

Briefing Note of:	Head of Environmental Health
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Key Decision:	No
Report Track:	HPDC 18/3/2014

HOUSING POLICY DEVELOPMENT COMMITTEE**18 MARCH 2014****CONSULTATION: REVIEW OF PROPERTY CONDITIONS IN THE PRIVATE RENTED SECTOR****1 Purpose of Briefing note**

- 1.1 To determine the Council's response to a consultation paper issued by the Department for Communities and Local Government on property conditions in the private rented sector.

2 Recommendation

- 2.1 That the Council's response to the Department for Communities and Local Government consultation paper "Review of Property Conditions in the Private Rented Sector" as set out in Appendix 1 is agreed.

3 Key Issues and Reason for Recommendation

- 3.1 The Department for Communities and Local Government have published a consultation paper on property conditions in the private rented sector.
- 3.2 The consultation paper invites comments on the proposals on the most appropriate measures to tackle rogue landlords, without negatively impacting on good landlords.
- 3.3 A proposed response to the consultation paper has been formulated and this is attached at Appendix 1.

4 Relationship to Corporate Priorities

- 4.1 The service aim to “improve the quality and availability of Private Sector Housing” forms part of the Housing Portfolio section within the agreed 2014-15 “Place” Priority Delivery Plan.

5 Report Detail**The Consultation Paper**

- 5.1 The Department for Communities and Local Government has published a consultation paper on property conditions in the private rented sector.
- 5.2 The consultation paper invites views on a number of questions posed under a series of subject areas detailed below which forms the first stage of the Review:-
- Rights and responsibilities of tenants and landlords
 - Retaliatory eviction
 - Rent Repayment Orders
 - Safety conditions
 - Licensing of rented housing
 - Housing Health & Safety Rating System
- 5.3 The consultation paper can be viewed on the DCLG website www.gov.uk/dclg, whilst hard copies are available from Member Services. Responses to the consultation paper must be submitted by 28 March 2014.

The Issues

- 5.4 The consultation recognises that the overwhelming majority of landlords are reputable and provide decent and well maintained homes and wishes to support these landlords to continue to provide a good service and safe homes for their tenants.
- 5.5 However it acknowledges that there is a small proportion of landlords who neglect their properties and exploit their tenants, giving the sector a bad name. The measures outlined in the consultation paper are aimed at these rogue landlords.
- 5.6 In Cannock Chase District complaints made by tenants about poor standards, defective properties and occasionally, the behaviour of landlords of private rented properties are dealt with by the Private Sector Housing Team of the Environmental Health Department and the Housing Options Team of Housing and Waste Management Department.

5.7 On average the Private Sector Housing Team receives and investigates in the order of 500 requests for service from tenants in the private rented sector. Responses include the provision of advice, inspections of properties in accordance with the Housing Health and Safety Rating Scheme, liaison with landlords regarding the remedial works and, in a small proportion of cases, where landlords are less co-operative, formal action.

5.8 The Housing Options Team often assist and offer advice to tenants of private rented sector properties facing eviction or the threat of eviction, in addition to supporting individual's and families that present as "homeless". Anecdotal evidence suggests that a number of these approaches may fall into the category of "retaliatory eviction".

5.9 Explanations of the following terms referred to in the Consultation Paper are provided below:

- Housing Health & Safety Rating System

The national method used by Housing professionals and Council Officers for the assessment and classification of the hazards and associated health impacts of a particular deficiency in a privately-rented property. Deficiencies are classified as either a Category 1 or Category 2.

- Category 1

The assessed standard of disrepair/defect or deficiency in respect of which a Local Authority must take action (Mandatory).

- Category 2

The assessed standard of disrepair/defect or deficiency in respect of which a Local Authority may take action (Discretionary).

- Section 21 Possession Notice

A Notice issued by a landlord to a tenant under the provisions of the Housing Act 1988 on an Assured Shorthold Tenancy, in which the landlord is not obliged to specify why the possession is being sought and tenant evicted. Specific requirements apply and in order to conclude the eviction the landlord would need to take the matter to Court.

- Assured Shorthold Tenancy

The most common type of tenancy in the private rented sector, usually of 6 or 12 months duration.

- Retaliatory Eviction

The eviction of a tenant as a result of a complaint by the tenants to the local authority concerning housing conditions. This may be a threat made directly to the tenant or indirectly to an Officer investigating the tenant's complaint and involving the use of a section 21 Notice.

- 5.10 Responses to the Consultation are invited from individual Local Authorities and a range of professional organisations and other bodies working in this subject area. It is the intention to submit the Council's response directly to the DCLG and to also provide copies to the District Councils Network and the Chartered Institute of Environmental Health in order that the comments are incorporated with the responses of these bodies.

6 Implications

6.1 Financial

None

6.2 Legal

The Council has a legal obligation to investigate complaints made to it about statutory nuisance and to take enforcement action where a Category 1 hazard is identified as a result of an inspection of a private rented property in accordance with the Housing Health and Safety Rating Scheme.

