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To: MEMBERS OF THE HOUSING COMMITTEE  
Councillors Pursehouse (Chair), Lockwood (Vice-Chair),  
Gaffney, Gillman, Groves, Hammond, Mills, Morrow, Ridge,  
Shiner, Steeds and Swann

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Substitute Councillors: Allen, Connolly, Gray and Wren

C.C. All Other Members of the Council

17 January 2022

Dear Sir/Madam

## **HOUSING COMMITTEE TUESDAY, 25TH JANUARY, 2022 AT 7.30 PM**

The agenda for this meeting of the Committee to be held in the Council Chamber, Council Offices, Station Road East, Oxted is set out below. If a member of the Committee is unable to attend the meeting, please notify officers accordingly.

Should members require clarification about any item of business, they are urged to contact officers before the meeting. In this respect, reports contain authors' names and contact details.

If a Member of the Council, not being a member of the Committee, proposes to attend the meeting, please let the officers know by no later than noon on the day of the meeting.

Yours faithfully,

David Ford  
**Chief Executive**

### **AGENDA**

- 1. Apologies for absence (if any)**
- 2. Declarations of interest**

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter:

- (i) any Disclosable Pecuniary Interests (DPIs) and / or
- (ii) other interests arising under the Code of Conduct

in respect of any item(s) of business being considered at the meeting. Anyone with a DPI must, unless a dispensation has been granted, withdraw from the meeting during consideration of the relevant item of business. If in doubt, advice should be sought from the Monitoring Officer or her staff prior to the meeting.

- 3. Minutes of the meeting held on the 30th November 2021 (Pages 3 - 8)**  
To approve as a correct record
- 4. To deal with any questions submitted under Standing Order 30**

5. **Enforcement Policy for Private Sector Housing** (Pages 9 - 64)
6. **Housing Committee 2022/23 draft General Fund budget and Medium Term Financial Strategy** (Pages 65 - 78)
7. **Housing Revenue Account - 22/23 draft budget** (To Follow)
8. **Any other business which, in the opinion of the Chair, should be considered as a matter of urgency**

## TANDRIDGE DISTRICT COUNCIL

### HOUSING COMMITTEE

Minutes and report to Council of the meeting of the Committee held in the Council Chamber, Council Offices, Station Road East, Oxted on the 30<sup>th</sup> November 2021 at 7.30pm.

**PRESENT:** Councillors Pursehouse (Chair), Lockwood (Vice-Chair), Gaffney, Gillman, Groves, Hammond, Mills, Morrow, Ridge, Shiner, Steeds and Swann

**ALSO PRESENT:** Councillors Farr and O'Driscoll

#### **195. MINUTES OF THE MEETING HELD ON THE 28TH SEPTEMBER 2021**

These were confirmed and signed as a correct record.

#### **196. HOUSING QUARTER 2 (2021-22) PERFORMANCE REPORT**

The Committee considered an analysis of progress against its key performance indicators, together with an updated risk register and a Council housebuilding / affordable housing development summary for the second quarter of 2021/22. Upon presenting the report, the Executive Head of Communities confirmed that the status update for Risk H2 (delivery of the target number of properties via the Council house building programme) on page 23 of the agenda pack should have stated:

*“Monthly contractor meetings continuing - both Uplands and Bronzeroak forecasting delays due to materials shortages. Some programme change to minimise disruption as far as possible. Flats are affected more than houses. Looking at split handover at Uplands.*

*Build costs increasing due to materials shortages - limited impact on current design & build contracts but development costs likely to rise in the short/medium term.*

*Limited resources in development team preventing progress on identifying new schemes. New team member due to start in Jan 2022.”*

In response to Members' questions, Officers confirmed that:

- it was too soon to assess the impact of the lifting of the (Covid related) ban on evictions in respect of the number of households in temporary accommodation (the temporary legislation expired in October 2021) although more households were now approaching the housing needs team for advice
- the possibility of amending the calculation for KPI H07 (average cost of repairs to properties for Council tenants) would be pursued, i.e. to 'total cost to date' divided by 'total number of jobs to date' ... to provide a mean cost figure at any point in time

- notwithstanding the challenges of having to compete with developers on the open market, potential purchases of specific sites for Council housing were being pursued and would be reported to Members if negotiations progressed
- negotiations were ongoing with the landowner of the prospective affordable rented scheme near Dormansland Station with a view to the homes being delivered as part of the Council housebuilding programme – the matter may have to be referred to the Committee for a decision in due course
- building homes to the net zero carbon standard was more expensive for developers ... the Council had committed to achieving the standard for new builds, although this did not apply to property acquisitions.

**RESOLVED** – that the report be noted.

## **197. APPROPRIATION OF LAND FOR COUNCIL HOUSE BUILDING - NEXT STEPS**

The Council held land for various statutory purposes to perform its functions and, subject to certain provisos, could use powers to transfer the use of land from one purpose to another. Relevant properties at the following locations were currently held for housing purposes and had to be appropriated for planning purposes to enable Council house developments to proceed:

- Auckland Road and Windmill Close, Caterham
- Featherstone, Blindley Heath
- Hollow Lane, Dormansland

The appropriation process had commenced in accordance with previous Committee decisions and a report was submitted which informed Members of the outcome of consultation with affected residents, i.e.:

- one objection in respect of the proposed Windmill Close development
- thirteen responses in respect of the proposed Hollow Lane development, although there were no outright objections to affordable housing on the garage site or the appropriation process itself – the main concerns related to the proposed design of the flats and the parking court.

The key observations and conclusions of the report were that:

### *Auckland Road and Windmill Close, Caterham*

*Appropriation of the sites for the economic, social and environmental well-being of the areas is justified when set against the very great need for affordable housing in the District.*

### *Featherstone, Blindley Heath*

*The size of open space proposed to be used for the proposed development is negligible and its loss will not compromise current usage. On balance, the loss of the space can be justified due to the significant demand for affordable housing locally.*

*The current flats at 63-78 comprise 8 bedsits and 8 one beds. They are small and outdated and do not meet the current insulation standards. They have suffered from condensation and dampness for many years and are very expensive to repair. Roof and window replacements are due in the next few years, requiring significant investment in an otherwise failing building. Replacing the properties with modern, well insulated buildings designed to be operationally net zero carbon is a better and more cost-effective approach. The redevelopment will enable the Council to respond to the significant need for family sized housing in the area. As part of the appropriation process, the consent of the Secretary of State is required where there is existing housing on the site. Information will be submitted to demonstrate that the land is no longer required for the purpose for which it is held and that the appropriation of the site for the proposed redevelopment, which will contribute to the economic, social and environmental well-being of the area, is justified in these specific circumstances.*

#### *Hollow Lane, Dormansland*

*The consultation feedback will be discussed with the architect and a site meeting with residents will take place in the coming weeks. Further liaison with residents and the Parish Council will take place as the plans evolve.*

*Appropriating the land for planning purposes does not mean that planning approval will be granted. The appropriation of the site for the economic, social and environmental well-being of the area should be considered justified when set against the very great need for affordable housing in the District. As and when a planning application is submitted for the scheme, the land will already be held for the correct purpose and any third-party rights will have been identified and considered.*

*Some properties have rights of way over the access road through the garage site. If planning approval is granted, the Council will endeavour to minimise any disruption during the development and will keep residents informed throughout the process. Whilst the appropriation would enable the development to proceed if planning permission is granted, the Council would be required to pay compensation for interference with any valid third-party rights.*

*The residential development of the garage site would necessitate the provision of alternative parking elsewhere. The proposals include the creation of a parking court in New Farthingdale to compensate for the loss of parking at Hollow Lane garages and help ease the parking issue in New Farthingdale. The Parish Council has previously expressed a desire to explore the idea of re-designing the central green areas of New Farthingdale to provide additional parking spaces and recognises the need to improve accessibility for vehicles.*

*The proposed parking site is publicly maintainable highway land and, notwithstanding the residents' concerns, it is not a village green or open space and cannot be considered as land for public recreation given its status as highway land. Before the Council can appropriate this land for planning purposes, a process must be followed to remove highway rights and extinguish the rights of the public to pass and repass. This process results in the making of a legal order known as 'stopping up the highway'.*

The report also confirmed that, on completion of any development, the land would need to be appropriated back to housing land from planning purposes.

Arising from the debate, Officers advised that the Council's housing allocations scheme sought to address the greatest housing needs of the whole District and didn't seek to restrict availability to those in the immediate vicinity of particular schemes. However, Community Land Trusts (non-profit organisations that own and develop land for the benefit of the community) were potential vehicles for providing affordable homes for local people and the Council could work with them to seek appropriate sites.

**RESOLVED** – that:

- A. in respect of the proposed development sites at Featherstone open space, Hollow Lane, Auckland Road and Windmill Close, the land at each site be appropriated for planning purposes to facilitate the redevelopment of the land for the proper planning of the area and contribute to its economic, social and/or environmental wellbeing;
- B. in respect of the land at Featherstone, the Council the consent of the Secretary of State be sought for the appropriation of housing land for planning purposes by demonstrating that the land is not required for the purposes for which it is currently held and that the use of the power of appropriation is in the public interest;
- C. in respect of the land at New Farthingdale, the land be appropriated for planning purposes in order to facilitate the redevelopment of the land for the proper planning of the area and contribute to its economic, social and/or environmental wellbeing, following the stopping up of any highway land required as a result of the proposed redevelopment;
- D. in respect of all of the aforementioned sites, delegated authority be provided to the Executive Head of Communities:
  - (i) subject to any necessary statutory consents and procedures in relation to Featherstone and New Farthingdale (outlined in recommendations B and C above) to sign a memorandum for:
    - Hollow Lane, Dormansland
    - New Farthingdale, Dormansland
    - Auckland Road, Caterham
    - Windmill Close, Caterham
    - Featherstone, Blindley Heathstating in each case that the land is appropriated from housing to planning purposes;
  - (ii) to sign a memorandum for Featherstone Open Space stating that the land is appropriated from general fund to planning purposes; and
  - (iii) at the appropriate time, to sign a memorandum for each site stating that the land is appropriated from planning purposes to housing.

## 198. CAPITAL FUNDING OF ACCOMMODATION FOR ROUGH SLEEPERS

At its meeting on the 28<sup>th</sup> June 2021, the Committee supported the Council's participation in a joint bid to Homes England with the other three East Surrey Authorities (Epsom & Ewell, Mole Valley and Reigate & Banstead) in partnership with 'Transform Housing and Support' (Transform). That bid sought grant funding to purchase eight move-on properties across the four local authority areas, including 2 x one bedroom flats in Tandridge, to provide supported housing for former rough sleepers and those at risk of rough sleeping. At that time, the Committee approved the use of commuted sums (provided by developers in lieu of on-site provision of affordable homes) of up to 25% of the total scheme cost, subject to a maximum of £50,000 per unit (total £100,000) to be provided to Transform to enable the purchase of the two local properties.

However, due to changes to the grant levels from Homes England, the original bid did not proceed, and the East Surrey partnership had since submitted a revised application to Homes England. It was now necessary to increase the level of commuted sums involved to £68,000 per unit if the Council was to participate in the programme. Furthermore, given the low levels of rough sleeping in the District, Homes England would now only support a bid for one move-on property in Tandridge.

During the debate, Officers explained that the cost of providing a property for the programme included a provision of £40,000 for necessary works, e.g. the installation of a more energy efficient boiler and new windows. The property in Tandridge would probably be a former Council owned flat, previously sold under the Right to Buy and will not be part of the Council house building programme; neither would it be subject to the 'net zero carbon standard' requirement.

**RESOLVED** – that the use of commuted sums of up to £68,000 (representing 25% of the total scheme cost) be approved and given by way of grant to support Transform Housing and Support in the purchase of one property in the District to provide housing with support for rough sleepers, former rough sleepers or those at risk of rough sleeping.

## 199. ASSISTED PURCHASE SCHEME POLICY

The Council operated an Assisted Purchase Scheme with the aim of increasing the capacity to meet housing needs by giving existing council tenants a financial incentive to vacate their property and purchase a home on the open market. Although numbers participating in the scheme were relatively low (two completions in 2021/22 to date) the report before the Committee advocated that the scheme should continue, both to help release Council housing and to enable those who aspire to home-ownership achieve their goal.

The Scheme had not been reviewed for several years and the report recommended revisions to:

- take account of house price increases during the last 10 years; and
- target funding at those properties which were urgently required and make best use of public funds, i.e. by restricting eligibility to qualifying tenants occupying properties with two or more bedrooms.

Members debated the extent to which the scheme represented value for money. Officers advised that a key priority of the scheme was to retain the housing stock and that grants were funded from the Housing Revenue Account.

**RESOLVED** – that the following amendments be made to the Assisted Purchase Scheme with effect from 1<sup>st</sup> April 2022:

- A. eligibility for the Scheme will be restricted to qualifying tenants occupying properties with two or more bedrooms;
- B. the fixed grant amount payable to applicants purchasing a property be increased as follows (amounts relate to the property being vacated):
  - for a two-bedroom property from £15,000 to £22,500
  - for a three-bedroom property from £18,000 to £27,000
  - for a four-bedroom property from £20,000 to £30,000;
- C. the fixed grant amount payable to applicants purchasing a share in a property with a partner or relative be increased as follows (amounts relate to the property being vacated):
  - for a two-bedroom property from £11,250 to £16,875
  - for a three-bedroom property from £13,500 to £20,250
  - for a four-bedroom property from £15,000 to £22,500; and
- D. the fixed value limits for qualifying purchases be increased as follows and reviewed annually:
  - for properties with up to three bedrooms: £268,878 to £358,000;
  - for properties with four or more bedrooms: £295,766 to £393,800.

