

<b>Subject:</b>	<b>Private Sector Housing Update Report</b>		
<b>Date of Meeting:</b>	<b>22<sup>nd</sup> September 2021</b>		
<b>Report of:</b>	<b>Executive Director for Housing, Neighbourhoods &amp; Communities.</b>		
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Improving the quality and management of homes in the private rented sector over the period 2019-2023 is a key area of focus in the Housing Committee Work Plan. The Housing Committee Work Plan (Housing Committee, 18 September 2019) includes the following key actions in relation to improving private rented sector homes:
- a) Review and resubmit selective licensing scheme proposal to improve the management and standards of private rented sector homes in the city.
  - b) Develop the enforcement approach to private sector housing to reflect the full range of potential options available to improve management and standards.
  - c) Research and develop a “not for profit” ethical letting agency to enable vulnerable people and others to obtain private rented accommodation and to be supported to retain a tenancy.
- 1.2 An update was provided to Housing Committee in June 2021 and this report provides further update on those three areas.

**2. RECOMMENDATIONS:**

- 2.1 Housing Committee note the updates on progress against key elements of the Housing Committee Work Plan objectives to improve the quality and management of homes in the private rented sector as set out in this report.
- 2.2 Housing Committee note the expansion of the existing Private Sector Housing enforcement team, as outlined in paragraph 3.1, and that the service will assess the impact of the Private Sector Housing Enforcement Policy and new legislation in this area.
- 2.3 Housing Committee note that, as outlined in paragraph 5.1, officers will seek to support renters to understand what legal remedies are available to them under the Private Sector Housing Enforcement Strategy, including any provided by new legislation in this area.
- 2.4 Housing Committee request a review of the current national position with regard to selective licensing designations to better understand the current context within which any approvals are being given. Identifying the resources that are required to undertake this work to be considered.

- 2.5 That Housing Committee agrees the re-purposing and expansion of the Direct Lets scheme as an ethical letting agency incorporating Good Landlord standards. Any additional costs arising as a result of these changes will be brought back to committee for approval.
- 2.6 That Housing Committee notes the funding required to explore and scope the feasibility of a broader based ethical letting agency proposal. This will require an estimated budget of £0.100m.
- 2.7 That officers urgently develop options for sustaining tenancies where a tenant with arrears faces eviction and could become homeless

### **3. CONTEXT/ BACKGROUND INFORMATION**

#### **Progression delivering the enforcement approach**

- 3.1 The private rented sector is a disproportionately large sector in Brighton and Hove comprising around 30% of the total housing stock in the city. This compares with the national average figure of approximately 15%. In some city wards the private rented sector makes up over 50% of households. The private rented sector is an important source of accommodation for a large number of residents across a range different income groups. The council wish to ensure that such accommodation is safe and well managed. There is a concern that some of the accommodation, particularly at the lower end of the market where vulnerable households may reside, does not adhere to minimum standards.

In February 2020, Budget Council agreed additional funding of £0.150m for the Private Sector Housing Team to enable more proactive approach to enforcement. This work was not possible during most of 2020 due to the restrictions owing to the Covid 19 pandemic. The recruitment process for additional officers is now underway. Alongside this, further funding of £0.045m was identified to enable enforcement of the Energy Performance Certificate standards to ensure private rented properties achieve minimum national standards. Recruitment to this post is also underway. We anticipate officers being in post for all positions by November 2021.

We propose to continue to seek to engage with private rented sector residents and representative groups such as Acorn, to ensure that they have knowledge of our Private Sector Housing Enforcement Policy and access to the Private Sector Housing service in order that we can work with them and landlords to ensure properties are safe and well managed. We propose to monitor the impact of the enhanced enforcement approach.

#### **Selective licensing**

- 3.2 The council currently license 4,099 Houses in multiple occupation (HMOs) citywide (HMOs licensed or awaiting licence). The Housing Act 2004 has given councils the power to introduce selective licensing of private rented properties not covered by an HMO licensing scheme to improve conditions for tenants and the local community in certain specific circumstances. This would primarily cover properties occupied by single family units. Circumstances include where significant and persistent anti-social behaviour and / or poor property condition can be demonstrated to the extent required by the legislation. All but very small Selective Licencing schemes require approval by the Secretary of State. Following review of evidence, including independent research commissioned by

the council and undertaken by Mayhew Harper Associates Ltd (MHA), followed by comprehensive consultation, proposals to introduce a Selective Licensing Scheme in 12 wards in the city received cross party Housing & New Homes Committee support in November 2017. Following a legal challenge, the Secretary of State withdrew approval for the previously proposed scheme to designate 12 wards in the city as subject to selective licensing. The cost of the independent research commissioned from MHA was £27,300, the cost of consultation for a selective licensing scheme identified in the relevant Finance comments at that time (04/11/2016) was £0.020m.

3.2.2 In view of the previous response of the Secretary of State and risk of judicial review, any evidence supporting a further proposed scheme needs to be robust. We have considered available evidence to support a scheme in addition to undertaking a targeted private sector stock condition survey of a sample of properties to establish the evidence base on the basis of property conditions. This includes receiving information from third sector stakeholders. The information supplied by the voluntary sector was of some assistance (it identified approximately 80 complaints across the city around disrepair), but the legal advice is that it would be subject to challenge as further detail is required to ensure it is robust if used to support consent for a selective licensing scheme and so has limited weight.

