

AGENDA MANAGEMENT SHEET

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| Report Title: | Changes to Houses in Multiple Occupation (HMO) Licensing Regulations |
| Name of Committee: | Cabinet |
| Date: | 25 June 2018 |
| Report Director: | Head of Environment and Public Realm |
| Portfolio: | Environment and Public Realm |
| Ward Relevance: | All |
| Prior Consultation: | Senior Management Team |
| Contact Officer: | David Burrows, Regulatory Services Manager, ext. 3806 |
| Public or Private: | Public |
| Report subject to Call-In: | Yes |
| Report En-Bloc: | No |
| Forward Plan: | Yes |
| Corporate Priorities: | This report relates to the following priority(ies): <ul style="list-style-type: none">• Ensure residents have a home that works for them and is affordable.• Protect the public. |
| Statutory / Policy Background: | The council already licences Houses in Multiple Occupation (HMOs) with 3 or more storeys where residents have their own rooms but share facilities such as kitchens. The legislation has now been changed and will apply from October 2018 to any HMO occupied by 5 persons. |

Summary:

The Council currently has an obligation to license and regulate HMOs with 3 or more storeys. The council will be required to extend this to all HMOs occupied by 5 or more people from October 2018 which will require a step change in the identification, licensing and regulation of these. The scheme is self-funding as it allows cost recovery, and the proposal is that this will be used to fund an additional post to implement the scheme.

Financial Implications:

Additional income from the new HMO licence applications is expected to be £195,000 based on 300 new applications for new, five-year HMO licences at £650 each. It is proposed this additional income is used to ensure sufficient resources to carry out the duty, and it is proposed that an additional officer is appointed.

Risk Management Implications:

HMO licensing is a cost recovery statutory function which protects the public, including vulnerable people. The council is required to licence HMOs

Environmental Implications:

The policies appended to this report, particularly the overarching enforcement policy, will provide a framework to tackle poor housing conditions and poor management of houses in multiple occupation which in turn will assist in the improvement of local communities within the borough.

Legal Implications:

This report brings together a number of recent legislative developments in relation to the enforcement of private sector housing, taking into account the Council's statutory obligations. The appended overarching enforcement policy reflects the different considerations that must be applied by a responsible enforcement authority.

Equality and Diversity:

The policies appended to this report will help improve housing conditions and life chances of those vulnerable people such as the homeless, people with disabilities and those from a diverse range of backgrounds to improve communities. In implementing these policies, we will have regard to the Council's public sector duty and will continue to work to tackle discrimination and inequality and contribute to the development of a fairer society. However, as the licensing will be in accordance with specific housing legislation and guidance, an equality impact assessment is not required.

Options:

1. No further action.

Risk: non-compliance with statutory duty.
Benefit: none

2. Adoption of policies and appoint specific officer as recommended.

Risk: income is estimated, but evidence suggests it is a reasonable estimate.
Benefit: compliance with legislation to protect the public.

Recommendation:

- (1) The establishment be increased to allow the appointment of a permanent Environmental Health Officer or Environmental Protection Officer to undertake the Council's extended HMO licensing duties; and
- (2) IT BE RECOMMENDED TO COUNCIL THAT the Private Sector Housing Enforcement Policy, the Private Sector Housing Civil Penalties Policy and the Private Sector Housing Houses in Multiple Occupation Licensing Policy (as set out in Appendices 2, 3 and 4) be considered and approved.

Reasons for Recommendation:

To ensure that the council meets its statutory obligations and that those residential properties comprising the borough's private rented sector provide safe and healthy environments for the borough's residents to live.

To ensure the Neighbourhood Services Team is able to use the enforcement powers available and implement them effectively to tackle those rogue landlords currently operating within the borough's private rented sector

Cabinet – 25th June 2018

Changes to Houses in Multiple Occupation (HMO) Licensing Regulations

Report of the Head of Environment and Public Realm

RECOMMENDATION

- (1) The establishment be increased to allow the appointment of a permanent Environmental Health Officer or Environmental Protection Officer to undertake the Council's extended HMO licensing duties; and
- (2) IT BE RECOMMENDED TO COUNCIL THAT the Private Sector Housing Enforcement Policy, the Private Sector Housing Civil Penalties Policy and the Private Sector Housing Houses in Multiple Occupation Licensing Policy (as set out in Appendix 1, 2 and 3) be considered and approved.

1. BACKGROUND

The Housing Act 2004 introduced the statutory licensing of specific Houses in Multiple Occupation (HMOs). A house in multiple occupation is a property rented out by at least 3 people who are not from one 'household' (e.g. a family), but share facilities such as the bathroom and kitchen.

Currently an owner must have a licence if renting out a large HMO. A property is defined as a large HMO if all of the following apply:

- It is rented to 5 or more people who form more than 1 household
- It is at least 3 storeys high
- Tenants share toilet, bathroom or kitchen facilities

The council currently licenses approximately 54 of these licensable HMOs.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 was agreed by parliament on 23rd February 2018 and will come into effect across England on 1st October 2018. This Order will change the definition of an HMO under the Housing Act 2004.

From 1st October 2018, the definition of an HMO for licensing purposes will be any property occupied by five or more people, forming two or more separate households. Insight suggests that this will result in approximately 300 additional HMOs for Rugby, each of which will need to be licensed.

2. IMPLEMENTATION OF NEW REGULATION

The new HMOs will have to be identified, have applications be processed and be inspected – both before the issue of licences and during the duration of licences. The legislation requires that licenses are issued for a 5-year period and that the costs of the scheme can be recovered in the licence fee.

The current fee is based on the costs of administering the large HMO scheme and is set at £650 for the 5-year licence.

It is anticipated that the smaller HMOs will require a similar cost to enforce per property. As such, it is anticipated that the 300 new HMOs will generate an additional £195,000 income (equivalent to approximately £39,000 per annum) over the 5-year licence period.

It will not be possible to administer the new scheme within existing resources, therefore it is proposed that the income from the licensing scheme (which must be used for the administration of the scheme) is used to fund a permanent Environmental Health Officer (EHO) or specialist Environmental Protection Officer (EPO). Which one is chosen will depend on the current market place for qualified environmental health applicants with specialist housing knowledge and experience.

The cost for a 37-hour EHO (Grade F) is £38,650 per annum and an EPO (Grade E) is £35,250 per annum. The cost of appointing to either role can be met from the expected additional license fee income. Full staffing costs are detailed in Appendix 1. It is therefore recommended that a net nil supplementary budget of £39,000 per annum be approved.

Furthermore, it is recommended that an earmarked reserve for the additional HMO fee income is created, with the income credited to it at the start of the five-year licence and drawn down to match the salaried expenditure over the period of the licence.

3. POLICY REVIEWS

The opportunity has been taken to update the Private Sector Housing Enforcement Policy, the Private Sector Housing Civil Penalties Policy and the Private Sector Housing Houses in Multiple Occupation Licensing Policy, as set out in Appendices 2, 3 and 4.

3.1 The Private Sector Housing Enforcement Policy

The proposed Private Sector Housing Enforcement Policy is a new policy. Currently, the Council's generic enforcement policy is used. However, HMOs are currently a major issue for enforcement and it is anticipated that when the definition is extended this issue will be more significant and so a specific policy is considered important.

The Private Sector Housing Enforcement Policy provides for the implementation of those powers introduced under the Housing and Planning Act 2016 and those extended enforcement powers under the Housing Act 2004, including Civil Penalties,

Rent Repayment Orders, Banning Orders and the Database of Rogue Landlords and Property Agents.

3.2 The Private Sector Housing Civil Penalties Policy

The Private Sector Housing Civil Penalties Policy uses powers introduced in the Housing and Planning Act 2016 and introduces new options for the officer toolkit for discouraging and penalising poor landlords who put tenants at risk.

While the Housing Act 2004 does include actions which can be taken to require works to be completed and give formal cautions or prosecutions of 'rogue landlords', the levels of fines means that it is often not a deterrent so it is important to be able to use whatever powers are available, including the Housing and Planning Act 2016 and the Proceeds of Crime Act 2002.

