

To: City Executive Board
Date: 16th October 2017
Report of: Head of Planning, Sustainable Development and Regulatory Services
Title of Report: Regulating the Private Rented Sector in Oxford

Summary and recommendations	
Purpose of report:	The report sets out the preferred option for changing the regulation of the private rented sector in Oxford.
Key decision:	Yes
Executive Board Member:	Councillor Alex Hollingsworth, Board Member for Planning and Regulatory Services
Corporate Priority:	Meeting Housing Need
Policy Framework:	Private Sector Housing Policy 2016-2019.
Recommendation(s): That the City Executive Board resolves to:	
<ol style="list-style-type: none"> 1. Approve the option of establishing and pursuing a 5 year proactive inspection programme of unlicensed privately rented properties. 2. Approve the use of all the funds generated from Civil Penalties issued under the Housing and Planning Act 2016 for the purposes of enforcement in the private rented sector. 3. Approve the Civil Penalty Protocol and delegate authority to the Head of Service for Planning, Sustainable Development and Regulatory Services to review and update the protocol in consultation with the Head of Law and Governance and the Executive Director. 	
Appendices	
Appendix 1	Private Rented Sector Options Paper
Appendix 2	Civil Penalty Protocol
Appendix 3	Risk register
Appendix 4	Equalities Impact Assessment

Introduction and background

1. The private rented sector (PRS) plays a significant role in Oxford, accounting for 30% of the housing stock in the City and the Private Sector Housing Policy 2016-2019 sets out the Council's priorities with regard to regulating the PRS, which are:
 - Priority 1 – HMO Licensing
 - Priority 2 – Regulation and Improvement of Dwellings Occupied by Families or Single Occupants
 - Priority 3 – Unlawful Dwellings
 - Priority 4 – Housing Assistance
2. Whilst the Council introduced citywide licensing for Houses in Multiple Occupation (HMO) in 2011, there are approximately 12,000 properties in the PRS that are not HMOs and are not licensed by the Council.
3. The Private Sector Housing Policy included a commitment to identify the best option to improve management and property conditions and reduce Anti Social Behaviour in the unlicensed PRS and to consider the introduction of a Selective Licensing Scheme for PRS properties Oxford under Part 3 of the Housing Act 2004. This would introduce similar powers to the existing HMO Licensing Scheme. However, since that time the government has introduced a number of constraints on Selective Licensing schemes that limited its potential effectiveness in the Oxford context. This report reviews the options available and makes recommendations as to the way forward.

Options considered

4. A detailed analysis of the options considered can be found in the Private Rented Sector Options Paper at Appendix 1.
5. Selective Licensing powers can be used to regulate properties in the PRS in a similar manner to the licensing of Houses in Multiple Occupation and given the positive impacts of the Council's citywide licensing of HMOs, the introduction of a Selective Licensing Scheme was considered a strong option.
6. However, the use of Selective Licensing by local authorities to regulate the PRS has declined significantly since the government amended the general consent powers in 2015. Local authorities now have to seek confirmation from the Secretary of State for any Selective Licensing Scheme covering more than 20% of their geographical area, or affecting more than 20% of privately rented homes in the local authority area. The refusal to confirm the proposed borough wide licensing scheme proposed by the London Borough of Redbridge in 2015 sent out a strong message that large scale schemes would not be approved and that the government wanted to see councils adopting a more targeted approach to property licensing.
7. The government also introduced conditions relating to the introduction of Selective Licensing Schemes and these limit the areas where schemes can be introduced. One of these conditions relates to the scale of the PRS in an area and some of the Wards of greatest concern in Oxford contain levels of private renting that are below the government's threshold of 20%.
8. With these restrictions in mind three possible Selective Licensing areas were worked up in the Private Rented Sector Options Paper (Appendix 1), showing the

pros and cons of each. The third option examined was seen as the least worst, and would have introduced Selective Licensing into 13 out of 24 wards and resulting in approximately 6,000 properties requiring a licence, making it the largest intervention in regulating the PRS ever undertaken by a district council. This option would have been targeted at many of the wards in the city with the highest concerns and whilst covering a substantial part of the City, officers believe that it would have satisfied DCLG's requirements for approval. However there were substantial risks and weakness associated with this option:

- A substantial number of staff and further investment in IT would be required, particularly in the application processing service in the first three years when application numbers would be high.
 - The scheme could not have been applied to wards with some of the biggest problems, which would have generated a range of issues and reputational challenges. Given the high level of renting across Oxford tenants, landlords and the public would be confused by the rationale behind which areas had been selected for licensing, undermining support for the scheme from all these groups.
 - Wards in the City where there is clear evidence of poor standards and high levels of enforcement, but relatively low numbers of rented properties would not be covered by the licensing scheme, potentially making these areas attractive to landlords wanting to avoid regulation.
9. Local authorities must bear in mind their obligations under Section 81 of the Housing Act 2004 to coordinate licensing schemes with their overall housing strategy and, in particular, to consider whether there were other or lesser options which might achieve the same results. The government has made it clear in its guidance that licensing is to be seen more as an option of last resort rather than the preferred course of action and this is backed up by limiting licensing schemes to a five year period with a requirement for a periodic review. It is in this context that the option to increase the proactive inspection programme, rather than pursue selective licensing was considered to be the preferable approach at this time.

Preferred option – Proactive Enforcement

10. The Council already has proactive programmes in place to inspect 275 non-HMO PRS properties and target 10 unlawful developments per year. However, these proactive programmes are relatively small compared to the size of the non-HMO sector and the challenge is to increase the scale of proactive inspections to make a real impact.
11. The Housing and Planning Act 2016 introduced the following new powers to tackle rogue landlords and property agents:
- Banning orders for the most prolific offenders
 - Database of rogue landlords/property agents
 - Civil penalties of up to £30,000
 - Extension of Rent Repayment Orders
 - Tougher Fit and Proper Person test for landlords
 - Tenancy Deposit Protection Scheme data sharing.

