

<b>21 July 2016</b>		<b>ITEM: 5</b>
<b>Housing Overview &amp; Scrutiny Committee</b>		
<b>Update on the Housing and Planning Act 2016</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key	
<b>Report of:</b> Dawn Shepherd, Housing Strategy & Quality Manager and Dulal Ahmed, Housing Enforcement Manager		
<b>Accountable Head of Service:</b> Dermot Moloney, Strategic Lead, Housing		
<b>Accountable Director:</b> Roger Harris, Director of Adults, Housing and Health		
<b>This report is</b> Public		

### **Executive Summary**

On 12 May 2016 the Housing and Planning Act 2016 received royal assent.

The Act contains provisions on new homes (including starter homes), landlords and property agents, abandoned premises, social housing (including extending the Right to Buy to housing association tenants, the sale of local authority assets, pay-to-stay and secure tenancies), planning, compulsory purchase, and public land.

This report outlines details regarding the key changes to local authority housing and private housing enforcement that the legislation introduces:

- Fixed term tenancies – removing life time tenancies and replacing with tenancies for a fixed period of time;
- Pay to Stay provisions – requiring tenants earning above determined thresholds to pay higher rents;
- Sale of higher value Council houses
- New powers to protect residents from unsafe and unacceptable housing conditions, including banning orders and a database of rogue landlords.

Thurrock Council tenancy policy was implemented in 2012; it determines the types of tenancies offered by the Council. The tenancy policy will need to be reviewed and updated to incorporate the new legislation and to determine any discretionary provisions e.g. length of fixed term tenancies.

Public consultation with existing and future tenants will need to be undertaken.

This report also includes proposals on the extension of HMO licensing in Thurrock with proposed fees.

## **1. Recommendation(s)**

It is recommended that the Housing Overview & Scrutiny Committee:

- 1.1 Note the new legislative requirements of the Housing & Planning Act 2016;
- 1.2 Approve a public consultation to inform a revised tenancy policy;
- 1.3 Approve a public consultation into an extension of HMO licensing and new fees 2017/18;
- 1.4 Agree to review the outcomes of the consultations at the next Overview & Scrutiny meeting in October with a view to making recommendations to Cabinet in November.

## **2. Introduction and Background**

- 2.1 The Housing & Planning Act 2016 received Royal assent on 12 May 2016 after a lengthy and controversial pathway through Parliament
- 2.2. The Act contains provisions on new homes (including starter homes), landlords and property agents, abandoned premises, social housing (including extending the Right to Buy to housing association tenants; sale of local authority assets; 'pay-to-stay'; secure tenancies), planning, compulsory purchase, and public land (duty to dispose).
- 2.3 There are three key areas of change for Council housing:
  - The introduction of mandatory fixed term tenancies
  - The introduction of new "Pay to Stay" regulations
  - The sale of higher value Council properties
- 2.2 Many provisions in the Act are still to receive further clarifications through regulations to be published later in this year; however it is important to understand the implications and to prepare for the increased administrative processes required to implement the new legislation
- 2.3 There are also provisions to protect privately renting tenants from unsafe and unacceptable housing conditions.
- 2.4 This report analyses the provisions and make recommendations for how the provisions are implemented.

### **3. Issues, Options and Analysis of Options**

#### **3.1 Fixed term tenancies**

- 3.1.1 Traditionally the Council issues secure, or so called “tenancies for life” whereby, provided a tenant pays their rent and does not breach the tenancy terms, they may continue as a tenant of the property for the rest of their life if they choose to do so
- 3.1.2 In 2012 the Localism Act gave local authorities the discretion to issue flexible tenancies; Thurrock Council, following a full consultation, opted to keep secure life time tenancies but implemented an introductory tenancy process for the initial year of the tenancy. Details were incorporated into the Councils Tenancy Policy which was approved by Cabinet in December 2012
- 3.1.3. The 2016 Housing & Planning Act requires all local authorities to issue only fixed term secure tenancies in future
- 3.1.4 A single set of regulations are expected by the end of the year but some provisions are already known:
- 3.1.5 The tenancies must be for a minimum period of two years and a maximum of ten years, with an exception where there are children under the age of 9 living in the household: the fixed term will be extended up to the 19<sup>th</sup> birthday of the child
- 3.1.6 The Council can determine the length of period that tenancies for households without children will be given and this can include provisions for the elderly and those with disabilities
- 3.1.7 Six months before the end of the fixed term the Council must review the tenancy and determine one of the following:
- To offer a further fixed term tenancy in the same property;
  - To offer a fixed term tenancy in an alternative property;
  - To end the tenancy and offer advice on buying a property or other housing options
- 3.1.8 Criteria for determining the initial tenancy length and outcomes at the end of the fixed term must be contained within the council’s Tenancy Policy; this will therefore need to be revised. Appeal procedures will also be available
- 3.1.9 Cabinet approval will be required for the revised tenancy policy. It is therefore anticipated that a further report will be brought to housing O & S in October 2016 to provide recommendations to Cabinet in November 2016.
- 3.1.10 Fixed term tenancies will apply to all new tenancies but not retrospectively to current secure tenancies (old-style life time tenancies)

