduced the ability for local authorities to use a financial penalty as an alternative to prosecution for Housing Act 2004 offences (housing conditions and housing licensing). In order to use this ability the council is required to adopt an enforcement policy.
4. Since the adoption of the last Housing Renewal Enforcement Policy in January 2017 the council has issued a total of 24 financial penalties as an alternative to prosecution (total value - £ 21,250). Whilst financial penalties have been successful in tackling poor housing conditions and housing licensing offences a proportion of notices are appealed by landlords. Officers need to spend significant time preparing for such appeals to the First Tier Tribunal.
5. The methodology for calculating the financial penalties has been reviewed in light of recent tribunal and wider Housing Act 2004 prosecution decisions and a new matrix for calculating financial penalties is proposed. In particular the matrix for setting financial penalties has been amended to correspond better with sentencing guidelines used by magistrates in prosecution cases.

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## Wards Affected

All

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## Implications

Relevant project tools applied? ~~Yes~~/No

Have you checked this report for plain English and readability? Yes/~~No~~ (Flesch Reading Ease – 14.8)

Climate change implications considered? ~~Yes~~/No

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

Equalities and Community Cohesiveness - None  
Crime and Fear of Crime (Section 17) - None

Risk Management – a robust enforcement policy is required to reduce the risk of legal challenge to enforcement actions

Environmental Issues - None

Economic/Financial Implications - None

Human Rights Act – the Housing Renewal Enforcement Policy includes a statement with regards to human rights. In particular the policy takes into account article 6; the right to a fair trial

Organisational Consequences - None

Local People’s Views - None

Anti-Poverty - None

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### **Additional Information**

Appendix 1 – Housing Renewal Enforcement Policy (Revision 2.0).

Rogue Landlord Enforcement – Guidance for Local Authorities

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807484/Rogue\\_Landlord\\_Enforcement\\_-\\_Guidance\\_for\\_Local\\_Authorities.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807484/Rogue_Landlord_Enforcement_-_Guidance_for_Local_Authorities.pdf))

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### **Officer to Contact**

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# HOUSING RENEWAL ENFORCEMENT POLICY (REVISION 2.0 – October 2019)

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## Contents

To be inserted

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## 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 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 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 <https://goo.gl/crmDhB> or available on request.
- 1.4 The content of the Housing Renewal Enforcement Policy has been written having regard to;
  - **The Regulators Compliance Code** – This 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 <https://goo.gl/hfvzwh>
- **Ministry of Housing, Communities and Local Government Guidance for Local Authorities on Rogue Landlord Enforcement** – This guidance is non-statutory however it sets out the enforcement approaches available to a local authority when tackling rogue landlords. In particular the guidance sets out general guidelines of routes to enforcement: Proportional and escalating, Transparent, Evidence based, Repeat offenders.
- **The Code for Crown Prosecutors 2018** – The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, which sets out the general principles Crown Prosecutors should follow when they make decisions on cases. Whilst the Crown Prosecutor does not take decisions in relation to local housing authority cases it is expected that the councils litigation team follow its principles.

## 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 [http://www.hastings.gov.uk/my\\_council/transparency/equalities/equalities/](http://www.hastings.gov.uk/my_council/transparency/equalities/equalities/)

## 3. Purpose and Methods of Enforcement

- 3.1 The Council 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 principle legislation used by the Housing Renewal Team is the Housing Act 2004 and

the Housing and Planning Act 2016. The range of action that will be considered under these Acts include but is not limited to;

- 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 an 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 following an inspection of the whole dwelling and how serious they are deemed to be. This is assessed using the Housing Health Safety Rating System. This system has been adopted by regulation as the prescribed method for assessing housing conditions (The Housing Health and Safety Rating System (England) Regulations 2005). The aim is to identify deficiencies within dwellings that may lead to a hazard. Each hazard is assessed and assigned a band. These bands are translated into either a category one or a category two hazard. The Council has a legal duty to take the most appropriate enforcement 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 Council 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 there are category 1 hazard(s) 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 for compliance having regard to the seriousness of the defects and/or contraventions.

As a minimum category 1 hazards must be reduced to a low category 2. Where this is not possible all reasonable steps must be taken to reduce the hazards as far as reasonable practicable to a category 2 hazard.