12. The new power to impose civil penalties up to £30,000 is a significant change and when civil penalties were introduced Ministers made it very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.
13. In addition, regulations have been introduced that provide local authorities with the power to retain any financial penalty to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out enforcement functions in relation to the PRS. This gives local authorities the opportunity to create a ring fenced account to fund further enforcement activity.
14. The Council has a strong enforcement record and already has a Corporate Enforcement Policy and the Private Sector Housing Policy 2016-2019 sets out the Council's approach to enforcement in the PRS. A Civil Penalties Protocol has been developed that takes into account the Council's Corporate Enforcement Policy and the statutory guidance from DCLG. It is based on other local authority's policies and guidance from organisations such as the Local Government Association. The proposed protocol on the Council's approach to civil penalties is attached for approval at Appendix 2. As this is a new and developing area of housing law it is proposed that the power to make changes to the protocol in light of national best practice or new case law is delegated to the Head of Service for Planning, Sustainable Development and Regulatory Services subject to the agreement of the Head of Law and Governance and the Executive Director.
15. The proposed Civil Penalties Protocol will be used to decide when a civil penalty is a suitable alternative to prosecution and to calculate the level of the penalty to be imposed. There are internal and statutory processes in place that protect the rights of landlords and letting agents and ensure that a civil penalty is given full consideration before it is issued. There is oversight from the Law & Governance Service and senior management reviews before a notice of intention to serve a civil penalty can be issued, which is the first stage of the process. The recipient of an intention notice has a statutory opportunity to represent to the Council against the imposition of a civil penalty which the Council must consider before issuing a final notice for the civil penalty. There is then a further statutory right of appeal to the First Tier Tribunal once a final notice for the civil penalty has been issued.
16. The increased pro-active inspection and enforcement approach will need to become self-funding as quickly as possible. It is therefore recommended that the money raised from civil penalties is used to fund an enlarged proactive inspection programme. It has been estimated that the income could be in the region of £125k p.a. and that this would finance 2 additional Environmental Health Officers who will focus exclusively on proactive inspections of the non-HMO PRS stock.
17. In addition the Council has been successful in securing £275k of government funding to reinvigorate the Unlawful Developments Programme until 2018/19 and the work of this team will inevitably result in visits to and inspections of non-HMO PRS stock.
18. These extra resources will significantly boost the existing proactive inspection programme to an estimated 700 inspections a year, which, if targeted at the high risk stock areas and landlords, will have a significant impact on property conditions in the City.
19. A stock modelling survey carried out by the Buildings Research Establishment (BRE) in 2014 provided data on the condition of the stock and identified the areas of the City that contains the housing in the poorest condition. It has been estimated

that there are approximately 3,300 properties in the non-HMO PRS that contain category 1 hazards that require remedial action and so the proactive inspection programme will targeted at these properties.

20. The information from the BRE survey is being combined with other data sources such as tenancy deposit data, EPC data, the electoral roll, Council Tax etc. to further refine the current intelligence led inspection programme.
21. The proactive programme will need to be in operation for 5 years to enable inspections of all the properties that require remedial action. During that time the condition survey will also need to be updated, the ring-fenced funds can also be used for that purpose.
22. The advantages of this approach in comparison with selective licensing are that the improvements will be across the City rather than being confined to one area, that rogue landlords will not be able to relocate to other parts of the City to avoid licensing, that work will closely follow our targeting using intelligence and that no additional funding will be needed.

Financial implications

23. The aim is to create a self funded resource using the income from civil penalties and more detailed proposals for the scheme are contained in paragraphs 30 – 36 of Appendix 1.
24. The proposed approach is to move to recruitment on fixed term contracts once sufficient funds have been accrued in a ring fenced account.

Legal issues

25. The use of civil penalties in the regulation of the PRS is a new activity and there will no doubt be challenges given the scale of the potential fines. It is anticipated that the time currently spent by Law & Governance in preparing cases for court will in future be taken up preparing cases for appeal at the First Tier Tribunal. The day to day enforcement work of improving properties will create no new legal issues beyond those already generated by the Service. The delegated power to amend the civil penalties protocol, subject to the necessary oversight, will improve the Council's ability to respond to the development of national best practice and future case law.
26. Regulation 4 of the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 restricts the use of civil penalty income to supporting enforcement work in the private rented sector and any funding not so used must be paid to the government.

Level of risk

27. The completed Risk Register is attached as Appendix 3 and there are four key risks. The civil penalty procedure is subject to an appeal mechanism through the First Tier Tribunal. Nationally, local authorities are anticipating a large number of appeals given the high value of penalties that can be imposed and the low cost of an appeal. There is the potential for adverse case law to be generated that has a negative impact on the ability to successfully issue civil penalties. Secondly, the penalty is a debt that in the event of non-payment has to be recovered using civil recovery proceedings against assets, for example, houses, goods and vehicles. The third risk is that compliance rates in the HMO sector improve and that

insufficient civil penalties are issued to sustainably fund the proactive programme. The fourth risk is that the targeting of inspections is insufficiently accurate and resources are not used effectively.

Equalities impact

28. The Equalities Impact Assessment is attached as Appendix 4. No negative impacts were identified and improved property standards will have a positive effect for everyone living in the PRS.

Report author	Ian Wright
Job title	Environmental Health Service Manager
Service area or department	Planning, Sustainable Development and Regulatory Services
Telephone	01865 252553
e-mail	iwright@oxford.gov.uk
Background Papers: None	