3.2.3 In June 2021 Housing Committee requested we continue to explore this option further. In the first instance we propose to undertake a review of the current national position with regard to selective licensing designations to better understand the current context within which any approvals are being given. This review will include peer review of other local authorities; current government information and approach; and any relevant independent studies and / or research. Undertaking this review will require an additional resource. It is proposed to consider this resource requirement and any funds that may be available with Budget Review Group. Once this review of the national position has been undertaken a further report will be provided to Housing Committee to enable consideration of the current context within which any selective licensing approvals are being given. Should the position as outlined in Legal comments (paragraph 7.5) change in relation to the large deficit in evidence to support an application, in order to enable members to consider a robust evidence base to support and agree any consultation on selective licensing, a broader report that would support an officer recommendation to committee in favour of consulting on a selective licensing scheme would then be required. This would encompass consideration of a more thorough level of evidence commissioned via an independent expert in order to commence any meaningful consultation on any selective licensing proposals and to withstand the high risk of challenge in the form of a Judicial Review anticipated from landlords who would be impacted. In considering the Legal advice on the level of evidence that is required, and in view of the requisite Secretary of State consent for any larger scheme and likelihood of challenge, an independent report including review of evidence, such as the one undertaken by Mayhew Harper for the previously submitted scheme is required. Despite the comprehensive independent evidence base provided by Mayhew Harper, previously, the Secretary of State consent was withdrawn from the proposed scheme based on their evidence.

- 3.2.4 The independent evidence commissioned from Mayhew Harper cost us £27,500 and we anticipate that the current costs of a similar piece of work to be £50,000.
- 3.2.5 There is currently no funding identified to commission a report and any subsequent consultation, which we estimate would cost in the region of £0.100m, this would include the independent research, meeting the consultation requirements (we previously commissioned an independent consultancy to ensure robustness of approach and results) and officer resource required to support this. Given current Legal advice that, having reviewed current available evidence, it is unlikely we would reach the bar for selective licensing consent and / or defend the anticipated challenge, and that the previous report which provided substantial evidence, was not successful, it is considered that there is a high risk that pursuing an independent review of evidence at this time may not be an effective use of resources.

### **Ethical Letting Agency**

3.3 Ethical letting agency - to enable vulnerable people and others to obtain private rented accommodation and to be supported to retain a tenancy.

3.3.1 The council has operated a Direct Lets scheme for some time which has been expanded over recent years, details this were set out in the report to Housing committee in June 2021.

3.3.2 The Direct Lets scheme operates on ethical letting principles which we aim to develop and expand further. The service includes:

- i) Tenancy workshops for potential tenants setting out tenancy rights and responsibilities. These are held every week and have been developed with input from landlords.
- ii) A Deposit Guarantee. This means that the council effectively holds the deposit and can negotiate if there is a claim at the end of the period to ensure it is fair.
- iii) Financial incentives to landlords to mitigate potential risks of initial rent arrears whilst benefit is assessed and put into payment.
- iv) Financial incentives to tenants to purchase belongings such as a bed/bedding, crockery etc to make accommodation a home.
- v) Intensive management support for the first three months of a tenancy to ensure both landlord and tenant are helped to set up the tenancy well at the start including help with utilities etc.
- vi) Ongoing support as needed by either landlord or tenant to ensure the tenancy is sustainable.
- vii) Minimum property accommodation standards checked by the council.

This scheme is successful and held up nationally as good practice. It could be rebranded into an Ethical Letting Agency with enhanced good landlord standards for participating landlords.

3.3.3. Alternatively, if a broader ethical letting agency model is proposed, including accessibly to the general public, this would necessitate further scoping for which resources would be required. There are legal and commercial implications that would need to be explored to avoid the risk of unfair competition using public

funding as well as financial and IT systems development to support such an agency. Advice to scope out such a proposal would require funding. Such an agency would be a substantial undertaking requiring a team to develop and implement the proposed agency in addition to the resources required to progress from inception into operational business and to manage the agency going forwards. It is also noted that there are currently in existence local authority led ethical letting agencies, that have been subject to some challenge, a risk that necessitates greater preparation and cost being incurred, to avoid the same issues. The estimated resource requirements for specialised advice and project officers suggest a budget of £0.100m to commence exploration. Further funding of a team would subsequently be required should there be a decision to set up and develop an agency.

### **Preventing evictions**

- 3.4 Now the eviction ban has been lifted it is anticipated that more evictions from the private rented sector may have an adverse impact on the city and homelessness. The council has written to landlords urging them not to evict and contact the council for assistance in sustaining tenancies. Officers will review options to continue to support prevention of homelessness that may arise from evictions from the private rented sector.

## **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 Enforcement - We have a statutory duty to enforce standards in the private rented sector. In some circumstances, we have a duty to act, whilst in other circumstances we have powers to act. These are outlined in the Private Sector Housing Enforcement Policy and incorporated into the procedures.