In accordance with Standing Order 25 (3) Councillor Steeds wished it recorded that she abstained from voting on this matter.

Rising 8.43 pm



## Enforcement Policy for Private Sector Housing

### Housing Committee Tuesday, 25 January 2022

Report of: Executive Head of Communities

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Purpose: For decision

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Publication status: Open

Wards affected: All

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#### **Executive summary:**

Private sector housing plays a significant part in the housing provision within Tandridge. The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. The sector represents 14% of the total housing stock in the district.

The Council has a legal duty under Section 3 of the Housing Act 2004 to keep housing conditions in its area under review to identify any action that may need to be taken to deal with unsatisfactory housing that presents a health and safety hazard to the occupiers.

The Council is required to publish a Private Sector Housing Enforcement Policy (the Policy) so that members of the public, landlords and tenants are informed about the duties and powers of the Council, know what to expect from the service and to promote consistency in the delivery of the service. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure the private sector housing in Tandridge is well maintained.

The type of action taken to deal with a problem property will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In other cases, Officers have the discretion to use informal action as a first option and this approach is the one adopted by this Council wherever possible. Informal action includes working with property owners, tenants and others to provide advice and information to help them to comply with housing legislation and make their property a safe place to live.

In addition to providing details about the range of notices that the Council may serve on landlords and agents to require repairs or the closure of a property that its unsafe, the Policy includes information about the Council's power to charge for the service of formal notices under the Housing Act 2004. It provides information about the requirement to licence certain Houses in Multiple Occupation (HMO) and detailed information about the penalties that the Council may impose where there is a contravention of the legislation and notices that the Council may serve are not complied.

The Council has the power to impose financial penalties under a range of legislation.

For example, the Housing and Planning Act 2016 introduced penalty charges as an alternative enforcement tool to prosecution and can be imposed for certain offences under the Housing Acts, including overcrowding, failure to licence an HMO, breach of licensing conditions, or failure to comply with an Improvement Notice. The 'Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004' forms part of the main Policy. It sets out how the Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

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**This report supports the Council's priority of:**

'Creating the homes, infrastructure and environment we need'

**Contact officer** Nicky Thomas Team Leader, Residential and Environment  
Environmental Health and Licensing Partnership  
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**Recommendations to Committee:**

That:

- A. the Private Sector Housing Enforcement Policy and the associated policy documents, including the approach to agreeing Civil Penalties, as outlined in Section 11 and Appendix 3 of the Policy, be approved and adopted;
- B. authority be delegated to the Executive Head of Communities, in consultation with the Chair and Vice Chair of the Housing Committee, to make any minor amendments to the policy that may be necessary when it is reviewed annually; and
- C. the introduction of a charge for the service of Housing Act notices, as outlined in Section 4.1, which has been set in accordance with the current principles for fees and charges, be noted.

## **Reason for recommendations:**

The Council has a legal duty under the Housing Act 2004 to keep housing conditions in its area under review to identify any action that may need to be taken to deal with unsatisfactory housing that presents a health and safety hazard to the occupiers.

The Council is required to publish a Private Sector Housing Enforcement Policy so that members of the public, landlords and tenants are informed about the duties and powers of the Council, know what to expect from the service and to promote consistency in the delivery of the service.

This Policy and the enforcement work carried out under it contribute to meeting Objective 2 in the Housing Strategy 2019- 2023, 'Improving the quality and the use of the existing stock'. The review of the Policy also completes one of the actions listed in the Housing Strategy; to 'Review Enforcement Policy to ensure it reflects current legislation, policy and good practice and publish on the Council's website'.

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### **1. Introduction and background**

- 1.1 Private sector housing plays a significant part in the housing provision within Tandridge. The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. The sector represents 14% of the total housing stock. Whilst it is recognised that the majority of the housing in this district is in good condition and well managed, there will always be a proportion of private housing, particularly in the private rented sector, which is not maintained to the required standards and is poorly managed.
- 1.2 The Council, as a local housing authority, has a legal duty under Section 3 of the Housing Act 2004 to keep housing conditions in its area under review, with a view to identifying any action that may need to be taken. It has a responsibility to deal with unsatisfactory housing that presents health and safety hazards to the occupiers.
- 1.3 The Private Sector Housing (PSH) enforcement role is delivered by the Environmental Health and Licensing Partnership which works across Tandridge and Mole Valley District Councils. The agreement to form the partnership between the authorities was originally signed in February 2017 and was amended in August 2019 to include the delivery of PSH enforcement. There is one full time Private Sector Housing Officer providing this service across the Tandridge District. The post sits within the Residential and Environment Team of the Partnership.

- 1.4 It is important for local authorities to publish a Private Sector Housing Enforcement Policy so that members of the public, landlords and tenants are informed about the duties and powers of the Council, know what to expect from the service and to ensure consistency in the delivery of the service. The policy also provides clarity around the need to take legal proceedings and provides guidance for those seeking to lodge an appeal against action taken.
- 1.5 There have been some significant changes in the government's approach to dealing with private sector housing in recent years, including the introduction of new wider ranging legislation to tackle poor housing conditions and poor management. These changes in policy and the additional legal framework need to be reflected in our local approach and included in our enforcement policy. For example, legal measures to help local housing authorities to crack down on 'rogue landlords' and the extension of the mandatory licensing regime of houses in multiple occupation (HMOs).

## **2. The Policy**

- 2.1 The Private Sector Housing Enforcement Policy (the Policy) outlines the Council's approach to ensuring that standards are met, good practice is maintained, and all properties let as residential dwellings, those in private ownership, and properties under registered provider control throughout Tandridge are of good quality and are well managed. (The full Policy is provided at Appendix 1 to this report.)
- 2.2 The Policy details how the Council will regulate standards in private sector housing in Tandridge. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure the private sector housing in Tandridge is well maintained. Whilst the Policy details the range of enforcement powers available to the Council, including verbal advice, the service of notices, imposing civil penalties and prosecution, it is not an exhaustive list and is not intended to be a definitive interpretation of the legislation.
- 2.3 The Policy aims to set out in one place the Council's approach to enforcement and the wide range of enforcement options available to officers under multiple pieces of legislation. It ensures that enforcement action is transparent and the approach consistent. The review of the Policy also ensures that all recent legislation and government guidance is incorporated into the Policy and the service is delivered through informed and up to date procedures.
- 2.4 The aim is to raise standards in private sector housing throughout Tandridge, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

### **3. Enforcement Approach**

- 3.1 The type of enforcement taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In other cases, Officers have the discretion to use informal action as a first option and this approach is the one adopted by this Council wherever possible. Informal action, when appropriate, includes working with landlords, tenants and others to provide advice, information and assistance to assist them to reach compliance with housing legislation.
- 3.2 Where an informal approach fails to achieve the desired result, or a failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. In the most serious contraventions, possible action could include imposing civil penalties for breaches of the Housing Acts or prosecuting the offender.
- 3.3 The type of enforcement action to be used is always determined on a case by case basis, after consideration of the specific circumstances of the particular case such as the nature of the breach, the risk posed to occupants, how urgently action needs to be taken and how willing the landlord/owner is to take the action necessary. In every case, enforcement seeks to:
- Remove or reduce a risk to health and safety
  - Ensure that landlords take action to deal immediately with serious risks
  - Promote and achieve sustained compliance with the law
  - Deter landlords who breach legislative requirements from future breaches
- 3.4 The Policy provides information about when the Council will carry out an inspection of a property and about the types of Statutory Notice it may serve to require improvements to a property and the other enforcement action it may take. The powers available relate to enforcement in both individual family dwellings and HMOs.

### **4. Power to charge for the service of Housing Act Notices**

- 4.1 The Council has the power, under the Housing Act 2004, to make a charge as a means of recovering certain administrative and other expenses incurred in serving certain Housing Act notices. The charge for each notice will be based on time spent by the officer in gaining entry to a property, visiting and inspecting the property to determine appropriate action and the administration costs for the production of a Notice or Order. The charge is determined in accordance with the Fees and Charges Principles. The Policy includes information about this power in section 7.5 and it is proposed that charges are introduced in the next financial year 2022/23.

- 4.2 In addition to the range of powers and duties required under the primary legislation, the Housing Acts, there are a number of Regulations and Orders made under those Acts laying down additional powers and duties. These are also included in the Policy.

## **5. Redress Schemes for Lettings Agency Work and Property Management Work**

- 5.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 requires all letting agents and property managers to register with one of three government approved redress schemes. This means that tenants and landlords with agents in the private rented sector are able to complain to an independent organisation about the service they have received.
- 5.2 The Council may impose a maximum penalty of £5,000 where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. The level of penalty is to be determined by the Council and the Policy states how officers will follow the procedure for issuing a monetary penalty as defined in the 2014 Order.

## **6. Smoke and Carbon Monoxide**

- 6.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) require private sector landlords to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance (for example a coal fire or a wood burning stove). They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy.
- 6.2 The Council will issue a remedial notice where it has reasonable grounds to believe a landlord has not complied with one or more of the requirements. The landlord must comply with the notice within 28 days. If they do not, the Council is required to carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met.
- 6.3 The Council may impose a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice. The Regulations require the Council to be open and transparent regarding the civil penalty and publish a Statement of Principles, which it will follow when determining the amount of a penalty charge. The Policy provides information about the Regulations and includes the Statement of Principles that the Committee is requested to consider as part of the wider Policy.

## **7. Power to impose civil penalties for Housing Act offences**

- 7.1 In recent years, legislation has changed to allow councils to issue penalty notices in defined circumstances within the private sector housing enforcement. The Housing and Planning Act 2016 introduced penalty charges as an alternative enforcement tool to prosecution and can be imposed for certain offences under the Housing Acts, including overcrowding, failure to licence an HMO, breach of licensing conditions, or failure to comply with an Improvement Notice.
- 7.2 When considering imposing a civil penalty the Council must have in mind that the same criminal standard of proof is required as for prosecution. Therefore, the Council must satisfy itself that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.
- 7.3 Tandridge's proposed 'Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004' forms part of the main Policy. It sets out how the Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.
- 7.4 The approval and adoption of the Policy by the Committee, which includes information about the Council's powers and responsibilities in relation to civil penalties, will enable the Council to bring these powers into operation.
- 7.5 Any income collected by local authorities, through civil penalties, can be kept by them, provided it is used to further its undertaking of its statutory duties in relation to enforcement activities in the private rented sector.
- 7.6 It should be noted that formal enforcement and the use of these powers in particular should be seen as measures of 'last resort' and the hope is that the powers will act as a powerful incentive to landlords and agents to comply with their legal responsibilities. As such, the measures can be considered as a significant deterrent to landlords and the approval of their introduction will provide the Council with an effective tool.

## **8. Delivery**

- 8.1 The PSH enforcement role is delivered by the Environmental Health and Licensing Partnership which works across Tandridge and Mole Valley District Councils. The inspection of HMOs, family homes and other privately rented accommodation, in accordance with all the Housing Acts and associated Regulations, is already carried out by the PSH Officer within that team. The approval of this Policy will enable the Council to apply charges for the service of notices and apply civil penalties where appropriate for non-compliance.
- 8.2 The timescale for the introduction of these powers will be during 2022/23.

## **9. Financial Implications**

- 9.1 It is possible that the introduction of the new financial penalty regime may result in a small amount of additional income to the Council. However, financial penalties are just one type of enforcement action applied by the Council, and each case is judged on an individual basis. The enhanced penalties are also expected to act as a deterrent to landlords committing offences. This means that it is difficult to assess the financial impact, if any, arising from this change.
- 9.2 When introduced, the financial impact of these changes will be monitored. Any income received from the issue of civil penalties will be used to further our private sector housing working practice in line with regulations.

## **10 Legal Implications**

- 10.1 The Housing and Planning Act 2016 introduced a number of changes, including a power allowing local authorities to impose civil penalties of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004. The amount of penalty is to be determined by local authorities in each case, having regard to statutory guidance. The guidance states that it is expected that the maximum amount is reserved for the very worst offenders and that the actual amount levied in each case should reflect the severity of the offence, as well as taking into account the previous record of the offender and the harm or potential harm caused to the tenant.
- 10.2 The Policy, if approved, will help ensure that the Council's duties to regulate standards within private sector rented accommodation are met. Failure to have an up to date Policy is likely to attract criticism and have an adverse effect on the reputation of the Council.

### **Options**

#### ***Option 1 – Recommended***

*Committee approves and formally adopts the Policy in full, to set out the Council's approach to enforcement in private sector housing and also enable the Council to use its powers to impose civil penalties in certain circumstances.*

#### ***Option 2***

*Committee approves and formally adopts the Policy in part, to set out the Council's approach to enforcement in private sector housing but does not approve the inclusion in the policy of some of the Council's powers to impose civil penalties.*



## **Risk Implications**

### ***Option 1 – Recommended***

#### **Risks**

There are no identified risks associated with this option.

#### **Opportunities**

The Policy enables the Council to utilise its full powers under the Housing Acts and associated legislation to provide the full range of enforcement options and significant deterrents to those landlords who might otherwise contravene the legislation.

### ***Option 2***

#### **Risks**

If the Council only adopts the Policy in part and does not adopt the powers provided under the Housing and Planning 2016, it will not be able to impose civil penalties as an alternative to prosecution in respect of certain offences under the Housing Acts. This would be a missed opportunity to have in place a significant deterrent to those landlords who might consider contravening the legislation and also the loss of an important enforcement tool to deal with those landlords and agents who choose to break the law.