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, leaseholders, freeholders 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 category 1 and/or category 2 hazard(s) at the property. This is used where a hazard has been identified but the circumstances are not necessarily serious enough to require an improvement notice or prohibition order. It is a way of drawing attention to the need for remedial action. This notice is not registered as a local land charge and has no appeal procedure.
- Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the category 1 and/or category 2 hazards found. This is used where reasonable remedial works can be carried out to sufficiently reduce the hazard. This notice is registered as a local land charge.
- Prohibition Order – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property. This may be used where category 1 and/or category 2 hazards are found and conditions present a risk but remedial action is unreasonable or impractical. This notice is registered as a local land charge.
- Suspended Improvement Notices or Prohibition Orders – these notices may be suspended where enforcement action can be safely postponed until a specified event or time. This notice is registered as a local land charge.
- Emergency Prohibition Order – same as a prohibition order but the order will take effect immediately. This is only acceptable where there is an imminent risk of serious harm from a category 1 rated hazard. It is also not practicable to carry out the remedial works.
- Demolition Order – an order requiring the demolition of the property. It can only be used in response to category 1 hazards, however not on listed buildings.
- Declaring a Clearance Area – an area which is to be cleared of all buildings. All residential buildings in the proposed area must have at least one category 1 hazard.

There are circumstances where other pieces of legislation may be appropriate in dealing with an identified problem. Officers are expected to use professional judgement to determine the most appropriate piece of legislation

4

to use. It sometimes may be appropriate to use a range of appropriate tools. For example, The Environmental Protection Act 1990 allows the Council to serve an Abatement Notice in relation to certain types of nuisance coming from one property and affecting another. 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 and the hazard is rated as category 1. The Housing Renewal Team will take the action necessary to reduce the imminent 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** – This relates to parts 2 & 3 of the Housing Act 2004 and the Licensing of Houses in Multiple Occupation and Selective Licensing. Where the relevant person does not comply with the prescribed conditions and or is not deemed to be a fit a proper person to hold a licence, this course of action may be considered.

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. The data will be kept and processed in line with the Councils data protection and data retention policy. For further information please see the following link <https://www.hastings.gov.uk/privacy/your-privacy/>

A Public Register of licensed HMOs, dwellings with interim/final/empty dwelling management orders and HMOs with temporary exemption Notices in force 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 will be subject to a reasonable fee to cover administration costs.

**3.3** Where there is evidence of non-compliance with a statutory notice or order served under Part One of the Housing Act 2004, a failure to appropriately licence property under Parts 2 and 3 of the Act, or non-compliance with any other legislation enforced by the Housing Renewal Team the following enforcement options will be considered.

**3.3.1 Formal (Simple) Caution** – used to deal quickly and simply with less serious offences. 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 administered by the Chief Legal Officer in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders (April 2015) .

- 3.3.2 **Penalty Charge Notice** – a number of Acts and Regulations provide for the issuing of a penalty charge notice for non-compliance. These include the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 and the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014. Where the Council decides to issue a Penalty Charge Notice it will follow the same principles as the Civil Penalty below (and in Appendix 1).

The amount of penalty will be capped at the maximum provided for the offence.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require that the Council have a statement of principles for its application of penalty charge notices in relation to offences under those regulations. The Civil Penalty process described in Appendix 1 forms the Council's statement of principles.

- 3.3.3 **Civil Penalty** – under s249A of the Housing Act 2004 as introduced by The Housing and Planning Act 2016 the Council may decide to impose a financial penalty as an alternative to prosecution for certain housing offences. The Council must be satisfied beyond reasonable doubt that the person's conduct amounts to a relevant housing offence.

The offences under the Housing Act 2004 which the Council can impose a financial penalty as an alternative to prosecution are:

- Failure to comply with an improvement notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)
- Under the Housing and Planning Act 2015 the offence of breach of a banning order can also be dealt with by a financial penalty (section 21(1))

The amount of a financial penalty is determined by the Council but it must not exceed £30,000.

The Housing Renewal Team, in consultation with the legal department will determine on a case by case basis whether to issue a civil penalty or instigate a prosecution in respect of the offences listed above. Examples of situations where a decision to prosecute may be made taken are;

- Offences of a particularly serious nature
- Where the offender has committed similar offences in the past

In circumstances where it has been deemed appropriate to issue a civil penalty as an alternative to prosecution, the level of penalty will be calculated having regard to the matrix set out in Appendix 1.

