

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	The Cabinet
2.	Date:	8th June 2011
3.	Title:	Charging for Housing Act 2004 Enforcement
4.	Directorate:	Neighbourhoods and Adult Services

5. Summary

Cabinet Member for Safe & Attractive Neighbourhoods considered a report on the 18th April 2011 addressing the provisions of the Housing Act 2004 that allows for a Local authority to make a charge for the service of enforcement notices.

It was agreed that Cabinet be requested to refer to Council for adoption the discretionary power with the effect of introducing a charge for specific private sector housing enforcement action carried out by the Safer Neighbourhood's Community Protection Unit (minute 6 of 18th April 2011 refers).

6. Recommendations

That Cabinet recommends to Council;

- 6.1. the introduction of a charging system under Section 49 of the Housing Act 2004 with respect of the service of Improvement Notices, Prohibition Orders, Emergency Remedial Action, Emergency Prohibition Orders and Demolition Orders.**
- 6.2. that the relevant Notices only be served in accordance with the principles of the Enforcement Concordat and the Council's General Enforcement Policy.**
- 6.3. the General Enforcement Policy be amended with the introduction of Section 3.7.**
- 6.4. that owner occupiers be exempt from the proposed charging regime.**
- 6.5. the introduction of the charging system be with effect from 1st August, 2011.**

7. Proposals and Details

7.1 The Housing Act 2004 ('the Act') came into force in April 2006. Within the Act, section 49 gives local authorities the discretion to charge for the service or making of enforcement notices listed as follows;

- Improvement Notices (requiring that works be carried out).
- Suspended Improvement Notices (as above, but the operation of the notice delayed until a specific event occurs e.g. a vulnerable person moves into the property).
- Prohibition Orders (restricting the occupancy of a property).
- Suspended Prohibition Orders (as above, but the operation of the notice delayed until a specific event occurs (e.g. the current occupier is re-housed)).
- Hazard Awareness Notices (advising an owner of a risk, but not requiring remedial action or restricting the occupancy of the property).
- Emergency Remedial Action (works of improvement in very urgent situations).
- Emergency Prohibition Orders
- Demolition Orders

The Act provides that the following type of activity on the part of the Council, may form the basis for any imposed charge (although these vary with the notice option being considered):

- Determining whether to serve the notice.
- Identifying any action to be specified in the notice.
- Serving the specified notice.
- Reviewing a Suspended Improvement Notice or Suspended Prohibition Order (a review must be undertaken within a year of service, and subsequent reviews at intervals of not greater than one year thereafter).

To date, the Council has not adopted this provision as it was viewed prudent to identify good practice across local authorities, in both imposing and recovering this charge, before adoption was considered. The most recent survey undertaken in 2008 by the Chartered Institute of Environmental Health indicates 45% of responding Local Authorities had adopted the charging provision. It is now felt that adequate guidance is available to develop systems and procedures making charging a practical option.

7.2 Landlords within the private rented sector have a legal responsibility to maintain their properties in a good state of repair and free from hazards to their tenants. Where a landlord fails in this duty, the Council then has a duty to take action to require that the landlord improves the property to remove or reduce hazards.

The Council's Safer Neighbourhood Unit is responsible for responding to all housing related complaints from private tenants, who have difficulty asserting their legal rights through their landlord. They also deliver proactive housing assistance and enforcement in areas of highest housing need.

In achieving compliance the Safer Neighbourhood team uses a wide range of formal and informal actions which comply with the Enforcement Concordat and Council's General Enforcement Policy. The principles being that, in taking enforcement action, we follow clear and simple procedures and standards which are transparent, helpful, consistent and proportional underpinned with a clear procedure for complaints. Proposals for charging for enforcement need to be consistent within these principles.

- 7.3 The standard procedure when there is a serious contravention of the Act (and informal approaches to the landlord have failed) an officer will serve a legal notice requiring remedial action to be taken. The process follows that, where a landlord fails to comply, the Council may instigate proceedings against the landlord and/or do the works in default and recover costs.

It is in these situations, where a landlord fails to respond to initial, informal approaches to comply with their duties, that the statutory process required to further the enforcement process becomes complex and time consuming. It places a considerable burden on officer's time, which then affects their ability to respond to other clients and also may provide a negative experience to the tenant and their perception of the Council's speed of being able to solve the issue.

At the present time, a landlord can extend the period that a tenant has to suffer poor housing conditions by waiting for a notice to be prepared and served without any penalty or loss. If a landlord finally complies with the notice before it expires, they do not commit an offence and thus the time committed to gaining compliance by officers is unrecoverable.

The Act acknowledges this, and section 49 gives local authorities the discretion to charge for the time in the preparation and service of enforcement notices.

If the charging for the specific enforcement actions is adopted, the ability to recover a charge for the time devoted to preparing legal notices is found to deter landlords from ignoring issues when initially advised of hazards at their properties. In doing so this will reduce the time tenants live with the defect and the number of instances where officers have to prepare full legal notices. This will release officer time and improve productivity, whilst benefiting the tenant.

- 7.4 It is proposed that the Council start to charge for the following forms of enforcement under the Housing Act 2004:

- Improvement and Suspended Improvement Notices (sections 11, 12 and 14).
- Prohibition and Suspended Prohibition Orders (sections 20, 21 and 23).
- Emergency Remedial action (section 40).
- Emergency Prohibition orders (section 43).
- Demolition Order (section 265 Housing Act 1985).

It is not proposed that there is a charge for Hazard Awareness Notices, as these are an advisory notice and no formal action can be taken should the recipient fail to comply with this.

