

**Report of Director of Environment and Housing**

**Report to Executive Board**

**Date: 23 September 2015**

**Subject: Future Policy Direction for the Regulation of the Private Rented Sector and tackling Empty homes**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	No
Are there implications for equality and diversity and cohesion and integration?	No
Is the decision eligible for Call-In?	Yes
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	No

**Summary of main issues**

1. Improving the housing conditions within the PRS is a key priority for this Council and there is a significant programme of work underway to raise standards. The continued growth of the sector, which is now larger than the Council's own stockholding, allied to potential initiatives from the government make it an appropriate time to review the Council's current approach to the regulation of the sector. Any review of policy has to be set within the context of the limited resources available to the Council.
2. The paper proposes a redirection of resources towards dealing with rogue landlords. The report also contains a response to the TUSC deputation made in April.

The Executive Board is asked to request the Director of Environment and Housing to report back to the February 2016 Executive Board on the development of a range of options for improving the regulation of the PRS development, specifically

- A self-regulation agreement with members of Accreditation Schemes
- Establishing a "Rogue Landlord" unit
- Lobbying government for changes to the operation of Housing Benefit or Universal Credit within the sector

- Refining the approach to prosecutions of failing landlords
- Establishing an “Ethical Lettings Agency”
- Targeting the LNA within a Neighbourhood Improvement programme.

## **2 Purpose of this report**

2.2 The purpose of this report is to reflect on the current PRS and to suggest a number of potential policy directions that can be worked up into a future report.

## **3 Background information**

3.1 In the last ten years the number of households living in the PRS in England has doubled from 2.2m to 4.4m according to a recent report from Citizens Advice. This huge rise has made the sector one of the country's most important consumer markets. In Leeds the PRS was 18% of the housing market in the city according to the 2011 census. That would mean that there were 58k privately rented houses in the city in 2011, this figure will have grown since that date and the PRS now outstrips the Council's own provision.

3.2 In 2004 the most common household type in the PRS was single working-age adults. The growth of the sector has seen a significant change in the household types renting. Now couples with children are the most common household type in the sector. It is important, therefore, that the product on offer in the PRS not only meets the needs of its new market but also provides the quality of home to be expected in 2015. It is in this latter area that some sections of the PRS are failing. Analysis of government data suggests that 16% of all privately rented homes are unsafe because they contain a category 1 hazard that presents "a severe threat to health or safety". This means they fail the legal minimum standard for housing. This could mean that around 9k privately rented homes in Leeds fail to meet the minimum legal standard for housing. Analysis of the English Housing Survey for 2012 suggests that 40% of those failing properties will contain children and 17% will house people who are in poverty.

3.3 Despite these concerns about quality in the sector, the average rents are higher than social rents and higher than the average weekly mortgage. Nationally the average rent in the sector is £144 per week. The difference is most stark at the bottom end of the market where rents are just below £100 per week on average compared to an average of around £70 per week for the social sector. The increase cost of renting is increasingly being borne by the state through Housing Benefit. In the last decade the number of private renters receiving Housing Benefit grew from 410k to 1.1m. Therefore the homes in the PRS are more likely to be more expensive and less safe than homes in other sectors and more likely to be paid for by Housing Benefit.

3.4 These national themes are reflected in the PRS in Leeds. The sector has grown about 10% over the decade of the last census and stood at 18% of the market in 2011 or 58k houses. This growth will have continued in the interim period. Rents across the city, excluding the student market, average around £140 per week which is almost double the average social rent. The sector has significantly grown in the bottom end of the market where the poorest conditions are found and rents are increasingly supported by Housing Benefit which is paid regardless of the quality of the housing.

3.5 The sector in Leeds can be split into three main markets

- The City Centre Market – Modern purpose built flats with a strong customer voice and largely self-regulating through the demands of the customer
- The Student Market – In the main this constitutes Houses in Multiple Occupation (HMOs) which are regulated by the Council. Standards have steadily increased through the twin pressures of the Council's regulation and increased expectancy from students. The onset of the purpose built student accommodation has further galvanised the need to improve standards in the traditional market
- The low rental market – This market has some of the poorest quality housing in the city. The market mainly covers LS7, 8, 9, 10, 11 and 12. There high levels of Benefit dependency with most rents paid for through Housing Benefit and paid direct to the landlord or agent. Consequently tenants tend to feel they have little or no stake in the market.

