

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

Agenda Item No. 10

meeting date: THURSDAY, 1 SEPTEMBER 2016
title: CHARGING FOR HOUSING ACT 2004 ENFORCEMENT NOTICES
submitted by: MARSHAL SCOTT – CHIEF EXECUTIVE
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1 PURPOSE

1.1 To ask Members to adopt the Private Sector Housing Enforcement Policy and consider introducing charges to recover the costs associated with the service of an Enforcement Notice under the Housing Act 2004.

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives – To promote and support healthy environment, economic and social well-being of people who live, work and visit the Ribble Valley.
- Corporate Priorities – This document will contribute to two of the four stated ambitions to help make people's lives safer and healthier.
- Other Considerations – To promote a healthier environment and lifestyle and ensure a well-managed Council providing efficient services based on identified customer needs.

2 BACKGROUND

2.1 The Housing Act 2004 came into force in April 2006 and brought significant changes to how houses are inspected, the enforcement action that can be taken, the introduction of the residential properties tribunal and the introduction of mandatory licensing for certain high risk houses in multiple occupation.

2.2 The change to the process of inspecting houses and the enforcement tools that became available, was one of the most significant changes and introduced a risk based inspection system called the Housing Health and Safety Rating Scheme (HHSRS). All properties are now inspected under this regime, which seeks to quantify the hazards within a property and give each hazard a score depending on its likelihood to cause harm, the presence of a vulnerable group in the property and the type and use of the property itself. The aim of introducing this method was to create a consistent approach for inspecting properties and a way of determining those at highest risk.

2.3 The HHSRS system categorises the houses into two groups, category 1 hazards and category 2 hazards. A local authority is legally required to enforce category 1 hazards which they have identified and category 2 hazards are discretionary. Most Councils enforce category 2 hazards where possible, as they still affect the health and safety of the occupants.

3 ISSUES

3.1 Enforcement Notices

3.1.1 The Housing Act 2004 introduced a broader range of enforcement options that were available under previous legislation and can be applied to both category 1 and category 2 hazards. These include:

- Hazard Awareness Notice – a legal notice that simply advises of the hazards present and the action that should be taken. These notices do not carry a time limit for compliance.
- Improvement Notice – a notice that requires repairs to be undertaken within a set amount of time.
- Prohibition Notice – restrict the use of the whole or part of a dwelling due to the serious hazard.
- Emergency Prohibition Order – restrict the use of all or part of the dwelling in an emergency.
- Emergency Remedial Action Notice – works undertaken as an emergency by the Council.
- Demolition Order – main provisions are still held within the Housing Act 1985, and require the demolition of the property.

3.1.2 Enforcement Notices can be served across tenures, meaning they can be served on owner/occupiers as well as rented providers of properties. It is rare to serve an enforcement notice on an owner/occupier but it does happen. These notices are tools to effect a change and to discharge the Council's duty by advising of hazards present. In general hazard awareness notices are used when dealing with owner/occupied properties.

3.2 Charging for Enforcement Notices

3.2.1 Section 49 of the Housing Act 2004 allows a local authority to charge for the following:

- Determining whether to serve a notice
- Identifying an action to be specified in a notice.
- Serving the specified notice
- Reviewing a suspended improvement notice or suspended prohibition order (a review must be undertaken within a year of service and a subsequent review at intervals of not greater than 1 year thereafter).

3.2.2 The aim of introducing a charge is to hopefully avoid the need to serve a notice in the first place and where the person responsible refuses to engage with the Council, that the officer time can be covered when having to serve the enforcement notice.

3.2.3 It has been calculated that the average time spent by an officer during the process of serving an improvement prohibition and an emergency prohibition notice is approximately 10 hours. This would typically involve:

- The time taken to inspect the property (including travelling and revisits if necessary)
- Obtaining warrants to enter
- Enforcement options discussed with line manager
- Face to face and telephone/email discussions with tenants, landlords and agents
- Liaison/discussions with partner agencies eg planning, local fire authority, legal and housing options.
- Entering inspection details and other actions on Civica – computer database
- Drafting, printing and sending internal memos, notices, schedules of work and letters

3.2.4 In line with current officer costings this would equate to a fee of £550 per notice. This is in line with similar neighbouring authorities where enforcement costs have been implemented.