3.3.4 **Prosecution** – 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 seek to 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 before passing to Legal Services.

3.3.5 **Rent Repayment Order (RRO)** – the Council is required to consider an application to the First Tier Tribunal for a rent repayment order in cases where a landlord has been convicted of:

- failing to comply with an improvement notice (Housing Act 2004),
- failing to comply with a prohibition order (Housing Act 2004),
- being in control or managing an unlicensed HMO or house (Housing Act 2004)
- concerning violence for securing entry (Criminal Law Act 1971)
- concerning eviction or harassment of occupiers (Protection from Eviction Act 1977)
- breach of a banning order (Housing and Planning Act 2015).

The Council may apply to a First Tier Tribunal (FTT) for a RRO award in respect of rent payments within 12 months of an offence. In a notice of intended proceedings the Council must specify how much the order for repayment of rent is. The level of rent relates to a defined period of 12 months in the period leading up to the offence or during the 12 month period whilst the offence was being committed.

Where the Council is satisfied beyond reasonable doubt that a relevant housing offence has been committed they may consider an application to the First Tier Tribunal for a rent repayment order irrespective of whether landlord has been convicted of an offence. In either case a notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations

Regardless of whether a conviction has or has not been achieved any RRO applied for by the Council will be for the maximum rent repayment; within a 12 month period.

A person aggrieved by the decision of the First Tier Tribunal may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

3.3.6 **Works in Default** – may be considered as an alternative to, or in addition to prosecution or issuing a civil penalty under s249A of the Housing Act 2004. 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.

- 3.3.7 **Rogue Landlord Database** – where a landlord has received a banning order (see below) the Council must enter this onto the Rogue Landlord Database. In cases where a landlord has been found guilty of committing a banning order offence (but no banning order has been made) or has received two or more civil penalties in respect of banning order offences may enter this onto the database.

When deciding whether to make an entry onto the rogue landlord database the Council will take into account:

- Severity of the offence. The more serious the offence, the stronger the justification for including the offender on the database
- Mitigating factors. In cases where a less serious offence has been committed and/or there are mitigating factors, the Council may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement.
- Culpability and serial offending. Whether the offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the justification for making an entry on the database. Conversely, where it is a first offence and/or where it is a relatively minor, the Council may decide that it is not appropriate to record a person's information on the database.
- Deter the offender from repeating the offence. The ultimate goal of the database is to prevent landlords and property agents, who have failed to comply with all of their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that (a) the Council has the tools and is proactive in recording the details of rogue landlord and property agents and (b) that they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities
- Deter others from committing similar offences. Knowing that they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlords from committing banning order offences in the first place

- 3.3.8 **Banning Orders** – may be considered as an addition to prosecution or issuing numerous civil penalties under section 214(2)(b) of the Housing and Planning Act 2016. The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 outline the offences for which Banning Orders

9

can be issued under section 14(3) of the Housing and Planning Act 2016. The Council has to apply to the First Tier Tribunal which has the power to issue the order.

When deciding to apply to the First Tier Tribunal for a banning order, the Council will consider

- The seriousness of the offence. All banning order offences are serious. When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court in respect of the banning order offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made. This will later be considered by the First Tier Tribunal when determining whether to make, and the appropriate length of a banning order.
- Previous convictions/rogue landlord database. The Council will check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.
- The harm caused to the tenant. This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud).
- Punishment of the offender. A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.
- Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future.
- Deter others from committing similar offences. An important part of deterrence is the realisation that (a) the Council is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending

Landlords aggrieved by the decisions of the First Tier Tribunal may appeal under section 15(1) of the Housing and Planning Act 2016.

10

Once granted a banning order remains in place for at least 12 months. Once a banning order is in place, the local housing authority can take over the management of the property or properties of the landlord receiving the order.

#### **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.
- 4.2 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. Every case is assessed on its own merits.
- 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 recommendation to instigate a prosecution will be made by the Housing Renewal Manager (as delegated by the Assistant Director Housing and Built Environment). The decision to prosecute lies constitutionally with the Chief Legal Officer.