### 4.2 Selective Licensing

Based on the information available and collated to date, there is currently a large deficit in the evidence required to demonstrate that there is a significant problem which can only be addressed by way of a selective licencing scheme. At this time, neither property conditions or anti-social behaviour provide enough evidence to support a recommendation to commence consultation on the introduction of a selective licensing scheme. If the council were to proceed with a scheme without robust evidence of the need, there is high risk of challenge from landlords.

The council also needs to explore how new legislation is having an impact and how tenants can be empowered to help themselves under the Homes (Fitness for Human Habitation) Act 2018 and applying for Rent Repayment Orders. In addition, the council will assess the impact the of the new powers, including Civil Penalties. One of the issues which emerged from the data supplied by Acorn, was the apparent lack of knowledge of tenants as to their legal rights.

Officers cannot recommend commencing consultation on a Selective Licensing Scheme at this time as the available and commissioned evidence we currently have does not support it. To commission a broad independent survey to enhance that previously commissioned, which resulted in an unsuccessful application, cannot be recommended by officers at this time based on the

information in this report. The alternative option is to assess the impact of the enforcement policy and new legislation in this area. Also, to support renters to understand what legal remedies are available to them.

- 4.3 With regard to an ethical letting agency. Alternatives to rebranding the Direct Lets scheme will require a significant investment to scope out and obtain legal, commercial, financial and IT advice to develop the options.

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 We will continue to seek to engage both with tenants and landlords and with representative organisations such as Acorn, in particular to support renters to understand what legal remedies are available to them under the Private Sector Housing Enforcement Strategy, including any provided by new legislation in this area.

## **6. CONCLUSION**

- 6.1 The evidence considered does not currently support a recommendation to proceed with consultation on a selective licensing scheme. However, we aim to use existing powers, enhanced by new legislation and resources, to carry out effective enforcement activity. In addition, we will keep information and engagement with private rented tenants under review in order to support renters so that they are empowered to also take action to resolve any matters relating to the management and standards of their homes.  
The council has an effective direct letting scheme operating on ethical letting principles which we aim to develop and expand further in our development of an ethical letting agency.  
To explore either of the above options more fully requires significant funding and would not necessarily result in the outcome being sought.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 As part of the council budget setting 2020/21, Budget Council approved extra investment of £0.150m to enable the private housing team to have a more proactive approach to improving standards in the private rental sector by enforcement of landlords. Budget council in February 2021 also agreed a further £0.045m to enable enforcement of the Energy Performance Certificate standards to ensure private rented properties achieve minimum national standards on energy efficiency.
- 7.2 The costs of commissioning an independent report to gather evidence to support a new selective licensing scheme together with the consultation required is estimated to be in the region of £0.100m. The council were unsuccessful in implementing a selective licensing scheme a few years ago when the Secretary of State withdrew approval for the previously proposed scheme to designate 12 wards in the city as subject to selective licensing. The legal advice is that having reviewed current available evidence, it is considered unlikely that we would reach

the bar for selective licensing consent and / or defend the anticipated challenge, Therefore, given the history and the current legal advice, the cost of commissioning this piece of work represents a high risk to public money that would not meet the test of value for money at this time. There is currently no budget for this work and therefore this would cause a budget pressure. Recommendation 2.4 mentions the need for resources to research the current national position with regard to selective licensing designations to better understand the current context within which any approvals are being given. Resources required to undertake this research will need to be identified to enable this to go ahead.

- 7.3 Setting up an ethical lettings agency that includes accessibility to the general public would also require expert advice including the commercial and legal implications and advice on the possibility of challenge from commercial organisations about unfair competition. The report estimates costs for this advice to be in the region of £0.100m for which there is currently no budget. There is also the risk that the costs of running such an agency could be significant for the council. The council is currently overspending in 2021/22 and has a significant budget gap for 2022/23. Given the risks involved and the financial position of the council, commissioning this expert advice is not considered to be good value for money at this time.
- 7.4 The expansion of the current direct lets scheme (recommendation 2.5) has not been costed and if any additional costs arise, a further report to this committee outlining the costs of such a scheme will be needed.

*Finance Officer Consulted: Monica Brooks*

*Date: 13/9/21*

Legal Implications:

- 7.5 In terms of selective licencing, there is still a large deficit in evidence to support an application.

In terms of the ethical letting scheme, this will need to be fully explored. While there is a legal basis for creating the scheme, it has to be done in such a way so as to avoid legal challenge in its formation and also ensure that it is able to function in a way which means it is fully compliant with all statutory provisions

*Lawyer Consulted: Simon Court  
2021.*

*Date: 1<sup>st</sup> September*

Equalities Implications:

- 7.6 The private rented sector provides accommodation for a range of people. At the lower end of the market, some of the most disadvantaged groups may be living and so by having a proactive enforcement policy and ensuring minimum electric energy performance standards (MEES), standards will be improved for those people.

Sustainability Implications:

- 7.7 The MEES are intended to ensure that private rented accommodation can be adequately warm but also is energy efficient. This contributes towards reducing carbon emissions.