

Committee Name and Date of Committee Meeting

Cabinet – 25 April 2022

Report Title

Banning Order Policy (Private Sector Housing)

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

The Housing and Planning Act 2016 introduced a number of tools and powers relating to private sector housing enforcement, including the use of Banning Orders. Banning Orders became law at the end of 2018, to be used as a sanction for those who rent out private residential properties and are convicted of certain offences. A Banning Order would result in the individual being banned from managing rented properties anywhere in England for a defined period, and a breach would constitute an offence which could result in imprisonment or a fine. Given the significance of the sanctions provided by Banning Orders it is important to outline the Council's approach to Banning Orders and under what circumstances the Council would consider utilising such powers. In particular, work through selective licensing and recent targeted operations has created the need to consider further sanctions available to address persistent or serious offences and as a result, a policy has been developed to clearly state how, when and why the Council will exercise these powers.

Recommendations

1. That Cabinet approves the new Banning Order Policy.

List of Appendices Included

- Appendix 1 Banning Order Policy
- Appendix 2 Equalities Screening Assessment
- Appendix 3 Carbon and Climate Change Assessment

Background Papers

Housing and Planning Act 2016
The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017
Guidance for Local Authorities for Banning Order Offences under the Housing and Planning Act 2016

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Banning Order Policy (Private Sector Housing)

1. Background

- 1.1 The Housing and Planning Act 2016 introduced powers in 2018 for Local Authorities to seek Banning Orders against those who let private rented property, or who act as agents or property management for private rented property, where they have been convicted of a banning order offence, as defined in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.
- 1.2 Where a Banning Order is made, it prevents an individual from letting property, or engaging in agency or property management work related to privately rented property anywhere in the England.
- 1.3 A Banning Order also has the effect of determining an individual to be not 'fit and proper' to hold a licence under Parts 2 and 3 of the Housing Act 2004: Houses in Multiple Occupation Licences and Selective Licensing Licences respectively.

2. Key Issues

- 2.1 The Housing and Planning Act 2016 gives the Council powers to seek a Banning Order based upon convictions of an individual involved in the private rented housing sector.
- 2.2 Legislation and non-statutory guidance specifies the process that the Council must follow if it seeks to apply for a Banning Order. This includes serving a Notice of Intent on the individual within six months of a conviction and allowing a minimum of 28 days for the individual to make representation to the Council.
- 2.3 If the Council then decides to continue to pursue a Banning Order they must make an application to the First-Tier Tribunal. It is the First-Tier Tribunal that will decide the application for a Banning Order based on a number of factors including: the seriousness of the offences, previous convictions, the likely effect of the Banning Order and whether the individual has been listed on the database of rogue landlords and agents.
- 2.4 The Banning Order process can be a long process but can be an effective tool for preventing individuals, their associates and family from having any involvement in the private rented housing sector. As an example, where an individual is served with an Improvement Notice under provisions of the Housing Act 2004, a period up to three months may need to be given to carry out repairs. If this Notice is then breached it could be a further eight months before a Court hearing and conviction. Only then can the Council consider an application for a Banning Order.
- 2.5 Where a Banning Order is imposed by a First-Tier Tribunal, the individual is prohibited from transferring assets, including to their family and/or associates.

- 2.6 Consequently, an individual who is subject to a Banning Order may decide to leave the property vacant, in which case the Council may consider an Interim or Final Management Order which allows the Council to control the letting of the properties. This does however also come with an obligation to ensure that the properties meet legal requirements which is likely to be costly.
- 2.7 Banning Orders provide a potentially useful tool for excluding landlords, agents and property management agencies from the private rented sector where relevant convictions exist. This power adds to the tools that are available to the Council to use in relation to those individuals who routinely offer poor housing conditions, often to the poorest and most vulnerable people in society.
- 2.8 Given the significance of the sanction provided by Banning Orders it is important to outline the Council's approach to Banning Orders and the circumstances under which the Council would consider utilising such powers. A Policy detailing this approach is attached at Appendix 1.

3. Options considered and recommended proposal

- 3.1 Consideration has been given to not using this discretionary power. However, there is a clear public interest in managing landlords who commit serious offences effectively, both to protect their tenants and to protect the wider community.

4. Consultation on proposal

- 4.1 Officers have consulted with relevant internal colleagues, including Housing colleagues, legal and finance. The Banning Order Policy lays out the process that is contained within legislation to ensure that the Council's approach is transparent. Strategic Housing within Adult Care, Housing and Public Health have noted that the potential to use Banning Orders are a necessary tool to improve the private rented sector and protect tenants. The Service has seen an increase in unregulated and /or unaccredited agents and landlords advertising rented properties through social media, without any appropriate letting background. A number of landlords have now, as a result of Selective Licensing, been found to be in breach of relevant legislation. This policy will offer the Council the means to take action against landlords and agents who have been convicted of certain offences, and who routinely offer poor housing, often to the poorest and most vulnerable in society
- 4.2 The Council's General Enforcement Policy is scheduled to be reviewed during 2022 and the Banning Order Policy will be appended to the General Enforcement Policy following approval. Upon review, the General Enforcement Policy will be subject to consultation with stakeholders and the public if required.