The Private Sector Housing Civil Penalties Policy provides the framework for the implementation of civil penalties as an appropriate enforcement intervention, including the means to calculate the level of financial penalty which is to be imposed, up to a maximum of £30,000.

3.3 The Private Sector Housing Houses in Multiple Occupation Licensing Policy

The Private Sector Housing Houses in Multiple Occupation Licensing Policy is a revision of the current policy. The amended policy takes into account the changes to legislation extending the mandatory licensing of houses in multiple occupation.

Name of Meeting:
Cabinet

Date of Meeting:
25 June 2018

Subject Matter:
Changes to HMO licensing legislation and implementation of new private sector housing enforcement powers

Originating Department:
Head of Environment and Public Realm

List of Background Papers

| Document No. | Date | Description of Document | Officer's Reference | File Reference |
|---|------|---|---------------------|----------------|
| 1. Housing Act 2004 | | | | |
| | | https://www.legislation.gov.uk/ukpga/2004/34/contents | | |
| 2. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 | | | | |
| | | http://www.legislation.gov.uk/uksi/2018/221/made | | |
| 3. Housing and Planning Act 2016 | | | | |
| | | http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted | | |

* The background papers relating to reports on planning applications and which are open to public inspection under Section 100D of the Local Government Act 1972, consist of the planning applications, referred to in the reports, and all written responses to consultations made by the Local Planning Authority, in connection with those applications.

* Exempt information is contained in the following documents:

| Document No. | Relevant Paragraph of Schedule 12A |
|--------------|------------------------------------|
|--------------|------------------------------------|

* There are no background papers relating to this item.

(*Delete if not applicable)

| Proposed Budget Position 1 | | | | | | |
|---|-----------------------|-----------------------|------------------------|------------|-----------------------|--------------------|
| A 37 Hour Grade F Post - Full Year Cost 2018/19 | | | | | | |
| Post Title | Contract Terms | Hours Per Week | Grade & SCP | FTE | Pension Scheme | £ Cash Cost |
| Environmental Health Officer | Permanent | 37 | F .33 | 1.00 | Yes | 38,650.00 |
| *Estimated Available Regulatory Services Budget | | | | | | - 39,000.00 |
| Difference | | | | | | - 350.00 |
| Saving(-)/Additional Cost(+) | | | | | | |

| Proposed Budget Position 2 | | | | | | |
|---|-----------------------|-----------------------|------------------------|------------|-----------------------|------------------|
| A 37 Hour Grade E Post - Full Year Cost 2018/19 | | | | | | |
| Post Title | Contract Terms | Hours Per Week | Grade & SCP | FTE | Pension Scheme | Cash Cost |
| Environmental Protection Officer | Permanent | 37 | E .29 | 1.00 | Yes | 35,260.00 |
| *Estimated Available Regulatory Services Budget | | | | | | - 39,000.00 |
| Difference | | | | | | - 3,740.00 |
| Saving(-)/Additional Cost(+) | | | | | | |

**Notes: the Estimated available Regulatory Services budget has been calculated from:*

£650 per 5 year HMO Licence
 300 new HMO Licences required
 therefore 650x300 = £195,000
 195,000/5years = £39,000 income p.a.

Rugby Borough Council

Private Sector Housing Civil Penalties Policy

1. Introduction

- 1.1 Rugby Borough Council's Neighbourhood Services Team is committed to ensuring good quality, healthy housing for all, by improving standards within the private housing sector.
- 1.2 The Borough's private rented sector has grown substantially over recent years. The majority of private landlords operate within the law, providing a high standard of rented accommodation. The Neighbourhood Services Team work with landlords where necessary to provide advice and guidance to support them to achieve compliance. However, in cases where landlords put their tenants health and safety at risk and fail to comply with their statutory obligations we will take enforcement action in accordance with the Private Sector Housing Enforcement Policy.
- 1.3 The Housing and Planning Act 2016 introduced civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

2. Purpose

- 2.1 The purpose of this policy is to ensure transparency, consistency and fairness in how and when civil penalties are imposed. In setting a framework for determining the level of civil penalty in any particular case the Neighbourhood Services Team has consulted with the other Warwickshire local authorities to ensure consistency in its approach.
- 2.2 The application of a civil penalty will be made in accordance with the Private Sector Housing Enforcement Policy as part of the enforcement options available to the Neighbourhood Services Team to achieve safe and healthy private sector housing. It will assist us to deal with those criminal and irresponsible landlords who put tenants at unacceptable risks.

3. Legislative Background

- 3.1 The Housing and Planning Act 2016 came into force on 6 April 2017 and introduced provisions for local authorities to impose civil penalties of up to £30,000 as an alternative to prosecution for certain housing offences. Those offences for which a civil penalty may be applied are;
 - Failure to comply with an improvement notice (Housing Act 2004 section 30)
 - Offences relating to licensing of houses in multiple occupation (HMOs) (Housing Act 2004 section 72)
 - Offences relating to licensing of houses under Part 3 of the Housing Act 2004 (Housing Act 2004 section 95)

- Failure to comply with an overcrowding notice (Housing Act 2004 section 139)
 - Failure to comply with management regulations in respect of houses in multiple occupation (Housing Act 2004 section 234)
 - Breach of a banning order (Housing and Planning Act 2016 section 21)
- 3.2 A civil penalty may only be imposed if the Neighbourhood Services Team is satisfied, beyond reasonable doubt, that the offence has been committed and civil penalties can only be used as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for a particular offence cannot be issued with a civil penalty for the same offence.
- 3.3 Only one civil penalty may be imposed on a person for the same offence. However, in respect of breaches of the HMO management Regulations, a civil penalty can be imposed for the breaching of each separate Regulation.
- 3.4 Statutory guidance has been issued under the Housing and Planning Act 2016 which the Council must have regard to in the exercise of its functions in respect of civil penalties and Schedule 9 of the Housing and Planning Act 2016 covers the procedure for imposing civil penalties, their appeal and enforcement.

4. Determining the Level of Civil Penalty

- 4.1 The Council has the power to impose a maximum civil penalty of £30,000. Generally, this will be reserved for the worst offenders. To ensure the civil penalty is set at an appropriate level, the Council will consider the following factors:
- Severity of the offence – the more serious the offence, the higher the penalty.
 - 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 – the greater the harm or the potential for harm, the higher the penalty.
 - Punishment of the offender – A civil penalty should be set at a high enough level to help ensure it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
 - Whether the penalty will deter the offender from repeating the offence – the level of penalty should be set at a high enough level that it is likely to deter the offender from repeating the offence.
 - Whether the penalty will deter others from committing similar offences – the penalty should be high enough so that, should other landlords become aware of a civil penalty having been imposed, other landlords will be deterred from committing offences.

- Whether the penalty will remove any financial benefit the offender may have obtained as a result of committing the offence – the penalty imposed should ensure the offender does not benefit as a result of committing the offence.
- 4.2 All income received from a civil penalty will be retained by the Council's Regulatory Services to be used to further its statutory functions in relation to their enforcement activities covering the private rented sector, as specified within the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

5. Procedure for Imposing Civil Penalties

- 5.1 The procedure for imposing a civil penalty is set out in Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016.
- 5.2 At the point the Neighbourhood Services Team has sufficient evidence of the conduct to which the penalty relates, or at any time the conduct is continuing, a Notice of intent has to be issued to the person within 6 months. This notice of intent must set out:
- The amount of the proposed civil penalty;
 - The reasons for proposing to impose the civil penalty; and
 - Information about the right of the landlord to make representations to the Council.
- 5.3 A person who is given a notice of intent may make written representations to the Council about the proposal to impose a civil penalty with 28 days from the date of the notice. After the 28 day period the Council will consider any representations made and decide whether to impose the civil penalty and, if so, the amount of the penalty.
- 5.4 If the Council decides to impose the civil penalty a Final Notice shall be issued requiring the civil penalty to be paid within 28 days. This final notice must set out:
- The amount of the civil penalty;
 - The reasons for imposing the civil penalty;
 - Information about how to pay the civil penalty;
 - The period for payment of the civil penalty;
 - Information about the right of appeal to the First-tier Tribunal;
 - The consequences of failure to comply with the Final Notice.
- 5.5 The Council may at any time:
- Withdraw the notice of intent or final notice; or
 - Reduce the amount specified in a notice of intent or final notice at any time.
- Where the Council decides to take either action, it will give written notice to the person to whom the notice was given.
- 5.6 On receipt of a final notice a landlord may appeal to the First-tier Tribunal against the decision to impose a civil penalty and/or the amount of penalty.