#### **6. Costs of Enforcement**

- 6.1 The Housing Act 2004 gives the Council the power to charge for enforcement action under Section 49 and to recover these costs.
- 6.2 Enforcement action may arise as a result of a complaint, usually the occupier of the residential premises. However they may arise as a referral from other agencies or third parties or as a result of a proactive inspection regime undertaken by the Housing Renewal Team.
- 6.3 Charging will apply for enforcement action in the following circumstances:
  - serving an improvement notice under section 11 or 12
  - making a prohibition order under section 20 or 21
  - serving a hazard awareness notice under section 28 or 29

- taking emergency remedial action under section 40
- making an emergency prohibition order under section 43 or
- making a demolition order under section 265 of the Housing Act 1985
- carrying out a review under section 17 (review of suspended improvement notices) or
- section 26 (review of suspended prohibition orders) or
- serving copies of the Council's decision on such a review

What can be charged for will depend on the type on action taken. However in most instances it will include;

- the expenses incurred in determining whether to serve a notice / order
- identifying any action to be specified within the notice /order
- serving the notice /order

6.4 Expenses will be recovered in accordance with Section 50 of the Housing Act 2004, via a demand for payment of the charge. As from the time the demand becomes operative until recovered, the sum recoverable will be registered as a local land charge on the premises concerned.

6.5 Expenses in respect of which a demand is served carry interest, at such reasonable rate as the Council may determine, from the date of service until payment of all sums due under the demand. (Housing Act 2004 – Schedule 3, Part 3, Paragraph 10)

***Charges will be made for the service of certain notices. The charge for enforcement is a separate payment and is not the same as a penalty charge or civil penalty issued as an enforcement mechanism to address non-compliance***

## 7. Powers of entry

7.1 Entry to a property is usually required to enable the Housing Renewal Team to carry out its statutory functions. We will normally make an appointment to visit in the first instance and will give 24 hours' notice to the occupants and owners of our intention to enter properties to inspect them

7.2 Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

7.3 The Housing Renewal Team will exercise its statutory powers to gain entry without giving prior notice to investigate non- compliance with Housing related law or to carry

out a statutory duty where it is necessary to do so. Reasons for the use of these powers include;

- Protection of the health and safety of any person or to protect the environment without avoidable delay;
- Prevent the obstruction of officers where this is anticipated;
- To determine if a property is an unlicensed HMO or does not have a selective licence

7.4 The Housing Renewal Team will apply to the Magistrates Court for a Warrant to Enter Premises if entry has been consistently refused or refusal is reasonably anticipated.

## **8. Appeals**

8.1 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

8.2 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.

8.3 All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served.

8.4 The Council will rigorously defend any appeals where the notice/order has been correctly served.

## **9. Complaints**

9.1 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 or Tel: 01424 451066

9.2 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

## **10. Review**

- 10.1 This Enforcement Policy shall be reviewed annually 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

## Appendix 1 – Civil Penalties

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provides local authorities with the power [through the creation of section 249A Housing Act 2004] to impose a civil penalty (in the form of a financial penalty) as an alternative to prosecution in respect of certain offences under the Housing Act 2004. These are listed above at paragraph 3.3.3

The Council has the power to impose a civil penalty of up to £30,000, with a level of civil penalty imposed decided on a case by case basis in line with its policy. This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an appropriate enforcement option.

The standard of proof required to issue a civil penalty is the same as that which is required for preparing a criminal case. This means that the evidence should indicate beyond reasonable doubt that an offence has been committed.

A civil penalty cannot be issued where there has been a previous prosecution for the same set of circumstances, or where a prosecution is currently pending for the same offence.

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016. Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties. A full copy of that guidance can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606653/Civil\\_Penalties\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf).

Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

**Severity of the offence.** The more serious the offence, the higher the penalty should be.

**Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

**The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

**Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both

the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

**Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

**Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

**Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

### **Civil Penalties Matrix**

In determining the level of a civil penalty, officers will have regard to the matrix set out in this policy. The matrix is intended to provide an indicative minimum 'tariff' under the various offences, with the final level of the civil penalty adjusted in each case to take into account other relevant aggravating or mitigating factors. The rationale will be applied on a case by case basis and applied to the specific circumstances of each case.

In cases where the maximum level of fine is less than £ 30,000 the fine will be capped at the maximum amount allowable. For instance where the maximum level of penalty is £ 5,000 the matrix cannot

Hasting Borough Council uses a five stage process to provide a framework to assist with "determining the level of fine" which will ensure consistency, transparency and a fair assessment for all parties.

The process has taken into account the following documents;

1. The statutory guidance issued by the Secretary of State under;
  - Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.

