

CANNOCK CHASE COUNCIL

CABINET

19 OCTOBER 2006

REPORT OF CHIEF EXECUTIVE

PORTFOLIO LEADER – SOCIAL INCLUSION AND HOUSING

HOUSING HEALTH AND SAFETY RATING SYSTEM & LICENSING OF HOUSES IN MULTIPLE  
OCCUPATION

**1. Purpose of Report**

- 1.1 This report sets out proposals on how the Council intends to implement recent changes in legislation relating to the assessment of housing conditions and the enforcement of housing standards. These, together with a proposed charging policy for such enforcement work, the introduction of Houses in Multiple Occupation (HMO) licensing and the orders to tackle long-term empty homes, form the Council's approach to implementing key areas of the Housing Act 2004 relevant to private sector housing issues. This approach enhances the existing enforcement action, such as Compulsory Purchase Orders and public health legislation.

**2. Recommendations**

- 2.1 That Cabinet agree to the proposed process of housing enforcement action under the Housing Act 2004, as set out in Section 2 – Proposed process of Enforcement Action (a) to (k).
- 2.2 That Cabinet agree to apply the principles of charging as set out within Section 2 – charging for enforcement work and in accordance with the Council's approved fees and charges.
- 2.3 That Cabinet recommend to Council to approve the proposed HMO licensing charging policy as set out within Section 2 – HMO Licensing.
- 2.4 That Cabinet authorise the Chief Executive, in consultation with the Cabinet Member for Social Inclusion & Housing, to apply for authorisation from a Residential Property Tribunal to make an interim or final Empty Dwelling Management Order in respect of a property.

**3. Key Issues**

- 3.1 During 2006, duties under Part 1, 2 & 4 of the Housing Act 2004 (referred to as "the Act") relating to the assessment of housing conditions, the enforcement of housing standards, the licensing of HMOs and the serving of Empty Dwelling Management Orders became

law.

- 3.2 Part 1 of the Act replaces the housing fitness standard with the Housing Health and Safety Rating System (HHSRS). This is an evidence-based risk assessment process that generates objective information in order for Officers to determine housing enforcement action.
- 3.3 The Housing Act 2004 applies to all tenures and types of property within the District. Where appropriate, Officers will address issues in owner occupied and tenanted properties.
- 3.4 Enforcement action by Officers must be based on the provisions of the Act and reflect Government guidance. A certain degree of discretion is available to the Council to decide what action to take, and proposals for Cannock Chase Council are set out within this report.
- 3.5 The principles behind the proposals on housing enforcement are to tackle the most serious hazards through enforcement action and less serious hazards through an agreed course of action with owners and landlords using the powers provided by the Act.
- 3.6 It is proposed for the Council to make a reasonable charge to owners or landlords as a means of recovering expenses incurred in inspecting properties, considering what action needs to be taken and the serving the legal notices and orders.
- 3.7 Under Part 2 of the Act, all Local Authorities in England & Wales must implement a licensing scheme for HMOs with 3 or more storeys and 5 or more occupiers. This report sets out the proposals for a fee structure for the Council to make a reasonable charge to owners or landlords as a means of recovering expenses incurred in the licensing process.
- 3.8 The Empty Dwelling Management Order (EDMO) is a last resort action that should only be used when all other attempts to bring empty property back into use have failed. The Act and the associated Government guidance is clear on the processes the Council must have considered prior to applying the EDMO sanction on an owner of an empty property. The process should not be seen as an initial approach to dealing with empty properties. At the 1<sup>st</sup> April 2006, there were 506 properties within the District that had been empty for more than 6 months.

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## Section 1

### Background

On the 6th April 2006, duties under Part 1 of the Housing Act 2004 (referred to as "the Act") relating to the assessment of housing conditions and the enforcement of housing standards became law. The Council now possesses revised duties to assess and take enforcement action to rectify hazards within homes that can significantly affect the health and safety of the occupants or visitors. The Act also gives the Council power to take enforcement action to rectify hazards less significant to occupants or visitors.

The Act contains new enforcement options that are available to the Council. The choice of the appropriate course of action is for each Local Authority to decide, having regard to statutory enforcement guidance published by the Department for Communities and Local Government (DCLG).

This report proposes criteria on how the Council might select an appropriate course of action to address poor housing conditions within the District.

The Act has also strengthened the law relating to HMOs, especially those properties that are regarded as high risk – HMOs which are 3 storeys or more in height, housing 5 or more occupiers. The Act requires the licensing of high risk HMOs. There have also been changes to the standards for fire precautions and amenity standards.