3.1.11 Existing old style secure tenants who transfer to alternative properties will receive a new fixed term tenancy unless they are required to move by the Council i.e. through a decant programme; there may be some discretion for example where the move is due to domestic abuse or via a mutual exchange but further clarification will be provided in the awaited regulations

3.1.12 Succession rights will be changed so that successors are only entitled to a further fixed term period of five years

## 3.2 Pay to Stay

3.2.1 Under the new Act the Secretary of State will introduce “Rent Regulations” which determine the amount that a local authority must charge its tenants for Council housing

3.2.2 The regulations are still to be provided but the following provisions are already known:

3.2.3 The Council must charge a higher rent to a tenant on a “high income”

3.2.4 High income will initially mean over £31,000 in England outside London; this figure will be up rated annually in line with CPI

3.2.4 The amount of rent to be charged is still to be determined but will be either

- Equal to market rent;
- A proportion of market rent;
- To be determined by other factors

3.2.5 The rent will differ according to the household income but is generally expected to increase by 15p for every £1 earned above the £31,000 threshold

3.2.6 The table below shows potential new rents for households according to their household income

	Studio	One	Two	Three	Four
Average Social Rent - Month	£366	£374	£438	£492	£552
Assumed Market Rent (full)	£625	£700	£825	£950	£1,100
Household Income					
30k	£378	£387	£450	£504	£565
35k	£441	£449	£513	£567	£627
40k	£503	£512	£575	£629	£690
45k	£566	£574	£638	£692	£752
50k	£625	£637	£700	£754	£815

55k	£625	£699	£763	£817	£877
60k	£625	£700	£825	£879	£940

3.2.7 Tenants are required to inform the Council of their household incomes and Councils can share information with HMRC for verification purposes. It is anticipated that some tenants may fail to disclose the correct information and are likely to face prosecution under the Fraud Act 2006.

3.2.8 Collected income – less any administration costs – must be returned to the Treasury

### **3.3 Sale of higher value void council properties**

3.3.1 The new Act requires the Council to pay a sum to the treasury equivalent to the market value of any “higher value” Council housing stock that would become vacant during the year.

3.3.2 Further regulations will define what “higher value” represents and more detailed provisions about the sums to be paid.

### **3.4. Measures to tackle rogue landlords and property agents in Thurrock**

3.4.1 The new Act will give Council’s new powers in 2017, to protect residents from unsafe and unacceptable housing conditions. This will enable the Council to regulate the private rented sector better, against rogue landlords who pose a serious risk to tenants

3.4.2 In 2015/16, the Council received 240 complaints about poor housing conditions of which 147 were identified as Category 1 Hazards under the Health, Housing Safety Rating System Assessment. A Category 1 hazard requires the council must take action to remove or reduce the hazard.

The new Act has 6 new measures designed to tackle rogue landlords and property agents in Thurrock.

#### **3.4.3 Banning orders for most prolific offenders**

The Government will consult on what offences could result in a banning order this autumn, with draft regulations published in early 2017 and the measures coming into force in October 2017. This power will enable the council to apply for a banning order to prevent landlords or letting agents from operating and renting out property when a landlord or letting agents commit certain offences.

#### **3.4.4 Database of rogue landlords/property agents**

The database of rogue landlords and agents who have been issued with a banning order will be held by the Department for Communities and Local

Government and updated by each local authority to improve information sharing legally and professionally, preventing rogue landlords/agents from trading illegally and passing the Fit and Proper test for landlords in England.

3.4.5 Civil penalties of up to £30,000 for those who breach a banning order  
The Government expects to publish guidance on the penalty will be calculated in March 2017, with measures taking force in April 2017.

3.4.6 Extension of Rent Repayment Orders

A tenant or a local housing authority may apply for a rent repayment order against a person who has committed an offence as defined in the Act. This could be equivalent to 12months rent. Defined offences detailed below:

Act	Section	General description of offence
Criminal Law Act 1977	section 6(1)	violence for securing entry
Protection from Eviction Act	section 1(2), (3) or (3A)	eviction or harassment of occupiers
Housing Act 2004	section 30(1)	failure to comply with improvement notice
Housing Act 2004	section 32(1)	failure to comply with prohibition order etc
Housing Act 2004	section 72(1)	control or management of unlicensed HMO
Housing Act 2004	section 95(1)	control or management of unlicensed house
Housing Planning Act 2016	Section 21	breach of banning order

3.4.7 Tougher Fit and Proper Person test for landlords

We will have to wait for the published guidance on this aspect but it will include matters of right to remain and insolvency /unspent bankruptcy

3.4.8 Tenancy Deposit Protection Scheme data sharing

The Council will be able to request data from tenancy deposit protection schemes to identify private rented property and landlords. This applies to HMOs, to enforce licence fees due to the council and take action against rogue landlords and enforce housing standards identified as Category 1 Hazards.