This appeal must be made within 28 days of the date the final notice was served. Upon any appeal, the final notice is suspended until the appeal is determined or withdrawn.

- 5.7 The First-tier Tribunal has the power to confirm, vary (increase or decrease) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

6. Enforcement of Civil Penalties

- 6.1 Where the landlord or property agent fails to pay the full civil penalty, the Council will recover the amount by order from the County Court. Where appropriate, the Council will further seek to recover those costs incurred in taking this action from the person to which the civil penalty relates.
- 6.2 Where a landlord receives two or more civil penalties over a 12 month period the Council will consider whether it is appropriate to include the persons details in the database of rogue landlords and property agents. In doing so, this will ensure other local authorities in England are made aware that formal action has been taken against the landlord.
- 6.3 If a landlord receives a civil penalty, the Neighbourhood Services Team will, where appropriate, take this fact into account when considering whether the landlord is a fit and proper person to be the licence holder for a house in multiple occupation.

7. Penalty Charging Table

- 7.1 The following table will be used by the Neighbourhood Services Team to calculate the level of civil penalty. The financial penalty to be imposed is on a scale, starting at an initial level which will be increased if there are aggravating factors

Charging table for determining value of Financial Penalties

| <i>Failure to comply with an Improvement Notice (Section 30)</i> | <i>£</i> |
|---|-----------------|
| <i>1st offence (note 1)</i> | <i>5000</i> |
| <i>2nd subsequent offence by same person/company (note 2)</i> | <i>15000</i> |
| <i>Subsequent offences by same person/company (note 7)</i> | <i>25000</i> |

| | |
|--|-------|
| | |
| Premiums (use all that apply) | |
| Acts or omissions demonstrating high culpability (note 8) | +2500 |
| Large housing portfolio (10+ units of accommodation) (note 3) | +2500 |
| Multiple Category 1 or high Category 2 Hazards (note 4) | +2500 |
| Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5) | +2500 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |

| | |
|--|-------|
| Offences in relation to licensing of HMOs (note 1) under Part 2 of the Act (Section 72) | £ |
| Failure to obtain property Licence (section 72(1)) (note 1) | 10000 |
| 2nd subsequent offence by same person/company (note 2) | 30000 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |
| | |
| Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach | 5000 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |

| | |
|--|-------|
| Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95) | £ |
| Failure to Licence (section 95(1)) (note 1) | 10000 |
| 2nd subsequent offence by same person/company (note 2) | 30000 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |
| Breach of Licence conditions (Section 95(2)) - Per licence breach | 5000 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |

| | |
|--|-------|
| Offences of contravention of an overcrowding notice (section 139) | £ |
| 1st relevant offences (note 1) | 5000 |
| 2nd subsequent offence by same person/company (note 2) | 15000 |
| | |

| | |
|--|-------|
| Premiums (use all that apply) | |
| Acts or omissions demonstrating high culpability (note 8) | +2500 |
| Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3) | +2500 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |

| | |
|--|--------------|
| Failure to comply with management regulations in respect of HMOs (Section 234) | £ |
| 1 st relevant offences (note1) | 1000/offence |
| Second subsequent offences by same person/company for the same offence | 3000/offence |
| | |
| Premiums (use all that apply) | |
| Acts or omissions demonstrating high culpability (note 8) | +2500 |
| Large housing portfolio (10+ units of accommodation) (note 3) | +2500 |
| Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5) | +2500 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |

NOTES

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

1. The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.
2. After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed
3. No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

1. The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.
2. For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

1. This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.
2. For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

1. This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.
2. For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.
3. For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.
4. At the time of publication this document can be found at www.gov.uk and a summary table is below.

| Hazard | Vulnerable age group (age of occupant) |
|--|---|
| Damp and mould growth | 14 and under |
| Excess Cold | 65 or over |
| Excess Heat | 65 or over |
| Carbon Monoxide | 65 or over |
| Lead | under 3 years |
| Personal Hygiene, Sanitation and Drainage | under 5 years |
| Falls associated with baths etc. | 60 or over |
| Falling on level surfaces etc. | 60 or over |
| Falling on stairs etc. | 60 or over |
| falling between levels | under 5 years |
| Electrical hazards | under 5 years |
| Fire | 60 or over |
| Flames, hot surfaces etc. | under 5 years |
| Collision and entrapment | under 5 years |
| Collision and entrapment - low headroom | 16 or over |
| Position and operability of amenities etc. | 60 or over |

Note 6 - Perpetrator demonstrates Income to be less than £440/week

1. This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.
2. To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

3. The figure of £440/week is to be calculated after omission of income tax and national insurance.
4. The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

1. This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.
2. The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Rugby Borough Council

Private Sector Housing Enforcement Policy

1. Introduction

- 1.1 Rugby Borough Council's Neighbourhood Services Team is committed to ensuring good quality, healthy housing for all, by improving standards within the private housing sector, targeting that which presents the greatest risk to health and safety.
- 1.2 The Borough's private rented sector has grown substantially over recent years. In order to regulate private sector housing the Neighbourhood Services Team will use those statutory powers predominantly under the Housing Act 2004 and its relevant secondary legislation, including the Housing Health and Safety Rating System and Mandatory licensing of Houses in Multiple Occupation (HMOs).
- 1.3 The Council's Neighbourhood Services Team will carry out inspections of properties, process HMO licence applications, encourage and promote good practice, provide information and advice to landlords and managers, investigate alleged offences and, where appropriate take enforcement action in accordance with this Policy, to improve standards within private sector housing.

2. Purpose

- 2.1 The purpose of this enforcement policy is to ensure that:
 - Private sector housing is free from hazards which present unacceptable risks to the health, safety and wellbeing of its occupants;
 - All HMOs are safe for occupation and are well managed in accordance with the relevant Management Regulations;
 - All licensable HMOs are licensed with the Council's Neighbourhood Services Team and all licensing conditions are complied with;
 - Privately owned property and land does not cause any detrimental impact on the local community, and does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and
 - The Council meets its statutory obligations in relation to private sector housing.
- 2.2 This Policy provides an overview of the broad principles with which the Council's Neighbourhood Services Team will seek to comply to ensure all private sector housing is healthy and safe.
- 2.3 Rugby Borough Council will regularly review this Policy to ensure it is up to date with new legislation and guidance and in carrying out any review, all relevant stakeholders will be consulted.