3.2.5 The charges for notices will not include any costs incurred by the Council in undertaking works in default. These charges will be dealt with separately under the Housing Act 2004 for works in default.

3.3 Exemptions

3.3.1 Should Members agree to apply charges for enforcement notices, it is recommended that charges do not apply to owner/occupier properties. In general complaints regarding housing conditions inside owner/occupier properties, either arising from the owner itself who is seeking help from the Council for their disrepair issues or from external agencies that may have had a reason to visit such as district nurses, social workers and care providers. Since the Housing Act 2004 came into force in 2006, we have not served Housing Act notices on any owner/occupier.

3.4 Proposals

3.4.1 It is proposed from the 1 April 2017 the following notices carry a charge as provided in section 49 of the Act.

- Improvement and Suspended Improvement Notice (Sections 11, 12 and 14)
- Prohibition and Suspended Prohibition Orders (Sections 20, 21 and 23)
- Emergency Remedial Actions (Section 40)
- Emergency Prohibition Orders (Section 43)
- Demolition Orders (Section 265 Housing Act 1985)

3.4.2 The informal letters will be amended to advise the person responsible that should they fail to undertake the works required and the Council feels it necessary to serve an enforcement notice, that a charge will apply.

3.4.3 When the notice is served the invoice for the enforcement charge will be included. Any invoices that are not paid can be placed on a local land charge and recovered when the property is sold.

3.5 Important Issues to Consider

3.5.1 The adoption for charging for the service of enforcement notices under the Housing Act 2004 is designated for Councils to recover their costs for undertaking the work. Whilst this will provide some additional income, it is aimed to make this aspect of the statutory notice costs neutral.

3.5.2 The introduction of the charges from the serving of the Housing Act notices may result in the works requested at the informal stage being completed quicker by the person responsible and also encourage them to engage with us at an early stage, reducing the likelihood of a notice being served.

3.5.3 It is important to ensure that the landlords are advised prior to the outset of charging for the enforcement notices served. All written communication with landlords and their agents will also include information of the proposed charges.

3.6 Legal Implications

3.6.1 The introduction for charging for Housing Act notices is provided for within Section 49 of the Act and must first be approved by Members before it is introduced. The private sector housing enforcement policy will need to be updated including the provisions of the charges.

3.6.2 A person served with a notice and the charge for the notice has a right to appeal to the Residential Property Tribunal. Their right to appeal can be on the decision to serve a particular notice and/or the charge for the cost of the notice. The Residential Property Tribunal can uphold the notice and the charge, vary it, or quash it altogether.

3.7 Financial Implications

- 3.7.1 While the imposition of charging new enforcement notices is not meant as an income generation method, it does enable the Council to apply cost recovery charges for the work officers undertake in issuing notices. This will see income being generated for a service that otherwise would not be able to recover its costs incurred.
- 3.7.2 As identified previously, the proposals are at a fixed rate of £550. This covers the cost of the enforcement notice and will be reviewed on an annual basis as part of the Council's budget setting process through its fees and charges policy.
- 3.7.3 The Council have served 4 enforcement notices under the Housing Act during the financial year 2015/2016. Should charging be introduced at the proposed rate, this would equate to the recovery of over £2000.
- 3.7.4 Guidance recommends that the Council consider that the personal circumstances of the individual are taken into account at the time of serving the notice and the charge. It may be appropriate for the Council to determine in exceptional circumstances a reduced charge or no charge at all should be applied. It is suggested that the decision to reduce or waive the charge is made by the Head of Environmental Health Services in consultation with the case officer.

4 RISK ASSESSMENT

- 4.1 The approval of this report may have the following implications:
- Resources – This will allow the recovery of the costs involved in formal Housing Act duties.
 - Technical, Environmental and Legal – There are environmental and legal implications, as stated within the report.
 - Political – It is important we have an approved method of charging.
 - Reputation – No implications identified.
 - Equality & Diversity – There are considered no significant implications.

5 **RECOMMENDED THAT COMMITTEE**

- 5.1 Approve the introduction of charges from 1 April 2017 for notices detailed in section 3.2.
- 5.2 Agree that owner/occupiers shall be exempt from the charging scheme.
- 5.3 Delegate authority to the Head of Environmental Health Services to agree the reduction or waiver of fees.

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BACKGROUND PAPERS

For further information please ask for Heather Coar, extension 4466.

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