- 3.6 The Council's powers to regulate the PRS are contained within the Housing Act 2004. Part 1 of the Act introduced the Housing Health and Safety Ratings System (HHSRS) against which properties are assessed to see if they comply with the minimum legal standards. Part 2 of the Act gave Authorities mandatory powers to licence and regulate HMOs of three or more storeys and five or more units of accommodation. Part three of the Act gave the Authorities discretionary powers to licence other HMOs and geographical areas under Selective Licencing.
- 3.7 Improving the standards within the PRS has been a priority for the Council and it has maintained its core services of regulation and licensing whilst other Councils have reduced theirs in response to budgetary pressures. In 2014/15 these services received over 2,500 complaints about the quality of properties and licenced around 2,700 Houses in Multiple Occupation. There has been recent investment to establish the Leeds Neighbourhood Approach (LNA) which targets small areas of poor quality private rented accommodation with significant numbers of long term empties.
- 3.8 The multi-agency approach of the LNA has been extremely successful. Recent completed work within the Nowells area of Burmantofts and Richmond Hill has seen 150 properties brought up to the legal standards, 44 empty properties brought back into use as well as a range of fire safety and security improvements. In addition to this a range of support has been given to the residents. Further work is underway in Armley and Holbeck. This work has built on the transformational multi-agency work that has been undertaken in Cross Green and demonstrates that multi –agency working in a controlled geographical area can bring significant improvements to communities.
- 3.9 At a strategic level the Council has worked closely with DCLG to develop potential improvements to the regulation of the sector following the Select Committee's report, to which the Council gave evidence, into the sector which was published in 2013. Locally the Council has developed a PRS Housing Forum, which is a subset of the Leeds Housing Forum. The PRS Forum contains representatives from the Landlord Associations, Universities, Unipol, third sector organisations and Housing Associations. The customer voice is not represented on the Forum with Tenant engagement and organised tenants groups absent within the sector.

- 3.10 The government has just issued a consultation paper titled “Tackling rogue landlords and improving the private rental sector”. The government states that it intends to drive out what they see as a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.
- 3.11 Given the backdrop of a growing market, especially within the low rental market with its attendant issues around quality, and the publication of the consultation paper, it is an opportune time to review the Council’s activities in relation to the regulation of the PRS and to look at what policy initiatives are available for the future regulation of the sector.

#### **4 Main issues**

- 4.1 The Housing Act 2004 provides the legislative backdrop for the Council’s mandatory activities. The Council must operate the HHSRS as its tool to test accommodation for hazards and to ensure that properties meet the minimum legal standards. However, these standards are a minimum and are generally below those in which most reasonable people would wish to live. They would not pass a “Your Home” test. Therefore one option for the future would be to set aspirational standards above the minimum accepted as a means of driving up standards in the sector.
- 4.2 This could be achieved by working with Landlord Associations to develop an agreement to self-regulate parts of the sector. Self-regulation would take the form of an agreement with the Council to guarantee the provision of the minimum legal standards for all members of the scheme but with an aspiration to drive standards up beyond the minimum legal standard. All current members of the range of accreditation schemes that currently exist would automatically become members of the scheme. The membership would then self-regulate itself and provide the Council with assurance about standards whilst having the ability to refer cases back to the Council should it believe there is need for enforcement action. Early indications from the landlord associations are that they are receptive to this type of arrangement.
- 4.3 It is likely that vast majority of initial members of a self-regulation scheme would come from the student market, although the self-regulation scheme agreement would contain a requirement for expansion of membership. Currently the Council issues at any one time around 2,700 mandatory licenses for HMOs within this sector. The Council would continue to issue a license, in order to fulfil its statutory duty, but the inspection regime to assure standards are complied with would rest with the self-regulation scheme. This would release Council resources from inspecting and regulating a sector that already provides a good standard of accommodation.
- 4.4 The LNA has shown that targeted action can be successful in improving standards, helping communities and tackling bad landlords. The release of resources resulting from the implementation of a self-regulation scheme could be utilised to provide further targeted action. However, rather than replicating the geographical approach of the LNA, it is suggested that resources could be targeted at “criminal landlords”. A small team could be established to compile a list of “criminal landlords” and then to tackle their property portfolios to ensure the minimum standards are provided,

taking enforcement action where necessary. This type of approach would fit with one proposal contained within the government's current consultation paper "Tackling Rogue Landlords and improving the PRS".

