

Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016

Cabinet:	14 March 2019
Report Author:	Richard Hopkins, Private Sector Housing Manager
Portfolio Holder:	Cllr Lesley Ann Game, Cabinet Member for Housing and Safer Neighbourhoods
Status:	For Decision
Classification:	Unrestricted
Key Decision:	No
Ward:	All Wards

Executive Summary:

The council has a statutory duty to ensure that all private sector homes in the Thanet area are maintained in a safe condition and in pursuance of that duty it undertakes a range of enforcement activities. Owing to recent legislative changes, the council now has the power to impose a financial (civil) penalty of up to £30,000 as an alternative to prosecution for certain housing offences.

This report seeks the agreement of Cabinet to adopt a policy that would allow the council to impose such penalties for certain housing offences committed on or after 01 April 2019.

Recommendation(s):

That Cabinet:

1. Approves the adoption of the proposed "Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016" annexed to this report.
2. Delegates authority to the Head of Housing and Planning, in consultation with the Cabinet Member for Housing and Safer Neighbourhoods, to approve minor amendments to the policy.

CORPORATE IMPLICATIONS

Financial and Value for Money	<p>The Government introduced these new powers as it is keen to see more enforcement action taken by local authorities against rogue landlords. The financial implications for the council are therefore positive.</p> <p>At present, any fines arising from successful prosecutions are collected by the courts and passed to the Treasury. The council may be awarded some or all of its prosecution costs. If the proposed policy is adopted, the council will be entitled to retain all monies collected, with the only proviso being that they are used to fund private sector housing enforcement activities.</p>
Legal	<p>Section 126 and Schedule 9 of the Housing and Planning Act 2016 amended the Housing Act 2004 to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences. Financial penalties of up to £30,000 may now be imposed under section 249A of the Housing Act 2004.</p>

	<p>The Housing and Planning Act 2016 also introduced banning orders. A person who breaches a banning order commits an offence under section 21(1) and is liable on summary conviction to imprisonment, or to a fine, or to both. However, a local housing authority may instead impose a financial penalty of an amount not exceeding £30,000 under section 23.</p> <p>In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016. The Ministry of Housing, Communities & Local Government issued such statutory guidance in April 2018, namely: <i>Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities</i>.</p> <p>The guidance requires local housing authorities to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty, and the level of financial penalty it should impose in each case. Having regard to the statutory guidance, the council has developed the proposed policy.</p>
<p>Corporate</p>	<p>The Government expects local housing authorities to adopt a financial penalties policy to help them improve housing conditions in the private sector. While it is not mandatory to do so, the council could face criticism if it failed to adopt a policy.</p> <p>The proposed policy links to the following corporate priorities and values:</p> <p><u>Priority 1: A clean and welcoming environment</u></p> <p>A relevant offence could relate to a private landlord's failure to manage waste at a property they own. In the knowledge that financial penalties are an available enforcement option for the council, some landlords may be deterred from committing such offences.</p> <p><u>Priority 2: Supporting neighbourhoods</u></p> <p>Having the additional enforcement option of imposing financial penalties will assist the council in ensuring local residents have access to good quality housing that is safe and affordable.</p> <p><u>Value 1: Delivering value for money</u></p> <p>Any funds arising from the collection of financial penalties will help to ensure that the council's private sector housing enforcement services are delivered in the most cost effective and efficient way.</p>
<p>Equality Act 2010 & Public Sector Equality Duty</p>	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p>

	Please indicate which aim is relevant to the report.	
	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.	✓
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it.	
	Foster good relations between people who share a protected characteristic and people who do not share it.	
<p>Persons from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poor quality privately rented accommodation. Consequently, the council's enforcement activities often involves safeguarding the health, safety and welfare of persons with the protected characteristics of age and disability. Therefore, the enhanced enforcement capabilities provided by financial penalties will help to minimise disadvantage and contribute to the needs of many residents with protected characteristics.</p> <p>An Equality Impact Assessment has been undertaken and is annexed to this report.</p>		

