

Report No.
ES20076

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: PORTFOLIO HOLDER FOR PUBLIC PROTECTION & ENFORCEMENT

FOR PRE-DECISION SCRUTINY BY THE PUBLIC PROTECTION AND ENFORCEMENT POLICY DEVELOPMENT & SCRUTINY COMMITTEE

Date: 16th March 2021

Decision Type: Non-Urgent Executive Key

Title: DRAFT PRIVATE RENTED SECTOR HOUSING ENFORCEMENT POLICY 2021

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Chief Officer: Colin Brand Director of Environment and Public Protection

Ward: (All Wards)

1.0 Reason for report

- 1.1 To present the Council's draft Private Rented Sector Housing Enforcement Policy 2021 (draft PRSHEP 2021 Appendix 1) for public consultation. The Council has legal duties to ensure that accommodation in the private rented sector meets minimum housing management, health and safety standards and to deal with landlords and letting agents that fail to meet those standards.
 - 1.2 In February 2020 Public Protection refreshed their overarching enforcement policy, and this is the parent policy that sets out the principles that Officers of the services within Public Protection will apply when undertaking regulation enforcement activities. However, given the range of enforcement options relating to the housing sector, a supplementary enforcement policy (Appendix 1) for this area is warranted; for example, the Housing and Planning Act 2016 brought in a number of new enforcement tools, including Civil Penalty Notices as an alternative to prosecution. The measure was introduced to meet the Government's aim of clamping down on 'rogue' landlords and letting agents and reduce offending. Before these penalties can be applied, it is a requirement to publish a policy that demonstrates the decision making that will be taken into account (Appendix 2). The same applies to the penalties that can be applied under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015), which requires that a statement of intent be published (Appendix 3).
 - 1.3 This draft PRSEP 2021 presents the option of civil penalties, and it further provides:
 - a transparent rationale as to how the Private Rented Sector Housing Team (PRSH Team) provides the service to different tenures (Appendix 1 section 3),
 - the circumstances it takes into account should a service be withdrawn (Appendix 1 section 4), and
 - the discretion that will be used when considering formal enforcement action against Category 2 Hazards pertaining to (amongst other issues) uncontrolled fire and smoke (Appendix 1 section 5.12 and 3.10 below)
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2.0 Recommendations

The Portfolio Holder for Public Protection and Enforcement is asked to:

- 2.1 Agree that the draft Private Rented Sector Housing Enforcement Policy 2021 (PRSEP) attached to this report (Appendix 1), and the subsequent appendices for Civil Penalties Policy imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016 at Appendix 2 and the Statement of Principles for the determining of financial penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Appendix 3) be approved for 6 week public consultation (1st April – 13th May 21).
- 2.2 Agree that delegated authority be given to the Director of Environment and Public Protection, in consultation with the Portfolio Holder for Public Protection

and Enforcement to make amendments to the Policy, following the consultation should it be required.

- 2.3 Present the results from the consultation and the finalised policy at the next PP&E PDS committee meeting on 22nd June 2021.
- 2.4 Recommend the adoption of the finalised enforcement policy by the Portfolio Holder on the 22nd June 21.
- 2.5 Agree that delegated authority be given to the Director of Environment and Public Protection, in consultation with the Portfolio Holder for Public Protection and Enforcement to make minor amendments to the Policy post adoption, should it be required.

Impact on Vulnerable Adults and Children

1. Summary of Impact: Housing is an essential basic need for all, and the private rented sector (PRS) plays an increasingly important role in housing people. Conditions in this sector are not always at an acceptable standard, and poor conditions can compromise health and wellbeing, and have a disproportionate impact on the vulnerable tenants they house. While conditions are improving, thanks to existing legislation and inspection regimes, there is still more to be done. The Housing and Planning Act 2016 extends the powers that local councils have to take enforcement action to improve standards in their local PRS, and crack down on rogue landlords, thus improving standards in this sector. This will have a positive impact on all tenants and will protect the most vulnerable.

Corporate Policy

1. Policy Status: New Policy:
2. BBB Priority: Excellent Council Quality Environment Safe Bromley Regeneration:

Financial

1. Cost of proposal: Not Applicable:
2. Ongoing costs: Not Applicable
3. Budget head/performance centre: Public Protection – Housing Enforcement
4. Total current budget for this head: £101k
5. Source of funding: Existing controllable revenue budget 2020/21

Personnel

1. Number of staff (current and additional): No additional staffing anticipated due to the policy.
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory Requirement:
2. Call-in: Not Applicable:

Procurement

1. Summary of Procurement Implications: Not Applicable

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough wide impact on those people living in private rented sector housing.#

