

Southend-on-Sea City Council

Report of Executive Director Neighbourhoods &
Environment John Burr

To

Cabinet

On

12 January 2023

Report prepared by: Elizabeth Georgeou, Head of Regulatory
Services

Agenda
Item No.

Private Rented Sector Housing Enforcement Policy 2023

Relevant Scrutiny Committee: Policy and Resources

Cabinet Member: Councillor Ian Gilbert – Economic Recovery, Regeneration and
Housing

Cabinet Member: Councillor Martin Terry- Cabinet Member for Public Protection

Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 To present Southend on Sea City Council's ('The Council') Private Rented Sector Housing Enforcement Policy 2023 (PRSHEP 2023) (attached as Appendix 1) for adoption following the public consultation.
- 1.2 The Council has legal duties to ensure that accommodation in the private rented sector meets minimum housing management, health and safety standards, and further to deal with landlords and letting agents that fail to meet those standards.
- 1.3 In 2021, Neighbourhoods and Environment refreshed their overarching Enforcement Policy, this is the parent policy that sets out the principles that Officers of the services within Public Protection apply when undertaking regulation enforcement activities. However, given the range of enforcement options relating to the private rented housing sector, and the pressures within that area, a supplementary enforcement policy is warranted.
- 1.4 With the above in mind, this PRSHEP 2023 provides:
 - A transparent rationale as to how Regulatory Services provides the service to different tenures.
 - The circumstances it considers should a service be withdrawn.
 - The discretion that will be used when considering formal enforcement action against Category 2 Hazards.
 - The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the Electrical Safety Standards Regulations').
 - A statement of principles, so that the penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015) can be applied.
 - The use of civil penalties where housing legislation provides for their use.

2. Recommendations

That Cabinet:

- 2.1 Carefully consider the consultation summary at Appendix 2.
- 2.2 Agree that the Private Rented Sector Housing Enforcement Policy 2023 attached to this report (Appendix 1), be adopted.
- 2.3 Agree that delegated authority be given to the Executive Director of Neighbourhoods and Environment, in consultation with the Cabinet Members for Economic Recovery, Regeneration and Housing and Public Protection, to make minor modifications and updates to the Policy as required.

3. Background

- 3.1 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);
 - Improving the standards in properties that are required to be licenced within the Selective Licensing area.
- 3.2 The PRS in Southend is growing steadily and plays an important part in the housing provision within the Council. This sector 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 PRSHEP 2023 is specific to the investigation of housing conditions and enforcement action taken by Regulatory Services for this sector. Notwithstanding this, it is intended to be read in conjunction with the overarching Enforcement Policy 2021 (ERP 2021), 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 Policy. 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 PRSHEP 2023 is to set out in para 1.4 above.

Service Offer to Tenure Groups

- 3.5 The enforcement of housing legislation is tenure neutral, however, 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 PRSEP 2023.
- 3.6 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;
 - 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;
 - 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;
 - 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

- 3.7 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.
- 3.8 There are other circumstances that may result in the cessation of an investigation, or the withdrawal of service, these are listed in Appendix 1 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 Regulatory Services 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)

- 3.9 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.
- 3.10 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.
- 3.11 This PRSHEP 2023 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.

Civil Penalties for Housing Offences

- 3.12 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.
- 3.13 The Government has also legislated for the use of civil penalties for other housing legislation.
- 3.14 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.
- 3.15 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.

- 3.16 In order that the Council can impose these penalties, it is necessary to publish the decision-making process in determining them. The Civil Penalties Policy for Housing Enforcement was adopted by Cabinet in February 2022, and this set out how financial penalties would be imposed under the Housing Act 2004 and the Housing and Planning Act 2016. However, the contents of this Policy, and power to use civil penalties for other specific housing legislation, have now been incorporated within the PRSHEP 2023, so as to have all enforcement elements contained in one policy document.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the Electrical Safety Standards Regulations).

- 3.16 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 made under the Housing and Planning Act 2016 requires electrical installations to be safe and periodically inspected. The Council can impose a financial penalty of up to £30,000 for failing to do so. This Policy will be used to determine the financial penalty.
- 3.17 As mentioned in para 3.15 above, it is necessary to publish the decision-making process in determining this type of penalty, and the Council published the Civil Penalties Policy in February 2022.