CORPORATE PRIORITIES	
A clean and welcoming Environment	✓
Promoting inward investment and job creation	
Supporting neighbourhoods	✓

CORPORATE VALUES	
Delivering value for money	✓
Supporting the Workforce	
Promoting open communications	

1.0 Introduction and Background

- 1.1 Thanet District Council is a Local Housing Authority. As such, it has a statutory duty to keep private sector housing conditions in the Thanet area under review.
- 1.2 Our residents should have access to a home that does not have a detrimental effect on their health, safety or well-being. Therefore, the council uses a wide range of statutory powers to ensure that those responsible for private sector homes take the actions needed to prevent harm from occurring.
- 1.3 When in the public interest, it is sometimes appropriate for the council to punish those who contravene housing law. The sanction for such failures is usually prosecution in the criminal courts. However, the Housing and Planning Act 2016 has introduced the concept of financial (civil) penalties as an alternative to prosecution for certain housing offences.

1.4 However, before the council can issue financial penalties for certain housing offences, it must first have an adopted policy which is just and proportionate. The purpose of this report is to propose the adoption of such a policy.

2.0 The Current Situation

2.1 In the absence of an adopted policy, the council does not currently have the capability to impose financial penalties as an alternative to prosecution.

2.2 Nevertheless, the council is proactive in taking robust enforcement action when in the public interest to do so. As of January 2019, the council had successfully prosecuted 11 private sector landlords in the 2018/19 financial year (April 2018 to December 2018). The total amount of fines and victim surcharges handed down by the Magistrates' Court amounted to £41,820. This averages £3,802 per prosecution. Fines collected by the court are returned to the Treasury. The total amount of prosecution costs awarded to the council was £3,165, which averages £288 per case.

3.0 Relevant offences

3.1 Financial penalties may not be imposed as an alternative to prosecution for all housing offences investigated by the council. It is an option for nine specified offences.

3.2 The Housing and Planning Act 2016 introduced the option for eight pre-existing offences under the Housing Act 2004. They are:

- Failing to comply with an Improvement Notice;
- Failing to licence a house in multiple occupation ("HMO");
- Knowingly permitting the over-occupation of a licensed HMO;
- Failing to comply with the condition of an HMO licence;
- Failing to licence a house subject to selective licensing;
- Failing to comply with the condition of a selective licence;
- Failing to comply with an overcrowding notice in respect of a non-licensable HMO;
- Failing to comply with HMO management regulations.

3.3 The Housing and Planning Act 2016 also introduced a new offence of breaching a banning order. The power to impose a financial penalty for such an offence is available under that act.

3.4 The maximum financial penalty that can be imposed in respect of the above mentioned housing offences is £30,000. The actual penalty imposed in each case should reflect the severity of the offence, with the higher amounts reserved for the worst offenders.

3.5 The council cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate.

4.0 Options

4.1 There are three options available to the council, namely:

Option 1: To adopt the proposed “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” annexed to this report.

Option 2: To adopt the proposed “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” annexed to this report, subject to amendment.

Option 3: To not adopt the proposed “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” annexed to this report.

- 4.2 In the event that the policy is adopted, with or without amendment, its ongoing ability to deliver just and proportionate sanctions will remain under review. While not expected, it is possible that minor anomalies arise in its application. It is therefore proposed that authority to approve minor amendments to the policy is delegated to the Head of Housing and Planning, in consultation with the Cabinet Member for Housing and Safer Neighbourhoods.

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Reporting to:	Bob Porter, Head of Housing and Planning

Annex List

Annex 1	Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016
Annex 2	Equality Impact Assessment

Background Papers

Title	Details of where to access copy
Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities	Available at: https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016

Corporate Consultation

Finance	Matthew Sanham, Interim Head of Financial Services
Legal	Tim Howes, Director of Corporate Governance and Monitoring Officer
Communications	Hannah Thorpe, Head of Communications