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Borough Wide
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 The London Borough of Bromley ('The Council') is responsible for enforcing a wide range of statutory provisions relating to private sector housing and environmental conditions affecting health, wellbeing, and safety, these include:
 - Reducing the number of properties with serious risks to health and safety
 - Improving energy efficiency, warmth of homes and help reduce fuel poverty
 - Improving standards in Private Sector (PS) and Private Rented Sector (PRS) accommodation
 - Improving the standards in HMOs (houses in multiple occupation).
- 3.2 Bromley has a lower proportion of homes managed by Registered Social Landlords (RSLs) than anywhere else in London (14%, compared to an average of 23%), furthermore, home ownership is high (73% of housing is privately owned, compared to an average of 50% across London). Whilst the private rented sector (PRS) has grown steadily in recent years, it too remains relatively small – 14% of all housing, compared to an average of 27% across London. Notwithstanding this, the PRS plays an important part in the housing provision within Bromley, it often accommodates the most vulnerable of our residents, and whilst it is recognised that the majority of this housing is in good condition and well managed, there are landlords who allow their properties to fall below acceptable standards, and it is within sector that the majority of enforcement takes place.

3.3 The draft PRSHEP 21 (Appendix 1) is specific to the investigation of housing conditions and enforcement action taken by the PRSH Team for this sector. Notwithstanding this, it is intended to be read in conjunction with the overarching Public Protection Enforcement Policy 2020 (PPEP 2020), that was developed with regard to the Regulators' Compliance Code (RCC). The RCC requires a risk-based approach and proportionality to regulatory enforcement, together with relevant policy and guidance, and these principles also apply within this draft PRSHEP 21. As such, the initial approach will still be to secure and encourage compliance through assistance education where possible and appropriate.

3.4 The purpose of the proposed PRSEP 21 is to set out:

- The areas of legislation used by the PRSH Team
- The service offer provided to different tenure groups (Appendix 1 section 3)
- The situations whereby the service may not be provided (Appendix 1 section 4.2)
- The discretion that will be used when considering formal enforcement action against Category 2 Hazards pertaining to (amongst other issues) uncontrolled fire and smoke (Appendix 1 section 5.12 and paragraph 3.10 below)
- The circumstances in which a financial penalty will be used, and the various factors taken into consideration in setting the appropriate penalty (Appendix 1 section 6 and Appendix 2 and 3).

Service Offer to Tenure Groups

3.5 The enforcement of housing legislation is tenure neutral, however, generally the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not always able to do so. For this reason, the Council proposes that it is appropriate for its powers to be used according to tenure, as clearly set out in the draft PRSEP 21 (Appendix 1 Section 3). In brief, save for exceptional circumstances that pertain to the vulnerability of the occupier/tenant, or imminent life and limb issues, the following enforcement response will be applied to the following tenure groups:

- **Owner Occupiers:** The Council will not generally take enforcement against this tenure (Appendix 1 section 3.2);
- **Private Tenants:** Enforcement for this tenure group will only commence once tenants have notified their landlords of the problem, and given them an opportunity to rectify the problem, in accordance with legislation (Appendix 1 section 3.3);
- **Registered Social Landlords (“RSL”):** This service will not normally take action against an RSL, unless the problem in question has been properly reported to the RSL, and they have failed to take the appropriate action and the tenant has been to the Housing Ombudsman without a satisfactory result (Appendix 1 Section 3.4);

- **Leaseholders:** Other than in exceptional cases (on a case by case basis), the Council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves.

Situations Where the Service May Not be Provided

- 3.6 There may be occasions where an investigating officer cannot substantiate the complaint. When this arises, the person who has raised the issue will be informed that Council will not take any further action.
- 3.7 There are other circumstances that may result in the cessation of an investigation, or the withdrawal of service, these are listed in Appendix 1 section 4.2 and include (but are not limited to) situations where:
- The landlord of the property has initiated eviction proceedings where there has been a breach of tenancy agreement
 - The tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, for works to be carried out
 - The tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
 - A tenant does not want their present accommodation to be brought up to standard, and the only reason for contacting the Private Rented Sector Housing Enforcement Team is to secure rehousing
 - The tenant(s) have been aggressive, threatening, verbally or physically abusive or shown racist behaviour towards officers, or has made spurious and/or unsubstantiated allegations.
 - The tenant(s) make repetitive complaints and allegations which disregards the responses the Council has supplied in previous correspondence to the complainant or their representative(s).

HOUSING, HEALTH AND SAFETY RATING SYSTEM (HHSRS)

- 3.8 HHSRS is set out in Part 1 of the Housing Act 2004 (the Act), and the Council will base enforcement decisions in respect of residential premises on assessments made under that system. It is a risk-based approach consisting of 29 hazards. In undertaking an inspection of a dwelling, an Environmental Health Officer (or other suitably qualified Officer), undertakes an assessment of the potential risks to health and safety from any deficiencies identified in a dwelling. The officer will then determine whether any enforcement action is required depending upon the severity of the hazard, or whether there is a duty or discretion to act.
- 3.9 In the case of hazards determined under the HHSRS, the Council has a statutory duty to act in the case of Category 1 hazards, and a power to act in the case of Category 2 hazards (Appendix 1 Section 5).
- 3.10 This draft PRSEP 21 proposes that the Council will exercise its power to deal with Category 2 hazards formally for those hazards that it considers to be significant. Whilst it is not possible to be prescriptive, factors that may be

considered to assist in the determination of which hazards are deemed to be significant include one or more of the following:

- Whether the hazard pertains to threats from uncontrolled fire (and smoke);
- Whether there are multiple hazards within the property;
- Whether there is a vulnerable individual or group in occupation or likely to be in occupation.
- Whether or not it is reasonable to assume the conditions are likely to deteriorate in the next 12 months.