The Act has also introduced the concept of charging for both notice preparation and for licensing of HMOs. Section 49 of the Act enables the Council to make a reasonable charge to owners or landlords as a means of recovering expenses incurred in inspecting the property, consideration of any action to be taken and the serving the legal notices and orders. The current minimum charge for such enforcement work is £63.00, as set out within the Council's Fees & Charges Book 2006-07. Additional charges will be reasonable, reflect the amount of work involved and be justified in writing to the owner.

Latterly, procedures to deal with the growing problem of empty properties have also been introduced by the Act, including the power for the Local Authority to bring a property back into use by means of an Empty Dwelling Management Order.

## Section 2

### Details of Matters to be Considered

#### **1) New System for Assessing Housing Conditions**

Part 1 of the Act replaces the housing fitness standard, which was based on criteria first introduced

70 years ago and there was wide support for modernisation. The test of fitness has been replaced with an evidence-based risk assessment process, carried out using the Housing Health and Safety Rating System (HHSRS). The purpose of HHSRS assessment is to generate objective information in order to determine and inform enforcement decisions.

HHSRS is a complex new approach to the assessment of risks to health and safety in residential premises. Council Officers have received training on the use of HHSRS, subsidised by the DCLG and provided by the Chartered Institute of Environmental Health and The University of Warwick. Since the 6th April, Officers now base enforcement decisions in respect of all residential premises on the basis of their assessments under the HHSRS.

In summary, the HHSRS assesses 29 categories of housing hazard, such as excess cold and personal hygiene. It provides a rating for each hazard present, which is expressed through a numerical score which falls within 1 of 10 bands labelled A to J. Scores in bands A-C are category 1 hazards and present the greatest risk to health of the most vulnerable people likely to occupy or visit the property being considered. For example, where a property has a serious dampness problem, the risk group are the young and elderly and the risk to them would be substantial and thus score over 1000 points, be identified as a category 1 hazard and resulting in the Council requiring works to rectify this hazard. Where the score is in bands D-J the hazard is less serious, for example where a loss skirting board or floorboard is the only issue, and they would be scored as category 2 hazards.

### **Action Available to the Council Following Hazard Assessment**

The Act gives the Council powers to intervene where Officers consider housing conditions to be unacceptable, on the basis of the impact of hazards on the health & safety or the safety of the most vulnerable potential occupant, typically young children or elderly people. Section 239 of the Act gives new powers of access to Officers to carry out inspections.

Where Officers have identified a category 1 hazard through a HHSRS assessment of a property, the Council has a statutory duty under the Act to take appropriate action to deal with this hazard. Where a category 2 hazard exists, the Council has powers under the Act to deal with category 2 hazards.

The Act gives the Council the choice to take one of the following courses of action at a time to deal with a category 1 hazard:

- (a) Serve an Improvement Notice in accordance with section 11 of the Act;
- (b) Make a Prohibition Order in accordance with section 20 of the Act;
- (c) Serve a Hazard Awareness Notice in accordance with section 28 of the Act;
- (d) Take Emergency Remedial Action under section 40 or make an Emergency Prohibition Order under section 43 of the Act;

- (e) Make a Demolition Order under section 265 of the Housing Act 1985 as amended;
- (f) Declare a Clearance Area by virtue of section 289 of the Housing Act 1985 as amended.

The Council have similar powers to deal with category 2 hazards, with the exception of emergency measures, Demolition Orders or declare a Clearance Area.

### **Proposed Process of Enforcement Action**

The following process is proposed to direct Officers and inform owners of housing enforcement action to be taken under the Act on any residential property within the District.