#### **Opportunities**

The Council would still be able to utilise its existing range of enforcement powers under Housing Acts and some of the associated legislation.

## **Communications**

Following adoption of the Policy, a notice will be placed on the TDC website to inform the public that the Policy is in force and a copy of the full Policy will be available to the public free, at the Council offices and on the website.

## **Comments of the Chief Finance Officer**

The Policy does potentially have direct financial implications for 2022/23. However, and as mentioned in Paragraph 9 (Financial Implications), each notice will be determined on an individual basis and the civil penalties, if agreed, may act as a deterrent to landlords committing offences.

If introduced, the financial impact will be closely monitored and managed. Any income received from the issue of civil penalties will be used to further our private sector housing working practice in line with regulations.

## **Comments of the Head of Legal Services**

The legal implications are set out in the body of the report. The Policy is necessary to ensure any action the Council will take is robust, defensible, consistent and transparent.

## **Equality**

It is considered that there are no equality implications for the Committee to consider in respect of the Policy.

## **Climate change**

The improvements to residential properties brought about by the enforcement work undertaken in line with this policy will impact positively on the environment.

## **Appendices**

Appendix 'A' – Proposed Private Sector Housing Enforcement Policy 2022

----- end of report -----

# **Private Sector Housing Enforcement Policy**

January 2022

## **Contents**

### **1 Purpose**

### **2 Introduction**

### **3 What to expect from the Council**

- 3.1 Landlords
- 3.2 Tenants
- 3.3 Owners Occupiers

### **4 Enforcement Policy and Principles**

- 4.1 Role of the private rented sector
- 4.2 Advice and guidance
- 4.3 Inspections, other visits and information requirements
- 4.4 Compliance and enforcement actions
- 4.5 Accountability
- 4.6 Risk Assessment
- 4.7 Housing Health & Safety Rating System

### **5 Tenure**

- 5.1 Owner-Occupiers
- 5.2 Registered Social Landlords
- 5.3 Private Landlords
- 5.4 What is expected of tenants
- 5.5 Retaliatory evictions

### **6 Situations where a service may not be provided**

### **7 Powers available to the Council to deal with poor standards**

- 7.1 Authority to investigate or enforce
- 7.2 Authorisation of officers
- 7.3 Powers of entry and power to require information
- 7.4 Choice of appropriate enforcement action
- 7.5 Power to charge for enforcement action
- 7.6 Recovery of debts

### **8 Housing Notices and other types of Enforcement Action**

- 8.1 Hazard Awareness Notice
- 8.2 Improvement Notice
- 8.3 Suspended Improvement Notice
- 8.4 Prohibition Order
- 8.5 Suspended Prohibition Order
- 8.6 Emergency Remedial & Prohibition Action
- 8.7 Demolition Orders
- 8.8 Clearance Areas
- 8.9 Revocation and Variation of Notices
- 8.10 Failure to Comply with Notices
- 8.11 Simple Cautions
- 8.12 Works in Default
- 8.13 Review of Enforcement Action

- 9 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**
- 10 The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014**
  - 10.1 Implementation
- 11 Civil Penalties**
  - 11.1 Determining the sanction
  - 11.2 Factors to be taken into consideration when determining the Penalty
  - 11.3 Determining the penalty
- 12 Rent Repayment Orders**
- 13 Houses in Multiple Occupation**
  - 13.1 HMO Licensing
  - 13.2 Fit and Proper Person
  - 13.3 HMO Licensing Offences
  - 13.4 Temporary Exemption Notices
  - 13.5 Fire Safety in HMOs
  - 13.6 General Management of HMOs
  - 13.7 Interim Management Orders
  - 13.8 Final Management Orders
- 14 Minimum Energy Efficiency Standards**
  - 14.1 Exemptions
  - 14.2 Penalties
- 15 Electrical Safety Standards**
  - 15.1 Enforcement
- 16 Empty Homes**
- 17 Monitoring & Review**
- 18 Application of the Policy**

**Appendices:**

- 1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015  
Statement of Principles for determining the amount of the Penalty Charge
- 2. Schemes for Lettings Agencies and Property Managers - Statement of Implementation
- 3. Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004

## 1. Purpose

This Policy details how the Council will regulate standards in Private Sector Housing in Tandridge. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure the private sector housing is well maintained.

It is important for local authorities to have an enforcement policy to ensure consistency of approach among council officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or if an appeal is made against enforcement action.

Our aim is to raise standards in private sector housing throughout Tandridge, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

In developing this policy, the Council must remain impartial and be fair to all parties and provide help and advice to achieve our aim; but we must also be firm in taking enforcement action if appropriate.

## 2. Introduction

Private Sector Housing Enforcement is part of the Council's Environmental Health remit. It aims to protect and improve lives, by ensuring private rented homes and other homes in the private sector are safe and warm.

The 'Environmental Health and Licensing Enforcement Policy 2020' which can be found at: <https://www.tandridge.gov.uk/Portals/0/Documents/Business-and-Licensing/Health%20and%20safety%20at%20work/EH-licensing-enforcement-policy-approved-tdc-february-2020.pdf?ver=2020-08-17-143010-860> outlines the Council's general approach to enforcement across a wide range of Environmental Health activities.

This 'Private Sector Housing Enforcement Policy' however, provides details of the Council's specific approach to regulating housing standards in Tandridge. It follows the "Principles of Good Regulation" set out in the Legislative and Regulatory Reform Act 2006 (2006 Act):

- Regulatory activities should be carried out in a way which are transparent, accountable, proportionate and consistent.
- Regulatory activities should be targeted only at cases in which action is needed.

## **Regulators' Codes**

The 2006 Act requires that we have regard to the current Regulators' code when developing policies and procedures that guide our regulatory activity. This policy has regard to the Regulators' Code.

The Private Sector Housing Enforcement Policy (the Policy) confirms that:

- The Council will provide information, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant housing legislation, before embarking on any enforcement process.
- The Council is committed to carrying out its duties in a fair and consistent manner, ensuring that any enforcement action is proportional to the severity of the noncompliance and the risk posed to the public.

Enforcement means an action carried out in exercise of, or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, an application for a rent repayment order or the issue of civil penalty notices. It also includes inspections or investigations related to property or land and any relevant person, where the purpose is checking compliance with legislation or to give advice to help comply with the law.

## **3. What to expect from the Council**

### **3.1 Landlords**

1. We will advise you of applicable legislation and provide advice about how you can comply with the requirements.
2. We may advise you of any remedial action you need to take to comply with the legislation and will ask you to provide your proposal for doing that.
3. If we are satisfied with your proposal, we will agree suitable time scales.
4. If we are not satisfied with your proposal or how the work is progressing, we will initiate formal action in a proportionate manner as appropriate to the circumstances.
5. Where a statutory notice is served, we may make a charge for the service of that notice.
6. Where you do not comply with the requirements of a formal notice, in making any decision whether to commence prosecution or other penal proceedings, we will have regard to how serious the offence is, the public benefit of enforcement action and whether some other action would be appropriate.

### **3.2 Tenants**

1. We will expect you to advise your landlord of any issues within your property, wherever possible in writing, before contacting the Council to register a complaint about your accommodation.
2. We will advise you about the action the Council may take in order to resolve the matter and advise you of the expected timescales.
3. We will expect you to cooperate with the landlord in providing access to undertake any works and to advise us of any action taken by the landlord.

### **3.3 Owner Occupiers**

1. We will expect owner occupiers, where practicable, to maintain the properties they live in.
2. If an owner occupied property is brought to the Council's attention, and the condition of the property presents a health and safety risk to an occupier or potential visitor, the Council will consider taking appropriate enforcement action to reduce or eliminate that risk.

## **4. Enforcement Policy and Principles**

### **4.1 Role of the private rented sector**

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. To this end the Council will work with landlords to improve and sustain good quality accommodation and will only intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property.

### **4.2 Advice and guidance**

The Environmental Health and Licensing Service (the Service) will provide authoritative advice about private sector housing. The Council's website provides general information, to make it easier for landlords, agents and home owners to understand their obligations. The Service will consult with government guidance, landlords' associations and other appropriate stakeholders when developing the content and style of the guidance.

When offering advice, the Service will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.



Whilst the Service welcomes general enquiries from home owners, tenants and landlords about complying with minimum standards and ensuring homes are safe and warm, it is not able to act as a private consultant for home owners or landlords. The Service will not undertake non-statutory, detailed assessments for individual properties, such as fire safety risk assessments, or specifying in detail the work that would be required to develop a proposed House in Multiple Occupation (HMO). However, the Service will advise landlords of their fire safety responsibilities to ensure HMOs are adequately protected, in consultation with Surrey Fire and Rescue where appropriate.

#### **4.3 Inspections, other visits and information requirements**

No inspection will take place without reason. Inspections and other visits will take place:

- in response to a reasonable complaint, or
- a request for service, or
- where poor conditions have been brought to our attention, or
- on receipt of relevant intelligence, or
- monitoring progress and compliance.

The inspections will be carried out in accordance with risk-based programmes and statutory inspection requirements (such as for mandatory licensing of HMOs).

Where it becomes clear that a formal inspection of a property is required, the landlord or their agent will be contacted and given the opportunity to accompany the investigating officer during the visit. Following an inspection, clear information will be provided, setting out any work required in order to meet statutory requirements and where appropriate, positive feedback will be given, to encourage and reinforce good practice.

The Service will focus its resources on the highest risk properties, those in worst condition and properties owned by landlords who regularly fail to comply with regulations or frequently have properties with poor conditions.

#### **4.4 Compliance and enforcement actions**

By facilitating compliance through a positive and proactive approach, the Service aims to achieve higher compliance rates and reduce the need for reactive enforcement actions. When considering formal enforcement action, the Service will, where appropriate, discuss the circumstances with those suspected of a breach and take their representations into account when deciding on the best approach. This will not apply where immediate action is required to prevent, or respond to, a serious breach or to deal with an imminent risk to health and safety, or where to do so is likely to defeat the purpose of the proposed enforcement action.

The Service will ensure that clear reasons for any enforcement action are given and information about complaints and appeal procedures are provided.

## **4.5 Accountability**

The Service will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions that it takes. Officers will provide a courteous, prompt and efficient service and will identify themselves by name. A contact point, telephone number and email address will be provided. Applications for licences etc. will be dealt with efficiently and promptly and services will be effectively coordinated to minimise unnecessary overlaps and time delays.

Information about independent appeal mechanisms, such as to the First-Tier Property Tribunal can be found here: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Complaints about our service will be handled in line with the Council's Corporate Complaints procedure which is outlined here: <https://www.tandridge.gov.uk/Report/Compliments-complaints-and-feedback>

## **4.6 Risk Assessment**

Officers use basic risk assessments to focus resources in the areas that most require them and on the properties in the worst condition. In doing so, we also take account of any safeguarding issues and the vulnerability of the occupants.

Where formal enforcement is likely, a more detailed assessment is required. Suitably trained and experienced officers apply the Housing, Health and Safety Rating System (HHSRS), a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions. HHSRS can also be applied to HMOs. Additionally, HMOs will be assessed in accordance with appropriate licence conditions and Management Regulations.

Following receipt of a service request or complaint about poor housing conditions, an initial risk assessment will be carried out. Follow-up advice or action will be dependent on the outcome of the initial risk assessment and may not always involve a visit to the property.

Complaints about Social Housing properties will be referred to the relevant housing provider (Housing Association) to investigate and resolve in the first instance. However, where the provider fails to investigate within a reasonable time period, or the tenant considers the action taken has not resolved the matter we may intervene.

## **4.7 Housing Health & Safety Rating System**

This Policy takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (HHSRS).

The HHSRS is a calculation of the effect of 29 possible hazards on the health and safety of occupiers and potential visitors to a residential property. It is a two-stage calculation combining the likelihood of an occurrence taking place, (that occurrence being caused by defects to the property) and the range of probable harm outcomes that could arise from that occurrence. The calculation is repeated for each of the hazards identified at the property and provides a numerical rating for each hazard. Once scored, any action considered will take into account the effect of the identified risk upon the occupant.

Hazard ratings of 1,000 points and over are the most severe, and are classed as Category 1 hazards. The less severe ratings, with less than 1,000 points are classed as Category 2 hazards.

HHSRS provides a combined score for each hazard identified. It does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented. The Council has a duty to take appropriate action in response to Category 1 hazards. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to Category 2 hazards and what form that action may take.

## **5. Tenure**

The HHSRS applies to all tenures of housing. It does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a social housing provider. 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 usually able to do so.

The Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

## **5.1 Owner-Occupiers**

The range of formal notices available to the Council under the Housing Act are detailed in Section 8 of this policy. Most of the powers may be applied to owner occupied properties in the same way as they apply to rented properties. However, we anticipate that Hazard Awareness Notices will frequently be the appropriate course of action when dealing with hazards in an owner-occupied property. The use of Improvement Notices, Prohibition Orders and their emergency equivalents will be considered however, in certain cases involving:

- vulnerable elderly people who are judged incapable of making informed decisions about their own welfare
- vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
- hazards that might reasonably affect persons other than the occupants
- serious risk of life-threatening harm such as electrocution or fire

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

## **5.2 Registered Social Landlords**

Registered Social Landlords, better known as Housing Associations (HA), exist to provide suitable and properly maintained accommodation for people in housing need. They are managed by boards and their performance is scrutinised by Homes England. HAs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will not normally take formal action against a HA unless:

- it is satisfied that the problem in question has been reported to the HA by the tenant and
- the HA has then failed to take appropriate action or
- the HA's complaints procedure has run its course without adequately mitigating the hazard(s).