6.3 Human Resources

None

6.4 Section 17 (Crime Prevention)

None

6.5 Human Rights Act

None

6.6 Data Protection

None

6.7 Risk Management

None

6.8 Equality & Diversity

None

6.9 Best Value

None

5 Appendices

Appendix 1:

Proposed Response – Review of Property
Conditions in the Private Rented Sector

Background Papers

DCLG Consultation Paper “Review of Property Conditions in the Private Rented
Sector”

PROPOSED RESPONSE – REVIEW OF PROPERTY CONDITIONS IN THE PRIVATE RENTED SECTOR

This is the response of Cannock Chase District Council.

Question 1: In addition to the production of the Tenant's Charter, is there any further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?

Response: Most if not all Councils provide website information about the services available to private tenants. Similarly, published service standards and enforcement policies are widespread. Good landlords will endeavour to follow good practice when letting property. Sadly, rogue landlords have little interest in compliance and no amount of helpful publicity will improve their behaviour. The draft tenants charter should be finalised and published as it is a helpful and informative document. We do not consider that further significant action is necessary.

Question 2: What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities?

Response: See above. There are mechanisms in place where enforcement teams meet on a regional basis to share and develop good practice. In our area there is no lack of enquiries from tenants about problems or help available. Fear of subsequent eviction is a much more prevalent problem.

Question 3: What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?

Response: It is inevitable that there will be some differences in response between authorities given differing resources and private rented stock conditions. Unfortunately the body which used to help local authorities improve consistency (LACORS) no longer exists. Best practice and advice can be shared via local and regional housing liaison groups. However, there will be variations in the effectiveness of these groups.

Question 4: Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?

Response: We welcome this proposal.

Question 5: Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?

Response: Yes. Retaliatory eviction is a significant problem (we estimate it is threatened or taken in approx. 25% of enforcement enquiries). It is common for tenants to discuss hazards with our housing standards officers and still decide to accept substandard conditions rather than allow enforcement because of fear of eviction.

In your commentary you say that no reputable landlord would fail to respond to reasonable request for repairs or improvements. In our area there is a significant housing shortage and landlords are in a very strong position. We know of one major portfolio holder who has threatened or intimidated retaliatory eviction resulting in surveys being cancelled and we suspect it is more widespread than just rogue landlords.

Care is needed here though as there can be circumstances where the landlord is not able to resolve the cat1 hazard/stat. nuisance and the best solution is for the tenant to be lawfully evicted and the house sold to a new owner who can improve it. An example was a house which required a new damp course and associated replacement plasterwork cost approx. £2-3k. It was owned by a couple who were in negative equity and entrenched in a bitter divorce dispute. Neither would invest in the repairs and the local authority were unlikely to easily recover any money spent on works in default.

We would suggest a mechanism where the default position is a stop on s21 evictions until 6 months after the identified cat1/stat. nuisance is resolved to local authority satisfaction unless the local authority confirm in writing that they are in agreement with the s21 action. We feel 6 months is appropriate because it is in line with an initial Assured Shorthold Tenancy and gives the tenant a window to demonstrate that they are a good tenant and repair "bad feelings".

Question 6: What would be an appropriate trigger point for introducing such a restriction?

Response: At the point where the local authority have determined that a category 1 hazard or a statutory nuisance exists. We suggest it should have some carry over i.e. 6 months as described above. If not the landlord can still swiftly "punish the errant tenant who dares complain". Experience suggests that this response is not uncommon.

Question 7: How could we prevent spurious or vexatious complaints?

Response: Local authorities are used to dealing with spurious/vexatious complaints and are well versed in assessing whether a defect is longstanding and genuine or exaggerated or manufactured. Officers are trained and qualified in assessing the condition of properties. We would be disappointed if we were unable to determine if a cat1 hazard/statutory nuisance existed and whose responsibility it was to remedy the problem.

One significant problem regularly encountered is where a landlord claims to be endeavouring to make the necessary improvements, but is being unreasonably denied access by the tenant. It is considered essential that this issue is properly addressed. In such circumstances involvement of the Council would be beneficial as it would not be proportionate to threaten or pursue formal action against the landlord.

Question 8: Do you think Government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?

Response: Yes, particularly in cases where the court has not made an order for damages in favour of the tenant. Although incidences of illegal evictions are relatively low at a local level, any legislation that may act as a financial deterrent/penalty is welcome. Illegal evictions cause great distress to families and place an added burden

on local authorities if they are required to provide temporary accommodation due to a homelessness situation having occurred.

Question 9: Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?

Response: In cases where the tenant has not already been awarded damages by the Courts as part of a successful prosecution commenced under the protection from Eviction Act 1977, RRO should be a tool available for consideration.

Question 11: Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?

Response: Yes, this may prove to be a more swift and effective method for a tenant to receive a degree of financial recompense. Prosecution Proceedings can be lengthy and as the time limit for applying for a RRO is twelve months, if a RRO can be triggered automatically this would offer a more speedy resolution for the tenant, as opposed to having to pursue a separate action.

Question 12: Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?

Response: Yes we agree rent repayment should be required where a cat1 hazard or stat. nuisance has been prosecuted by the local authority.

Question 13: What should the trigger point be?

