

Subject:	Private Sector Housing update		
Date of Meeting:	23 June 2021		
Report of:	Executive Director for Neighbourhoods, Communities & Housing		
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Ward(s) affected:	All Wards		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Improving the quality and management of homes in the private rented sector over the period 2019-2023 is a key area of focus in the Housing Committee Work Plan. The Housing Committee Work Plan (Housing Committee, 18 September 2019) includes the following key actions in relation to improving private rented sector homes: Review and resubmit selective licensing scheme proposal to improve the management and standards of private rented sector homes in the city; Develop the enforcement approach to private sector housing to reflect the full range of potential options available to improve management and standards; Research and develop a social lettings agency.
- 1.2 There are several developments in the area of private sector housing that this report provides updates on. First, legislative changes in recent years have introduced new powers to tackle private sector landlords who do not maintain their privately rented properties to a safe, secure and warm standard. In response to this the council developed a Private Sector Housing Enforcement policy which was approved by Housing Committee in November 2019.
- 1.3 Second, in an attempt to improve standards in the private rented housing sector we have explored the viability of a selective licensing scheme to cover a section of private rented properties not covered by the National Mandatory or Additional Houses in Multiple Occupation licencing schemes.
- 1.4 Finally, there is the concept of a “not for profit” ethical letting agency to enable vulnerable people and others to obtain private rented accommodation and to be supported to retain a tenancy.

2. RECOMMENDATIONS:

- 2.1 Housing Committee note the update on progress against key elements of the Housing Committee Work Plan objectives to improve the quality and management of homes in the private rented sector as set out in this report and that a further report for decision on these actions (as outlined in paragraph 1.1), is scheduled for Housing Committee in September.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The private rented sector is a disproportionately large sector in Brighton and Hove comprises around 27-30% of the total housing stock in the city. This compares with the national average figure of approximately 15%. It is an important source of accommodation for a large number of households across a range different income groups.
- 3.2 We want to ensure that such accommodation is safe and well managed. There is a concern that some of the accommodation, particularly at the lower end of the market where vulnerable households may reside, does not adhere to minimum standards.
- 3.3 The Housing and Planning Act 2016 strengthened reactive enforcement work that councils can take. This was reflected in the Private Sector Housing Enforcement Policy agreed by Housing Committee in November 2019. Due to the Covid 19 pandemic, it has been difficult to carry out enforcement due to ensuring safe working practices for staff and for tenants when going into tenants' accommodation and so this was restricted to the most urgent cases. As Government pandemic restrictions are relaxing we are able to commence inspections and enforcement using additional options such as the ability to issue Civil Penalties in place of taking a prosecution; issuing Rent Repayment Orders and potentially issue Banning Orders for the worst offenders. These include recouping some of the costs of enforcement from landlords through fines, charges and the civil penalties.

In February 2020, Budget Council agreed additional funding of £0.150m for the Private Sector Housing Team to enable more proactive approach to enforcement. This work was not possible during most of 2020 due to the restrictions due to the Covid 19 pandemic, but the recruitment process for additional officers is in progress. In addition, further funding was identified to enable enforcement of the Energy Performance Certificate standards to ensure private rented properties achieve minimum national standards and recruitment to enable this is also in train.

Selective Licensing

- 3.4 In November 2019, Housing Committee agreed a report to consider exploring a small-scale Selective Licensing Scheme for private rented housing in the City. This would primarily cover properties occupied by single family units and not cover Houses in Multiple Occupation that are currently licenced under the National or Additional HMO Licensing Schemes. The intention was to bring a robust proposal to Housing Committee in March 2020. However, this had to be delayed until now, due to restrictions and challenges presented by the pandemic.
- 3.5 Whilst we can bring enforcement action against property owners whose properties fall below standard using the Housing Health and Safety Rating System, (HHSRS), this generally relies on the tenant informing us of potential issues and there may be reasons why tenants are concerned, unable, or reluctant to do this.

- 3.6 Selective Licensing is a pro-active approach to address this. This proactive nature is attractive as it would enable access to properties where tenants may not feel able to approach the council to raise their concerns with their housing situation. It is also a self-funding regime.
- 3.7 Two Licensing Schemes that cover Houses in Multiple Occupation (HMO) are currently in operation within the city:
- Mandatory Licensing. The National Scheme for all properties with 5 or more tenants. This is an on-going scheme, with licences renewed every 5 years.
 - Additional Licensing Scheme which is a local scheme for smaller HMOs with 3 or more tenants, in properties with 2 or more storeys. This can only run for 5 years and will end in March 2023.

With the impact of the interruption of Covid on the service it would be prudent to review the achievements the above schemes have delivered in March 2022.