- Para 12 of the new schedule 13A in the 2004 Act.
2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
  3. Sentencing Council Guidance for Health and Food Safety Offences (2016)
  4. Hastings Borough Council Corporate Enforcement Policy (April 2013)
  5. Ministry of Housing, Communities and Local Government Guidance for Local Authorities on Rogue Landlord Enforcement

### **The five Stages in ‘Determining the Level of Financial Penalty (FP)’.**

Stage One: Banding the offence. The initial FP band is decided following the assessment of two factors; culpability and harm.

If more than one party is involved in the commission of the offence then this will be considered in terms of each person’s culpability. Any penalty will then be calculated based on each party’s involvement and level of culpability.

Stage Two: Amending the penalty band based on aggravating factors.

Stage Three: Amending the penalty band based on mitigating factors.

Stage Four: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage Five: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour.

**Stage One: Banding the level of Offence (there are two factors to assess)**

Banding the Offence	
<p><b>Factor 1.</b></p> <p><b>Culpability</b></p> <p>(seriousness of offence and culpability)</p> <ul style="list-style-type: none"> <li>• To consider as part of assessment the scale and scope of the offences,</li> <li>• was length of time did the offence continue for or repeat over?</li> <li>• what was the legislation being breached?</li> <li>• to what extent was the offence premeditated or planned,</li> <li>• whether the landlord/agent knew, or ought to have known, that they were not complying with the law,</li> <li>• the steps taken to ensure compliance.</li> <li>• whether the landlord/agent has previous relevant unspent housing offence related convictions (source National Landlord database),</li> <li>• the likelihood of the offence being continued, repeated or escalated.</li> <li>• the responsibilities the landlord/agent had with ensuring compliance in comparison with other parties</li> </ul>	<p><b>Assessment:</b></p> <p>The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</p> <hr/> <p><b>Low</b></p> <p>Offence committed with little fault, for example, because:</p> <ul style="list-style-type: none"> <li>• Significant efforts were made to address the risk although they were inadequate on this occasion</li> <li>• There was no warning/circumstance indicating a risk</li> <li>• Failings were minor and occurred as an isolated incident</li> </ul> <hr/> <p><b>Moderate</b></p> <p>Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <hr/> <p><b>High</b></p> <p>Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <p>Breaches allowed to subsist over a period of time</p> <hr/> <p><b>Very High</b></p> <p>Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p>

<p><b>Factor 2</b></p> <p><b>Level of Harm</b></p> <p>(to tenant / community)</p> <ul style="list-style-type: none"> <li>To consider as part of assessment circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010)</li> <li>tenant's views about the impact that the offence has had on them.</li> <li>the extent to which other people in the community have been affected, for example, because of anti-social behaviour, excessive noise and damage to adjoining properties. Was more than one other household affected,</li> <li>the level of actual or potential physiological or physical impact on tenant(s) and third parties</li> <li>what regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence</li> <li>has the level of trust been breached and have landlord actions impacted on sector</li> </ul>	<p><b>Assessment:</b></p> <p>The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</p>
	<p><b>Low</b></p> <p>Low risk of an adverse effect on individual(s) (not amounting to low risk)</p> <p>Public misled but little or no risk of actual adverse effect on individual(s)</p>
	<p><b>Moderate</b></p> <p>Adverse effect on individual(s) (not amounting to high)</p> <p>Moderate risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities.</p> <p>Regulator and/or legitimate industry substantially undermined by offender's activities</p> <p>Consumer/tenant misled</p>
	<p><b>High.</b></p> <p>Serious adverse effect(s) on individual(s) and/or having a widespread impact High risk of an adverse effect on individual(s) – including where persons are vulnerable</p> <p>Significant disregard of Regulator or legitimate industry role with significant deceit.</p>

**Scoring Matrix to determine the level of fine**

<b>Scoring Matrix for Financial Penalty</b>				
<b>LEVEL OF CULPALABILITY (SERIOUSNESS OF OFFENCE)</b>	Very High	4	5	6
	High	3	4	5
	Moderate	2	3	4
	Low	1	2	3
<b>FACTORS</b>		Low	Moderate	High
	<b>IMPACT, LEVEL OF HARM</b>			

## Financial Penalty Banding

Band	Penalty range	Mid-point
Band 1	£ 0 to £ 1,000	£ 500
Band 2	£ 1,000 to £ 4,000	£ 2,500
Band 3	£ 4,000 to £ 8,000	£ 6,000
Band 4	£ 8,000 to £ 12,000	£ 10,000
Band 5	£ 12,000 to £ 20,000	£ 16,000
Band 6	£ 20,000 to £ 30,000	£ 25,000

The starting point for each band will be the mid-point e.g. for Band 1 the mid-point will be £ 500. In cases where the amount of penalty is capped below £ 30,000 then the penalty cannot exceed this amount

### Stage Two: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. The penalty can be increased within the assigned band based on aggravating factors.