3.4.9. The Private Sector Housing Team will plan to update its policies and procedures to use the new powers and methods.

3.4.10 The Housing and Planning Act 2016 also paved the way for regulations to be made introducing a compulsory electrical safety check for rented property.

### **3.5 Extension of Mandatory Licensing for Houses of Multiple Occupation (HMOs)**

3.5.1 At the end of December 2015, the Government consulted on the proposals to extend the scope of mandatory licensing of HMOs, from three storey building occupied by five persons or more and two or more households to two storey buildings occupied by at least 5 persons.

3.5.2 Government ministers are still considering their response, but changes to include two storey buildings, flats above shops seem likely, as well as reducing the people/households threshold. This is expected in October 2016.

The new legislative requirements will define part of our HMO management approach in the Thurrock Housing Strategy 2015-20.

3.5.3 Following the new definition to extend the scope of mandatory licensing of HMOs. Thurrock has over 300 two storey HMO buildings, including shared houses and single tenancies on its private sector housing database.

3.5.4 We are proposing new fees to be implemented in 2017/18. The last licence fee Cabinet report was in 2013/14. The proposed fees reflect the administrative costs to license the HMO changes. These costs have been benchmarked regionally. The new fees are seen at 3.5.11.

This is comparable to other local authorities providing the same service. Private landlords with more than one HMO (Landlord accredited or non-accredited) will pay a discounted fee.

If the two storey HMO definition is adopted, this would require those 300 HMO landlords in the borough to be licensed. Additional resources will be needed to administer this scheme for collecting the General Fund income of up to £284k.

3.5.5 The new fees take into account local housing supply conditions in the private rented sector. It will encourage private landlord accreditation to ensure decent standards in properties where there are several people sharing basic facilities and require landlords to be 'Fit and Proper' person to be granted a licence.

The new fees do not apply to a private landlord leasing a whole house/flat to one tenant/family unless their household has two or more unrelated tenants on a single tenancy living in a shared house.

3.5.6 The licencing scheme will allow the council to proactively identify and engage with landlords, particularly less responsible private landlords, to improve management standards at this type of accommodation. As HMOs increasingly become a housing option for single people without a housing duty owed to them.

Essex Police support this initiative to reduce crime and disorder related to poorly managed HMOs. As a licence scheme can make it easier taking enforcement against a HMO landlord for failing to tackle their anti-social tenants.

- 3.5.7 The new landlords within the extension of mandatory HMO licensing affected by the HMO fees will be consulted during the next few months. This will discuss the proposed fees, landlord accreditation benefits, and an early bird discount reward.
- 3.5.8 We will support private landlords by offering help, advice and guidance on how to complete the application process to comply with the law.
- 3.5.9 The landlord consultation results will be shared with members in the October Overview Scrutiny report. The proposed fees are expected to be implemented on April 1<sup>st</sup> 2017.
- 3.5.10 Another part of our approach to manage HMOs in the borough will be to limit the number of HMOs over concentrating in a particular street or area for example more 10% in a ward. The Private Sector and Planning Team will ensure they use the relevant regulatory legislation where possible.
- 3.5.11 The current HMO licence fee is £808. The proposed license fees for 2017/18 can be seen in the table below:

	Number of people	Landlord Accredited	Non-Accredited	Accreditation discount 15%
New HMOs 5 year License (Fees for single tenancies and shared houses)	0 to 5	£949.70	£1,092.16	£142.46
	6 to 10	£999.40	£1,149.31	£149.91
	11 to 15	£1,099.10	£1,263.97	£164.87
	16 to 20	£1,198.80	£1,378.62	£179.82
	21 to 29	£1,378.26	£1,585.00	£206.74
	30 or more	£1,597.60	£1,837.24	£239.64
* extra fee may be applicable for larger premises inspection				
Renewable HMOs License (5 Year- no changes or management regulation breaches)	0 to 5	£474.85	£546.08	£71.23
	6 to 10	£499.70	£574.66	£74.96
	11 to 15	£549.55	£631.98	£82.43
	16 to 20	£599.40	£689.31	£89.91
	21 to 29	£689.13	£792.50	£103.37
	30 or more	£798.80	£918.62	£119.82
<b>Other Misc. income</b>				