3. Principles of Good Enforcement

- 3.1 When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:
- Regulators Compliance Code
 - The Police and Criminal Evidence Act 1984 (as amended)
 - Criminal Procedures and Investigations Act 1996
 - Regulation of Investigatory Powers Act 2000
 - Housing and Planning Act 2016
- 3.2 The Neighbourhood Services Team will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners and occupiers. In doing so, it will have regard to the local economy, the purpose of inspections, compliance visits during which advice and guidance is given, and the principles underpinning enforcement activity.
- 3.3 The Neighbourhood Services Team recognises that most private residents and landlords want to comply with the law. It is therefore intended that housing enforcement officers will make all attempts to help them meet their legal obligations without unnecessary expense and minimising burden, where possible. However, it is recognised that in some cases formal actions, including prosecution where appropriate, will be taken against those who contravene the law or act irresponsibly.
- 3.4 The Neighbourhood Services Team will make all attempts to work actively with landlords and residents, providing clear and concise advice and guidance to assist them to meet their legal obligations, in a range of formats. We will provide a courteous and efficient service. Officers will identify themselves by name, provide landlords and residents a contact telephone number and email address for further correspondence and encourage residents and landlords to seek advice/information from officers. We will further aim to deal with representations and licence applications efficiently and promptly and ensure, wherever practicable, the regulatory services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- 3.5 The Neighbourhood Services Team will undertake proactive property inspections based on risk and intelligence and ensure its resources are targeted at the those properties which are the highest risk, such as those where there is a high likelihood of non-compliance. Where both applicable and practicable, we will endeavour to undertake joint or coordinated inspections of premises, for example with the Warwickshire Fire and Rescue Service.
- 3.6 The Neighbourhood Services Team will follow the Principles which underpin good enforcement. These principles being:

- Targeted – Enforcement action will be targeted towards those properties and people which pose the greatest risk, including those persons who contravene the legislation, putting people’s health and safety at risk and including those who evade licensing.
- Proportionate – Enforcement action will be proportionate to the risks and will reflect the nature, scale and seriousness of any breach of legislation.
- Consistent – The Neighbourhood Services Team will carry out its duties in an equitable and consistent manner, interpreting and applying relevant legal requirements and enforcement policies fairly and consistently. While officers are expected to exercise judgement in individual cases, we will have arrangements to promote consistency, including effective arrangements for liaising with other authorities and enforcement bodies.
- Transparent – Enforcement action will be put clearly and simply, and will be confirmed in writing on request, making sure that statutory requirements are clearly distinguished from advice or guidance. Prior to formal enforcement action officers will provide opportunity to discuss the circumstances of the breach/es and take these into account when deciding on the best approach, unless immediate formal action is required. Where formal action is taken, officers will provide clear reasons for this action at the time the action is taken and will be confirmed in writing at the earliest opportunity. Complaints and appeal procedures will be clearly set out at the same time.
- Accountable – The Neighbourhood Services Team will work closely with landlords, tenants and other interested parties to create effective consultation and feedback opportunities so that constructive relationships are maintained.

3.7 Complaints about service

The Neighbourhood Services Team will provide a well publicised, effective and timely complaints procedure which is easily accessible. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescale involved.

4. **Housing Health and Rating System (HHSRS)**

- 4.1 The HHSRS is the method for assessing, rating and categorising hazards within residential dwellings as prescribed within Part 1 of the Housing Act 2004. The HHSRS categorises hazards into category 1 and category 2 hazards, depending on the risk rating of each hazard, which is a numerical score. The numerical score is then banded from A – J, A being the highest risk.
- 4.2 Category 1 hazards (band A – C) are the more serious and which require the Neighbourhood Services Team to take appropriate action. Category 2 hazards (band D and lower) present less of a risk to an occupier and give the Neighbourhood Services Team a discretionary power to take action where appropriate.

- 4.3 Where formal enforcement action is taken by the Neighbourhood Services Team to address any hazard assessed under the HHSRS, a minimum charge will be applied in accordance with the Council's publicised Fees and Charges document.

5. Enforcement Options

- 5.1 In order to achieve and maintain consistency within private sector housing enforcement the Neighbourhood Services Team will use the following range of enforcement options as appropriate:

- No action
- Informal action
- Statutory notices
- Formal caution
- Civil penalties*
- Prosecution
- Works in default
- Rent Repayment Orders*
- Banning Orders*

* Only applicable in relation to certain offences under the Housing Act 2004 or other specified legislation.

- 5.2 In determining the most appropriate course of action, officers will consider all relevant information and evidence of the specific case. Where appropriate, officers will consult with the Principal Environmental Health Officer or Regulatory Services Manager about the most appropriate course of action.

- 5.3 In cases where if, on investigation, it is found there is no breach of legislation and there is no risk to health then no further action may be required. In such cases, customers may be directed to other sources of advice and support.

5.4 Informal action

- 5.4.1 Informal action includes verbal advice, advisory letters and the service of Hazard Awareness Notices (applicable to the HHSRS only). Where applicable, informal letters and Hazard Awareness Notices will include an advisory warning providing full information as to if and when the Council is proposing to take any further enforcement action in respect of the said matter and, should this take place, what the implications will be.

- 5.4.2 Informal action will be considered appropriate in the following circumstances:
- The act or omission is not seriousness to warrant formal action.

- The previous history of the individual/company's past history suggests that informal action will achieve compliance within a suitable time.
- The consequences of non-compliance will not pose a significant risk to health and safety.

5.5 Statutory notices

5.5.1 The service of statutory notices will be done in accordance with any relevant statutory guidance and procedures and only those officers who are authorised under the scheme of delegation, in relation to the specific legislation under which the statutory notice is being served, will serve the notice.

5.5.2 The service of statutory notices will be considered in any of the following circumstances:

- Attempts to resolve the situation informally have failed
- There are serious contraventions of legislation, which pose a significant risk to health and safety of persons or the environment
- There is a history of non-compliance or there is intelligence that the responsible person will not respond to informal action
- The person in control is unknown or unable to be contacted
- Standards in the premises are generally poor with little management awareness of statutory requirements
- A situation exists which places a mandatory duty on the Council to serve a statutory notice.
- Effective action needs to be taken as quickly as possible to remedy conditions that present a serious risk and are deteriorating or likely to deteriorate.

5.5.3 Prior to service, authorised officers will be in possession of sufficient evidence to enforce the statutory notice and will be prepared to pursue non-compliance through the most appropriate sanctions available.

5.6 Formal Caution

5.6.1 The Neighbourhood Services Team will offer formal cautions as an alternative to prosecution in order to deal quickly and simply with less serious offences, to divert less serious offences away from the Courts and to reduce the chances of repeat offences. A formal caution will only be offered on the understanding that the Council's costs will be paid by the offender.

5.6.2 Formal cautions will be used where:

- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction,
- The offender admits the offence, and
- The offender will accept the formal caution and understands its significance

- The use of a formal caution is considered to be in the public interest.

5.6.3 Formal cautions will only be administered by the Regulatory Services Manager or another senior officer in accordance with the Council's Scheme of Delegation. Where an individual or company declines a formal caution, the Neighbourhood Services Team will instigate legal proceedings. A formal caution will be recorded on the Central Register of Convictions.

5.7 Civil Penalties

5.7.1 Civil Penalties have been introduced under the Housing and Planning Act 2016. The Neighbourhood Services Team may impose a civil penalty as an alternative to prosecution in relation to specified offences under the Housing Act 2004. In doing so, we must be satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed by an individual/s or company, such that should the case be taken for prosecution in the Courts, there would be a realistic prospect of conviction.

5.7.2 When considering whether a civil penalty should be issued in place of taking a prosecution, we will have regard to the Private Sector Housing Civil Penalty Policy, taking each case on a case-by-case basis.

5.7.3 In determining the level of civil penalty to be applied the Neighbourhood Services Team will have regard to the Penalty Charges Table contained within the Private Sector Housing Civil Penalty Policy. The maximum civil penalty which may be applied is £30,000.

5.8 Prosecution

5.8.1 In deciding whether to refer a case for prosecution the Neighbourhood Services Team will have regard to the Code for Crown Prosecutors. A prosecution will only be taken in cases where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual/s or company and that there is a realistic prospect of conviction.

5.8.2 Prosecution proceedings will be instigated in the following circumstances:

- Where the offence involves a flagrant breach of the law such that the health, safety or wellbeing of the public and/or the environment is put at risk
- The offence involves the failure to comply with a statutory notice, statutory instrument or other legal duty
- There is a history of similar offences involving the serious risk to the health or safety of the public and/or environment
- Where an individual/s or company is unwilling to comply with a statutory duty after having been given reasonable opportunity to do so

- Where an authorised officer has been intentionally obstructed in the course of his/her duties.

5.8.3 The decision to prosecute will be taken on a case by case basis and shall only be taken with the approval of the Head of Environment and Public Realm.