Example aggravating factors:

- Previous convictions, having regard to;
  - a. the nature of the offence to which the conviction relates and its relevance to the current offence; and
  - b. the time that has elapsed since the conviction (is conviction spent)?
- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
- Falsification of documents / records
- Established evidence of longer term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to the Council advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of the Council or other Regulatory Body.
- Targeting of vulnerable tenants
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

### Stage Three: Amending the penalty band based on mitigating factors.

Objective: to consider any mitigating factors and whether they are relevant to the offence. The penalty can be decreased within the band based on mitigating factors.

Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Where the person has been assessed as having mental health issues or learning disabilities, where linked to the commission of the offence
- Where the person is diagnosed with a debilitating or life limiting medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

**Stage Four: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:**

**Step 1:** to check that the provisional assessment, proposed FP meets the aims of the Crown Prosecutions code of practice:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

**Step 2:** to check that provisional FP assessment, proposed FP is proportionate and will have an appropriate impact.

The Council will use its existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty by making an adjustment within the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6, Schedule 6 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be taken into account when making an assessment and setting the level of penalty.

The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the Council such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

### **Stage Five: Totality principle**

Objective: Where the offender is issued with more than one financial penalty, the Council will consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality. Where separate financial penalties are passed, the Council will be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that 'only one financial penalty under this section may be imposed on a person in respect of the same conduct'. The 2016 Act does permit the Council to issue a financial penalty and also apply for a rent repayment order. Where the financial penalty is issued the First Tier Tribunal must award the maximum rent repayment order.

The total financial penalty is inevitably cumulative. The Council will determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the Council. The Council will add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council will consider how to reach a just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management

offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;

- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The Council will add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council will consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- where the Council has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, if successful, the RRO award will be the maximum.

### **Rights to Make Representations**

Before imposing a financial penalty on a person under section 249A the Council must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the Council will decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 requires that the Council must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the Council about the proposed RRO.

The landlord has the right to make representations and any representation must be duly considered. The Council will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

### **Appeals**

Under Section 249A of the Housing Act 2004 recipients may appeal to the First-Tier Tribunal following a review of their written representations to the Housing Renewal Team. An appeal can only be made on specific grounds which are;

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

Full details of the appeals process can be found on the penalty notice issued.

### **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 refer the case to the County Court for an order of that Court.

### **Income from Civil Penalties**

The income from civil penalties will be retained by the Hasting Borough Council Housing Renewal Team and used to further statutory functions in relation to their enforcement activities in the private rented sector.

# Agenda Item 6

To Councillor Davies  
Chair of Overview and Scrutiny Committee

## ACCESS TO INFORMATION RULES

### KEY DECISIONS

#### RULE 20 – general exceptions.

**NOTICE** is hereby given under Rule 26 of the Access to Information Rules contained in the Council's Constitution that the following key decision will be taken at Cabinet on: -

Cabinet 4 <sup>th</sup> November 2019			
<u>Decision</u>	<u>Consultation and Timetable</u>	<u>Working Papers and files</u>	<u>Responsible Officer / Portfolio Holder</u>
To decide whether to purchase two commercial properties – will be included as Part 2	Negotiations have only recently been concluded and the need to conclude purchases requires an urgent decision by Cabinet	Part 2 report to Cabinet - contains commercially sensitive information that is exempt to public access	Peter Grace, Chief Financial Officer Peter Chowney, Leader of the Council

Signed



Chief Legal Officer

Dated

23<sup>rd</sup> October 2019

#### Note:

##### Rule 26.20 General Exception

If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 26.21 (special urgency), the decision may still be taken if:

- the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;
- the Chief Legal Officer has informed the chair of a relevant overview and scrutiny committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made; and
- the Chief Legal Officer has made copies of that notice available to the public at the offices of the Council; and

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# Agenda Item 7

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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