

Brighton & Hove City Council

Housing Committee

Agenda Item [Insert]

Subject: Private Sector Housing Update Report

Date of meeting: 16th March 2022

Report of: Executive Director for Housing, Neighbourhoods & Communities.

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Ward(s) affected: All

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 Update reports were provided to Housing Committee in June and September 2021. This report provides further update to Housing Committee.

2. RECOMMENDATIONS:

2.1 Housing Committee to 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 to note the review (Appendix 1) of the current national position with regard to selective licensing designations to better understand the current context within which any approvals are being given.

2.3 Housing Committee to delegate authority to the Executive Director for Housing Neighbourhoods and Communities to proceed with commissioning

any further consultancy work needed prior to any recommendation to Committee on undertaking any formal consultation on a selective licensing scheme.

3. CONTEXT/ BACKGROUND INFORMATION

Progress delivering Enforcement

- 3.1 The private rented sector is a large sector in Brighton and Hove, comprising around 28% of the total housing stock in the city, and is an important source of accommodation for many residents across a wide range of income groups, The council wish to ensure that such accommodation is safe and well managed.
- 3.2 In February 2020, Budget Council agreed additional funding of £0.150m for the Private Sector Housing Team to enable more a proactive approach to enforcement. Although delayed by the Covid 19 pandemic, the recruitment process for additional officers has been completed for both this and for the further funding of £0.045m to enable enforcement of the Energy Performance Certificate standards to ensure private rented properties achieve minimum national standards. Since December 2021 we have recruited 4 new officers. Work has been able to commence on the projects outlined below.
- 3.3 Checking the backlog of outstanding special conditions on HMO licenses to ensure works have been completed to a satisfactory standard. There is a backlog of just over 1000 properties to be checked which could have outstanding license conditions. A programme is now in place to check all these properties, this will be completed by September 2022. Between mid-December and 23rd February 2022, approximately 70 properties have been confirmed as compliant. Officers are now able to check all properties as soon as the period for completion expires for those licenses issued since January 2022.
- 3.4 All HMO license holders have been contacted where gas and electrical safety certificates had expired and obtained current ones for each property. This will now be continued on a monthly basis as certificates are due to expire, having the added benefit of ongoing engagement with license holders.

	GAS	ELECTRICAL
Backlog of expired Certificates from June 21 – Jan 22	2598	1024
Certificates received	2386	906
Certificates not received – these are being followed up	212	118
Ongoing monthly certificates expiry rate (approx.)	150	40

- 3.5 We are taking forward a more systematic approach to investigation of suspected unlicensed HMOs, with a view to gaining sufficient evidence for formal action as required. Up to date information has been obtained from Council Tax, Land Registry and Planning data. This has had the added benefit of improved information sharing with the Planning Department to help with Planning enforcement work on HMO properties operating without Planning consent.

Backlog of possible non-licenced properties from PSH records as of 20/02/22

Properties to be investigated 107 - These are properties that have either been referred by other parties or where the HMO Licence has expired, and no new application received.

Of which:

39 Closed after proactive investigation – either received licence application or non-licensable.

68 remain for further investigation/enforcement as at 20.02.22.

Partnership work with Planning Team

868 properties identified with a Mandatory HMO licence which may fall under the remit to require residential status of C4 under planning – Planning to investigate status.

617 properties that have been identified as having applied for C4 status through planning in the past 10 years (either authorised or refused) but the property does not have a HMO license – PSH investigating status.

- 3.6 A procedure has been set up with the Corporate Collections Team for issuing Civil Penalties. The first civil penalty of £1,000 has been successfully received, (for non-compliance with Improvement Notice), with a second one served for £2,000, (for non-licensed HMO). A third is being discussed with the Legal team currently (for non-compliance with an Improvement Notice).
- 3.7 Discussions have commenced with East Sussex Fire and Rescue Service (ESFRS) to update liaison agreements, including better information sharing to inform their risk based proactive inspection programme of HMOs. We are looking into options for undertaking a small project of joint proactive inspections with ESFRS of the highest risk properties.
- 3.8 Officers have reviewed and updated procedures relating to noise and anti-social behaviour (ASB) from licensed HMOs, including more comprehensive information to be provided to complainants and increased officer liaison with license holders, at an earlier stage than previously.
- 3.9 Minimum Energy Efficiency Standard Regulation compliance work has started. The Council's website has been updated with this information in addition to sending out information via social media channels. Procedures have been set up including joint processes with Trading Standards. Data has been obtained from the National Energy Performance Certificates and Exemptions databases on properties with F and G rated properties (approx. 3000 properties), cross referenced with information on property owners from Council Tax records. As of 4th March 2022, we have sent out 259