- 3.8 Selective Licensing is for privately rented property not covered by an HMO licensing scheme. All but very small Selective Licensing schemes require approval by the Secretary of State.
- 3.9 A Selective Licensing Scheme does have limitations as to the powers it contains which are different to those for HMO licensing. Whilst the council can impose conditions on a licence relating to the management of the property, it is not possible to directly address physical problems with the property, such as poor layout for means of escape, or insufficient construction, as is possible with HMO licensing. It is also not possible to include anything that would be an enhancement in standards/facilities, such as a new fire alarm system. We would, however, hope to be able to address most repair issues under the requirements for suitable management and keeping the property free from hazards.
- 3.10 If any identified hazards could not be rectified by licence conditions, the council would still be legally obliged to deal with them under other Housing legislation powers.
- 3.11 Proposals to introduce a Selective Licensing Scheme in 12 wards in the city received cross party Housing & New Homes Committee support in November 2017. Following a legal challenge, the Secretary of State withdrew approval for the previously proposed scheme to designate 12 wards in the city as subject to selective licensing.
- 3.12 In view of the previous response of the Secretary of State, any further proposed scheme needs to be robust. We have considered available evidence to support a scheme in addition to undertaking a stock condition survey of a sample of properties to establish the evidence base on the basis of property conditions.
- 3.13 Details of both the data review, and the stock condition survey are given in Appendix 2.

- 3.14 In addition to providing evidence for one of the specific grounds for the scheme detailed above, the council must also consider the general obligations a scheme would include. In particular, it:
- must be consistent with overall Housing Strategy.
 - must have a coordinated approach to dealing with homelessness, empty properties and ASB.
 - must have considered other courses of action.
- 3.15 This requires that the council considers other alternatives to a Selective Licensing scheme. Legislation has been enacted over recent years with the aim of improving conditions of private rented accommodation. For example, on disrepair, the Homes (Fitness for Human Habitation) Act 2018 is now in force and its purpose is to ensure that all rented accommodation is fit for human habitation. Its aim is to strengthen tenants' means of redress against landlords who do not fulfil their legal obligations to keep their properties safe. These changes mean that tenants have more powers to take their own action to deal with those landlords who do not maintain their properties.
- 3.16 There has also been further legislation around what is referred to as "revenge" evictions and reducing the grounds for possession, thereby enhancing security of tenure.(Deregulation Act 2015) This should also strengthen the position of tenants requesting that repairs are completed, as they can do so with less fear of eviction. Due to the pandemic, it is too early to assess the impact these legislative changes will have. The Private Sector Housing team are developing approaches on how to best provide further information and assistance to empower tenants to help themselves with these new pathways.
- 3.17 These are in addition to the additional powers given to Local Authorities and incorporated into the Enforcement Policy as mentioned above. Over the past year, while the pandemic has restricted enforcement that could be undertaken we have focused on training to ensure the Private Sector Housing team is fully trained, and able to use these additional options.
- 3.18 Links have also been strengthened between the Private Sector Housing Team and the Direct Lets, Early Intervention and Acquisitions Teams to help ensure properties are up to, or improved to, acceptable standards where necessary.
- 3.19 While the evidence obtained to date does not support a selective licensing scheme, we will continue to reach out to private sector tenant groups, including Acorn, and engage to keep the position under review.

Ethical Lettings

- 3.20 The council has operated a Direct Lets scheme for some time which has been expanded over recent years, details of what this comprises are set out in 3.21. In March 2019, the council successfully bid for funding to enable additional access to private rented sector accommodation for those households becoming homeless who the council may have an accommodation duty towards, and then more latterly further grant funding under Rough Sleepers Initiative (RSI 3) to support up to 50 former rough sleepers into private rented accommodation in 2020/21 and the same again under RSI4 in 2021/22. The Direct Lets scheme has

been expanded to incorporate these changes to enable vulnerable people to access private rented accommodation.

3.21 The Direct Lets scheme operates on ethical letting principles which we aim to develop and expand further. The service includes:

- i) Tenancy workshops for potential tenants setting out tenancy rights and responsibilities. These are held every week and have been developed with input from landlords.
- ii) A Deposit Guarantee. This means that the council effectively holds the deposit and can negotiate if there is a claim at the end of the period to ensure it is fair.
- iii) Financial incentives to landlords to mitigate potential risks of initial rent arrears whilst benefit is assessed and put into payment.
- iv) Financial incentives to tenants to purchase belongings such as a bed/bedding, crockery etc to make accommodation a home.
- v) Intensive management support for the first three months of a tenancy to ensure both landlord and tenant are helped to set up the tenancy well at the start including help with utilities etc.
- vi) Ongoing support as needed by either landlord or tenant to ensure the tenancy is sustainable.
- vii) minimum property accommodation standards checked by the council.