Housing Notices under the Act can be served on owner occupiers, though this is rare. Serving notices on owner occupiers may be a duty in some cases and can be a useful tactic in others, to protect both the home owner and the Council. As there is a commercial distinction between a landlord who operates his properties for profit and an owner occupier, it is proposed that where a notice is served on an owner occupier, they be exempted from this charge under section 49 of the Act. This would not affect recovery of costs in any further legal action should it be required.

- 7.5 It is proposed that the level of charge be based on the requirements of the Act, (described in 7.1), and specific to the officer time involved in the preparation of the individual notice. This will require changes in our procedures to allow for time recording whilst enforcement notices are being prepared. This change will not have any financial implication, but it is recommended a system development period is allowed before introduction. An introduction date of the 1st July 2011 is proposed.

The charging regime requires that there is no fixed charge and, as a result, the charge will vary from case to case. This is a reasonable and fair approach, consistent with the Enforcement Concordat, as preparing notices for a property with multiple hazards is more time consuming than for a single hazard. It is also in line with best practice as Councils must prove the 'reasonableness' of any fee charged on a case by case basis. In addition, the Housing Health and Safety Rating System Enforcement Guidance, though not the Act, suggests authorities should take account of the personal circumstances of the person or persons against whom the enforcement action is being taken. The degree to which authorities consider personal circumstances is at their discretion, having regard to the resources available to them. This leaves room for a suitably delegated officer to take exceptional circumstances into account to vary or quash a charge.

In accordance with the principles of the Enforcement Concordat landlords will be advised of this potential fee in all enforcement orientated correspondence. Also, the Enforcement Policy will be amended to advise clients and officers when this fee will be applied. The amended General Enforcement Policy (new section 3.7) is provided in Appendix 1.

It is further proposed, that an illustrative fee of £400 (based on the cost of preparing the average Housing Act Improvement Notice with a disclaimer that the actual cost of notices in specific cases may vary) be included. In all but cases of imminent risk, the Landlord will be contacted and offered an opportunity to comply before a notice is served. In cases of imminent risk, an attempt will be made to involve the landlord before service of notice, but if a landlord cannot react quickly enough, or cannot be contacted, notice will be served and the charge incurred.

The recipient of the notice has the right to appeal against the notice and the charge to the Residential Property Tribunal. A tribunal may make an order to reduce, quash or require repayment of any charges made.

8. Finance

- 8.1 It is important to note that the aim of the enforcement activity carried out by the Council to improve the quality of the housing across the district and protect tenants; however as a consequence of this proposal, there is the potential for an increase in the income generated by the team through enforcement activity.
- 8.2 Councils, however, are required not to use section 49 as an income generating tool. Only justified notices which comply with the Enforcement Policy may be served and any charge made, must accurately reflect the Councils costs in preparing that notice.
- 8.3 Recovery of the fee will be via established sundry debtor arrangements and the charge in cases of non payment may be placed against the property as a local land charge.
- 8.4 In the year 2009/10, 61 relevant notices were served, it is anticipated that the charge itself will prompt landlords to react more quickly, reducing the number of notices required to be served. As an illustration, if we assume a 50% reduction in notices served, 30 notices at an average cost of £400 would produce an income of £12,000.

9. Risks and Uncertainties

- 9.1 Section 49 of the Housing Act 2004 gives the local authority the discretion to charge for the service of notices. There is no maximum limit to the level of the charge however the charge must be justifiable and reasonable. Section 49 (6) provides that the appropriate national authority may impose a limit through regulation at any time. Further to this, guidance recommends that consideration of the personal circumstances of the proposed recipient of the demand for payment should be considered – there may be circumstances which result in a reduced charge or no charge being made at all. This discretion will be embedded in approval procedures.
- 9.2. The recipient of the notice has a right to appeal against the notice and the charge. A tribunal may make an order to reduce, quash or require repayment of any charges made.
- 9.3 Charging for notices must not be seen as a potential source of generating income. Enforcement action must only be taken where it is appropriate to do so. The Council is at risk of being challenged where a disproportionate number of notices have been served inappropriately to generate income.
- 9.4 The current delegation of Council powers to the Director of Housing & Neighbourhood Services with respect to the Housing Act 2004 cover the introduction of the charging regime.

10. Policy & Performance Agenda Implications

10.1 This item is aimed at improving the efficiency of Rotherham's housing enforcement, having regard to available resources and thus improving the lives of private tenants. Alignment with Community Strategy and the Corporate Plan is clear from Rotherham Safe. Effective housing enforcement is clearly an important aspect to the Corporate Plan's goals of;

- Ensuring care and protection are available for those people who need it most
- Helping to create safe and healthy communities.

This especially the case to achieve our aspiration that people are able to live in decent affordable homes of their choice and by that directly contribute to the delivery of the Housing Strategy.

In addressing the Community Strategy's "Rotherham Safe" objectives the following key strategic actions are delivered;

- Aiding the development of a sustainable housing stock.
- Increase satisfaction with local neighbourhoods.
- Making the connection between national and local strategies.

10.2 Effective housing enforcement has clear linkages to the Outcomes Framework for Social Care, and importantly includes:

- **Improved Health and Emotional Well-being**, by promoting and facilitating the health and emotional well-being of people who use the services.
- **Improved Quality of Life**, by supporting independence of people to live a fulfilled life.

11. Background Papers and Consultation

- Housing Act 2004.
- Statutory Instrument 2006 No. 373 Office of the Deputy Prime Minister Guidance, Housing Health and Safety Risk Assessment System, Practitioners and Enforcement Version 2.
- RMBC, Housing Strategy 2010.
- RMBC, General Enforcement Policy.
- 2011-14 Housing Strategy 'Building Better Homes and Lives'.
- Consultation with Legal & Democratic Services.

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