If the Council determines that it is appropriate to take action, it will notify the HA that a complaint has been received and/or a hazard identified and seek their comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council consider taking further action and will determine which of the available enforcement options is the most appropriate, considering the facts of the case.

### 5.3 Private Landlords

The Council will have regard to the principles of statutory guidance and relevant guidance from the First-tier Tribunal (Property Chamber) decisions and will initially seek to proceed informally. Where appropriate, officers will seek to work with landlords to provide advice and guidance to bring about the improvements and repairs necessary without the need for formal action.

In some instances however, there may be a need to initiate formal enforcement action as a first step. Immediate formal action will be taken by the Council in the following circumstances:

- Where a hazard is identified which poses an imminent risk of serious harm to any person.
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.
- Where a hazard exists and retaliation eviction as defined by the Deregulation Act 2015 is likely to occur.

When arranging a formal inspection the Council will notify the landlord (or his/her relevant agent) usually in writing, to confirm their involvement and the time and date of the visit. Following the inspection, the Council will explain the nature of any hazard(s) identified in writing and seek the landlord/agent's proposals for remedying the problem. Unless the Council already holds the required information, a Requisition for Information Notice may also be served which requires the full details of the landlord and anyone else with a financial or other interest in the property.

Following an inspection, the Council will not normally need to take formal enforcement action to discharge its duties as long as:

- satisfactory proposals and timescales for the work to be carried out are received from the landlord or his agent, and agreed within 14 days and
- the work is carried out to a satisfactory conclusion within agreed timescales

Landlords are expected to either:

- provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or
- to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council.

The failure of an agent to respond to a communication from the Council, or any failure to take appropriate action, may be treated as a failure by the landlord. The Council will proceed with formal action in accordance with this Policy, where:

- it does not receive a response from the landlord/agent, or
- it receives a response that it judges inadequate, or
- it receives proposals that were judged acceptable but which are not then followed through (for example if works fail to start when agreed, fail to make sufficient progress or are completed to an inadequate standard), or
- a retaliation eviction, as defined by the Deregulation Act 2015, is in process or is likely to occur.

#### **5.4 What is expected of Tenants**

Legislation covering landlord and tenant issues (that includes the detail of tenancy agreements and landlord and tenant obligations), requires that tenants notify their landlords, normally in writing, of any problems with the property. Before considering taking any action in respect of a tenanted property, the Council will generally require the tenant to contact their landlord, in writing, to inform them about the problems, and allow a reasonable time period for the landlord to respond and undertake any works.

Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will still continue to try to contact their landlord, even if this is after they have contacted the Service. Copies of correspondence between the landlord and tenant should be provided for officers upon request.

In certain situations, tenants, will not be required to write to their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice.
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household.
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent.
- Where the property is an HMO which appears to fall within HMO licensing.

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

HA tenants have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner that includes the HA formal complaints process, and a final right of appeal to the Housing Ombudsman Service. However, if the HA has not taken appropriate action to deal with problems with the property, then the Council will investigate and take appropriate action.

#### **5.5 Retaliatory Evictions**

A 'Retaliatory Eviction' is one where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice.

The Deregulation Act 2015 introduced additional provisions, designed to protect tenants against unfair eviction. In order to rely on the protection against retaliatory eviction that the Act provides, a tenant must inform the landlord, in writing, of a defect in the property. If, after 14 days from the tenant making a complaint; the landlord does not reply, or that reply is inadequate, or they respond by issuing a Section 21 Eviction Notice, the tenant should approach the Service and request an inspection of the property to verify the need for a repair. If the HHSRS inspection confirms that the tenant's complaint was justified, appropriate enforcement action will be taken.

If the Council serves an Improvement Notice or Notice of Emergency Remedial Action, the landlord cannot evict the tenant for 6 months using the no-fault eviction procedure. The landlord is also required to ensure that the repairs are completed.

We will work with landlords to understand their obligations and the implications of this legislation, and will work alongside the Housing Service to provide support, advice and guidance to the tenant in these circumstances.

## **6. Situations where a service may not be provided**

Where any of the following situations arise, consideration will be given to not providing, or ceasing to provide, a service to a tenant:

- The tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works.
- 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.
- The tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow-up letter or appointment card.
- The tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers.
- There is found to be no justification for the complaint, on visiting the property.
- The tenant unreasonably refuses to provide the Council with relevant documentation.

## **7. Powers available to the Council to deal with poor standards**

### **7.1 Authority to investigate or enforce**

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that Tandridge District Council has in relation to regulating housing standards, in its capacity as the Local Housing Authority. Additional powers are also contained in the Housing Act 1985 and other legislation such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, the Public Health Acts 1936 and 1961 and the Housing and Planning Act 2016. This is not a complete list of the powers available.

## **7.2 Authorisation of Officers**

Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Scheme of Delegation sets out the powers delegated to officers and these are recorded in each officer's Warrant of Authority.

Officers who undertake criminal investigations will be conversant with the provisions of all relevant criminal investigation law.

Officers are sometimes asked to give evidence on behalf of one of the parties in a private action. In order to prevent any implication that the officer has taken sides, officers will usually only attend in response to a witness summons.

## **7.3 Powers of entry and power to require information**

The Council has the power of entry into private residential properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised
- The Officer has given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No prior notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), section 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO Management Regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004, or
- investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above, and also Housing Benefit and Council Tax information obtained by the authority, to carry out its functions in relation to these parts of the Act.



## 7.4 Choice of appropriate enforcement action

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will normally attempt to secure any required repairs and improvements through informal engagement with the landlord and within a reasonable amount of time.

The decision to use enforcement action will depend on the severity of any non-compliance and the factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals,
- The culpability of the responsible party,
- Evidence that suggests that there was premeditation in the commission of an offence,
- Whether there is a history of previous warnings or the commission of similar offences,
- Aggravated circumstances such as aggressive or violent behaviour towards the officer or occupants,

The Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case. A statement of reasons will be provided with any Notice it serves, explaining why the Council has decided to take a particular course of action. The Council will remain impartial and take action that is proportionate to the situation. The Service will adopt a coordinated approach with other Council services and relevant agencies in taking any action.

## 7.5 Power to charge for enforcement action

The Council has the power, under the Housing Act 2004, to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving certain Housing Act notices. The Council may recover a reasonable amount for expenses incurred in connection with time spent gaining entry to a property, visiting and inspecting the property to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action

The Council may make a charge where the following notices are served under the Housing Act 2004:

<b>Section</b>	<b>Type of Notice</b>
Section 11 and 12	Improvement Notice
Section 20 and 21	Prohibition Order
Section 28 and 29	Hazard Awareness Notice
Section 40	Emergency Remedial Action Notice
Section 43	Emergency Prohibition Order
Section 265 (Housing Act 1985)	Demolition Order

The charge reflects the expenses incurred by the council in the inspection of the property, consideration of action to be taken and service of the appropriate Notice. The investigating officer records the time spent and applies the hourly cost to calculate the total cost of the action. The hourly cost to the council constitutes the officers hourly rate plus on-costs. This charging structure seeks to recover the cost of administration and compliance only. The invoice for the charge will be included when the notice is served. When the charge demand becomes operative, the sum recoverable will be a local land charge. Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

## **7.6 Recovery of Debts**

Where charges for enforcement action are levied, they will be registered as a local land charge against the owner's property. If the charge has not been paid when the property is sold, the debt has to be repaid, including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). To recover debts the Council will use some of the following means:

- The enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs
- Use tracing services to track down debtors and secure judgments to recover debts
- Demand rents are paid to the Council instead of the landlord to recover outstanding debts (where the legislation allows and it is appropriate to do so).

## **8. Housing Notices and other types of Enforcement Action**

### **8.1 Hazard Awareness Notice**

Hazard Awareness Notices may be served to notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the longstanding nature of the occupancy). It might also be applicable where:

- It is judged appropriate to draw a landlord's attention to the desirability of remedial action
- To notify a landlord about a hazard as part of a measured enforcement response

### **8.2 Improvement Notice**

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards. Having considered the circumstances of the case, where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works that will either remove the hazard entirely or will reduce it to an acceptable level of risk.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works it considers sufficient to reduce it to an acceptable degree.

### **8.3 Suspended Improvement Notice**

The Council has the power to suspend an Improvement Notice so that it only comes into effect once a certain situation exists or arises. The following are situations in which it may be appropriate for the Council to serve a Suspended Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the property becomes vacant or temporary alternative accommodation can be provided for the tenants
- Personal circumstances of occupants; for example, temporary ill health, which suggests that works ought to be deferred

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to:

- the level of risk presented by the hazard(s)
- the turnover of tenants at the property
- the response or otherwise of the landlord or owner and
- any other relevant circumstances (e.g. whether the vulnerable age group is present)

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

### **8.4 Prohibition Order**

Prohibition Orders may be served in respect of both Category 1 and Category 2 hazards, for all, or part of a property. An Order may prohibit the use of the property where it is unsafe, until work has been carried out to make it safe, or where works of repair and/or improvement are inappropriate on grounds of practicality or excessive cost. Examples include:

- a room in a property which is badly affected by rising damp,
- a property which is structurally unsound,
- a property or part of a property where adequate natural lighting or a suitable fire escape cannot realistically be provided.

In addition to prohibiting all uses in relation to the whole or part of the premises in question, Prohibition Orders can prohibit specific uses. This option may be used to prevent occupation by particular descriptions of persons who may be more vulnerable to the hazard identified. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants.
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

### **8.5 Suspended Prohibition Order**

The Council may decide that the operation of a Prohibition Order may be suspended until a particular time, or the occurrence of an event, takes place at the property. This could include for example, the time when a person of a particular description begins, or ceases, to occupy any property. Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition, or a Suspended Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

### **8.6 Emergency Remedial Action & Emergency Prohibition Order**

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by Sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists, and that
- The hazard poses an imminent risk of serious harm to health or safety, and that
- Immediate action is necessary

If these conditions are met, the Council will take appropriate emergency action. Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises which lack a safe means of escape in the event of fire because there is no independent access
- Risk of electrocution, fire, gassing, explosion or collapse

### **8.7 Demolition Orders**

The Housing Act 1985 provides the Council with the power to make Demolition Orders. Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order, the Council will take account of Government guidance and will consider all the circumstances of the case.

### **8.8 Clearance Areas**

The Council can declare an area to be a Clearance Area if it is satisfied that each of the properties in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). In determining whether to declare a Clearance

Area, the Council will act only in accordance with Section 289 of the Housing Act 1985 and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

### **8.9 Revocation and Variation of Notices**

The Council has a duty to revoke certain Housing Act Notices once they are complied, to the satisfaction of the Council. An Improvement Notice being an example. In some circumstances, if only part of the work required within the Notice is carried out, then the Notice can be varied by the Council.

### **8.10 Failure to Comply with Notices**

If a landlord does not comply with a Housing Act notice, the Council will consider the reasons for non-compliance and consider taking the following options:

- Take no action (for example, where non-compliance is not the fault of the landlord i.e. the tenant refusing access)
- The issue of a simple caution
- Prosecution
- Carrying out the works in default
- Carrying out the works in default and prosecution
- Issue a Civil Penalty

Failure to comply with an Improvement Notice or a Prohibition Order is an offence for which an unlimited fine may be administered by the courts. Where a landlord is prosecuted for non-compliance with a Prohibition Order, it is an offence to carry on using the property in breach of the Prohibition Order, attracting a daily fine.

### **8.11 Simple Cautions**

Officers may use Simple Cautions where someone has committed a less serious offence. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple cautions are not appropriate where there is a history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances, prosecution is more appropriate.

### **8.12 Works in Default**

Works in Default will be considered if all other methods to try to remedy the necessary works have been unsuccessful. In determining if work in default is appropriate, Officers will report to the Environmental Health Shared Partnership Manager who will consider approval based on the following information:

- The effects of not carrying out the work on the health and safety of the occupants of the property concerned

- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Any other factors that are specific to individual properties

The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)

The expenses incurred are recovered from the person(s) on whom the Notice or Order is/are served (“the relevant person”). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The recoverable expenses, together with interest accrued on them, are registered as a charge on the property. As a charge on the property, the costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

### **8.13 Review of Enforcement Action**

If there is a change in the nature of the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers) the current state of any outstanding enforcement action will be reviewed by the Council. This ensures that the type of enforcement action is still appropriate and proportionate to the risk posed from the identified hazard(s).

## **9. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) require private sector landlords to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance (for example a coal fire or a wood burning stove). They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy.

The Council may issue a remedial notice where it has reasonable grounds to believe a landlord has not complied with one or more of the requirements. The landlord must comply with the notice within 28 days. If they do not, the Council is required to carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met.

The Council may also impose a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice. The Regulations require the Council to be open and transparent regarding the civil penalty and publish a Statement of Principles which it will follow when determining the amount of a penalty charge. The Statement of Principles is set out at Appendix 1.

Penalty charges for non-compliance are as follows:

First offence	£1,500	Reduced to £750 if paid within 14 days
Second offence	£3,000	No reduction for early payment
Any additional offences	£5,000	No reduction for early payment

In determining the level of the fixed penalty charge, the Council has considered the likely costs it will incur and that the amount charged is sufficient to provide a deterrent to future non-compliance. Increasing the charge for a second offence and then again for further offences reflects the seriousness of the offence and is designed to deter repeat offending.

While these charges are set as standard, a landlord may seek to review a penalty charge notice. Further information about this is provided in the Council's Statement of Principles.