information letters to landlords who we consider may be non-compliant advising them of their obligations under the regulations and possible future actions. We are prioritising areas with the most MEES non-compliance and fuel poverty. However, we will eventually cover the whole city. So far, the responses have been positive. There is also information on our website. There is planned approach to contact remaining landlords in addition to responding to enquiries subsequently generated.

- 3.10 The next step is to engage with private rented sector residents and representative groups to ensure they are aware of the Private Sector Housing Enforcement Policy and can access the Private Sector Housing service. This will better enable the council to work with tenants and landlords to ensure properties are safe and well managed. We propose to monitor the impact of the enhanced enforcement approach.
- 3.11 In line with our focus on enforcement and energy performance outlined in this report, we will develop further 'Improving Private Sector Housing' Key Performance Indicators for incorporation into our regular quarterly Housing Performance Report to Housing Committee.

HMO licensing.

- 3.12 Current licensing of HMOs is undertaken under both the national mandatory HMO licensing provisions and the council's own city-wide Additional Licensing Scheme for smaller HMOs. As of 07 March 2022, 1713 HMO licenses under the national scheme have been issued and a further 1716 under the Additional Licensing Scheme, bringing the total licenses to 3429. The council's Additional HMO licensing scheme designation commenced on 1 March 2018 and lasts for 5 years, ending in 2023. We will consider and report back to Housing Committee on the successful implementation and impact of the Additional HMO licensing scheme and the proposed next steps with regard to planning for the end of this designation and considerations around any future scheme.

Selective licensing of non-HMO private rented homes

- 3.13 The Housing Act 2004 gave 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. An application to Secretary of State is required for a scheme covering more than 20% of the local authority geographical area and / or affects more than 20% of privately rented homes.
- 3.14 Housing Committee requested a review of the current national position about 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.
- 3.15 Following this a specialist legal housing consultancy (Cadence Innova) have been commissioned to undertake this review to inform our next steps on the council's approach to selective licensing.

3.16 The review will cover:

- Consideration and understanding of the background and current position with regard to private sector housing enforcement and licensing in Brighton & Hove.
- Desk top review of peer local authorities' recent experiences; current government information and approach; any relevant independent studies and research undertaken and any alternative approaches that have been successful elsewhere.
- Interviews with peer local authorities with recent experience of seeking consent for selective licensing schemes to understand both where schemes have been approved and were not. In particular, to contact those local authorities who have been subject to judicial review to understand any learnings.
- Provision of a report to enable officers to report back to Housing Committee members to inform the next steps. Initial feedback on this review will be provided to this Housing Committee meeting. This initial review from Cadence Innova is included as Appendix 1 to this report.

Ethical Letting Agency

3.17 September 2021 Housing Committee approved the following recommendations'

“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 ‘

“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.”

The Direct Lets scheme continues to expand as the Housing Options service refocuses on prevention and in enabling single homeless and rough sleepers to move on from supported accommodation. In addition, following a successful grant award from Accommodation for Ex-Offenders programme (AFEO), a further 10 people can be assisted where there would be no other accommodation duty on the local authority.

As we progress with developing the Ethical Landlord Agency, we will incorporate the good landlord standards, which encourages landlords to limit rents to local housing allowance levels and matches landlords with lower income tenants who would otherwise struggle to pay market rent, along with industry best practice.