5. Timetable and Accountability for Implementing this Decision

- 5.1 The Banning Order Policy will be implemented following the Cabinet decision, subject to call-in.
- 5.2 The Assistant Director of Community Safety and Street Scene alongside the Head of Community Safety and Regulatory Services are accountable for implementing the decision.

6. Financial and Procurement Advice and Implications

- 6.1 The costs of utilising these powers, including officer time and associated legal costs, will be contained within the approved revenue budget for this Service.
- 6.2 Should Banning Orders be breached and the Council be successful in conviction then the Courts may award costs to the Council.
- 6.3 Should the Council need to apply Interim or Final Management Orders, due consideration will be given to the financial consequences as part of the legal process and costs applied for.

7. Legal Advice and Implications

- 7.1 Section 14 of the Housing and Planning Act 2016 defines a Banning Order as being made by a First-Tier Tribunal banning a person from letting, or engaging in agency or property management work in respect of private rented property.
- 7.2 Section 15 of the Housing and Planning Act 2016 gives powers to Local Authorities to make an application for a Banning Order against an individual who has been convicted of a banning order offence.
- 7.3 Importantly section 15 (3) specifies the steps that the Council must take to apply for a Banning Order in that they must give notice to the individual of intended proceedings:
 - a) informing the person that the authority is proposing to apply for a banning order and explaining why,
 - b) stating the length of each proposed ban, and
 - c) inviting the person to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- 7.4 Section 15 (4) stipulates that the Council must consider any representations made by an individual in receipt of a notice of intended proceedings.
- 7.5 The timeframe in which the Council can apply for a Banning Order is limited by section 15 (6) which requires the application to be made within six months of the date that the individual was convicted.

- 7.6 Section 16 of the Housing and Planning Act 2016 details that the First-Tier Tribunal may make a banning order where an individual who at the time of conviction was a residential property landlord or agent. In making this decision the First-Tier Tribunal should consider the seriousness of the offence, previous convictions, likely effect of the Banning Order on those affected by it and whether the individual has been listed on the database of rogue landlords and agents.
- 7.7 The minimum duration of a Banning Order is detailed in Section 17 (2) as being for 12 months. However, section 20 makes provision for those that are subject of a Banning Order to make application to revoke or vary the order.
- 7.8 Offences in relation to breaching a Banning Order are laid out in section 21, which upon summary conviction can be a custodial sentence up to 51 weeks or an unlimited fine or both. In addition, section 19 which gives powers to local authorities to request information, makes it an offence not to comply with such requests which upon summary conviction can result in an unlimited fine.
- 7.9 Banning Order breaches may also be dealt with by way of a financial penalty in accordance with section 23 and Schedule 1 of the Housing and Planning Act 2016 imposed by the Council. A maximum financial penalty of £30,000 is specified at section 23(5).
- 7.10 Section 26 and Schedule 3 make provision for interim and final management orders to be made within the meaning of the Housing Act 2004 where a Banning Order is in place.
- 7.11 The Housing and Planning Act 2016 at section 27 prohibits an individual who is subject to a Banning Order from unauthorised transfer of estate to a prohibited person, namely:
- a) a person associated with the landlord,
 - b) a business partner of the landlord,
 - c) a person associated with a business partner of the landlord,
 - d) a business partner of a person associated with the landlord,
 - e) a body corporate of which the landlord or a person mentioned in paragraph (a) to (d) is an officer,
 - f) a body corporate in which the landlord has a shareholding or other financial interest, or
 - g) in a case where the landlord is a body corporate, any body corporate that has an officer in common with the landlord.

8. Human Resources Advice and Implications

- 8.1 There are no human resources implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 The use of Banning Orders will contribute to protecting children, young people and vulnerable adults from rogue landlords.

10. Equalities and Human Rights Advice and Implications

- 10.1 A screening assessment has been undertaken and is attached at Appendix 2
- 10.2 There are no equalities or human rights implications in relation to this Policy as it details provisions made within legislation.

11. Implications for CO2 Emissions and Climate Change

- 11.1 The Policy will contribute to carbon reduction by ensuring that, in appropriate cases, properties are maintained to the appropriate standard.
- 11.2 A Carbon impact assessment is attached at Appendix 3

12. Implications for Partners

- 12.1 The Policy is likely to place some demands on partners where information might be required in relation to convictions to support applications for Banning Orders, which primarily relates to law enforcement agencies such as the Police.

13. Risks and Mitigation

- 13.1 Failure to utilise the powers available will negatively impact the Council's reputation in dealing with rogue landlords.
- 13.2 Failure to utilise the powers will ensure that the Council does not effectively address rogue landlords and consequently allow them to continue operating and affecting some of the most vulnerable residents in the Borough.

14. Accountable Officers

Tom Smith, Assistant Director Community Safety and Street Scene
Sam Barstow, Head of Service Community Safety and Regulatory Services
Lewis Coates, Service Manager Regulation and Enforcement

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	06/04/22
Assistant Director of Finance & Customer Services (S.151 Officer)	Graham Saxton	05/04/22
Assistant Director of Legal Services (Monitoring Officer)	Phil Horsfield	05/04/22

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