## **10. The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014**

It is a legal requirement for all lettings agents and property managers (subject to certain exclusions) in England to join one of three Government approved redress schemes. This means that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with residential property managers, are able to complain to an independent organisation about the service they have received.

A maximum penalty of £5,000 may be imposed by the enforcement authority (the Council) where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. The level of penalty is to be determined by the Council and it will follow the procedure for issuing a monetary penalty as defined in the 2014 Order mentioned above and as set out in its Redress Schemes Statement which provides more detail and can be found at Appendix 2.

### **10.1 Implementation**

The Council will investigate complaints or intelligence received concerning unregistered agents. Where it finds that an agent who should have registered with a scheme, has not done so, it will serve notice that it intends to issue a monetary penalty and will specify the reasons. It will also outline how the person notified can submit any representations concerning the notice and also provide information about the appeal process.

The standard penalty charge for breach of duty under the Order is set as follows:

Breach	Penalty	Notes
Failure to register with an approved redress scheme	£5,000	Reduced to £2,500 if paid within 14 days for first offence only

In determining the level of the fixed penalty notice, the Council has considered the likely costs it will incur and the amount required to be sufficient to provide a deterrent to non-compliance.

A guide for letting agents and property managers has been produced by the Ministry of Housing, Communities and Local Government and is available at <https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes>

## **11. Civil Penalties for offences under the Housing Act 2004**

The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords, including the power for Councils to issue civil penalties. Penalties of up to £30,000 may be issued as an alternative to prosecution for certain specified offences.

Income received from a civil penalty can be retained by the Council, provided that it is used to further its statutory functions in relation to enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The amount of penalty is to be determined by the Council in each case. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. In determining an appropriate level of penalty, the Council will have regard to the publication 'Civil Penalties under the Housing and Planning Act 2016' in which the Government's Department for Communities and Local Government (DCLG) provides statutory guidance.

A civil penalty can only be imposed as an alternative to prosecution. However, unlike prosecution action, where there are offences under Houses in Multiple Occupation Management Regulations, the Council may issue a civil penalty for each separate offence.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. The Residential and Environment Team will consult with the Council's legal team in this respect.



## 11.1 Determining the Sanction

The following principles will apply to each case to be considered in relation to a civil penalty;

- Each case will be considered on its own merits
- There must be sufficient, reliable evidence to justify the action taken
- The action taken must be in the public interest
- Any mitigating circumstances will be considered
- The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.

## 11.2 Factors to be taken into consideration when determining the Penalty

In accordance with the statutory guidance, the Council will consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a

high enough level such that it is likely to deter the offender from repeating the offence.

- **Deter others from committing similar offences.** While the fact that someone has received, a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

### 11.3 Determining the Penalty

Tandridge District Council's 'Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004' is provided as Appendix 3. It sets out how the Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made. It also provides further information about how the penalties are imposed, the procedure for issuing them and the process for appealing a penalty.

## 12. Rent Repayment Orders

The Housing Act 2004 enabled Councils to apply for Rent Repayment Orders (RROs) in regard to offences related to HMOs. A landlord who operates an unlicensed HMO can be subject to a RRO when issued by a First-tier Tribunal (Property Chamber). The Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6<sup>th</sup> April 2017:

- Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order under Section 32 of the Housing Act 2004
- Breach of a banning order made under Section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property under Section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property under Section 1 of the Protection from Eviction Act 1977

A RRO requires repayment of rent received by the landlord over a period of up to 12 months. The Council will usually consider applying for such a measure if the landlord has

received rent that has been paid by Housing Benefit. A criminal standard of proof is required. The Council must apply to the First-tier Property Tribunal for an RRO. A tenant may apply for a rent repayment order themselves if they are not in receipt of housing benefit.

Tandridge District Council will consider making an application for a Rent Repayment Order in all cases where a person has been prosecuted in relation to one of the above offences.

### **13. Houses in Multiple Occupation**

A House in Multiple Occupation (HMO) is defined in the Housing Act 2004. It is a residential property which is rented to three or more persons who form two or more households, and where those households share one or more amenities such as a bathroom, toilet or cooking facilities. A household is defined as a single person, a family, or a cohabiting couple.

The Housing Act 2004 introduced mandatory licensing for certain types of HMO. In October 2018 the definition of the types of HMO requiring to be licensed was extended to include all HMOs that contain five or more occupants, who form two or more households and share one or more amenities.

#### **13.1 HMO Licensing**

The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed. The responsibility for applying for a licence rests with the person having control of, or the person or company managing the property. Prospective licence holders are required to submit an application form, supply various certificates for gas and electrical safety, a fire alarm installation or servicing certificate and pay the licensing fee. Where possible an officer will normally undertake an inspection of the property as part of the application process, but this can happen at any time during the licensing period. The licence is issued for a period of five years, with mandatory conditions attached to the licence, which will include the maximum number of occupants and households that can occupy the HMO.

Where the Council is not confident in the management arrangements in place for a licensable HMO, it may only licence it for a one year trial period before deciding whether to issue the full five year licence.

The property is inspected at least once in the licence period. The officer will assess the room sizes and associated occupancy limits, numbers and condition of amenities such as kitchens, cookers, wash areas, bathrooms and toilets, and also the location and condition of fire detection devices, as well as protected fire escape routes. Where standards fall short of mandatory licence conditions, or the property is not being managed in accordance with the HMO Management Regulations, the Council will take enforcement action to improve standards. This may be done informally or through the service of notices.

If on inspection, an HMO does not comply with licence conditions and the officer deems that the state of the property is such that it presents a risk to the health and safety of the occupants, a full assessment will be carried out using the Housing, Health and Safety Rating System to determine the hazards that exist in the property. Using the results of the

assessment the officer will specify the works required to the property and require these informally, or by the service of an Improvement Notice.

If the repair works required are of a nature that is not feasible for them to be carried out, the officer will consider the service of a Prohibition Order under the Housing Act 2004. The Order would require that the occupants move out of the property for their own safety. In this situation, if the landlord does not have suitable alternative accommodation for the occupants to move to, the officer would first liaise with the Council's Housing Options team to find temporary accommodation, until such a time as the HMO is considered safe to return to, or if necessary assist them to find a new permanent residence.

### **13.2 Fit and Proper Person**

To be able to hold an HMO licence a person has to be considered to be "fit and proper". As part of the licence application process each applicant will be asked details of:

- Any unspent convictions for offences involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
- Any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business.
- Any contravention of any provision of the law relating to housing or of landlord and tenant law (including any civil proceedings that resulted in a judgement against the landlord).

The Council will also carry out an internal consultation to determine the licence holder is a fit and proper person to hold that licence. Where an applicant is deemed not to be 'fit and proper', an alternative licence holder must be nominated and assessed. If there is no suitable nominated licence holder this is not a reason to refuse a licence. In this situation the Council becomes responsible for the management of the HMO.

### **13.3 HMO Licensing Offences**

The Housing Act 2004 sets out a number of licensing related offences all of which carry an unlimited fine on conviction, including:

- Operating an unlicensed HMO
- Breach of a licence condition
- Supplying incorrect information in a licence application

In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO) by a First-tier Tribunal (Property Chamber). The Council may also impose a Civil Penalty for certain offences under the Housing and Planning Act 2016. The approach to these sanctions is outlined at sections 11.

Where an unlicensed HMO is identified, the Council will assess whether there are good reasons why an application has not been made. If a landlord of an unlicensed HMO approaches the Council for the purposes of licensing an HMO and the landlord can justify why a licence has not previously been applied for, the Council would normally not take enforcement action. However, if there are no good reasons why the landlord has not applied for a licence, the Council will consider taking formal proceedings leading to prosecution in the courts, or may issue a Civil Penalty.

Generally, a breach of a licence condition will be dealt with informally in the first instance. However, if the breach is serious and affects the safety of the occupants, or the landlord (or other responsible person) does not carry out the necessary works within an agreed timescale, the Council will pursue legal proceedings.

### **13.4 Temporary Exemption Notices**

Where a landlord is, or shortly will be taking steps to make an HMO non-licensable, the Council may agree to serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. In exceptional circumstances a second TEN can be served for a further three-month period. A TEN will be served where the owner of the HMO states in writing that steps are being taken to make the HMO non-licensable within 3 months and provides evidence of this, for example the property may be on the market or the number of tenants may be reducing.

### **13.5 Fire Safety in HMOs**

It is essential that any HMO possesses an adequate means of escape in event of a fire and adequate fire precautions. The actual level of fire protection and detection required will be determined by a risk assessment.

The Council's Environmental Health Officers are generally the lead enforcing authority for fire safety in HMOs, working closely with Surrey Fire and Rescue Service. Where an HMO contains communal areas, a Fire Risk Assessment must be carried out in accordance with the Regulatory Reform Order. For clarification, and/or general fire safety guidance, contact the Residential and Environment Team by emailing:

[privatesectorhousing@tandridge.gov.uk](mailto:privatesectorhousing@tandridge.gov.uk).

### **13.6 General Management of HMOs**

The Management of Houses in Multiple Occupation (England) Regulations 2006 (Regulations) require the person having control of the house to ensure that: -

- All services, furnishings, fixtures and fittings are maintained in good, sound, and clean condition
- The structure is kept in good order
- All communal areas of the interior are regularly cleaned and redecorated as necessary

- All yards, boundary walls, fences, gardens and outbuildings are maintained in a safe and tidy condition
- Satisfactory arrangements for the disposal of refuse and litter have been made
- At the commencement of all tenancies the lettings are clean, in a satisfactory state of repair and decoration, and comply in all respects with these standards
- All staircases and multiple steps should be provided with suitable handrails
- All Tenants should fulfil their tenancy obligations.

Where the Council determines that a landlord has not complied with the Regulations, it will normally seek to resolve the matter informally, by requesting the necessary improvements and providing advice to the landlord. However, where there is repeated failure by the landlord to comply with the Regulations, or refusal to improve the management of the HMO, the Council will consider formal enforcement by way of prosecution or imposing a Civil Penalty. Offences under these Regulations, attract a separate civil penalty for each separate offence.

### **13.7 Interim Management Orders**

Interim Management Orders (IMO) may be made when the licensing regime fails. They enable the Council to take over the management of a HMO where there is no fit and proper person available to manage it.

The Council also has a duty to make an IMO if:

- The property is required to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future.
- The Council intends to revoke an existing licence and upon revocation there will be no reasonable prospect of the property being licensed in the near future (e.g. to another suitable person)

### **13.8 Final Management Orders**

In exceptional circumstances the Council may need to make a Final Management Order (FMO) on a property which is already being managed under an IMO. An FMO must be made if the property should be licensed by the date of expiry of the IMO, but the Council consider that a licence cannot be granted by that date. The FMO would enable the Council to continue to manage the HMO for the duration of the order and it also enables the Council to create new tenancies without the consent of the landlord. FMOs can be varied or revoked by the Council and the provisions, including on appeals, are similar to those for the variation and revocation of HMO licences.

For more information on HMO Licensing or Management Orders please contact Private Sector Housing.

## **14. Minimum Energy Efficiency Standards**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 require that where a privately rented property has a valid, registered Energy Performance Certificate (EPC), the minimum acceptable rating for the energy performance of the property must be 'E' or above. Properties for which a valid EPC has been registered, which indicates an EPC rating of 'F' or 'G' must not be rented out until works have been carried out to improve the energy performance.

### **14.1 Exemptions**

There are various exemptions from the requirement to undertake the necessary energy improvements to meet the minimum requirement. These may be due to limitations in cost or to limitations associated with the type of construction of a property. Any exemption must be correctly registered with supporting documentation at the PRS Exemptions Register at: <https://prsregister.beis.gov.uk>. The exemption is valid for a maximum of 5 years.

### **14.2 Penalties**

Where officers identify a privately rented property that does not meet the Minimum Energy Efficiency Standards (MEES) and has not registered an exemption, the Council may administer a fixed penalty and require the improvements to be carried out. The maximum amount a landlord can be fined per property is £5,000.

The financial penalty may be served up to 18 months after the breach has occurred. The maximum penalty limits are:

Up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.

Up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.

Up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register.

Up to £2,000 and/or publication for failure to comply with a compliance notice.

The amount of civil penalty issued may be subject to representations as to the exceptional, or extenuating circumstances and may be reduced on consideration of the representations made.

## **15. Electrical Safety Standards**

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 apply to private landlords in respect of any specified tenancy and require all private landlords to:

- ensure that the electrical safety standards (currently the 18th edition of the Wiring Regulations, published by the Institution of Engineering and Technology and the British Standards Institution as BS 7671: 2018) are met during any period when their property is occupied by a tenant as their main or only home
- ensure every electrical installation in the property is inspected and tested at least every 5 years by a qualified person who will provide a written report;
- ensure the first inspection and testing is carried out before the tenancy and provide the inspection/testing report to tenants; and to the local authority within 7 days of receiving a written request for the report.
- carry out any further or investigative work recommended by the report within 28 days or any lesser period specified in the report and obtain written confirmation that the work has been done to the correct standard.

## **15.1 Enforcement**

Tandridge District Council, as the local housing authority, is responsible for enforcing the Regulations. Where the Council has reasonable grounds to believe that a private landlord is in breach of the regulations, it must, within 21 days of arriving at this belief, serve a remedial notice on the landlord setting out the breaches and action required to remedy them. That action must then be taken within 28 days of the notice being served.

The landlord may make written representations in respect of the notice, in which case the notice will be suspended until the Council has considered those representations and informed the landlord of the outcome.

