

Time started 12:00  
Time ended 12:34

## **Housing and Urban Renewal Cabinet Member Meeting 11 October 2017**

Present: Councillor Hussain

In Attendance: Mike Kay (Head of Environmental Health and Licensing), Rob Rylott (Housing Standards Team Leader), Clare Harrison (Democratic Services Manager),

Members in Attendance: Councillor Grimadell

### **06/17 Apologies**

There were no apologies.

### **07/17 Late Items**

There were no late items.

### **08/17 Declarations of Interest**

There were no declarations.

### **09/17 Minutes of the Previous Meeting**

The minutes of the meeting held on 11 July 2017 were agreed as an accurate record.

### **10/17 The Housing and Planning Act 2016 – new provisions to deal with rogue landlords**

The Cabinet Member for Housing and Urban Renewal considered a report of the Strategic Director for Communities and Place to endorse the use of the new housing enforcement provisions contained in the Housing and Planning Act 2016 by the Housing Standards Team as set out in the report.

It was reported that the Housing and Planning Act 2016 (the Act) contains further provisions to deal with rogue landlords and that although some provisions are already in force, others are yet to be implemented. The Cabinet Member was informed that the scope of Rent Repayment Orders has been extended to cover situations such as a landlord's failure to comply with an Improvement Notice or Prohibition Order. This became effective on 6 April 2017.

It was further reported that these provisions include the power to ban landlords, letting agents and property managers from operating if they have been convicted of banning order offences. It was originally expected that this would likely be available to local authorities in October 2017, but that this had been delayed and that a new date was yet to be advised. The Cabinet Member was further informed that the report would still seek the approval to use this power as and when it becomes available.

The Secretary of State has been given power to make Regulations covering electrical safety in all privately rented property and the test of fitness to run a licensable HMO is also being strengthened through legislation. However, there currently no information as to when these might be made.

The Cabinet Member approved the recommendation as printed and agreed an additional recommendation to approve the use of powers to ban landlords, letting agents and property managers from operating if they have been convicted of banning order offences as and when this becomes available.

**It was resolved to:**

- 1) To endorse the use by the Housing Standards Team of the new housing enforcement provisions contained in the Housing and Planning Act 2016 as set out in the report; and**
- 2) Approve the use of powers to ban landlords, letting agents and property managers from operating if they have been convicted of banning order offences as and when this becomes available to the Council.**

11/17        The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 - Penalty Charge Notices

The Cabinet Member for Housing and Urban Renewal considered a report of the Strategic Director for Communities and Place to endorse the Government's guidance and in circumstances where letting agents or property managers have failed to join a redress scheme within a 7 day grace period, approve the imposition of a fine of £5,000 unless there are extenuating circumstances, in which case a lower fine will be considered.

It was reported that bespoke legislation came into force in October 2014 which made it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme. It was further reported that the Council can impose a penalty charge notice of up to £5,000 where it is satisfied, that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined. It is proposed that agents and property managers upon

discovery that they are not a member of an approved scheme are given a grace period of 7 days in which to join.

The Cabinet Member was informed that the Council must serve a 'notice of intent' prior to imposing the penalty charge. If a written representation or objection to the 'notice of intent' is received, the Case Officer, Team Leader and Head of Service will meet to decide whether to impose the fine or whether to reduce it from the £5,000. The Head of Service shall make the final decision. If a penalty is still imposed the Council will issue a written 'final notice' demanding payment within 28 days. An appeal can be made against this notice to an independent First-tier Tribunal consisting of a body of housing professionals and a legally qualified professional.

The Cabinet Member approved the recommendation as printed.

**It was resolved to endorse the Government's guidance and in circumstances where letting agents or property managers have failed to join a redress scheme within a 7 day grace period, approve the imposition of a fine of £5,000 unless there are extenuating circumstances, in which case a lower fine will be considered.**

## 12/17 Civil penalties as an Alternative to Prosecution under the Housing and Planning Act 2016

The Cabinet Member for Housing and Urban Renewal considered a report of the Strategic Director for Communities and Place to endorse the use of civil penalties as an alternative to prosecution for certain offences under the Housing Act 2004 and the process for determining the level of penalty.

It was reported that the Housing and Planning Act 2016 introduced civil penalties of up to £30,000 from 6 April 2017 as an alternative to prosecution for certain offences under the Housing Act 2004. It was reported that the Government's Department for Communities and Local Government (DCLG) have published statutory guidance for local housing authorities which recommends certain factors that should be taken into account when deciding on the level of a civil financial penalty. It further recommends that local authorities develop and document their own guidance on determining the appropriate level of financial penalty in a particular case.

The Cabinet Member was informed that in light of this, guidance to officers in the Housing Standards Team has been developed on how to make decisions on the level of a financial penalty under the 2016 Act. In developing this guidance, regard was taken of certain parts of the 'Magistrates' Court Sentencing Guidelines' and discussions were also held with neighbouring Local Authorities. The Cabinet Member was also informed that in the interests of transparency and openness, the detail of this guidance will be presented at landlord meetings to be held in the near future. It was also reported that the guidance will be under constant review so that amendments can be made as and when appropriate.

The Cabinet Member received advice from the Democratic Services Manager and resolved to include a recommendation to delegate the approval of changes made to the 'Process for determining the level of a civil penalty for offences under the Housing Act 2004' document to the Head of Environmental Health and Licensing in consultation with the Cabinet Member for Housing and Urban Renewal.

The Cabinet Member queried the likely frequency of the application of financial penalties and was informed that the process won't be used for every inspection as the Housing Health and Safety Rating System will still be in place and will be sufficient to deal with most inspections where there has been no offence committed. It was reported that the process will only be implemented where an offence has been committed and will be used to determine the level of penalty. The Cabinet Member was informed that this will be based upon: the level of harm and culpability of the offender; aggravating and mitigating factors; costs to the Council; and assets and income of the offender.

**It was resolved to:**

- 1) Endorse the use of civil penalties as an alternative to prosecution for certain offences under the Housing Act 2004;**
- 2) Endorse the process for determining the level of penalty set out at Appendix 2; and**
- 3) Delegate the approval of required changes to the 'Process for determining the level of a civil penalty for offences under the Housing Act 2004' document to the Head of Environmental Health and Licensing in consultation with the Cabinet Member for Housing and Urban Renewal.**

MINUTES END