



Prosperous Communities Committee

4th December 2018

Subject: Banning Orders – Housing and Planning Act 2016

Report by:

Mark Sturgess
Director of Operations and Head of Paid Service

Contact Officer:

Andy Gray
Housing and Environmental Enforcement
Manager
Tel: 01427 675195
E mail: Andy.gray@west-lindsey.gov.uk

Purpose / Summary:

To provide information in regards to the Council's proposed approach to seek banning orders for rogue landlords under the Housing and Planning Act 2016

RECOMMENDATION(S):

Elected Members are asked to:

- a) Approve that the Council shall seek banning orders as appropriate and in line with the powers designated under the Housing and Planning Act 2016.
- b) Approve the policy shown in appendix 1 to enable the Council to do this.

IMPLICATIONS

Legal:

The Housing and Planning Act 2016 provides the legislative framework to enable the Council to seek banning orders for rogue landlords and property agents. Part 2 of this act provides specific information in regards to this power.

<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

Specific guidance was published in April 2018 for local authorities in relation to the seeking of banning orders

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf

Financial : FIN/155/19/CC

There are no financial implications in regards to this report. The resources required for enabling this power will be found from within the existing officer resource.

Staffing :

There are no staffing implications

Equality and Diversity including Human Rights :

NB: Please explain how you have considered the policy's impact on different groups (for example: young people, elderly, ethnic minorities, LGBT community, rural residents, disabled, others).

Risk Assessment :

First Tier Tribunal – the FTT is the determining body in regards to banning orders and the final determination lies with them. The Council will ensure that any application to the FTT is as robust as possible and based on a clear determination in line with the policy.

Climate Related Risks and Opportunities :

There are no climate related risks or opportunities

Title and Location of any Background Papers used in the preparation of this report:

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1. Introduction

1.1. As part of the revised powers provided to Local Authorities within the Housing and Planning Act 2016 a provision to seek a banning order against a rogue landlord or property agent has been made.

1.2. In April 2018 the powers relating to banning orders came into force along with the commencement of a database for rogue landlords and property agents which will identify those who have been subject to them or who have received two or more financial penalties.

1.3. In July 2018 the Council enacted its powers in relation to issuing civil penalties for Housing Act offences and this additional power will compliment and sit alongside this.

2. Banning Orders

2.1. Banning orders are aimed at rogue or criminal landlords who flout their legal obligations and rent out accommodation which is substandard. A banning order is an order by the First – Tier Tribunal that bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two more of those things.

2.2. A breach of a banning order is then a criminal offence.

2.3. As per the guidance and legislation a banning order can be sought for a wide range of offences, which can be found in Annex A of the Government guidance.

3. Determination

3.1. Local Authorities are expected to develop and document their own policy on when to pursue a banning order and should make decisions on a case by case basis in line with this policy.

3.2. The policy in appendix 1 sets out the approach that the Council is proposing to take in regards to whether it seeks a banning order. The policy also sets out the factors which the Council will consider in order to make this decision.

3.3. Once determined there is a set procedure for the Council to follow to then seek the banning order. This procedure includes provision for the landlord or property agent subject to the proposal to make representations.

3.4. The Council must then apply to the First-Tier Tribunal who have the power to then put the banning order in place.

4. Implementation

4.1. Subject to approval, this power will sit alongside the Council's Housing Enforcement Policy and provide an additional tool to officers in regards to their work in this area.

4.2. There will be no resource implications to the Council in the implementation of this policy

5. Recommendations

Elected Members are asked to:

5.1. Approve that the Council shall seek banning orders as appropriate and in line with the powers designated under the Housing and Planning Act 2016.

5.2. Approve the policy shown in appendix 1 to enable the Council to do this.

This policy is an appendix to West Lindsey District Council's Housing Enforcement Policy and should be read in conjunction with the current version of that policy. This document outlines how the Local Authority will utilise new powers under the Housing and Planning Act 2016 to ban landlords and managing agents from operating within the private rented sector.

1. Introduction

1.1 Chapter 2 of the housing and Planning Act 2016 enables Local Authorities to apply to the First tier Tribunal to impose a banning order on a landlord or managing agent, following conviction for a 'banning order offence'.¹

1.2 A landlord subject to a banning order is prevented from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work; or
- Doing two or more of those things.

1.3 In order to utilise the banning order powers, the Council is required to have in place its own policy as to when to pursue a banning order, and to decide the most appropriate course of action on a case-by-case basis in line with that policy.

2. Decision-Making

2.1 This policy gives due regard to the non-statutory guidance issued by the Ministry of Housing, Communities and Local Government, which sets an expectation that banning orders should be aimed at the most serious offenders.

¹ The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

2.2 Although the Local Authority will not be able to determine the length of a banning order, a recommendation will be made to the First-tier Tribunal as to how long an order should be, with accompanying reasons. A banning order must be in place for a minimum of a 12 month period.

2.3 The following factors will be considered by the Local Authority in deciding whether or not to apply for a banning order, and when recommending the length of a banning order:

- The seriousness of the offence
- Previous convictions/rogue landlord database
- Harm caused to the tenant
- Punishment of the offender
- Deterrence to the offender from repeating the offence
- Deterrence to others from committing similar offences

2.4 The decision to commence the procedure to apply for a banning order and length of proposed time for any such order will be authorised by the Housing and Environmental Enforcement manager.

2.5 Where a banning order is made, the individual will be determined not to be 'fit and proper' to hold a licence under Part 2 or 3 under the Housing Act 2004 and any licences in force under those parts will be revoked.

2.6 Where a successful banning order has been made, the Local Authority will consider whether to publish details of these, including the names of individual landlords. Legal advice will be sought prior to this where appropriate, and consideration will be given the Ministry of Justice guidance as to whether to publish sentencing outcomes.

2.7 Information on banned landlords will be made available to tenants on request.