Response: Where a local authority have successfully prosecuted for failure to comply with an improvement notice/prohibition order/stat. nuisance notice. Backdated to discovery of the hazard and confirmed at sentencing in court.

Question 14: Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property?

Response: We are not in favour of prohibiting future rental of the property as a further option. There are adequate enforcement tools available to remedy the problem. The RRO should be in addition to any private action the tenant may take. It is considered appropriate for the civil courts to take a view on any RRO in determining a private action and application for damages

Question 15: Is there a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches?

Response: Possibly fixed penalty notices for failure to obtain gas/electrical safety certificates and install smoke carbon monoxide detectors.

Question 15(a): Should private sector landlords be required to install, and maintain, smoke alarms in their properties, or would a non-regulatory approach to encourage greater take-up be a better option?

Response: We believe that the improvement in prevalence of smoke detectors has occurred in the better parts of the PRS. The remaining 18% of unprotected properties are more likely to be where there are unenlightened tenants and disinterested landlords. We regularly advise landlords to encourage their tenants to approach the local fire service for free ten year sealed SDs and advice. Given the minimal cost of the units, widespread availability from fire authorities and savings to the health service we would wholeheartedly support a requirement that all singly occupied homes must have a ten year sealed battery smoke detector on each floor. We support continuation of the LACORS guidance for shared and mixed use properties where there are higher risks and consequences of fire.

Question 16: Should private sector landlords be required to install, and maintain, carbon monoxide alarms in their properties or would a non-regulatory approach be a better option?

Response: Carbon monoxide detectors should be required where a home has a higher risk appliance only (e.g. open flued appliance or solid fuel heating). This would mean that for the vast majority of properties with relatively modern, safer appliances a detector would not be necessary.

Question 17: Does the Landlord & Tenant Act 1985 cover the right areas, or should it be broadened to cover other issues?

Response: Fine as it is. It acts only as supplementary guidance where enforcement is under consideration.

Question 18: Do you think that the current approach strikes the right balance or should there be a statutory requirement on landlords to have electrical installations regularly checked?

Response: We regularly receive complaints about unsafe electrics or identify defects when we carry out surveys. Where we feel that an installation looks as if it could be unsafe we ask owners for a report. It is unusual for one to be available so that often a new one is needed. Sometimes the owner will provide one, if not we have to commission one at our cost. We would support a requirement for a periodic safety check by a competent electrician every five years. Based on the national average tenancy turnover of twenty months that would mean that on average a check is carried out for each third tenant which seems proportionate. Visual checks at change of tenant and carried out by the landlord should be standard practice but would not be practical to enforce.

We would welcome a simplified form of report along the lines of the annual Gas Safety Certificate rather than the existing fairly extensive Electrical Installation Condition Report. This should help keep landlords costs down whilst ensuring tenants are not exposed to significant danger.

Question 19: How effective is voluntary accreditation as a way of driving up standards?

Response: Difficult to quantify. It does achieve improvements with landlords who are motivated and helps them with more technical issues that are not so obvious. Some owners who consider themselves as good landlords become disenchanted when shortcomings are explained e.g. the requirement for Energy Performance Certificates. In the current situation of under supply there is little incentive for rogue landlords or those in-between to consider voluntary accreditation.

Question 20: Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?

Response: No experience.

Question 21: Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?

Response: Yes but needs careful consideration.

Question 22: How can we balance the need for short-term holiday accommodation with seeking to ensure that sufficient accommodation is available for longer term letting?

Response: No experience.

Question 23: Do you think the methodology that underpins the Housing Health and Safety Rating System and/or the accompanying operational guidance need to be updated?

Response: We are happy with the principles of the HHSRS in that it is based on evidence of risks to safety or health. The statistical evidence is over ten years old and there has been some criticism of their accuracy at appeal and so updating or improvement would be welcome. Assessment and enforcement of the excess cold hazard remains the most controversial. It is largely a question of affordability. The private rented sector contains a disproportionate number of cold or difficult to insulate homes often heated by electric only. A complex mix of factors including rising fuel prices, the disparity between gas and electric prices, tenants lifestyles and many cold and difficult to treat homes in the national private rented stock create a situation where there is inconsistent opinion and enforcement.

Further Comments

If the requirement for electrical safety checks and smoke/CO detectors happens we would argue that enforcement should fall to local authorities. Similarly, we would argue that enforcement of the annual gas safety check should be moved to local authorities. These provisions seem to fit well with enforcement via fixed penalty notice. Please could you consider this. The level of FPN should be sufficient to act as a deterrent.

Finally, the issue of notice of entry for the purposes of enforcement has become problematic since the Evans v LB Camden case at Residential Property Tribunal in August 2007. The perceived need to give a landlord notice of entry and invite them to be present is problematic. Often they are aware of the problem and do not wish to be present, do not turn up or may be very remote from the location. Clearly we would not

ITEM NO. 5.11

want a situation where local authorities proceed without giving the owner a reasonable opportunity to remedy a problem. Surely though, if the council can show that the landlord has been properly advised of the matters and afforded an adequate opportunity to meet if they wish and propose a remedy then they should be safe to proceed with enforcement without the need to arrange a formal appointment. Clarification of this area would be helpful.