5.9 Works in Default

5.9.1 The Neighbourhood Services Team may carry out works in default where works required by a statutory notice have not been started or carried out within the specified timescales. This action may be taken in place of, or in addition to, prosecution.

5.9.2 Default action will normally only be carried out in cases where there is a risk to public health/safety or the environment, such that the consequences of not taking action would be unacceptable.

5.9.3 Where default action is taken, we will then recover those costs the Council has incurred having undertaken the required works, including administration costs. Where prompt payment of the costs is not received, the council will seek to recover the costs through the Courts or the outstanding amount will be placed as a charge on the property where interest will be accrued at the specified rate.

5.10 Rent Repayment Orders (RROs)

5.10.1 Rent Repayment Orders are made by the First-tier Tribunal and require a landlord to repay rent to tenant/s or the Council, depending on whether the rent was paid by the tenant/s themselves or whether the rent was paid by Housing Benefit or through the housing element of Universal Credit.

5.10.2 The Housing Act 2004 introduced RROs against landlords who failed to obtain a licence for any licensable HMO. The Housing and Planning Act 2016 has since extended the use of RROs to cover the following offences:

- Failure to comply with an improvement notice (Housing Act 2004 section 30)
- Failure to comply with a prohibition order (Housing Act 2004 section 32)
- Breach of a Banning Order (Housing and Planning Act 2016 section 21)
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

5.10.3 The Neighbourhood Services Team will consider applying for an RRO after a landlord is the subject of a successful prosecution or a successful civil penalty. In relation to those offences to which a civil penalty is not applicable,

e.g. offences relating to prohibition orders, we will consider applying for an RRO where we are satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed by an individual/s or company, such that should the case be taken for prosecution in the Courts, there would be a realistic prospect of conviction taken for prosecution in the Courts, there would be a realistic prospect of conviction.

5.10.4 When considering whether an RRO application should be made, each case will be decided independently. The maximum amount of rent which can be recovered is capped at 12 months. In making an application for an RRO, the Neighbourhood Services Team will have regard to statutory guidance issued under section 41 of the Housing and Planning Act 2016.

5.10.5 For those offences investigated and enforced by other council Services and not Regulatory Services, as set out in the Council's Scheme of Delegation, i.e. offences under the Criminal Law Act 1977 and Protection from Eviction Act 1977, the Neighbourhood Services Team will offer advice and guidance upon request and where appropriate.

5.10.6 In addition, we will offer advice, guidance and support to assist tenants to apply for an RRO if the tenant has paid the rent themselves.

5.11 Banning Orders

5.11.1 A banning order is issued by the First-tier Tribunal banning a landlord from:

- Letting any dwelling
- Engaging in letting agency work
- Engaging in property management work; or
- Doing two or more of these activities.

A landlord subject to a banning order will further be unable to hold a licence for an HMO.

5.11.2 Banning orders have been introduced under the Housing and Planning Act 2016 and are limited to England. A banning order must last for at least 12 months and has no maximum period. The length of time for which a banning order is in force is determined by the First-tier Tribunal, however the Neighbourhood Services Team will recommend how long a banning order should be.

5.11.3 The Neighbourhood Services Team will apply for a banning order where a landlord has been convicted of a banning order offence as specified in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and the sentence imposed by the Court is considered significant.

- 5.11.4 We will utilise the database of rogue landlords and property agents to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences within other local authority areas. 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 we will recommend to the First-tier Tribunal that the banning order is imposed for a longer period of time.
- 5.11.5 The Neighbourhood Services Team acknowledges that banning orders will remove the worst offenders from the private rented sector. We will therefore ensure the ban is proportionate and reflects both the severity of the offence and whether there is a pattern of previous offending to ensure it has a real economic impact on the offender and demonstrates the consequence of not complying with their responsibilities.
- 5.11.6 We will ensure the length of the ban reflects the level of harm, or the potential for harm, towards the tenant. A banning order for those offences which exposed tenants to a greater risk of harm will be imposed for a long enough time period to reflect this increased risk. In addition, banning orders will be set at a long enough period that it is likely to deter the offender from repeating the offence and to deter others from committing similar offences.
- 5.12.7 The Neighbourhood Services Team will further take into account, when considering whether to apply for a banning order in the case of property agents whether they are a member of a Government approved redress scheme.
- 5.12.8 Prior to applying for a banning order, we will serve a notice of intent on the landlord in accordance with section 15 of the Housing and Planning Act 2016. In addition, prior to making any application we may legally require the landlord to provide us with information, under section 19 of the Housing and Planning Act 2016, for the purpose of enabling us to decide whether a banning order is an appropriate sanction. In deciding whether to pursue a banning order, we will consider each case on a case by case basis.

6. Database of Rogue Landlords and Property Agents

- 6.1 The database of rogue landlords and property agents has been introduced under the Housing and Planning Act 2016 to enable English Local Authorities to keep track of rogue landlords and property agents. Statutory guidance has been issued under section 30 of the Housing and Planning Act 2016 to which the Neighbourhood Services Team will have regard to in deciding whether to make an entry within the database.

- 6.2 Where a person or organisation has received a banning order we will make an entry onto the database. This entry will remain for the duration of the banning order.
- 6.3 Where a person has been convicted of a banning order offence or has received two or more financial penalties within a 12 month period, the Neighbourhood services Team, or any other officer authorised under the Council's Scheme of Delegation, will consider, on a case by case basis, as to whether this person's details should be entered onto the database.
- 6.4 We will generally seek to include persons on the database in all cases except where the offence committed is less serious and/or there are mitigating circumstances such as personal issues (e.g. health problems) and/or it is the person's first offence.
- 6.4 Where a discretionary decision is made to entry a person's detail into the database, we will issue the person with a decision notice of our intention prior to making the entry.

7. Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 7.1 The Smoke and Carbon Monoxide (England) Regulations 2015 require rented properties to have smoke detectors installed on every storey of the accommodation and carbon monoxide alarms fitted in every room where there is a solid fuel heating appliance. The Regulations require landlords to ensure the alarms are in proper working order at the start of any new tenancy. The Regulations apply to most rented properties.
- 7.2 The Neighbourhood Services Team will enforce these Regulations, where appropriate, in accordance with Council's published Statement of Principles.

8. Enforcement – Tenure

- 8.1 The Neighbourhood Services Team utilises its statutory powers under a broad range of legislation to deal with a range of issues associated with residential premises, including disrepair and category 1 and 2 hazards, nuisance properties, defective drainage, insecure premises and filthy and verminous.
- 8.2 All enforcement options are available to the Neighbourhood Services Team, regardless of tenure. However, we consider that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvements which might affect their welfare, and are then able to set their financial priorities accordingly. Therefore, when dealing with owner-occupied properties, unless in exceptional circumstances, enforcement action will only be

considered where its condition is a danger to the occupier or the property is having a detrimental effect on either the adjoining properties or the local community.

- 8.3 The Neighbourhood Services Team thereby envisages that only Hazard Awareness Notices may be served in relation to owner-occupied properties, where it is assessed under the HHSRS that category 1 or 2 hazards are present. However, where there are concerns that person/s may be vulnerable and intervention is required to best protect their welfare, enforcement action will be considered and taken as appropriate.
- 8.4 The Neighbourhood Services Team acknowledges that tenants living within the private rented sector are usually less likely to be in a position to make decisions regarding maintenance and improvements. As such, we will generally exercise our powers when dealing with private rented properties, taking into account, where applicable, the most appropriate course of action.