If a landlord fails to carry out the required works, the Council may, with the tenant's consent, carry them out itself and charge the cost back to the landlord, to be paid within 21 days.

The landlord has a right of appeal against the authority to the First Tier Tribunal and there is dispensation for landlords who are prevented by tenants from gaining entry to the property to carry out works.

The Council may impose a civil penalty, up to a maximum of £30,000 if satisfied beyond reasonable doubt that a landlord has breached the Regulations. These penalties may be appealed to the First Tier Tribunal.

## **16. Empty Homes**

Empty homes can be a blight on our community as well as a wasted housing resource. The Council's Housing Team aims to work alongside owners of empty homes with a solution based approach to support and encourage voluntary action. However, the Council will also use appropriate enforcement action where owners fail to take responsibility for their properties and the condition of the property affects the community. There is a range of legislative powers available to different teams across the Council to deal with issues of anti-social behaviour linked to an empty home, or where an empty property presents a risk to health and safety.



## **17. Monitoring and Review**

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

## **18. Application of the Policy**

All authorised officers must have regard to this Policy when making enforcement decisions in relation to Private Sector Housing.

If you have any comments or queries regarding this Policy, please contact:

Residential and Environment Team Leader, Environmental Health

By Email: [envhealth@tandridge.gov.uk](mailto:envhealth@tandridge.gov.uk)

By telephone: 01883 722000

At this address: Environmental Health and Licensing Partnership, Tandridge District Council, Station Road East, Oxted, Surrey, RH8 0BT.

## **Appendix 1**

### **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 Statement of Principles for determining the amount of the Penalty Charge**

#### **Introduction**

The purpose of this Statement of Principles is to set out a framework for determining the amount of a penalty charge to be imposed for breaches of the above Regulations.

This statement sets out the principles that Tandridge District Council (the Council) will apply in exercising their right to require a landlord to pay a fixed penalty charge under the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. If the Council is satisfied that the landlord has breached his duty under Regulation 6(1) to comply with the requirements of a Remedial Notice under Regulation 5.

#### **The Legal Framework**

Regulation 8 provides that where a local housing authority (the Council) is satisfied, on the balance of probabilities, that a landlord on whom it served a remedial notice under Regulation 5 is in breach of their compliance duty under Regulation 6(1), it may require the landlord to pay a penalty charge. The amount of the charge to be determined by the Council and may be up to a statutory maximum of £5000.

#### **The scope of this document**

Regulation 13 requires Councils to prepare and publish a Statement of Principles to be followed in determining the amount of such a penalty charge. The Council will have regard to the criteria set out below in deciding whether to impose a penalty and what level that penalty should be.

#### **The primary aims of financial penalties will be to:**

- Recover the Council's costs in carrying out the necessary remedial work, under Regulation 7.
- Lower the risk to tenant's health, safety and wellbeing by ensuring that the property in question benefits from basic early warning in the event of a fire.
- Promote compliance of landlords in the private rented sector.
- Eliminate any financial gain or benefit from non-compliance with regulation.
- Be proportionate to the nature of the breach of legislation and the risk posed.
- Aim to prevent future non-compliance.

#### **Criteria for the imposition of a penalty charge**

In deciding whether it would be appropriate to impose a penalty charge, the Council will take full account of the particular facts and circumstances of the breach. Factors which the Council will take into consideration include, but are not limited to:-

- The extent to which the circumstances giving rise to the contravention were within the control of the landlord,
- The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach,
- The steps that the landlord has taken since being served with the remedial notice,
- Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred,
- Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).

### **Criteria for determining the amount of a penalty charge**

The Regulations set a maximum penalty charge of £5000. A penalty charge will be set at a level which the Council considers is proportional to the breach. It will also include the costs incurred by the Council in taking remedial action following non-compliance, including officer time and the cost of contractor supervision. The Council will consider:-

- Whether or not the breach under consideration is a first-time breach.
- The nature of the breach of the Regulations
- Continued, or repeat breaches of the Regulations

Tandridge District Council has set the penalty charge as follows:-

First Offence **£1,500** - if paid within 14 days from the service of the Penalty Charge Notice, there will be a discount of 50% to £750.

Second Offence **£3000** - No early payment discount

Subsequent Offences **£5,000** - No early payment discount

The Council will exercise discretion, and may not make, or may reduce, any penalty charge where the landlord is a housing charity providing housing services for vulnerable persons.

The Council will enforce penalty charges, to include obtaining a Court Order for payment, where necessary.

### **Review of Penalty Charge Notice & Appeals**

On receipt of a Penalty Charge Notice (PCN) from the Council, a landlord may, within 28 days from the service of the notice, make a written request asking the Council to review their decision. The Council will review the facts of the case and may confirm or vary their decision, and will serve notice giving the result of their review.

A landlord may appeal the review decision, to the First-tier Property Tribunal. The Tribunal may quash, confirm, or vary the PCN, but cannot increase the penalty charge.

The operation of the PCN is suspended until the Tribunal has determined the appeal.

Information about independent appeal mechanisms, such as to the First-Tier Property Tribunal can be found here: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

## Appendix 2

### The Redress Schemes for Lettings Agencies and Property Managers

#### Statement of Implementation

##### 1. Introduction

The 'Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014' (the Order), makes it a legal requirement for all lettings agents and property managers (subject to certain exclusions) in England to join one of three Government approved schemes meaning that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with residential property managers, will be able to complain to an independent organisation about the service they have received.

Definitions of what constitutes letting agency and property management work is found in the Enterprise and Regulatory Reform Act 2013

There are two Government approved schemes as follows:

1. Property Redress Scheme (<https://www.theprs.co.uk> )
2. The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk))
3. Ombudsman Services: Property (<https://www.ombudsman-services.org>)

The schemes deal with breaches of letting agency codes of conduct and issues including:

- Lack of transparency about fees for tenants
- Inaccurate property descriptions
- Disputes about refunds of holding deposits taken to reserve a property
- Inaccurate accounting and not passing tenants' rents to their landlord
- Slow or poor service

Redress schemes typically require letting agencies to:

- Follow a code of practice
- Have an in-house complaints procedure
- Cooperate with any investigation and agree to pay compensation promptly if the redress scheme awards it.

A maximum penalty of £5,000 may be imposed by the enforcement authority (the Council), where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. The level of penalty is to be determined by the Council.

## **2. Implementation**

Proactive checks of required membership will be undertaken as part of Mandatory Licence Applications for Houses in Multiple Occupation (HMO). All agents and property managers will be required to confirm details of scheme membership as part of all HMO Licence applications. The authority will also reactively investigate complaints/intelligence received concerning unregistered agents.

The Council will allow only one opportunity for agents to join a scheme once identified. If the agent/property manager fails to join within 14 days of being contacted by the Council, then a Notice of Intent to issue a monetary penalty will be issued, setting out the reasons and the amount of the penalty.

The lettings agent or property manager has 28 days to make written representations or objections to the authority.

At the end of the 28 day period the authority, having taken into account any representations received, will decide whether to impose the penalty.

If the authority decides to issue the penalty a Final Notice will be issued giving 28 days for payment to be made. Full details of payments methods are detailed on the notice.

If the letting agent or property manager does not pay the monetary penalty within the period specified, the Council may recover the penalty, with the permission of the court, as if payable under a court order.

The letting agents/property manager can appeal against the penalty to the First-tier Property Tribunal. The appeal must be made within 28 days of the day on which the Final Notice was sent.

The Council can impose further penalties if a lettings agent or property manager fails to join a redress scheme despite already having had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager if they continue to fail to join a scheme.

## **3. Enforcement Process**

### **Step 1: Notice of Intent**

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

- i) the reasons for the penalty;
- ii) the amount of the penalty; and
- iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate).

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

## **Step 2: Representations and Objections**

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

## **Step 3: Final Notice**

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must require the penalty to be paid within 28 days, from the day after the day on which the final notice was sent. When imposing a fine, the enforcement authority must issue a Final Notice in writing which explains:

- i) why the fine is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;
- v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

## **Step 4: Appeals**

If an appeal is lodged, the penalty cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- i) the decision to impose a fine was based on a factual error or was wrong in law;
- ii) the amount of the fine is unreasonable; or
- iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

## **Step 5: Recovery of the penalty**

The penalty charges received by the enforcement authority may be used by the authority for any of its functions. If the lettings agent does not pay the fine within the 28 day period, the authority can recover the fine on the order of the county court, as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate, signed by the enforcement authority's Chief Finance Officer, stating that the amount due has not been received by a date stated on the certificate, will be taken as conclusive evidence that the fine has not been paid.

Further guidance can be found at:

<https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes>

## **Appendix 3**

### **Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004**

#### **Introduction**

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.

This policy sets out guidance as to how Tandridge District Council (the Council) will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

#### **Legal reference**

Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:

- section 30 (failure to comply with an Improvement Notice),
- section 72 (licensing of Houses in Multiple Occupation (HMOs)),
- section 95 (licensing of houses under Part 3),
- section 139(7) (failure to comply with Overcrowding Notice), or
- section 234 (management regulations in respect of HMOs).

Schedule 13A of the 2004 Act prescribes the procedures that a local housing authority must follow before imposing a financial penalty, for imposing the penalty, the appeal process and the procedure for the recovery of the penalty.

#### **Government Guidance**

The Government's Department for Communities and Local Government (DCLG) published the following document: "Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities" to which local housing authorities must have regard. It recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

#### **The purpose of this policy**

This is Tandridge District Council's published policy in line with DCLG's recommendation that it should have a policy on determining the appropriate level of financial penalty.

This policy is based on one which is recognised as good practice, which was produced in consultation with a number of authorities and also the Local Government Association.

## **Basis of this policy**

In accordance with the new section 249A(4) of the 2004 Act the amount of a financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding on the level of penalty, it does not go into any detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of civil penalty in a particular case and seeks to set out further guidance through this policy as to how it will do so.

This policy is based largely on the principles set out in the Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline which this Council considers to be the most relevant sentencing guidance issued by the Sentencing Council. The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.

The range of financial penalties in this guidance use similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

## **THE PROCESS FOR DETERMINING THE LEVEL OF PENALTY**

### **1. Determining the offence category**

The Council will determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

#### **Culpability**

Very high - Where the offender intentionally breached, or flagrantly disregarded the law, or who has a high public profile and knew their actions were unlawful

High - Actual foresight of, or wilful blindness to risk of offending, but risk nevertheless taken  
Medium - Offence committed through act or omission which a person exercising reasonable care would not commit

Low - Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

#### **Harm**

The categories of harm below contain factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.



### *Category 1 – High Likelihood of Harm*

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable

### *Category 2 – Medium Likelihood of Harm*

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- The tenant has been misled

### *Category 3 - Low Likelihood of Harm*

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

The Council will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm.'

## **2. Starting point and category range of the penalty**

Having determined the category of the penalty, the Council will refer to 'starting points' to reach an appropriate level of civil penalty within the category range. These are set out in the table below.

<b>Penalty Starting Points and Ranges</b>				
		Range		
	Starting Point	Minimum	Maximum	
<b>LOW CULPABILITY</b>				
Harm Category 3	£ 50	£ 25	£ 175	
Harm Category 2	£ 125	£ 50	£ 350	
Harm Category 1	£ 300	£ 125	£ 750	
<b>MEDIUM CULPABILITY</b>				
Harm Category 3	£ 350	£ 175	£ 750	
Harm Category 2	£ 1,000	£ 350	£ 2,000	
Harm Category 1	£ 2,500	£ 750	£ 4,500	
<b>HIGH CULPABILITY</b>				
Harm Category 3	£ 1,000	£ 500	£ 2,250	
Harm Category 2	£ 3,000	£ 1,000	£ 5,500	
Harm Category 1	£ 6,250	£ 2,500	£ 12,500	
<b>VERY HIGH CULPABILITY</b>				
Harm Category 3	£ 2,500	£ 1,250	£ 4,500	
Harm Category 2	£ 6,250	£ 1,500	£ 12,500	
Harm Category 1	£ 15,000	£ 6,250	£ 30,000	

The table gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability.

### **Context**

Having determined the appropriate penalty range and the starting point, the Council will consider further adjustment to the level of penalty within the category range by taking into account any aggravating and mitigating features of the case.

Below is a list of some, but not all the factual elements that provide the context of the offence and the factors relating to the offender which the Council will need to identify in each case and consider whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, relevant recent convictions are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move above the original identified category range.

### **Aggravating Factors – Increasing Seriousness**

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Other aggravating factors include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements
- Refusal of free advice or training
- Member of Accreditation scheme, so should be aware of responsibilities

### **Mitigating Factors - reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

### **Obtaining financial information**

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the Council has obtained (or the offender has supplied) any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

*For example:* It is likely that an offender will be an owner of one or more properties in Tandridge. They are likely to have assets that they can sell or borrow against. Property values in Tandridge are high and have consistently increased, so even those offenders with mortgaged properties are likely to have value in the property that can be released. Therefore, if an offender claims that they are unable to pay a financial penalty and shows that their income is small, consideration should be given to properties owned that can be sold or refinanced.

### **3. Review any financial element of the penalty**

The Council will consider whether the proposed level of financial penalty is proportionate to the overall means of the offender. It may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range in the table above.

Full regard should be given to the totality principle at step 6, below, where multiple offences are involved.

#### **General principles to follow in setting a penalty**

- a) The Council should finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the offender.
- b) The level of financial penalty should reflect the extent to which the offender fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.
- c) The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences and that funds from the financial penalties should fund the work of the private rented sector team in the Council.