The Direct Lets Team are trained on ensuring property standards meet legal requirements and assessing and understanding suitability for individual clients' needs. In addition, landlords are provided with advice on how to achieve and maintain improved property standards. The direct lets team works collaboratively with Private Sector Housing colleagues to jointly improve property standards across the city. Further, we are exploring IT solutions to improve accessibility to prospective tenants and support

agencies so properties can be viewed on-line which will improve the customer experience.

Between April 2021 and 31st Jan 2022, the Direct Lets achieved are as follows:

Group assisted	Total Number of properties	Studios	1 Bed	2 Bed	3 Bed	4 Bed +
Prevention	137	16	43	58	14	6
Rough sleepers	93	76	17			
AEFO	7	7				

- 3.18 September 2021 Housing Committee noted the funding required to explore and scope the feasibility of a broader based ethical letting agency proposal and that this would require an estimated budget of £100,000. Following the approval of £100,000 additional funding in the 2022/23 Budget proposals (comprising £75,000 agreed at Budget Council and £25,000 as part of the Corporate Plan Delivery Risk fund) we are identifying a resource to provide the initial scoping of specialist advice needed and to scope the outline of the project.

Ethical Landlords Charter

- 3.19 Housing Committee on November 13th November 2019 noted a deputation on a 'Minimum Standards for Brighton Landlords Charter' produced by ACORN. Full Council on 19th August 2020 considered a Labour Group & Green Group Notice of Motion on Housing & Evictions, including a request that officers, 'finalise the establishment of the Ethical Lettings Agency and Ethical Landlords Charter'. Work on this has been delayed by the ongoing pandemic and addressing resultant service pressures and backlogs. However, officers will review the Charter and similar examples adopted by other local authorities and further progress this over the coming months by meeting with landlords and other key stakeholders.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 These are as previously considered in the Private Sector Housing Update Report presented to Housing Committee in September 2021.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 We will continue to seek to engage both with tenants and landlords and with representative organisations, 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 In relation to enforcement in private sector housing following the additional resources that were provided, the service is making good progress in terms of communication, enforcement and checking that Energy Performance Certificates are at the minimum level.
- Progress has also been made with engaging legal consultation to review and advise on the next steps in relation to a selective licensing scheme. Finally, we continue to expand the Direct Lets scheme and will engage resources to explore and scope the feasibility of a broader based ethical letting agency proposal which will be considered at a future Housing Committee.

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. Staff are already operational as discussed in the report.
- 7.2 £0.100m one-off funding for has been identified to explore and scope the feasibility of a broader based ethical letting agency proposal. £0.025m has been identified from the Corporate Plan Delivery Risk Fund and the other £0.075m was agreed as part of the 2022/23 budget setting process at Budget Council 24 February 2022.
- 7.3 A total of £0.065m one-off funding has been identified to review the current national position with regard to selective licensing designations to better understand the current context within which any approvals are being given. An initial report (at Appendix 1) has already been undertaken. Any further commissioning of advice and consultancy will need to take account of the current budget available.

Finance Officer Consulted: Monica Brooks

Date: 07/03/22

Legal Implications:

- 7.4 In terms of selective licensing, there is still a large deficit in evidence to support an application. The current enquiries are a step towards identifying next steps but separate from this there will need to be data acquired which will support any further steps, without appropriate evidence and unless we ensure that all relevant parts are in place, then it is unlikely that Sec of State Approval will be obtained. In the alternate if the threshold of total PRS is below 20% (so Sec of State approval is not required), we would also be at risk of judicial reviews. Judicial review is also a possibility if we pursue a scheme over 20% and this was what occurred on the last occasion.
- 7.5 Previous comments in relation to securing an ethical letting agency remain – that it would need to be created (if it is to be separate from the Direct Lets scheme) 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. The Direct Lets scheme is a pre-existing process, but if there is any significant departure from its current format, then this will need to be reviewed.

Lawyer Consulted: Simon Court

Date: 08/03/22

Equalities Implications:

- 7.6 The private rented sector provides accommodation for a range of households. At the lower end of the market, some of the most disadvantaged groups may be living in poorer standard homes. By having a proactive enforcement policy and ensuring minimum energy efficiency standards (MEES), we anticipate that standards will be improved for those households.

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.