- (a) Where Officers are made aware of or suspect any dwelling within the District contains category 1 or category 2 hazards, they will inspect the property to determine if such a hazard exists. Officers, in consultation with the Strategic Housing Manager, will use the power of entry under the Act to gain access where necessary, or seek a warrant to enter premises from a Justice of the Peace where a forced entry is required.
- (b) Officers will use HHSRS to identify hazards in dwellings and assess the likelihood of the hazard adversely affecting the health and safety of the occupants and visitors to the dwelling.
- (c) Officers will, without delay, set out their findings in a statement of reasons to the owner and occupants. Where possible, Officers will also discuss their findings in detail with the owner and occupants to ensure a mutual understanding of the findings and their health and safety implications. Officers should have regard for the principles of the Cabinet Office Enforcement Concordat.
- (d) Where a category 1 hazard exists (i.e. a hazard with a HHSRS score of 1,000 or more within Bands A - C), Officers will inform the owner and occupants and in consultation with the Strategic Housing Manager determine a course of appropriate enforcement action. This will involve the serving of an appropriate legal notice or order under the Act. Officers decisions on the specific course of action to be taken will be with due regard to:
  - a. The risk to human health;
  - b. The wider implications of the assessed risk;
  - c. The vulnerability of the occupants, potential occupants or visitors to the property;
  - d. If the property is a house in multiple occupation;
  - e. The quality of property management by the owner and any history of compliance;
  - f. The views of the owner, landlord and occupants;
  - g. Any relevant area renewal strategies, programmes or initiatives operating in the

location of the dwelling;

- h. Latest best practice that reflects current case law;
  - i. Relevant guidance from the DCLG.
- (e) Where a category 2 hazard exists (i.e. a hazard with a HHSRS score of 999 or less) with a point score within Bands D and E, Officers will inform the owner and occupants and in consultation with the Strategic Housing Manager determine an appropriate course of action under the Act. Where less serious category 2 hazards in Bands F-J exist, Officers may use powers under the Act to deal with the hazard. The Officers decision on the specific course of action to be taken will be with due regard to –
- j. The risk to human health and any wider implications of this risk.
  - k. The appropriateness and cost of the action against the risk.
  - l. The vulnerability of the occupants, potential occupants or visitors to the property.
  - m. The risk of possible eviction by the landlord.
  - n. If the property is a house in multiple occupation.
  - o. The quality of property management by the owner and any history of compliance.
  - p. The views of the owner, landlord and occupants.
  - q. Any relevant area renewal strategies, programmes or initiatives operating in the location of the dwelling;
  - r. Latest best practice that reflects current case law;
  - s. Relevant guidance from the DCLG.
- (f) Where multiple category 2 hazards exist with a cumulative HHSRS score above 999 (Band A-C), Officers will pursue appropriate enforcement action under the Act. Where multiple category 2 hazards exist with a cumulative HHSRS score 999 or below but scores within Bands D and E, Officers will use appropriate powers under the Act to deal with the hazard. Where less serious multiple category 2 hazards cumulative score is within Bands F-J, Officers may use powers under the Act to deal with the hazard. In each circumstance, Officers will have regard for the issues relevant for consideration to category 2 hazards.
- (g) Officers will consult with the Staffordshire Fire & Rescue Service if there is a fire hazard within a HMO or in the common parts of a building containing flats.
- (h) Officers, in consultation with the Strategic Housing Manager, will serve appropriate legal notices or orders under the Act on owners in the prescribed form.
- (i) The Council will only undertake works in default to deal with a category 1 hazard where an

owner is in agreement and not in a position to carry out the works or arrange for the works to be done, perhaps for financial reasons. The Council will only carry out works in default to a category 1 hazard without agreement where no reasonable progress has been made or is likely to be made to comply with the notice.

- (j) Empty residential dwellings will be treated in the same way as if they were occupied, as HHSRS score is based on the most vulnerable potential occupant, although enforcement will be appropriate to the likelihood of occupation and emergency enforcement measures would only be taken in exceptional circumstances.
- (k) Owners served with legal notices and orders under the Act can appeal to a Residential Property Tribunal within the relevant statutory period.

## 2) Charging for Enforcement Work

Section 49 of the Act enables the Council to make a reasonable charge to owners as a means of recovering expenses incurred in inspecting the property, consideration of any action to be taken and the serving the legal notices and orders. The current minimum charge for such enforcement work is £63.00, as set out within the Council's Fees & Charges Book 2006-07. This is increased annually to reflect increasing staffing costs. Additional charges are established through staff time recording and will be reasonable, reflect the amount of work involved and be justified in writing to the owner.

The Council will seek to recover all reasonable costs of inspection, professional consideration of a case, the serving of legal notices & orders, and building works incurred in undertaking any work in default.

## 3) HMO licensing

Under the Act, the Council now has a duty to introduce a licensing scheme for certain categories of HMO. It is proposed that Officers will commence a licensing scheme and licence high risk HMOs in line with the Act. On the basis of current knowledge, the District does not possess many high risk HMOs. It is likely that possibly 4 properties are known to require a licence – more may be found in the future.

