

For publication

Private Sector Housing Enforcement and Fees and Charges Policies

Meeting: Cabinet

Date: 19th March 2019

Cabinet portfolio: Health and Wellbeing

Report by: Assistant Director – Health and Wellbeing

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1.0 Purpose of report

- 1.1 Private sector housing has not previously had its own enforcement policy. However, Private Sector Housing Enforcement has changed significantly in recent years and therefore now requires its own bespoke enforcement policy. This policy will be in line with the Councils overarching Enforcement Policy.
- 1.2 The new Private Sector Housing Fees and Charges policy will also be introduced alongside the new Private Sector Housing Enforcement Policy.
- 1.3 The purpose of this report is to seek approval for the above listed reports.

2.0 Recommendations

- 2.1 Cabinet approves the Private Sector Housing Enforcement Policy.
- 2.2 Cabinet approves the Private Sector Housing Fees and Charges Policy.

3.0 Report details

- 3.1 The Private Sector Housing Team underwent a mini restructure in 2017. As a result of this restructure there has been a greater emphasis on improving standards within privately rented properties within the borough. This work is especially pertinent as private sector housing now accounts for approximately 78% of the Housing Stock within the borough. Although Chesterfield has many responsible landlords and letting agents, there are a number of criminal, rogue and irresponsible landlords operating within the borough who knowingly rent out accommodation that is unsafe, substandard or unlicensed.
- 3.2 Government has pledged to crack down on rogue landlords and has introduced a number of measures over the last two years to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:
 - Civil Penalties of up to £30,000 as an alternative to prosecution for certain offenses.
 - Extension of rent repayment orders, to cover illegal eviction, breach of a banning order, failure to comply with an Improvement Notice and certain other specified offences.
 - Database of Rogue Landlords and Property Agents who have been convicted of certain offences or received multiple civil penalties.
 - Banning Orders for the most serious and prolific offenders.
 - Extension to the Mandatory HMO licensing scheme.

3.3 The approach taken by Chesterfield Borough Council is based on the principle that no one who breaks the law should gain financial advantage over someone who does not.

3.4 **Private Sector Housing Enforcement policy**

3.4.1 The policy has been designed to provide an overview of the legislation and administrative processes with which the council will follow when taking action to ensure private sector housing in the borough is well maintained and safe.

3.4.2 The purpose of the policy is to ensure that:

- Tenants of private landlords and registered social landlords live in homes that are free of unacceptable hazards and risks to health and safety
- All Houses in Multiple Occupation are safe and well managed.
- All licensable Houses in Multiple Occupation are licensed and that all licensing conditions are met.
- Private housing is not left empty for an unreasonable amount of time or allowed to become a nuisance to the neighbourhood.
- Privately owned property and land does not present a statutory nuisance to other land owners and does not directly or indirectly present an unacceptable risk to public health and safety.
- The Council meets its statutory duties in relation to Private Sector Housing.

3.4.3 The Enforcement Policy confirms that decisions on the appropriate course of action will be made on a case by case basis, it explain what action the Council can take and describes the reasons why it may take that action. It also confirms that the Private Sector Housing Teams enforcement activity will be, proportionate, transparent, fair and objective.

3.5 **Private Sector Housing Fees and Charges Policy**

3.5.1 Section 49 of the Housing Act 2004 provides local authorities with the power to charge as a means of recovering certain administrative and other expenses incurred when undertaking the following enforcement actions under the Housing Act 2004:

- 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.

3.5.2 In order to support and compliment the Councils Private Sector Housing Enforcement Policy, the Council has decided that it is appropriate to implement a fee for taking the above listed enforcement actions. The fees and charges policy is designed to encourage good responsible behaviour and ensure that where possible the cost of enforcement is borne by the offender, rather than by the residents and responsible landlords of Chesterfield.

3.5.3 The Fees and Charges Policy also introduces a revised HMO licensing Fee, now a true reflection of the costs incurred in the HMO licensing process and also introduces the two stage HMO licensing fee, in accordance with the Provision of Services Regulations 2009.