Statement of Principles Under the Carbon Monoxide Alarm (England) Regulations 2015

- 3.18 The Council is required under the Smoke & Carbon Monoxide Alarm (England) Regulations 2015 to prepare and publish a statement of principles which it proposes to follow when deciding on the penalty charge amount for failing to comply with a remedial notice served under these regulations.
- 3.19 This statement sets out the principles that the Council will apply in exercising powers to impose a financial penalty for failing to meet certain legislative requirements. The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in a remedial notice within the required timescale.

4. Other Options

- 4.1 Option 1 – To adopt the Policy in part rather than in full. The Policy is written in such a way that it targets the Council’s resources to the areas of greatest demand whilst ensuring that statutory responsibilities are still met with respect to other tenure groups. In addition, it clearly sets out how the Council will exercise its power to deal with significant Category 2 hazards, which includes threats from uncontrolled fire (and smoke), which seeks to protect tenants.
- 4.2 There is a risk that part adoption of the Policy will dilute the full effects and have an impact on Regulatory Service’s ability to deliver, and ultimately protect those in greatest need.

- 4.3 Option 2 – To reject the Policy and fail to adopt it.
- 4.4 The risks are as above in para 4.3, with the addition of not providing a transparent and informative approach on enforcement.

5. Reasons for Recommendations

- 5.1 To ensure that all landlords and managing agents renting out accommodation in the private rented sector are dealt with in a fair, transparent and consistent manner.
- 5.2 To target the Council's resources to the areas of greatest demand whilst ensuring that statutory responsibilities are still met with respect to other tenure groups.
- 5.3 To strengthen the enforcement response by formally enforcing against substantial Category 2 hazards.
- 5.4 To set out how the Council intends to apply penalties under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the Electrical Safety Standards Regulations).
- 5.5 To publish a statement of principle, so as to apply the financial penalties under the Carbon Monoxide Alarm (England) Regulations 2015

6. Corporate Implications

- 6.1 The Council has a Corporate Plan 2022 – 2026 whose aims are to have the City:
- that is strong and prosperous
 - with a good quality of life
 - rising to the climate change challenge
 - delivering genuinely affordable housing
- 6.2 The PRSHEP 2023 seeks to deliver outcomes that impact positively on our residents who live within the sector, through improvements in housing conditions, which in turn impact positively on health and wellbeing, as well as the amenity as a whole. As such, the Policy assists the Council in achieving the Corporate Plan 2022-2026 and makes a particular specific contribution a good quality of life.
- 6.3 Additionally, a by-product of achieving the above aims, is that the prosperity of the City is improved.

6.2 Financial Implications

- 6.2.1 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 Regulatory Services will be responsible for applying the policy in the course of their day-to-day work. and therefore no additional costs are anticipated.

6.3 Legal Implications

- 6.3.1 The Policy is intended to support the enforcement activities of the Regulatory Services Team.
- 6.3.2 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.
- 6.3.3 Civil penalties under The Housing and Planning Act 2016 may only be imposed for offences committed after 6th April 2017 and regard must be had to the Statutory Guidance under Schedule 9(12) of the said Act in the exercise of their functions.

6.4 People Implications

- 6.4.1 This paper’s recommended approach has no specific people implications.

6.5 Property Implications

- 6.5.1 This paper’s recommended approach has no specific property implications.

6.6 Consultation

- 6.6.1 As required by the Regulators’ Code, Regulators undertook a consultation between 5 September 2022 and 9 December 2022.
- 6.6.2 Analysis of the results of the consultation are included as Appendix 2 and the unredacted consultation responses have been shared in full with the Cabinet. The results of the consultation were that the majority of those that responded were in favour of the priorities detailed in the Private Rented Sector Housing Enforcement Policy 2022. Where comments were made, which relate to the Policy, clarification will be provided on the Council’s internet pages.

6.7 Equalities and Diversity Implications

- 6.7.1 The Council must have due regard to any Public Sector Equality Duty under the Equality Act 2010 when carrying out any functions including developing any policies that may have any effect on any protected persons, in particular the duty to eliminate discrimination, harassment and victimisation and advance equality of opportunity and fostering good relations. Local Authorities also have a duty under the Human Rights Act 1998, when carrying out any function, not to act incompatibly with rights under the European Convention for the protection of Fundamental Rights and Freedoms.

The Council wants to ensure that it provides services and strategies which address the needs of all members of the community. As such the Council conducts Equality Impact Assessments as strategies, policies and services are developed to:

- Consider issues relating to age, disability, gender, gender reassignment, race, religion & belief and sexual orientation;
- Obtain a clearer understanding of how distinct groups may be affected;

- Identify changes which may need to be built into an initiative as it is developed;
- Comply with legislative requirements & identify good practice.