We also propose to undertake a peer review of other local authorities who have experience of setting up an ethical/ social lettings agency.

3.22 Below is a table setting out the number of households assisted into the private sector over the past 5 years. In addition, prior to the pandemic the team were invited to deliver presentations at the MHCLG roadshows.

Month	2016/ 17	2017/ 18	2018/ 19	2019/ 20	2020/ 21	2021/ 22
April	15	18	29	30	21	35
May	11	26	18	29	26	27
Jun	10	29	21	20	31	15
July	13	31	24	27	29	2
Aug	15	24	27	30	37	
Sept	10	14	21	35	21	
Oct	19	20	32	22	37	
Nov	13	24	25	26	50	
Dec	19	20	30	28	38	
Jan	15	21	17	21	23	
Feb	15	19	23	19	40	
March	27	24	30	30	44	
Totals	182	270	297	317	397	79

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 We have a statutory duty to enforce standards in the private rented sector. In some circumstances, we have a duty to act, whilst in other circumstances we have powers to act. These are outlined in the Enforcement Policy and incorporated into the procedures.

Selective Licensing

Based on the information available and collated to date, there is currently no clear evidence showing that there is a significant problem which can only be addressed by way of a selective licencing scheme. At this time, neither property conditions or anti-social behaviour provide enough evidence to support a recommendation to implement of such a scheme. If the council were to proceed with a scheme without robust evidence of the need, there is high risk of challenge from landlords. We propose to keep information available to support a potential selective licensing scheme under review. We are also reaching out to groups in the city who may have evidence that could justify a selective licensing scheme that is not currently available to the council.

The council also needs to explore how new legislation is having an impact and how tenants can be empowered to help themselves under the Homes (Fitness for Human Habitation) Act 2018 and applying for Rent Repayment Orders. In addition, the council will assess the impact the of the new powers such as Civil Penalties.

Officers cannot recommend progressing a Selective Licensing Scheme at this time as the available and commissioned evidence we currently have does not support it.

Enforcement analysis

The Private Sector Housing (PSH) team will respond robustly to tenant's complaints, using all tools available as outlined in the Private Sector Housing Enforcement Policy agreed at Housing Committee in November 2019. This includes service of, and charging for, Statutory Notices, having the option of issuing Civil Penalties as an alternative to prosecution, carrying out Works in Default and recovering the costs of this, Rent Repayment Orders, and Banning Orders with the possibility of entering a landlords details onto the National Rogue Landlord Database. These tools have not previously been used in the city.

Explore possibilities of additional interventions.

The PSH team will also explore more proactive options to help privately renting tenants, such as:

- Provide guidance, and support for tenants to take their own action for Rent Repayment Orders, or under the Homes (Fitness for Human Habitation) Act 2018.
- Develop information for Leaseholders in dispute with freeholders.
- Increase awareness of the Private Sector Housing service and how we are able to help tenants.
- Develop relationships with local tenants groups who may have more contact with tenants, including to obtain more information about property conditions.

- Relaunch the newsletter for landlords and work more closely with the local and national landlord associations.

Develop the Direct Lets scheme as the Ethical Letting Agency.

Undertaking further work to measure the outcomes achieved towards improving the PRS using the interventions listed in Appendix 1.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 We seek to engage both with tenants and landlords and with representative organisations such as Acorn on policy & implementation and welcome feedback.
- 5.2 On Selective Licensing, no community involvement has been necessary to date as this has been an in-house review of the current position. Should any selective licensing proposals be taken further, a full consultation exercise would be required.
- 5.3 We propose to keep information available to support a potential selective licensing scheme under review and are reaching out to groups in the city who may have evidence that could support a selective licensing scheme that is not currently available to the council.

6. CONCLUSION

- 6.1 The evidence considered does not support implementing a selective licensing scheme. However we can use existing reactive powers, enhanced by new powers, to carry out effective enforcement, and will keep under review the information for tenants to they are empowered to also take action to resolve any matters relating to property condition.
The council has an effective direct letting scheme operating on ethical letting principles which we aim to develop and expand further in our development of an ethical letting agency.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 As part of council budget setting 2020/21, Budget Council approved extra investment of £0.150m to enable the private housing team to have a more proactive approach to improving standards in the private rental sector by enforcement of landlords. For 2021/22 Budget council also agreed a further £0.045m for the enforcement of the Energy Performance Certificate standards to ensure private rented properties achieve minimum national standards on energy efficiency.