9. Houses in Multiple Occupation (HMOs)

- 9.1 The Neighbourhood Services Team will utilise all of the above enforcement options when dealing with HMOs, taking into account applicable statutory guidance.
- 9.1.1 We will seek to identify all HMOs within the Borough and endeavour to work with those in control of the HMOs to ensure no occupants of these properties are put at unacceptable risks. The Council has signed up to the Local Fire Safety Protocol with Warwickshire Fire and Rescue Service and we will operate in accordance with this Protocol. Where enforcement actions are necessary to address a prescribed fire hazard within an HMO or in the common parts of a building containing flats we will consult Warwickshire Fire and Rescue Service prior to taking this action.
- 9.2 Mandatory Licensing of HMOs
- 9.2.1 Part 2 of the Housing Act 2004 requires certain HMOs to be licensed by the Neighbourhood Services Team. The HMO licensing regime includes for the assessments of suitability of the premises for the number of occupants, including the adequacy of the amenities, and to ensure adequate management arrangements are in place. It further provides for the assessment of the fitness of any person who is the named licence holder and of any persons involved with the management of the premises.

9.2.2 It is a criminal offence if a person is in control or managing an HMO which does not have the required licence. In addition, it is a criminal offence to fail to comply with any condition attached to an HMO licence.

9.2.3 The Neighbourhood Services Team will seek to identify all HMOs within Rugby borough. Where licensable HMOs are found to be operating without the required licence we will take such action necessary to ensure the premises is licensed and, where appropriate take prosecutions against those persons in control or managing the unlicensed premises.

9.2.4 Further details of the Council's approach towards licensed HMOs is contained within the HMO Licensing Policy.

9.3 HMO Management Regulations

9.3.1 These Regulations apply to all HMOs, regardless as to whether it is licensed. They place a legal duty on those managing an HMO to maintain all areas of the HMO safe and in a reasonable state of repair, common parts must be kept clean and all installations (including those for fire safety) maintained in good working order.

9.3.2 Where there is a breach of these Regulations the Neighbourhood Services Team will generally write to the relevant person/s to inform them of those Regulations which are breached and notify them of those works necessary to remedy the breach. There is no option for serving of statutory notice or works in default under these Regulations.

9.4 Interim Management Orders (IMO)

9.4.1 An IMO can be made if the Neighbourhood Services Team is satisfied there is no reasonable prospect of a licensable HMO being licensed in the near future or if it is necessary to protect the health, safety or welfare of the occupiers or those occupying houses in the vicinity. An IMO enables the Council to take over the management of the property, including the collection of rents, for a maximum of 12 months.

9.4.2 The Housing and Planning Act 2016 extends the powers to make an IMO to include circumstances where a banning order has been made and where a privately rented property is being let in breach of a banning order.

9.4.3 Where an IMO is made, the Council may delegate the management of the HMO to another agency or external partner.

9.5 Final Management Orders (FMO)

9.5.1 On expiry of the IMO, if the Neighbourhood Services Team are satisfied that the HMO remains licensable but it is still not able to grant the HMO a licence, a FMO must be made for the purpose of protecting, on a long term basis, the health, safety or welfare of the occupiers of the HMO or those of properties in the vicinity.

9.5.2 The Housing and Planning Act 2016 extends the powers to make an FMO to include circumstances where a banning order has been made and where a privately rented property is being let in breach of a banning order.

9.5.3 An FMO is similar to an IMO and can last up to five years.

9.6 Overcrowding

9.6.1 Where no IMO or FMO is in force and the HMO does not require to be licensed the Neighbourhood Services Team may serve an overcrowding notice on those relevant person/s where, having regard to the number of rooms available, we consider that the HMO is, or is likely to be, over-occupied.

10. **Exercising Powers of Entry**

10.1 To enable the Neighbourhood Services Team to enforce its statutory powers, officers are provided with powers of entry under the Council's Scheme of Delegation. In general, these powers will allow officers at any reasonable time to:

- Enter a property to carry out an inspection
- Take any appropriate persons with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Take samples of articles or substances
- Determine if enforcement action is necessary
- Carry out works in default

10.2 In most cases prior notice will be given to the occupier/s and/or owner/s. Generally, this notice would be given in writing. The amount of notice given will depend on the legislation being enforced and can range from 24 hours to 7 days.

10.3 Where considered necessary and appropriate, the Neighbourhood Services Team will exercise their powers of entry through a warrant, obtained from the Courts. Where power of entry is enforced through a warrant, access may be obtained by force if necessary and other enforcement agencies may be in

attendance, such as Warwickshire Police, Warwickshire Fire and Rescue Service, UK Border Agency, Gangmasters Labour and Abuse Authority and Warwickshire Trading Standards.

- 10.4 If the premises subject to the warrant is unoccupied or the occupier is temporarily absent at the time of executing the warrant and entry has to be forced, officers will leave the premises as effectively secured against trespassers as it was found. If new locks are fitted to secure the premises, information will be left on how to obtain the keys, which will be available for collection at all times.
- 10.5 It is an offence to obstruct an officer in the course of their duty. Officers exercising their powers of entry will carry identification and details of their authorisation to carry out their action.

Rugby Borough Council

House in Multiple Occupation Licensing Policy

1. Introduction

- 1.1 Rugby Borough Council's Neighbourhood Services Team is committed to ensuring good quality, healthy housing for all, by improving standards within the private housing sector.
- 1.2 The Borough's private rented sector has grown substantially over recent years, particularly in relation to houses in multiple occupation (HMOs) due to factors such as demographics and social welfare reforms. HMOs make up a valuable part of the private rented sector housing market providing cost efficient accommodation to the Borough's private tenants.
- 1.3 Part 2 of the Housing Act 2004 places a statutory duty on the Neighbourhood Services Team to licence certain houses in multiple occupation (HMOs) within the Rugby borough. The main aims of HMO licensing are to ensure the safety of some of the poorest and most vulnerable tenants who live in this type of accommodation and to ensure that these types of properties are safe and properly managed.

2. Purpose

- 2.1 The purpose of this policy is to set the framework for the application and licensing of HMOs within the borough of Rugby. It will ensure transparency, consistency and fairness in how the Neighbourhood Services Team implements the mandatory HMO licensing scheme under Part 2 of the Housing Act 2004. This policy does not take into account additional or selective licensing which the Council has discretionary powers to implement.
- 2.2 This policy will be applied in conjunction with the Private Sector Housing Enforcement Policy to achieve safe and healthy private sector housing which is well managed. Where necessary, it will assist us to deal with those criminal and irresponsible landlords who put tenants at unacceptable risks.

3. What is an HMO

- 3.1 Section 254 of the Housing Act 2004 provides for the definition of an HMO. Appendix 1 to this policy details the tests for an HMO. In essence, a building, or part of a building, is an HMO if it meets one of the following:
 - It meets 'the standard test';
 - It meets 'the self-contained flat test';
 - It meets 'the converted building test';
 - An HMO declaration is in force in respect of it under section 255;
 - It is a converted block of flats to which section 257 applies.

- 3.2 HMOs must be occupied by persons as their only or main residence and may include bedsits, shared houses, hostels and houses converted into flats. A household is classed as members of the same family. These definitions are further defined in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.
- 3.3 With regard to hotels/hostels/guest house establishments the Neighbourhood Services Team shall consider that where the accommodation is occupied by persons for a minimum period of 30 consecutive days, this shall be construed to be the persons only or main residence for the purposes of the Housing Act 2004. Where the circumstances of occupation are further considered to constitute a significant use of that accommodation we will deem the property to be an HMO.
- 3.4 Exemptions to the HMO definition are detailed in Schedule 14 to the Housing Act 2004 and include any building owned or managed by a Local Housing Authority, Registered Social Landlord, Police Authority, Fire and Rescue Authority or a Health Service body. Additional exemptions include buildings occupied by only two persons who form two households, buildings occupied by a resident landlord with up to two tenants, buildings occupied by religious communities and student halls of residence where the education establishment has been listed by the Secretary of State.