6.7.2 The Equalities Assessment demonstrated positive impacts on the adoption of this Policy with respect to age and those living in deprived areas and did not demonstrate any negative impacts on any of the protected designations.

6.7.3 By working on the four priority areas identified, there will not be unlawful discrimination or contradictions under the European Convention of Human Rights; moreover, the overall impact of the Policy is to improve the housing standards for residents within this sector. Properties are inspected against statutory requirements and in conjunction with enforcement standards, to ensure equal and fair treatment for all. There is no evidence to suggest that the Policy would have a negative impact on any vulnerable group.

6.8 Risk Assessment

6.8.1 A lack of enforcement is damaging to the reputation of the Council, and risks giving the perception that it is acceptable to rent substandard and unsafe accommodation, moreover, failure to deal with management, health and safety breaches in the private rented sector could leave the Council exposed to legal action.

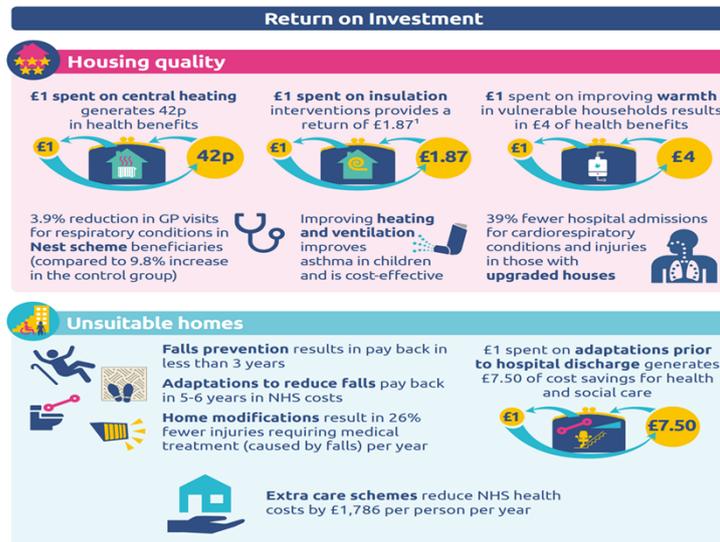
6.8.2 In addition to the above, there is a risk of legal challenge if the processes within the proposed Policy are not followed correctly, which could result in First Tier Property Tribunals overturning notices and penalty fines. These legal, reputational and financial risks will be mitigated through officers receiving training and updates and working closely with the legal services team.

6.9 Value for Money

6.9.1 Improvements in housing conditions supports the wider determinants of health, which in turn affords psychological and fiscal benefits to tenants, health services, society and the economy.

6.9.2 The infographic in figure 1 below, demonstrates the return on investment (ROI) achieved from investment in housing quality, and unsuitable homes.

Figure 1: Return on Investment



6.9.3 In addition to the ROI realised in partner services, the structural (internally or externally) improvements achieved from the service on enforcement Notices, has the potential to boost the local economy, through the primary use of local contractors and traders. Moreover, reinvestment by the landlord into their asset, will likely lead to an increase of its inherent value, and further improves the amenity of an area.

6.10 Community Safety Implications

6.10.1 Offences covered by this Policy include criminal offences and the investigation and enforcement of legislation. This Policy will assist with reducing crime and disorder.

6.11 Environmental Impact

6.11.1 Whilst the Electrical Safety Standards Regulations are primarily focused on the electrical safety of rented properties, the energy efficiency is likely to be indirectly improved if the electrical installations are modern and effectively optimised from a safety perspective. It is, therefore, reasonable to conclude that where enforcement powers are used to ensure compliance with the Electrical Safety Standards Regulations, there will be a positive climate outcome, particularly in relation to fuel consumption. There is a strong likelihood of significant improvements for tenants on low incomes, with associated co-benefits such as improved physical health and mental wellbeing. Having said this, it is acknowledged that enforcement of the Electrical Safety Standards Regulations will not generate any potential opportunities for carbon offsetting or specific measures to improve resilience to climate related extreme weather events.

7. Background Papers

7.1 The Civil Penalties Policy for Housing Enforcement adopted by Cabinet 22 February 2022 Item 734.

7.2 Environment and Regulatory Enforcement Policy 2021 (ERP 2021) Cabinet 14 January 2021 Item 740.

8. Appendices

Appendix 1 Private Rented Sector Housing Enforcement Policy 2023;
Appendix 2: Consultation Outcome,
Appendix 3 – Equalities Impact Assessment