Finance Officer Consulted: Monica Brooks

Date: 11/06/21

Legal Implications:

- 7.2 The report is for note and so at this point has no need for detailed legal comments. The body of the report contains a detailed explanation of why selective licencing would be problematic at this stage, but if further evidence was obtained then this might well change. We could not support an application at this time. In relation to ethical letting proposals, this is at this stage an extension of already existing direct let schemes and so no further advice is required.

Lawyer Consulted: Simon Court

Date: 08/06/21

Equalities Implications:

- 7.3 The private rented sector provides accommodation for a range of people. At the lower end of the market, some of the most disadvantaged groups may be living and so by having a proactive enforcement policy and ensuring minimum electric energy performance standards (MEES), standards will be improved for those people.

Sustainability Implications:

- 7.4 The MEES are intended to ensure that private rented accommodation can be adequately warm but also is energy efficient. This contributes towards reducing carbon emissions.

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1 - List of procedures covering the work of the PSH team to utilise all available powers

Appendix 2 - Detail of work undertaken to assess whether a Selective Licensing Scheme can be supported

Appendix 1

List of procedures covering the work of the PSH team to utilise all available powers

Subject
PSH WORK
Banning Orders
Charging for Notices and Orders
Civil Penalties
Cllr Enquiries
Dangerous Buildings
Drainage
Electrical Safety
Energy Performance Certificates
Emergency Remedial Action / Emergency Prohibition – incl Temp. Housing

Fitness for Human Habitation
Gas / Electrical Disconnections
Gas Safety (HSE)
HHSRS
HMO Declarations
HMO Inspections
HMO Regulations
Hoarding / Filthy & Verminous Premises
Housing Act Notices
Management Orders
Noise
Overcrowding
Owner Occupiers & Long Leaseholders
Party Wall Act
Pests
Planning Consultations
Possible Unlicensed HMOs
Powers of Entry
Property Redress Schemes
RFA's (Including Triaging, Immigration Inspections, Apps 18 and Cllr Enquiries)
Rogue Landlord Database
Securing of Buildings
Service of Notices / Retaliatory Evictions (revocations / requiring information)
Smoke & CO Regulations
Statutory Nuisances
Temporary Exemption Notices
Tenancy Deposit Schemes
University Head Leased HMO's
Works in Default
LEGAL
Appeals
Grant Repayment Procedure
Prosecutions - General
Obtaining Warrants
Prosecutions – HMO Licensing
Prosecutions – HMO Regulations
Rent Repayment Orders
FIRE
ESFRS Consultations / Protocol
Fire Protection Notes for Guidance
HEALTH, SAFETY & EQUIPMENT
Clients of Concern
Business Continuity
Ladder Safety
Lone Working

UNIFORM
Creating a Notice
HHSRS
HMO Licensing - Searches
HMO Licensing – Updating Uniform
RFAs – Updating Uniform

Note that queries on some of these subjects do not come under the remit of the PSH Team and are referred to other teams within the council. Where this is the case, the referral procedures have been confirmed with those teams.

Appendix 2

Detail of work undertaken to assess whether a Selective Licensing Scheme can be supported

Data Review and Stock Condition Survey

The legislation giving rise to the power to introduce a Selective Licensing Scheme has several grounds for introducing a scheme:

- Anti-social behaviour (ASB)
- Poor housing conditions
- Migration
- Deprivation
- Crime
- Low Housing Demand

Any of these issues need to be related to and directly associated with privately rented accommodation as opposed to more broad neighbourhood problems.

Work previously undertaken by consultants Mayhew and Harper Associated Ltd, as well as a public consultation exercise, was considered at Housing & New Homes Committee in November 2016. From this, all possible grounds were discounted other than Property Condition and ASB, as they don't apply in sufficient measure to privately rented property in Brighton and Hove.

We have carried out work to build on and update the previous work on ASB and property condition as it is recognised that these reports are now several years old. We looked at data on cases of ASB, Noise Nuisance and PSH Request for Assistance (with repairs) since that time, to see if we have any more evidence than before to make a more robust case for Selective Licensing on these grounds.

Whilst this work has been carried out in-house, it has been carried out with detailed input from our legal team. It should also be recognised that this is not a scientific study, but a review of current data to give an indication of the current situation.

The Mayhew Harper report from September 2016 stated that the core area of Brighton and Hove, centred on the seafront, contains most risk factors, with regard to ASB and

poor property condition, although there are two important outliers –Moulsecoomb & Bevendean and Hollingdean & Stanmer. These two wards have high levels of student HMOs, which are covered by the HMO licensing Schemes.