The following table sets out an assessment of fees for the Council to charge to cover the reasonable cost of work to licence high risk HMOs. They are based on the 2006-07 hourly rates for the appropriate officers within the Private Sector Housing Team undertaking this work and consistent with the approach taken by other Staffordshire Districts.

Officer	Hours	Rate
<b>Environmental Health Officer (EHO)</b>		<b>£16.70</b>
Initial assessment	0.50	
Preparation / reading etc.	1.25	

Consideration of the information and the case	2.50	
Decision	0.33	
Prepare licence in detail	0.75	
Communication with owner	2.00	
Fire officer negotiation	0.75	
Housing advice negotiation	0.50	
Visit property	2.00	
Discussion with tenants	1.50	
Consider plans / layouts, facilities etc.	2.25	
Specification of works	2.00	
Postage / general admin expenses		£15.00
<b>Sub-total</b>	16.33	£287.71
<b>Technical Officer (TO)</b>		<b>£16.70</b>
Assist EHO on enquiries	1.50	
Preparation	1.00	
Communication with owner / agents / tenants	1.00	
<b>Sub-total</b>	3.50	£58.45
<b>Admin</b>		<b>£9.43</b>
Land charge / Police check information checks	1.50	
Prepare documents	0.60	
Detailed checks	0.50	
Support to EHO / TO	1.25	
<b>Sub-total</b>	3.85	£36.31
	<b>TOTAL</b>	<b>£382.47</b>

On the basis of these costs, it is recommended that £380 is charged per licensed HMO in 2006-07 and that this is subsequently increased in line with staffing costs on an annual basis and set out within the Council's Fees & Charges Book. This level of fees is in line with other Staffordshire Districts.

#### 4) Empty Dwelling Management Orders

The Act provides a new legislative tool for Local Authorities to tackle long-term (over 6 months) privately owned empty properties, called Empty Dwelling Management Orders (EDMOs). In the current climate of a growing demand for housing and higher levels of homelessness, the need to secure occupation of empty homes increases. Empty homes can also have a significant impact on a community as they attract vandalism and other anti-social behaviour, such as arson.

Much speculation has appeared in the national press concerning these new powers, and as such the Private Sector Housing Team has received a number of calls from residents concerned about inherited empty properties. EDMOs do offer the Council the power to intervene in the management and maintenance of long-term empty private properties in order to bring them back into occupation,

but this is only after significant and comprehensive support and assistance has been unsuccessful, and the owner has had many opportunities to return the property to use and has failed to do so. Officers would only seek the use of an EDMO in exceptional circumstances and as a last resort. The Council cannot make an EDMO without first seeking authorisation from a Residential Property Tribunal, which will scrutinise the application and ensure it complies with qualifying criteria set out within Section 134 of the Act.

There are two types of EDMOs. Interim EDMOs allows the Council to let out the property with the consent of the owner, whilst a final EDMO allows the same but without the owners consent.

At the 1st April 2006, there were 506 properties within the District that had been empty for more than 6 months. Of these, the majority are unlikely to be ones where action using an EDMO would be appropriate as some are empty as a result of probate or other legal situation with families or are in the process of improvement or repair; others are the subject of redevelopment proposals. The remainder, with informal intervention by Officers will frequently be brought back into use. There are clear guidelines as to how Local Authorities should tackle the question of empty properties with owners to enhance the prospect of bring them back into use. The EDMO is the last resort action where all other avenues have been investigated. It is therefore recommended that prior approval be sought from the Chief Executive in consultation with the Cabinet Member for Social Inclusion & Housing before the Council seeks authorisation from a Residential Property Tribunal to make an interim or final EDMO in respect to a property.

The current minimum charge for enforcement work of £63.00 would be recovered along with all reasonable costs incurred by the Council through inspection, professional consideration of a case, the serving of legal notices & orders, and any building works undertaken. These would be established through staff time recording and will be reasonable, reflect the amount of work involved and be justified in writing to the owner.

### Section 3

#### Contribution to CHASE

The pursuit of assistance and enforcement would contribute to CHASE objectives as follows.

- (a) Health – The enforcement proposals contained within this report will reduce the risk to public health from hazards within the home.
- (b) Social Inclusion & Housing – These measures will improve the condition of the Districts private homes.
- (c) Environment – The overall effect of improving homes contributes to a clean, safe and sustainable environment.

### Section 4

#### Section 17 (Crime Prevention) Implications

Prevention of entry by intruders is one of the hazards within the Act that Officers will consider whilst

undertaking a HHSRS inspection.