License Variation		£150.00	£172.50	£22.50
Change of Manager or ownership		£150.00	£172.50	£22.50
Permitted number changes		£150.00	£172.50	£22.50
License Holder Change Fee reduced by 50% if application for new license within 12 month of issue and subject to property condition/inspection)	0 to 5	£474.85	£546.08	£71.23
	6 to 10	£499.70	£574.66	£74.96
	11 to 15	£549.55	£631.98	£82.43
	16 to 20	£599.40	£689.31	£89.91
	21 to 29	£689.13	£792.50	£103.37
	30 or more	£798.80	£918.62	£119.82
Failure to notify changes in ownership or management (non- license holder)		£250.00	£250.00	£0.00
HMO Public license register fee		£59.20	£59.20	£59.20
Assisting with Licensing application (First 30 minutes free for accredited landlords, thereafter £50.00 per hour pro rata)		£50.00	£50.00	£0.00

#### **4. Reasons for Recommendation**

- 4.1 The Housing and Planning Act 2016 has now received royal assent and therefore the Council needs to implement the new provisions;
- 4.2 Changes to the Council's Tenancy Policy will be required to determine the length of fixed term tenancies and criteria for issuing them
- 4.3 The Council will need to make procedural changes to implement other provisions within the Act.

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1.1 A full consultation on fixed term tenancies will be undertaken to consider the criteria for:
- The length of fixed term tenancies to be offered and reasons for any exceptions;
  - Issuing a further tenancy in the same property or in a different property at the end of the fixed term period;
  - The advice and assistance that will be given to tenants on finding alternative accommodation in the event that another tenancy is not issued.

- 5.2 A full consultation on HMO licensing will be undertaken; this consists of a private landlord forum, resident telephone survey, on line private landlord survey, and stakeholder consultation with councillors and the Police.
- 5.3 The outcome of the consultations and recommendations will be presented to the Housing Overview and Scrutiny Committee in October 2016; the Committee are expected to make recommendation for the Cabinet meeting on 9 November 2016

## **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 New powers to deal with rogue landlords should improve the health and wellbeing of private tenants through the reduction of poor and unsafe housing conditions

## **7. Implications**

### **7.1 Financial**

Implications verified by: **Julie Curtis**  
**HRA and Development Accountant**

Implementing the new Pay to stay provisions will involve initial set up costs and ongoing annual costs. A recent exercise by officers indicated that ongoing costs of more than £300,000 per year were likely. These costs will need to be deducted from any extra rent collected however, any excess beyond this must be sent to the treasury.

Receipts from the sale of higher value Council properties, less any administration costs, must also be sent to the treasury to be used to fund new starter homes.

Based on the proposed accredited licence fee of £949.70, the theoretical General Fund income could be up to £284k over 5 years based on 300 HMO homes. Staffing costs will have to be considered to administer the new scheme.

The expected licence fee income represents a significant service change because under the existing HMO licence definition, the Council has 5 licensed HMOs on its public register.

Section 63(3) of the Housing Act 2004 provides that licence applications may be accompanied by a fee to be determined by the local housing authority (LHA). In setting its fees, a LHA may take into account all costs it's incurred in carrying out its licensing function which we have done for all licence applications for up to a 5 year period.

The fees for this type of licensing are reviewed every year thereafter to be open and transparent. As the licence fee represents good value to trade lawfully as a HMO landlord licensed by the Council.

There is a 15% discount for private landlords who are accredited by the UK Landlord Accreditation Partnership (UKLAP) to raise the bar in HMO management standards.

Plus, an early bird discount scheme will also be considered to reward private landlords registering early.

## 7.2 Legal

Implications verified by: **Martin Hall**  
**Housing Solicitor / Team leader**

The Housing and Planning Act 2016 received Royal assent in May 2016 and will be implemented during the coming year.

The Council must implement the new arrangements, in line with regulations to be provided before the end of 2016.

Fixed term tenancies will be more complex to administer than current secure tenancies, particularly around the need to consider the age of children in the household and the requirement to review the circumstances 6 months prior to the end of the fixed term. Management of these tenancies will require new procedures around monitoring and repossessions.

Pay to Stay regulations will require close working with HMRC to verify incomes. It is likely that some tenants may fail to disclose their incomes and will therefore be subject to fraud investigations and possible criminal prosecutions under the Fraud Act 2006.

Powers for greater monitoring of HMO accommodation are likely to result in increased legal action against rogue landlords.

## 7.3 Diversity and Equality

Implications verified by: **Becky Price**  
**Community Development Officer**

A full equality impact assessment is required and will be undertaken as part of the consultations. The assessment will be provided to Housing O & S with the outcomes report in October

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

There is a large increase in the duties to be undertaken by officers to implement the new provisions including the HMO licensing and introduction of monitoring and assessing fixed term periods and tenant's incomes. This will necessitate an increase in the workforce.

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

None

9. **Appendices to the report**

None

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