- 4.5 There are some fundamental issues in the PRS that impact upon Housing Benefit/Universal Credit costs. The government's consultation paper is proposing some reform in this area through an extension of Rent Repayment Orders. The government takes the view that it is unacceptable that landlords knowingly rent out substandard and dangerous accommodation particularly where the rent is being paid either partially or in full from Housing Benefit or Universal Credit. It is considering extending Rent Repayment Orders to cover the above circumstances.
- 4.6 The government's proposal whilst welcome does not address the root cause of the problem as it is a retrospective action. The proposal is that where properties are rented out, are found to be substandard or dangerous and Housing Benefit or Universal credit is being paid, and then the landlord should refund the rent to the Local Authority. This is a retrospective action and will only be applied where the Council identifies the property as unfit.
- 4.7 A better approach would be to ensure that properties meet the legal standards before Housing Benefit or Universal Credit is paid. This approach would have two benefits. It would ensure that tenants were provided with better quality accommodation in the first place and would protect the public purse.
- 4.8 Even more fundamental is the basis of the calculation for Housing Benefit or Universal Credit in the PRS. Analysis was undertaken in 2014 which suggested that landlords receiving Housing Benefit directly on behalf of their tenants in low rental market areas were receiving payments of around £870k per annum more than the market rent for their properties.
- 4.9 This "profit" from the public purse, arises because the government introduced a limit for payment known as the Local Housing Allowance (LHA). The LHA was introduced to cap Housing Benefit payments and there is one LHA rate per property size for all of Leeds. The consequence of this is that in low rental market areas the LHA rate is above the market rent and therefore landlords operating in this sector can "profiteer" through the Housing Benefit system.
- 4.10 In its response to the consultation paper the Council has lobbied government on these two issues and has offered to test alternative mechanisms in Leeds.
- 4.11 The TUSC deputation, (see appendix 1) referenced the difficulties that tenants have when dealing with Letting Agents and Property Managers and it asked the Council to consider establishing an "ethical" Letting Agency.
- 4.12 The Council was already aware of these issues and had taken some actions through its Private Sector Lettings Scheme and the implementation of the Property Redress Scheme.
- 4.13 The Council has implemented its regulatory role to ensure that all Letting Agents and Property Managers are members of one of the three government backed Property Redress Schemes. These schemes provide a free and independent

service for resolving disputes between tenants and Letting Agents and Property Managers. All decisions made are fully binding on all parties. The Council is required to ensure that all Letting Agents and Property Managers are members of one of the schemes. Failure to be a member will incur a fine of £5k and the Council can retain the income.

- 4.14 The Council is working on ideas to build on the success of its Private Sector Lettings Scheme to create a broader offer to landlords. There are a large number of property owners who have only one property and are often unsure as to how they should proceed when considering letting their property. The Council could offer a lettings service to these owners, utilising its own waiting list and provide them with a more cost effective solution than if they were to approach a high street letting agent. This initiative could build on established Council brands such as Leeds Homes and the Private Lettings Scheme.
- 4.15 This report has highlighted the fact that the Council receives its regulatory powers from the Housing Act 2004. The ultimate sanction is take court action against landlords who do not respond to requests from the Council. The preferred approach is always to work with landlords to agree timed programmes for the improvement of properties. However where this approach fails then formal notices are issued which can lead to prosecution. This process can be extremely time consuming. It is proposed that officers will work with colleagues in Legal Services to review the process to enable speedier prosecutions of failing landlords.
- 4.16 The LNA has proved to be an extremely successful and popular initiative. By selecting tight geographical areas and working on a multi-agency basis the LNA has been able to achieve multiple outcomes in a much less bureaucratically manner than utilising the Council's discretionary powers to Selectively Licence an area. Key outcomes so far have seen a reduction in the number of long term empty properties, improvements to the standards of privately rented properties, increased fire safety and anti-burglary measures in homes, improvements to environmental conditions, supporting residents in seeking employment and maximising incomes for residents.
- 4.17 However the Council should not rule out the option of using Selective Licensing. It was one of the initiatives that contributed to the improvement in Cross Green. It may be that if a similar neighbourhood improvement scheme was undertaken then Selective Licensing might one of the mechanisms by which improvements could be delivered. Alternatively the Council might consider a more concerted and longer involvement of the LNA team.
- 4.18 An emerging issue within the traditional Council estates is the growth of privately rented properties. This results from the implications of the Right to Buy scheme. Properties are now being sold on for a second or third time and a significant number are being bought by landlords. The lack of effective tenancy management by landlords can and does lead to a destabilising effect on estates.
- 4.19 To respond to this the Council is considering how a more holistic housing management approach can be achieved on these estates. A Housing Management Forum is being established which will bring together all social landlords in the city to establish ways in which greater collaboration can be achieved. Private sector