4. HMO licensing

- 4.1 Previously the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 required that only those HMOs consisting of three or more storeys, occupied by five or more persons, forming two or more households required a licence. These Regulations have now been revoked by the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.
- 4.2 The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2018 come into force on 1st October 2018 and removes the 'storey' element of the definition of a licensable HMO. These Regulations thereby require the Neighbourhood Services Team to licence any HMO which is occupied by five or more persons, living in two or more households and which satisfies one of the three tests detailed in Appendix 1 of this policy.
- 4.3 The responsibility for obtaining a licence for an HMO lies with the person having control of, or the person managing, the property. This would generally be considered to be the person who receives the rent.
- 4.4 Prior to licensing any HMO the Neighbourhood Services Team must be satisfied that the property is reasonably suitable for occupation, the licence holder is a fit and proper person and is the most appropriate person to hold the licence and the proposed management arrangements are satisfactory.

4.4.1 Assessment for Suitability for Occupation

4.4.1.1 Prior to granting a licence the Neighbourhood Services Team must be satisfied that the property is reasonably suitable for occupation by not more than the maximum number of households or persons or that it can be made so suitable by the imposition of conditions. The suitability for occupation will be judged against those requirements as set out in Schedule 3 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) Regulations 2006, as amended and against the Council's Standard of Amenities.

4.4.1.2 The Council's Standards of Amenities is available on the Council's website and will be reviewed from time to time in line with changes in the legislation or consultation with landlords and others with an interest in the private rented sector.

4.4.2 Fit and Proper Person Assessment

4.4.2.1 The Neighbourhood Services Team must assess whether the applicant and the manager of the property, or any person associated with them, is a fit and proper person. In taking into consideration whether a person is fit and proper we must have regard to whether:

- The person has any previous convictions relating to offences involving violence, sexual offences, drugs or fraud
- The person has contravened any laws relating to housing or landlord and tenant issues
- The person has been found guilty of unlawful discrimination practices
- The person has managed HMOs otherwise than in accordance with any Approved Code of Practice.

4.4.2.2 We may further take into account whether the applicant has:

- Been refused a licence for an HMO or been convicted of breaching licence conditions either by the Council or any other Council
- Been in control of a property subject to an HMO control order, an Interim Management Order or Final Management Order
- Been in control of a property where work in default has been carried out and the debt remains outstanding
- Any outstanding debts with the Council in relation to Housing Services
- Been convicted of Housing Benefit Fraud or subject to legal proceedings by a Council for breaches of planning, compulsory purchase or environmental health legislation.
- Not been deemed fit and proper by another Council
- Not been compliant with the Tenancy Deposit Scheme.

4.4.2.3 Subsequent to the implementation of the Housing and Planning Act 2016, in addition to the above we will take into account whether a person has been issued with the civil penalty and/or whether the persons details have been entered onto the Database of Rogue Landlords and Property Agents when considering if the person is fit and proper.

4.4.2.4 Applicants will be required to complete and sign a self-declaration as evidence of their fit and proper person status. However, in some cases the Neighbourhood Services Team may require additional information from the person in order to make a determination as to whether they are fit and proper. This may include the request for a Criminal Record Certificate.

4.4.2.5 The Neighbourhood Services Team must consider that the proposed licence holder is the most appropriate person to hold the licence.

4.4.3 Satisfactory Management Arrangements

4.4.3.1 In deciding whether satisfactory management arrangements are in place for the property the Neighbourhood Services Team must have regard to whether:

- The proposed manager has a sufficient level of competency
- Any proposed management structures and funding arrangements are suitable
- Any person proposed to be involved with the management of the property (other than the manager) are fit and proper.

4.4.3.2 We will further consider whether there is:

- A system for tenants to report defects (including emergencies) and arrangements for responding
- A system of periodic inspections to identify repair or maintenance matters
- A declaration from the owner, where not the manager, that adequate funding will be provided to the manager to deal with repairs and maintenance matters
- Compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006 which include the requirement for HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept in a reasonable state of decoration.

5. Licensing Procedure

5.1 Part 2 and Schedule 5 of the Housing Act 2004 prescribe the procedure which the Neighbourhood Services Team must follow when dealing with HMO licence applications and in deciding whether to grant a licence.

5.2 We are required to determine licence applications within a reasonable time. The length of the application process will vary depending on a number of factors such as the circumstances of the individual property or the total number of applications that we have received. Provided a valid application is submitted, the HMO can continue to operate legally until we have reached our decision regarding the licence and any appeals against that decision are complete.

5.3 Wherever possible, licensing decisions will be based upon an in-depth assessment of the licence application form, accompanying documents and a full inspection of the property. As such, we will only accept a licence application to be valid if it is complete with all required documentation and accompanied by the correct licence fee. Further details of the documentation which is required to be submitted with the HMO licence application is listed within the guidance notes which must be read alongside the Council's HMO licence application form.

5.4 Once the licence has been granted the details of the licence will be entered onto a public register which is available on the Council's website.

6. HMO Licence Fee

6.1 Section 63(3) of the Housing Act 2004 enables the Council to charge a fee to cover the costs incurred in undertaking its HMO licensing functions.

6.2 This fee is currently set at £650 for new licence applications, £493 for renewals of HMO licences and £900 where the Neighbourhood Services Team has to contact the landlord to inform them they are operating an unlicensed licensable HMO.

6.3 The HMO licence fees will be reviewed on an annual basis and, where appropriate, amended with the approval of the Head of Environment and Public Realm.

7. Duration of HMO Licences

7.1 HMO licences will usually remain valid for a period of five years, this being the maximum period set down in the Housing Act 2004. Exceptions to this may occur if the Neighbourhood Services Team considers necessary, for example if there is evidence to suggest that management arrangements or the property are not satisfactory, or where the Council has taken intervention against the landlord which does not warrant refusal of the licence. In such cases, the time period for the licence will be set according to what is considered appropriate by the Head of Environmental Services.

7.2 If the licence application has come about only as a result of the Council's intervention, the Neighbourhood Services Team will consider whether, in certain circumstances, the period of the licence should be reduced to reflect the period from when the licence should have been applied for and when it was actually applied for. This would ensure fairness with those landlords who have applied for their licence in good time.

7.3 HMO licences are not transferable. In cases when the licence holder dies or if the ownership of the property changes whilst the licence is in force, the original licence ceases to be in force and the property may be issued with a Temporary Exemption Notice for a period of 3 months in accordance to the Housing Act 2004.

8.0 Mandatory Licence Conditions

- 8.1 Schedule 4 of the Housing Act 2004 prescribes certain conditions which the Neighbourhood Services Team must attach to all HMO licences. Currently, these conditions require the licence holder to:
- If gas is supplied to the property, provide to the Council the annual gas safety certificate in respect of the HMO within the last 12 months and on an annual basis
 - Keep electrical appliances and furniture provided by him/her in the property in a safe condition and provide to the Council a declaration to that effect
 - Ensure smoke alarms are installed in the HMO on every storey and to keep them in proper working order and to supply on demand to the Council with a declaration by him as to the condition and positioning of such alarms
 - Supply to the occupiers of the HMO a written statement of the terms on which they occupy it.
- 8.2 On 1st October 2018 it is expected additional mandatory conditions will be required, by Regulation, to be applied to all HMO licences. Such conditions are expected to cover the occupation of rooms on the basis of the available floor area and conditions relating to household waste.
- 8.3 HMO licences will specify the maximum number of occupants who may occupy an HMO. The number of occupants will be based on the number and size of rooms and the bathroom and kitchen facilities within the property.

9. Discretionary Licence Conditions

- 9.1 In addition to mandatory HMO licence conditions, the Neighbourhood Services Team will apply further conditions to HMO licences where appropriate. Such conditions may include requiring the licence holder and/or manager to:
- Take reasonable and practicable steps to be taken to reduce anti-social behaviour
 - Ensure facilities and equipment are made available in the property for the purpose of meeting statutory requirements and the Council's Standards of Amenity and to keep such facilities in good repair and proper working order.
 - Provide, fit and maintain fire safety measures on a risk assessment basis. Such conditions will be set in consultation with Warwickshire Fire and Rescue Service in accordance with the agreed protocol.
- 9.2 Where appropriate the Council will restrict the use or occupation of parts of the property. Conditions will also be applied for undertaking works within particular timescales as considered necessary.