3.5.4 The Council has a power to carry out Work in Default, where the perpetrator fails to comply with enforcement action undertaken by the Council. Previously the perpetrator has been required to pay the actual cost of the work in default and a 10% administrative charge to cover officer costs. Work in default can be a complex administrative and legal function to undertake and as such a 10% administrative charge does not usually cover the true cost of the officer time spent arranging and supervising the work. As such the new Fees and Charges Policy requires the perpetrator to pay the actual cost for the

officer time spent arranging the work in default of a legal notice. The Council will endeavour to recover any work in default costs at the earliest opportunity.

3.5.5 Whilst the Council have a duty to carry out certain functions, other functions that the Council carry out are discretionary, such as Immigration Compliance visits and reports. Whilst the Council is still prepared to carry out such inspections it will now implement a fee to cover the true cost of this area of work, including visiting the property and producing the report.

3.5.6 An annual review of the Fees and Charges Policy will take place, to adjust the fees already in place where necessary. However, given that the implementation of fees and charges for Private Sector Housing Services is a new requirement, the first review will take place in financial year 2020/21.

4.0 Human resources/people management implications

4.1 There will be no immediate additional cost to the Council in carrying out the enforcement duties as these are currently being met with existing resources within the Private Sector Housing Team. However, as the success of the service continues to grow alongside the continuing expansion of the private rented sector within the borough, so will the workload pressures on the team. A review of the needs of this service is due to take place shortly.

5.0 Financial implications

5.1 There are no additional financial implications outside existing budget provision associated with this report.

5.2 Any fees and charges received by Chesterfield Borough Council, will be received directly by the Private Sector Housing Team and will be used to offset some of the ongoing costs of running the service.

6.0 Legal and data protection implications

- 6.1 Both the Private Sector Housing Enforcement Policy and the Fees and Charges Policy are in line with powers delegated from government and are enforceable by law and are in accordance with the overarching Chesterfield Borough Council Enforcement Policy.
- 6.2 When the Local Authority has a statutory duty to provide a service, any charge to be imposed must be within any statutory fee range outlines in related legislation.
- 6.3 When the Local Authority has the “discretion” to provide a service any charge to be imposed must be made up of the reasonable costs of providing the service. The Local Authority is not entitled to make a profit from these charges

7.0 Consultation

- 7.1 No consultation has taken place in relation to either the Private Sector Housing Enforcement Policy or the Fees and Charges Policy.

8.0 Risk management

- 8.1 No potential risks associated with the proposed course of action.

9.0 Equalities Impact Assessment (EIA)

- 9.1 **Equalities Implications** – Initial equalities impact assessment has been carried out on Private Sector Housing Enforcement Policy 2019 and the Fees and Charges Policy 2019/20, and a full equalities impact assessment (EIA) is not considered to be needed. The preliminary EIA is attached in Appendix D.

10.0 Alternative options and reasons for rejection

- 10.1 Not to approve the Private Sector Housing Enforcement Policy or the Private Sector Housing Fees and Charges Policy. This may attract criticism and have an adverse effect on the reputation of the Council. It may also undermine the Council's efforts to prosecute or to defend appeals against statutory enforcement action.

11.0 Recommendations

- 11.1 Cabinet approves the Private Sector Housing Enforcement Policy.
- 11.2 Cabinet approves the Private Sector Housing Fees and Charges Policy.

12.0 Reasons for recommendations

- 12.1 To ensure that the Council is able to recover legitimately incurred costs for housing enforcement as set out in Housing Act 2004.
- 12.2 To ensure that the Council can meet its obligations that all properties let as residential dwellings and those in private ownership throughout the Borough are of good quality and are well managed.
- 12.3 The Private Sector Housing Enforcement Policy is designed to help deliver the Council's priorities identified in the Corporate Plan.

Decision information

Key decision number	857
Wards affected	All Wards
Links to Council Plan priorities	Priority – Improving quality of life for local people By 2023 we will: <ul style="list-style-type: none">• Improve the quality of private sector housing

Document information

Report author	Contact number/email
Sarah Watts	345144
Background documents These are unpublished works which have been relied on to a material extent when the report was prepared.	
<i>This must be made available to the public for up to 4 years.</i>	
Appendices to the report	
Appendix A	Private Sector Housing Enforcement Policy and Officer Authorisations
Appendix B	Banning Order Offences
Appendix C	Private Sector Housing Fees and Charges Policy
Appendix D	Equalities Impact Assessment