The cost of serving a financial penalty notice will be added to the penalty as a further deterrent to non-compliant landlords or agents. This is calculated by taking into account the time spent on investigating the case and may vary, depending on whether a case is either straightforward or alternatively more complex and takes a longer time.

#### **Review of the penalty**

The Council will review the penalty and, if necessary adjust the initial amount reached at step two to ensure that it fulfils the general principles set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

### **4. Reductions**

The Council will consider any factors which indicate a reduction in the penalty and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- the impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- the impact of the financial penalty on employment of staff, service users, customers and local economy.

## **Reduction for early admission of guilt**

The Council will take into account a potential reduction in penalty for an admission of guilt. The following factors will be considered in setting the level of reduction:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation the offender offers with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances, even where there is an admission of guilt, there may be no further reduction. For example, where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

## **5. Additional actions**

In all cases the Council must consider whether to take additional action. This may include works in default, Interim Management Orders or Rent Repayment Orders. The Council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.

## **6. Totality principle**

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, the council will consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, the Council will consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality.

‘The total financial penalty is inevitably cumulative.

The Council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LA.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved. For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no double-counting.'

## **7. Recording the decision**

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

### **PROCEDURE**

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal to impose a financial penalty ('notice of intent').

The Notice of Intent will include:

- The amount of the proposed financial penalty
- The reasons for proposing to impose the penalty
- Information about the right of the landlord to make representations

A landlord/agent who receives a Notice of Intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the when the notice was served.

Where written representations are received by the Council, a senior officer who was not previously involved with the case will consider the appeal. This will usually be the Environmental Health Shared Partnership Manager. The decision of the senior officer will set out their reasons for making their decision and the following options will be available to the

- Withdraw a notice of intent or final notice; or
- Reduce or increase the amount specified in a notice of intent or final notice
- Uphold the original decision to issue the notice of intent

At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, the Council will serve a Final Notice on the person, which will include the following information;

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty (28 days);
- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

A person who receives a Final Notice may appeal to the First-tier Tribunal (Property Chamber) against:

- The decision to impose a penalty; or
- The amount of the penalty.

In these circumstances, the Final Notice is suspended until the appeal is determined or withdrawn.

#### MONITORING AND REVIEW

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters. Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

#### APPLICATION OF THE POLICY

All Environmental Health Officers must have regard to this Policy when making enforcement decisions.

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## **HOUSING COMMITTEE 2022/23 DRAFT GENERAL FUND BUDGET AND MEDIUM-TERM FINANCIAL STRATEGY (MTFS)**

### **Housing Committee – 25<sup>th</sup> January 2022**

Report of: Alison Boote – Executive Head of Communities  
Rona Leitch – Finance Business Partner

Purpose: To propose the 2022/23 Draft Housing General Fund Budget to Council

Publication status: Unrestricted

Wards affected: All

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#### **Executive summary:**

The purpose of this report is to present the draft Budget for 2022/23 and Medium-Term Financial Strategy (MTFS), including the Capital Programme, for this committee.

Members are requested to agree the recommendations below. These recommendations will be consolidated into the overall position, which will form part of the Council-wide budget setting process (to be ratified by Full Council on 10<sup>th</sup> February 2022).

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#### **This report supports the Council's priority of:**

Building a better Council/Creating the homes, infrastructure and environment we need/Supporting economic recovery in Tandridge/Becoming a greener, more sustainable District.

**Contact officer** Rona Leitch – Finance Business Partner  
[rlitch@tandridge.gov.uk](mailto:rlitch@tandridge.gov.uk)

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#### **Recommendation to Committee:**

The approved Housing General Fund budget will form part of the Council-wide budget setting process (to be ratified by Full Council on 10<sup>th</sup> February 2022). This report focusses on the budgets for Planning Policy Committee, and recommends that that the Committee:

- A) **Agree the Housing Committee's Draft General Fund Revenue Budget for 2022/23 of £468k**, as shown in **Appendix A**, taking account pressures and savings allocated as part of **Tranche 1**. Note that a further two tranches of pressures and savings currently held in Corporate Items on behalf of other Committees will be distributed over the coming months (refer to para 1.4);
- B) **Agree the Housing Committee's General Fund Final Capital Programme** for 2022/23 being the sum of £460k for 2022/23, as shown in **Appendix C**;
- C) **Note the Subjective Revenue Budgets in Appendix B**, noting movements from 2020/21 to 2022/23 and an estimated movement to 2023/24;
- D) **Note** that due to timing and capacity constraints across the Council, **c£0.7m of savings** (as part of a £1.1m savings programme) and **c£0.4m of pressures** could not be allocated in time for January and February committee cycle, as such they will be allocated in three tranches (refer para 1.4):
- a. **Tranche 1** which are directly attributable to the committee have been allocated as per **Appendix A**;
  - b. **Tranche 2** will be brought to the March committee cycle for approval; and
  - c. **Tranche 3** will be overseen and monitored by the Benefits Board and will be brought to the June committee cycle for approval.

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## **Reason for recommendation:**

Section 151 of the Local Government Act 1972 requires all Councils in England and Wales to make arrangements for the proper administration of their financial affairs. It is a legal obligation that the Council sets a balanced budget for 2022/23. If the Council is unable to set a balanced budget, the Council will either have to draw down on its reserves which are already below the level considered prudent or it will have to make tough choices about service delivery.

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### **1. Introduction and background**

- 1.1. COVID-19 has exacerbated what have been two particularly challenging financial years. This has only served to confirm our requirement to re-build our Reserves, in order to create financial resilience and support the recovery from previous budget deficits.
- 1.2. The following section recaps the journey from the setting of the 2021/22 budget to the present day, as context for the Council's current financial position and proposed 2022/23 budget:
  - In February 2021, the Council approved a balanced budget for 2021/22, aiming also to replenish depleted reserves;

- By May 2021, when the 2020/21 outturn should have been reported, it was found that due to past decisions and unusual budget practices, the budgets for 2020/21 and 2021/22 included a recurring budget mistake of c£920k;
  - In June 2021, Grant Thornton (GT) was commissioned to conduct a Fact Finding and Forensic Review to confirm that the c£920k was an actual budget gap, which they did, and also confirmed that it was a base budget (i.e. ongoing) issue;
  - The GT report was presented to Strategy & Resources on 14 September 2021 and Audit & Scrutiny 30 September 2021;
  - Confidence in the Council's finances was eroded as a result, with a genuine risk that the ongoing budget position was unsustainable;
  - The Council required urgent assurance that the base position was sound, following correction of the budget error;
  - The GT report, and subsequent work, provides the Council with confidence that the proposed budget for 2022/23 is sound, and built on solid foundations on which to build the Tandridge Finance Transformation Programme (TFT);
  - In addition to the GT review, and acceptance of their 15 recommendations, the Council commissioned:
    - An independent, fundamental root and branch review of the Council's finances; and
    - A line-by-line budget review of 2021/22.
  - In order to provide confidence to set a draft budget for 2022/23, the results of these two reviews have been presented to Members; providing assurance that the Balance sheet and 2020/21 outturn have been independently assessed and 2021/22 budget reviewed in forensic detail to find no further significant issues; and
  - To complete the rebuild of the Council's budget, in December 2021 the 2020/21 Outturn was reported to Strategy & Resources along with the Draft Budget for 2022/23. The approved outturn has subsequently been provided to our External Auditors (Deloitte) to continue their work on finalising the 2020/21 Accounts.
- 1.3. Against this backdrop, the budget setting process for 2022/23 has been extremely challenging. Concluding the process with a sound and balanced budget has been made possible with independent advice and support from GT, Laura Rowley and IMPOWER. The challenges outlined above had a severe impact on the time and resources available to set the 2022/23 budget, which took place in very compressed timelines, whilst Finance was also transitioning to a new Target Operating Model. Arriving at a position which allows the Council to set a balanced budget is a major achievement and testament to the combined hard work of Members and officers.

- 1.4. Given the current capacity constraints in Finance and across the Council however, we have taken a pragmatic approach to the distribution of pressures and savings in order to ensure a balanced position is achieved for 2022/23 and presented in this report. For the purposes of budget setting, pressures and savings are generic terms used to identify changes (increases or decreases) to budgeted income and expenditure. For example; pressures could include costs due to contract inflation or increases in demand for services. Savings could include optimising existing sources of income or delivering services in an improved/more efficient way to provide better value for money. Refer to the Glossary of Terms in **Appendix A**
- 1.5. We will be distributing pressures and savings in three tranches:
- **Tranche 1** – savings and pressures are set out in **Appendix A**. These are the savings and pressures which were straightforward and simple to allocate.
  - **Tranche 2** – will require a bit more time to allocate correctly to each committee and include **£367k of pressures** comprising £193k of staffing increments, and £174k of contract inflation, plus **savings of £200k** for vacancy factor. These are currently being worked through and will be brought to the next committee cycle in March for approval. In the intervening period they will be held in Corporate Items
  - **Tranche 3** – are the more complex **cross-cutting savings totalling £450k**, which will require Service Reviews and business cases to be undertaken to ensure accurate distribution to committees. These savings include £200k enabling services/back-office review, £150k of Twin Track accelerated savings in 2022/23, £25k of review of staffing increments, pay award and terms and conditions and £75k of ensuring best value for external spend. The mechanism to oversee this process is the Benefits Board. The first meeting of this Board will take place in January and will meet on a monthly basis to ensure that the benefits are being defined, owned and delivered. The proposal is to take the cross-cutting savings allocation to committees in June for approval. Although, this will not occur until the end of quarter 1 in 2022/23, the Benefits Board will support their delivery on behalf of committees, and they will be monitored closely internally. In the intervening period they will be held in Corporate Items.
- 1.6. As part of the budget setting process for 2022/23 there were a number of indicative pressures identified for 2023/24 and savings which reflect the ongoing nature of those from 2022/23. They have been identified in **Appendix A** and will be reviewed and updated as part of next year's budget setting process.

- 1.7. **The final budget for 2022/23 no longer anticipates the use of reserves to balance, with the anticipated pooling gain and additional funding allocated through the settlement closing the remaining gap.** This will leave reserves at a legally acceptable level for now, but one which would require improvement through building in the next financial year. In future years, subsequent budgets and the financial strategy will target the replenishment of reserves, increasing them to a level to create resilience against medium-term risk.
- 1.8. The process followed to date has been well scrutinised and good progress has been made. Internal workshops have been held with Finance, Senior Leadership Teams and Members to allow discussions on both pressures and savings. Identified in this report are the committee's pressures and savings that are proposed to support closing the Council's budget gap.
- 1.9. Still, the COVID-19 pandemic will continue to create uncertainty into the 2022/23 financial year and possibly further into the medium-term. The Council has been integral in the response to support residents and will continue to do all it can and as long as it is required. This is not however without its risks and financial challenges.
- 1.10. The draft version of the Budget and MTFS was taken to Strategy & Resources Committee on 2 December 2021 detailing a budget gap for 2022/23 of c£0.3m. Further to the provisional settlement received on 16<sup>th</sup> December, **we have now proposed a balanced budget.** The consolidated and overall position for the Council will be reflected in the Final 2022/23 Budget Report and MTFS and will be presented for approval by Full Council on 10th February.

## **2. Housing Committee**

- 2.1. This Committee is responsible for formulating and reviewing the Council's policies for the management including repair, maintenance, improvements, sale, acquisition, allocation and control of all the Council's housing stock. In addition, the Housing Committee has the vital role of looking at the private sector housing conditions including standards of condition and the provision of a housing advisory service.
- 2.2. A review of the Council's income from the housing stock Housing Revenue Account (HRA) is to be completed through 2022/23. Resource and priority issues have delayed this work through 2021/22. A review of the Council's garage stock is in progress and reviews of the condition of the housing portfolio take place on a cycle during a five-year programme. Mindful of increasing regulation over environmental concerns, work is commencing to ensure costings for future efficiencies through 'retrofitting' stock and moves towards a future carbon zero position.

- 2.3. Ongoing resilience of the Council's housing service is vital to be able to support our ongoing programme to provide a direct supply of new Council owned homes. The effects of Covid-19 saw delays to the programme over the past two financial years. 35 new homes are projected to start on site in 2022/23 with 47 scheduled to complete. On 17th September 2020 the Council committed that all new developments will be net zero carbon (operational).
- 2.4. The need for affordable homes grows in the District. The Council seeks to develop and extend the programme of Council house building in the next year alongside working with Housing Associations to improve the flow of supply. 'Buy backs' of Council properties are also progressing.
- 2.5. The Housing team carry out extensive support work for all residents of Tandridge not just Council tenants. Housing Needs are assessed, the Council's Homelessness strategy is being progressed, Disabled Facilities Grants are administered, and a handyman service. Administration of Housing Benefit is brought to the Housing Committee. Much of the work is governed and dictated by Legislation with considerable statutory returns throughout the year.
- 2.6. Capacity within the team has been affected by previous changes and Covid-19. Despite these, there have been efficiency benefits seen through the close working of revenue and benefits teams with Housing Needs and Tenancy Management. 2021/22 has seen the implementation of a new Revenues and Benefits collection system with additional customer direct access. Further work will be carried out over the next year to improve debt management. There have also been resource issues affecting the housing development programme. All teams have worked well together to seek new models of working to ensure that the full range of activities are covered.