10 Inspections of Licensed HMOs

- 10.1 Where practicable all HMOs will be inspected prior to the licence being granted. All initial inspections will be undertaken where possible with the Fire Safety Officer from the Warwickshire Fire and Rescue Service. Following the granting of the licence and during the licence period the HMO shall be re-inspected by the Neighbourhood Services Team to ensure compliance with the conditions attached to the licence. The frequency of the re-inspections will be determined by a risk assessment undertaken by the inspecting officer.
- 10.2 Where a breach of licence conditions is found or any other category one or two hazard identified by the Housing Health and Safety Rating System the officer will, in most cases, initially use informal action to encourage the licence holder to undertake the necessary repairs. Where informal action fails to achieve a satisfactory outcome, or if the seriousness of the defect requires immediate action, the officer will use formal action against the licence holder, in accordance with the Housing Act 2004 and the Private Sector Housing Enforcement Policy.
- 10.3 Licensing does not preclude the Neighbourhood Services Team from taking any of the enforcement actions prescribed within Part 1 of the Housing Act 2004 in relation to any hazards found upon inspection, whichever is deemed to be the most appropriate course action in that instance.

11. Licence Fees

- 11.1 The Council has the power to set a fee for the licence taking into account those costs it incurs in carrying out the licensing function. Details of the current licence fees can be obtained from the Council's current 'Fees and Charges' document which is available on the Council Website. The fee must be paid to the Council prior to the licence being issued. The Council will not consider an application to be complete until full payment has been received. It is intended that this fee will be reviewed on an annual basis.
- 11.2 In circumstances where the licence holder has not voluntarily come forward to apply for a licence for an HMO an additional fee will be incurred.
- 11.3 In cases where the property ceases to be a licensable HMO, the property is sold, or the licence holder becomes deceased the fee is not refundable.

12. Variation of Licences

- 12.1 The licence may be varied upon application from the licence holder or relevant person or on the initiative of the Neighbourhood Services Team if there has been a change in circumstances from when the licence was granted. The variation procedure will be followed according to the requirements of the Housing Act 2004. Upon receipt of an application to vary a licence we may either decide to vary the licence or refuse to vary the licence.

13. Revocation of Licences

- 13.1 The Neighbourhood Services Team may revoke an HMO licence prior to the licence period ending upon an application made by the licence holder or the relevant person or by the Council's own initiative. The licence may be revoked:
- With the agreement of the licence holder;
 - If there have been serious or repeated breaches of licence conditions;
 - If the manager(s) of the property or the licence holder is no longer considered to be a fit and proper person.
 - If the property falls out of the licensing requirement or if the structure of the property is below standard.
- 13.2 The revocation procedure will be followed according to the requirements of the Housing Act 2004. Upon determining its decision, the Neighbourhood Services Team may revoke or refuse to revoke the licence.

14. Temporary Exemption Notices

- 14.1 The Neighbourhood Services Team may, if they think fit, serve a Temporary Exemption Notice in respect of an HMO which is required to be licensed but is not licensed, if the person having control or the manager of the HMO notifies us of their intention to take steps to secure that the property is no longer a licensable HMO.
- 14.2 A Temporary Exemption Notice remains in force for a 3 month period from the date on which it is served. A further Temporary Exemption Notice may be granted in exceptional circumstances. The Temporary Exemption Notice procedure will be undertaken according to the requirements of the Housing Act 2004.
- 14.3 Once a Temporary Exemption Notice has been served the details of the Notice will be entered onto a public register which is located at the Council Offices until the Notice ceases to be in force.

15. Penalties for Non-Compliance

- 15.1 The Housing Act 2004 makes it a criminal offence for a person controlling or managing a licensable HMO not to have a licence. A person found guilty of such an offence will be subject to an unlimited fine. The Neighbourhood Services Team will initially encourage the manager or person having control of any unlicensed licensable property to apply for a licence. In cases where this method is not successful we will begin formal proceedings, in line with the Private Sector Housing Enforcement Policy.
- 15.2 The Housing Act 2004 provides that at no time whilst a licensable HMO is unlicensed with the Council a section 21 notice, issued under the Housing Act 1988, may be given in relation to a shorthold tenancy.

15.3 Further offences will be committed if any licensable HMO is found to be in breach of its licence conditions, to be in a hazardous condition following a Housing Health and Safety Rating System assessment or to fail with the Management of Houses of Multiple Occupation (England) Regulations 2006, as amended. Any action taken by the Neighbourhood Services Team in respect of non-compliance with HMO licensing legislation will be taken in accordance with the Private Sector Housing Enforcement Policy.

16. Rent Repayment Orders

16.1 Upon establishing that a manager/person having control of a property has failed to licence a licensable HMO the Neighbourhood Services Team shall exercise its discretion to recover any Housing Benefit payment, or housing element of Universal Credit, from this person by applying to the First-tier Tribunal for a Rent Repayment Order. In addition, the Council will also provide tenants of the unlicensed licensable HMO with advice and support about how to apply for a Rent Repayment Order.

17. Interim and Final Management Orders

17.1 Where there is no reasonable prospect of an HMO being licensed or where the management of the property is such that the health, safety or welfare of persons occupying the house or houses in the vicinity requires protecting or there is a threat to evict the occupiers in order to avoid licensing, the Housing Act 2004 requires the Neighbourhood Services Team to make an Interim Management Order. This enables the Council to take over the management of the property for one year, including responsibility for running the property and collecting the rent.

17.2 Upon expiry of the Interim Management Order, if the property remains licensable and we are of the view that we still would not grant a licence upon application, we must apply for a Final Management Order, which would last for a period of five years.

17.3 Once a Management Order comes into effect, the details of the Order will be entered onto a public register which is located at the Council Offices until the Order ceases to be in force.

17.4 An external partner may be appointed by the Council to manage such properties for this purpose.

18. Appeals

18.1 When making its decision regarding the granting or refusing to grant a licence, the Council will enable applicants to make representation to the Head of Environment and Public Realm if they are aggrieved by the Neighbourhood Services Team's decision to set particular licence conditions or to revoke or vary a licence.

18.2 In certain case, a landlord may make a formal appeal to the First-tier Tribunal against the decision made by the Council regarding the licence within a specified time period. The First-tier Tribunal may then confirm, reverse or vary the decision.

19.0 Policy Review

This policy will be reviewed and revised as appropriate.

Last updated June 2018

Appendix 1

The tests for defining an HMO

To satisfy the definition of 'house in multiple occupation', a building, or part of it, must meet at least one of the following tests

1. It meets the 'standard test'
2. It meets the self-contained flat test
3. It meets the converted building test
4. It is declared to be a HMO, or
5. It is a block of flats subject to section 257 of the Act.

The Standard Test

To satisfy the Standard test, the building (or part) must fulfil six criteria:

1. It consists of one or more units of living accommodation which are not self-contained flats,
2. The living accommodation is occupied by persons who do not form a single household,
3. They occupy the living accommodation as their only or main residence, or they are treated as such,
4. Their occupation of the living accommodation constitutes the only use of that accommodation,
5. Rent is payable by virtue of at least one of the occupants of the living accommodation occupation of the accommodation (or there is some other agreed form of consideration in lieu of rent), and
6. Two or more of the households occupying the living accommodation share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities.

The Self-contained Flat Test

This can only apply to a self-contained flat within a particular building part of a building.

The part must be a self-contained flat and the criteria of the Standard Test are fulfilled, with the exception of the first item.

The Converted Building Test

To satisfy this test, six criteria are to be fulfilled:

1. It must be a converted building
2. It contains one or more units of accommodation which are not self contained flats (even though it may contain such flats too)
3. The living accommodation is occupied by persons who do not form a single household,
4. They occupy the living accommodation as their only or main residence, or they are treated as such,

5. Their occupation of the living accommodation constitutes the only use of that accommodation, and,
6. Rent is payable by virtue of at least one of the occupants of the living accommodation occupation of the accommodation (or there is some other agreed form of consideration in lieu of rent).