One suggestion from Mayhew Harper was Selective Licensing in 12 wards where there was already an Additional HMO Licensing Scheme:

St Peters & North Laine, Regency, Moulsecoomb & Bevendean, Hollingdean & Stanmer, Queens Park, Hanover & Elm Grove, Brunswick & Adelaide, East Brighton, South Portslade, Central Hove, Westbourne, Preston Park.

It did point out, however, that there is a significant variation in housing conditions and ASB in each ward, and they don't closely follow ward boundaries. They considered ward level to be too blunt a tool due to the mix of neighbourhoods in each ward. Unfortunately, we only have ward level data to review.

The Data considered is shown below. It is all since the Mayhew Harper report, although 2020 data is not included due to the Covid19 crisis:

- Community Safety Team - initial reports or enquiries regarding ASB or hate incidents.
- Environmental Protection Team - domestic noise nuisance complaints relating to people, music or parties.
- PSH – Requests For Assistance for disrepair or related that required officer involvement.

Wards	ASB 2018/19 (*NOT just PRS)	ASB 2019/2020 (*NOT just PRS)	Domestic noise nuisance cases – people/music/party ONLY 2019/2020	Total cases and indicative rank
Regency	115	81	30	226 2 nd
St Peter's & North Laine	92	80	25	197 3 rd
Queen's Park	67	59	78	229 1 st
Brunswick & Adelaide	55	20	18	93 7 th
Moulsecoomb & Bevendean	50	37	22	109 5 th
East Brighton	48	23	56	127 4 th
Central Hove	48	42	17	107 6 th
Hanover & Elm Grove	41	34	12	87 8 th
Hollingdean & Stanmer	34	24	18	76
Goldsmid	32	21	26	79
North Portslade	28	20	22	70
Preston Park	27	36	18	81
Westbourne	23	23	18	64
Hangleton & Knoll	20	28	15	63
South Portslade	20	8	16	44
Wish	17	21	4	42
Patcham	15	13	20	48
Rottingdean Coastal	11	8	3	22
Woodingdean	10	12	2	24

Withdean	7	7	3	17
Hove Park	4	5	4	13
Out of area	20	6	-	
Not Specified	35	41	-	
TOTAL	819	647	427	

*ASB Relating to	2018/2019	2019/2020
Street community and rough sleeping	152	102
BHCC housing	89	68
RSL	35	23
BHCC temporary accommodation	18	14
Private Housing Sector or public place	525	440
TOTAL	819	647
(No ward breakdown available)		

PSH – RFAs for disrepair or related that required officer involvement: highest wards

	2017/18	2018/19	2019/20
TOTAL	743	615	569
St Peters and North Laine	93	74	80
Moulescoomb and Bevendean	70	57	64
Hanover and Elm Grove	62	52	47
Regency	39	56	43
Central Hove	60	46	45
Queens Park	56	54	37
Brunswick and Adeleide	53	44	35

Looking at this data, whilst it is not a scientific study and can only provide an indication, the numbers of cases are very similar to those looked at by Mayhew Harper and indicate that neither property conditions nor ASB show any more need than back in 2016.

Looking at where the cases are within the city, it does generally agree with the Mayhew Harper report in suggesting relevant issues may be more prevalent in the central areas of the city.

To investigate further whether property condition is a particular problem in this area, a stock condition survey was commissioned and carried out during August and September 2020. Questions relating to ASB were also asked of the tenants of those properties.

240 properties were to be surveyed, and so we focused on area which are highest for both ASB and poor property condition, concentrating on the 4 wards of:

- Queens Park
- St Peters and North Laine
- Regency
- Brunswick and Adelaide

The survey form focussed on three areas -

- The condition of the internal and external elements of each property (roofs, windows, kitchens, bathrooms etc)

- Housing Health and Safety Rating System (HHSRS) assessments
- Socio-economic questions that were answered by the residents

Summary of findings from the Survey:

- Some elements are expected to require replacing in the coming years, but there were only a very small number of elements found to require a replacement within the next 12 months (based on their condition at the time of the survey), which is indicative that the properties are being maintained well and kept in an above average condition.
- HHSRS failures were very low with just one property being found to have a Category 1 hazard, no properties had Category 2 hazards.
- Socially, the majority of residents felt safe and as though they belonged to their neighbourhoods. Anti-Social behavioural issues were reported to be the biggest problem.
- Most properties were found to have just 1 or 2 occupants, with the majority of these co-habiting. St. Peter's and North Laine had properties with the highest number of occupants, with the majority of these residents having no connection between each other.
- Overall, properties within the four Wards were found to be in good condition.

Documents in Members' Rooms

1. None.
- 2.

Background Documents

1. None.
- 2.