### **3. Revenue Budget – General Fund**

- 3.1. The **revenue budget for Housing General Fund totals £468k**. **Appendix B** details the subjective budgets from 2020/21 outturn to Estimated Budget 2023/24.
- 3.2. The revenue budget proposals have been prepared on the basis that all existing services to residents are maintained.
- 3.3. **Tranche 1 of Financial savings (totalling £60k)** have been included in the draft Budget for this committee. **Appendix A** sets out full details of this tranche of allocated savings and pressures. The summary savings items are as follows:
  - £50k Westway grant – 3-year agreement finishes on 1<sup>st</sup> October 2022 regarding an annual grant £100k payment.
  - £10k Meadowside Mobile Homes Sales – to take account that the number of homes sold each year have increased year on year.

- 3.4. **Tranche 1 Financial pressures (totalling net £59k)** have been included and summarised as follows:
- £10k Afghan Refugees – net funding pressure for the scheme to relocate Afghan former locally employed staff (LES) to the UK Government. The scheme covers relocation and assistance to the families; and
  - £49k Redstone – loss of rental income as property is to be sold.
- 3.5. The remaining tranche of pressures and savings will be distributed as set out in para 1.4 above.
- 3.6. **Appendix A** is an extract from the MTFS for this committee which details the pressures identified and details the overall budget position against the budget envelope.

#### **4. Review of Fees and Charges**

- 4.1. Charges for services for a key part of the mechanism for financing local services. In simple terms income from fees and charges offsets the cost of the service. If income from charging does not fully offset costs, then the Council Taxpayer must pay for the difference.
- 4.2. It is therefore important that charges are regularly reviewed and assessed to reflect the Council's corporate priorities and are increased annually to take account of inflation, demand and any other appropriate factors particular to individual charges. 2022/23 will be a challenging year with ongoing uncertainty relating to the pandemic. This is all exacerbated by the significant uncertainty with funding from Central Government over the medium-term. The Spending Review and the provisional settlement has only provided us with surety for one year.
- 4.3. Fees and charges have been reviewed by service managers, taking into account factors such as anticipated demand, comparison with competitors, previous levels of performance and inflation. As a result, all fees and charges for Housing have been uplifted by 4.1% (September 2021 CPI + 1% in line with Government policy for Housing) taking into account to round the whole number.
- 4.4. Fees and charges for Housing are very limited to only include Meadowside (plots and garages).

#### **5. Capital Programme**

- 5.1. The proposed Capital Programme for this Committee is shown at **Appendix C**. The programme covers a three-year period but will be reviewed and updated annually. The Appendix shows the current agreed programme, revisions to existing schemes and any new schemes added and the proposed programme after all revisions.
- 5.2. Included in the Appendix is a narrative description of each scheme.

## **6. Other options considered**

- 6.1. It is a legal obligation that the Council sets a balanced budget for 2022/23 and this has been achieved with the Housing Committee having balanced its budget.

## **7. Consultation**

- 7.1. It is good practice for the Council to consult on its proposed budget for the next financial year. The views of local people and key stakeholders were considered in arriving at the final budget setting process.
- 7.2. The Council's budget consultation exercise in relation to the Budget for 2022/23 is taking place over January 2022, providing information in relation to the budget challenge that the Council faces. The outcome of that consultation will be included in the consolidated Final Budget report.
- 7.3. The public consultation will give residents and stakeholders an opportunity to comment on the 2022/23 overall budget before final decisions are formalised in the Council's annual budget.

## **Key implications**

### **8. Comments of the Chief Finance Officer (s151)**

- 8.1. The Council has faced a turbulent and challenging financial year with the identification of the error in the 2020/21 budget, coupled with the ongoing effects of the pandemic. These challenges are set to continue over the medium-term, particularly with the likely introduction of Fair Funding Reform and Business Rates reset for 2023/24 as was alluded to in the Provisional Settlement of 16<sup>th</sup> December. Despite all this **we have set a balanced budget for 2022/23** but this will need to ensure that in-year pressures are managed, and savings as set out in this report are delivered. We have de-risked this to the extent possible by the introduction of a Benefits Board to ensure we can deliver the benefits for 2022/23 from April and take the full-year effect. The progress of these savings will be reported to Members through routine management reporting.
- 8.2. 2021/22 is undoubtedly also a difficult year with a current (Month 7) overspend of c£200k forecast for year-end. We collectively need to ensure we manage this position as tightly as possible as we approach year-end to minimise the call on Reserves, which are at legally acceptable levels but are insufficient to provide us with any financial resilience in the medium-term.



- 8.3. Given the challenges of setting the 2022/23 against the backdrop set out above, we chose not to build Reserves in 2022/23 however for 2023/24 we must set back on this course. Due to the strategy adopted in budget setting for 2021/22 to build reserves our call on them to mitigate the 2020/21 budget error has been minimised and there is the hope that they can be replenished through our request to Department of Levelling Up Communities and Housing for a Capital Dispensation. This is currently in train and we will be notified of our success or otherwise in the early part of 2022.
- 8.4. The Council is required to set a balanced budget for 2022/23 and the proposals in this report help achieve that objective. If any efficiency proposals or savings are rejected, or pressures is added then offsetting savings must be identified to compensate.

## **9. Comments of the Head of Legal Services**

- 9.1. The report updates Members with the MTFS for this Committee. This is a matter that informs the budget process, is consistent with sound financial management and the Council's obligation under section 151 of the Local Government Act 1972 for the Council to adopt and monitor a MTFS.
- 9.2. The report provides information about risks associated with the MTFS and the budget. This is, again, consistent with the Council's obligation under section 151 of the Local Government Act 1972 to make proper arrangements for the management of its financial affairs. It is also consistent with the Council's obligation under the Accounts and Audit Regulations 2015 to have a sound system of internal control which facilitates the effective exercise of the Council's functions and which includes arrangements for the management of risk. The maintenance and consideration of information about risk, such as is provided in the report, is part of the way in which the Council fulfils this duty.
- 9.3. Section 28 of the Local Government Act 2003 imposes a duty on the Council to monitor its budgets throughout the financial year, using the same figures for reserves as were used in any original budget calculations. The Council must take necessary appropriate action to deal with any deterioration in the financial position revealed by the review.
- 9.4. The Council is a best value authority within the meaning of section 1 of the Local Government Act 1999. As such the Council is required under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (the best value duty) which includes a duty to consult. Having a MTFS therefore contributes to achieving this legal duty.
- 9.5. Although the MTFS is not a statutory document it is considered best practice.

## **10. Equality**

- 10.1. The Council has specific responsibilities under the Equality Act 2010 and Public Sector Equality Duty. Part of this is to ensure that the potential effects of decisions on those protected by the equalities legislation are considered prior to any decision being made.
- 10.2. Section 149 of the Equality Act 2010, provides that a public authority must, in the exercise of its functions, have due regard to the need to:
  - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EA;
  - advance equality of opportunity between persons who share a relevant protected characteristic (as defined by the EA) and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.3. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 10.4. Members should have due regard to the public-sector equality duty when making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome.
- 10.5. The Officers have reviewed their budget changes against the initial equalities screening tool. This has highlighted and concluded that all of savings within the 2022/23 budget will not have any direct effect on residents or service delivery (such as removal of vacant posts, renegotiation of contracts and reserve adjustments).
- 10.6. The outcome of this is that the budgetary changes have no negative or positive impact on protected characteristics and residents. However, the Council will continually monitor the effect of the Budget-setting process and decision-making by using equality impact assessments.

## **11. Climate change**

- 11.1. There are no significant environmental / sustainability implications associated with this report.

## **Appendices**

**Appendix A** - 2022/23 Revenue Budget Movements, including pressures and savings allocated as part of Tranche 1

**Appendix B** – Subjective Revenue Budgets from 2020/21 to 2023/24

**Appendix C** – Draft Capital Programme 2022/23 – 2024/25

## **Background papers**

2<sup>nd</sup> Dec S&R – 2022/23 Draft budget and medium- term financial strategy (MTFS)

## Appendix A - 2022/23 Revenue Budget Movements, including pressures and savings allocated as part of Tranche 1

### HOUSING GENERAL FUND

		2022/23 £000	2023/24 £000	Total £000
<b>Brought forward budget</b>		469	468	
<b>Pressures</b>				
		Pressure		
Theme	Description	2022/23 £000	2023/24 £000	Total £000
Service Demands	Afghan refugees – Net funding pressure	10	0	10
Service Demands	Redstone – sale of the property / affordable housing – loss of rent	49	0	49
<b>Total Pressures</b>		<b>59</b>	<b>0</b>	<b>59</b>
<b>Savings</b>				
		Saving		
Theme	Description	2022/23 £000	2023/24 £000	Total £000
Fees and Charges	Reduce funding for Westway Centre (Douglas/Broughton) as per the lease	(50)	(50)	(100)
Fees and Charges	Increase Meadowside Mobile Home Sales	(10)	10	0
<b>Total Savings</b>		<b>(60)</b>	<b>(40)</b>	<b>(100)</b>
<b>Net movement for committee budget</b>		<b>(1)</b>	<b>(40)</b>	<b>(41)</b>
<b>Indicative Budget Requirement</b>		<b>468</b>	<b>428</b>	

*Note: for 2023/24 Pressures are indicative only at this stage and savings are those which are a continuation of those identified for delivery in 2022/23. These will be reviewed as part of the annual budget setting cycle for 2023/24.*

#### Glossary of Terms

**Budget pressures:** Known budgeted expenditure increases and income reductions due to the following:

- Growth factors – e.g. demographic, inflation and/or increased demand for services;
- Full year effects – to take account of changes to expenditure or income which have taken effect in-year and need to be accounted for in future years as they are of an ongoing nature, e.g. ongoing changes to car parking income due to the pandemic; and/or
- Other increases in expenditure or reduction in income as a result of strategic, governance, funding or policy changes e.g. additions to the organisational structure or additional service activities undertaken and not budgeted for as they occur after the budget is set and have ongoing implications.

**Budget savings:** Known budgeted expenditure reductions and income increases which result due to the following:

- Containing additional costs of Inflationary increases in contracts or pay;
- Driving forward efficiencies in the provision of existing services i.e. providing services in an improved way to deliver better value for money;
- The delivery of new or additional services; and/or
- Optimising sources of income.

**Balanced budget:** Budget pressures fully offset by budget savings and funding changes.

## Appendix B - Subjective Revenue Budgets from 2020/21 to 2022/24

	2020/21		2021/22	2022/23	2023/24
	Annual Budget £k	Outturn £k	Annual Budget £k	Annual Budget <sup>1</sup> £k	Estimate <sup>2</sup> £k
Salaries	776	661	524	524	524
Meadowside Mobile Homes	(116)	(137)	(120)	(130)	(120)
Westway	100	123	100	50	0
Private Sector Enabling	64	53	71	71	71
Housing of the Homeless	(60)	(75)	(61)	(61)	(61)
Other Housing Renewal Functions	60	55	55	55	55
Syrian Refugees	15	(0)	15	15	15
Afghan Refugees	0	0	0	10	10
Redstone House	(49)	(48)	(49)	0	0
Housing Benefits	(193)	(132)	(69)	(69)	(69)
Care In The Community	1	1	1	1	1
Other Variances less than £10k	0	(51)			
Alarm Systems	(163)	(160)			
<b>Housing General Fund</b>	<b>435</b>	<b>291</b>	<b>469</b>	<b>468</b>	<b>428</b>

*Note 1: The Annual budget will be represented, to the committee in March 2022, when the Corporate Items Pressures and Savings have been distributed*

*Note 2: These include the indicative pressures and savings for the committee*

## Appendix C

### CAPITAL PROGRAMME 2021/22 TO 2024/25 - Housing General Fund

COMMITTEE SCHEMES	Current Programme 2021/22 £	Estimated Programme 2022/23 £	Estimated Programme 2023/24 £	Estimated Programme 2024/25 £	Total Programme 2021-25 £
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#### Housing General Fund

Current Continuing Programme					
Disabled Facilities Grant	460,000	460,000	460,000		1,380,000
<b>Total Current Continuing Programme</b>	<b>460,000</b>	<b>460,000</b>	<b>460,000</b>	<b>0</b>	<b>1,380,000</b>

Revisions and New Bids					
Disabled Facilities Grant				460,000	460,000
<b>Total Revisions and New Bids</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>460,000</b>	<b>460,000</b>

Proposed Programme					
Disabled Facilities Grant	460,000	460,000	460,000	460,000	1,840,000
<b>Total Proposed Programme</b>	<b>460,000</b>	<b>460,000</b>	<b>460,000</b>	<b>460,000</b>	<b>1,840,000</b>

#### CAPITAL PROJECT APPRAISAL - HOUSING GENERAL FUND

Title of Scheme	Disabled Facilities Grant
<b>Description of Scheme</b>	Mandatory DFG to a maximum of £30,000 at the recommendation of an Occupational Therapist for the provision of facilities and/or additional living space for residents with health or mobility problems. This is a means tested grant, with the exception of grants to children.
<b>Key Aspects of Scheme (including benefits, contract details, key dates and reasons for revisions where applicable)</b>	Provides grant funding for adaptations to allow residents living in the private sector (which includes the homes of registered social landlords), with a disability or severe mental health problem to live safely and independently in their existing home for as long as possible. The provision of adaptations also helps to avoid delayed transfers of care and delays or avoids the need to access acute services and residential care. Central government funding is provided through the Better Care Fund (BCF) which covers the current level of expenditure. DFGs are a mandatory grant and the demand for adaptation work is very difficult to predict but it is known that the District has a growing ageing population. There is no means test in respect of grants for adaptations for children. On occasion, the cost of works exceed the mandatory limit and discretionary funding is awarded and must be considered as one process with the mandatory grant otherwise the Council is open to challenge. The Council also funds qualifying Handyperson works in the private sector using BCF using discretion provided in the Regulatory Reform Order.