Financial Penalties

3.11 The Government announced the introduction of civil penalties (under the Housing and Planning Act 2016) for certain housing offences with a press release entitled: “Tougher measures to target rogue landlords – New rules will help crackdown on rogue landlords that flout the rules and improve safety and affordability for renters”. The aim is for more enforcement action to be taken against the small minority of landlords and letting agents who neglect their responsibilities and do not comply with the legislation.

3.12 These new powers were introduced to help local authorities take more enforcement action against rogue landlords; the civil penalties can be applied as an alternative to prosecution for certain housing offences, and these give the option to impose a penalty of up to £30,000 depending on the offence.

3.13 Local authorities are entitled to retain any monies collected, provided they are used to fund private sector housing enforcement functions. However, before any financial penalties can be issued, statutory guidance requires the council 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.

3.14 In order that the Council can impose these penalties, it is necessary to publish the decision-making process in determining them. Appendix 2 – Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016 sets out how the Council will consider applying penalties, and lists the offences for which a penalty can be imposed, these include:

- Failing to comply with an Improvement Notice
- Failing to licence a house in multiple occupation (“HMO”)
- Failing to comply with the condition of an HMO licence
- Breaching a banning order

Consultation

3.15 As required by the Regulators’ Code, Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce, as such; it is proposed that a public consultation exercise be undertaken through publishing the draft PRSHEP 21 and associated appendices on the Council’s website and inviting comments.

3.16 Details of any representations and the result of the consultation will be reported to PP&E PDS on the 22nd June 2021, and the proposed final report will also be presented at this meeting.

3.8 The timetable for consultation is below:

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| Draft Policy to PP&E PDS | 16 th March 21 |
| Public Consultation | 1 st April – 13 th May 21 |
| Consideration of Policy in response to consultation and presentation of proposed final policy | 22 nd June 21 |
| Adoption of Policy by Portfolio Holder | 22 nd June 21 |

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 Housing is an essential basic need for all, and the private rented sector plays an increasingly important role in housing people. Conditions in this sector are not always at an acceptable standard, and poor conditions can compromise health and wellbeing, and have a disproportionate impact on the vulnerable tenants they house. While conditions are improving, thanks to existing legislation and inspection regimes, there is still more to be done. The Housing and Planning Act 2016 extends the powers that local councils have to take enforcement action to improve standards in their local PRS and crack down on rogue landlords. Improving standards in this sector will therefore have a positive impact on all tenants and will protect the most vulnerable.

5. POLICY IMPLICATIONS

5.1 Regulation of housing standards in the PRS is highly beneficial improving health and wellbeing outcomes for all those living in this type of tenure. It will also assist in providing a level playing field ensuring landlords complying and often exceeding minimum standards are not financially undercut by others entering the sector offering unsatisfactory rented accommodation. The Policy will also assist landlords in this sector to understand their obligations and ensure the Council behaves in a transparent and consistent manner.

5.2 The draft PRSHEP 21 supports the aims of the Council's Housing Strategy 2019 – 2029 as it seeks to improve standards within this sector.

6. FINANCIAL IMPLICATIONS

6.1 It is not envisaged that the current level of enforcement activity is likely to increase because of the creation of this policy. The existing staff within the Private Rented Sector Housing Team will be responsible for applying the policy

in the course of their day to day work. and therefore no additional costs are anticipated.

6.2 The introduction of Civil Penalty Notices will generate a means of recovering the Council's costs regarding this work stream as well as a deterrent for rogue landlords. Therefore, although potential penalties for non-compliance are significant, service managers anticipate that landlords are unlikely to remain non-complaint and this is not anticipated to result in a significant new source of revenue income. Any penalties that are levied would be retained by the Council and this activity will be kept under review as part of the budget monitoring process.

7. LEGAL IMPLICATIONS

7.1 The policy is intended to support the enforcement activities of the Private Rented Sector Housing Enforcement Team.

7.2 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to use enforcement powers and impose a financial penalty as an alternative to prosecution for certain housing offences. The law allows a maximum financial penalty of £30,000 to be imposed per offence. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ("the Regulations") also provide the ability for Officers to serve a notice should the required duties within the Regulations be contravened.

7.3 The draft policy will be subject to public consultation and officers will consider representations made.

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| Non-Applicable Sections: | Procurement Implications Personnel Implications |
| Background papers | House of Commons Library – Private Rented Sector 2017 https://commonslibrary.parliament.uk/research-briefings/cbp-7328/ |