Empty homes can have a significant impact on a community as they attract vandalism and other anti-social behaviour, such as arson. Applying for an EDMO can reduce such crime.

## Section 5

### Human Rights Act Implications

Issuing a statement of reasons is to ensure that the enforcement provisions of Part 1 do not give rise to disproportionate interference with Article 8 of the European Convention on Human Rights - respect for private and family life, and also with Article 6 and Article 1 of the First Protocol - the right to a fair hearing, and protection of property.

## Section 6

### Data Protection Act Implications

By virtue of section 237 of the Act, the Council may obtain information held on Council Tax and Housing Benefit records in respect to enforcement action under the Act.

## Section 7

### Risk Management Implications

The Council has a statutory duty to undertake the enforcement action proposed within this report. Failure to do so would open the Council up to potential prosecution and the Council would be liable for the cost of damages.

There is significant health and safety risks to people if the Council do not undertake the enforcement action set out within this report.

The Strategic Housing Manager will determine any enforcement action proposed by Officers to ensure they are appropriate and in line with Council policy.

## Section 8

### Legal Implications

The Housing Act 2004 brings about a new kind of enforcement action for dealing with the new system for assessing housing conditions. The purpose of the Housing Health & Safety Rating System is not to set a standard but to generate objective information in order to determine and inform enforcement decisions.

The Act imposes a general duty on the Council to take appropriate action in relation to a Category 1 hazard and when doing so take the most appropriate course of action having regard to any guidance, which is available. Similar powers are available to it when dealing with Category 2 hazards however, the extent of its enforcement powers are reduced.

Section 8 imposes a duty on the Council to prepare a statement of reasons for its decision to take enforcement action. The statement should include an explanation as to why a particular course of action was taken rather than any of the other courses that were available.

The rationale behind Section 8 is to ensure that the enforcement provisions of Part 1 do not give rise to disproportionate interference with Article 8 of the European Convention on Human Rights - respect for private and family life, and also with Article 6 and Article 1 of the First Protocol - the right to a fair hearing, and protection of property.

Sections 49 and 50 provide powers for the Council to charge, and to recover charges, incurred in respect of certain enforcement powers and duties exercised under Part 1, namely Enforcement of Housing Standards. These provisions re-enact with modifications sections 87 and 88 of the Housing Grants, Construction and Regeneration Act 1996, which are repealed by Schedule 16 to this Act.

Section 55 sets out the scope of the licensing provisions under Part 2 and the general duties on the Council in relation to its licensing functions. The section provides that Councils are required to license the types of Houses in Multiple Occupation prescribed in the Order, which is initially to be those of 3 storeys and above occupied by at least 5 persons who constitute more than one household.

Under section 55(5), the Council has a duty to promote the implementation of licensing; to ensure that it deals with licensing applications promptly and satisfy itself that no Part 1 functions remain to be discharged in respect of licensed House in Multiple Occupation as soon as possible and in any case within 5 years of the first application for a licence.

Section 138 of the Act sets out the rights of third parties to apply to a Residential Property Tribunal for an order requiring the Council to pay compensation for interference with their rights in respect of the dwelling on which an interim Empty Dwelling Management Order is made. In addition, third parties may also request the Council pays compensation for interference with their rights in respect of the dwelling on which a final Empty Dwelling Management Order is made.

Should the Council fail to discharge its duties under this Act it could be challenged and become liable in damages.

## **Section 9**

### **Financial Implications**

Parts 1, 2 & 4 of the Act provide duties and powers for Local Authorities to enforce Housing Health & Safety Standards (Part 1), Housing in Multiple Occupation Licensing (Part 2) and Empty Dwelling Management Orders (Part 4).

The 2006-07 Fees and Charges Booklet already includes a charge for Parts 1 and 4 being a minimum charge of £63 plus additional reasonable charges being justified in writing to the owner.

Part 2 introduces a new charge for the enforcement of the duties and powers.

A proposed charge of £380 has been calculated for Part 2 licensing HMOs. Benchmarking with other Local Authorities on this charge level has shown that the proposed charge level is comparable. This new charge would need to be included in the next Fees and Charges Booklet 2007-08.

For any action under Part 4, a further Cabinet report would be required detailing financial implications to this Council.

Section 10

### Human Resource Implications

There are no human resource implications arising from this report.

Section 11

### Conclusions

That the recommendations detailed in paragraphs 2.1 – 2.4 be approved.

Section 12

### Background Papers

None