landlord representatives will also be invited to attend these meetings as a means of engaging them in these matters.

## **4.20 Housing Growth**

4.21 On a separate subject, The Trade Unionist and Socialist Coalition (TUSC) called upon the Council to embark upon a home building programme.

4.22 The Council is in fact investing its Housing Revenue Account (HRA) resources into a £148m programme for 1,000 new council houses by 2018 and into an annual £80m capital investment programme into its existing council housing. Officers are actively exploring opportunities to have further programmes post 2018 by maximising resources within the Housing Revenue Account and by lobbying government for new financial freedoms and flexibilities. The Executive Board will continue to be kept informed of progress.

## **5 Corporate Considerations**

### **5.1 Consultation and Engagement**

5.1.1 As part of the development of the policy proposals contained in this report, officers have had discussions with core cities and other Local Authorities within Yorkshire.

5.1.2 Meetings have also taken place with the Resident Landlord Association (RLA), the National Landlord Association (NLA) and Unipol. Early indications are that these organisations are supportive of the proposals contained within this report. Indeed the RLA has recently submitted their view on self-regulation and the NLA has brokered a meeting with Doncaster Council who are considering self-regulation as part of a selective licensing scheme.

5.1.3 Officers will continue to consult with other Local Authorities and the various Landlord Associations in the development of policy.

### **5.2 Equality and Diversity / Cohesion and Integration**

5.2.1 There are no issues for Equality and Diversity / Cohesion and integration. An Equality and Diversity / cohesion and integration screening document is attached.

### **5.3 Council policies and Best Council Plan**

5.3.1 The development of the Council's policy for the PRS and empty homes supports the Council's ambitions in the Best Council Plan. Proposals set out in this area will directly support the Council's ambition to promote sustainable and inclusive growth by improving the quality of accommodation and reducing the number of empty homes.

### **5.4 Resources and value for money**

5.4.1 The Council has maintained its core resource to fund work in the PRS and to tackle empty homes. Indeed a small investment was made in 2013 to establish the LNA. However, the growth in the sector has far outgrown the Council's capacity to regulate the sector. Whilst some of the proposals in this report are to some degree

self-funding such as self-regulation, further initiatives may require additional investment.

## **5.5 Legal Implications, Access to Information and Call In**

5.5.1 There are no legal implications or Access to Information issues with this report which is eligible for call in.

## **5.6 Risk Management**

5.6.1 There no risk management issues contained within this report

## **6 Conclusions**

6.1 The PRS is now a major part of the Housing Market in Leeds estimated at 58k houses in 2011. It is essential that the market not only meets customer needs but also provides modern and safe standards. Within Leeds the city centre and student markets largely meet these standards. However the low rental market areas, which have seen significant growth over the last decade, provides some of the poorest quality housing in the city.

6.2 Whilst the core regulatory service has been retained the growth in the market has outstripped the Council's ability to effectively regulate the sector. With the publication of the government's consultation paper on "tackling Rogue Landlords and improving the private rental sector", it seems an appropriate time to consider the Council's options.

6.3 There are a range of options which are worthy of further consideration

- A self-regulation agreement with members of Accreditation Schemes
- Establishing a "Rogue Landlord" unit
- Lobbying government for changes to the operation of Housing Benefit or Universal Credit within the sector
- Refining the approach to prosecutions of failing landlords
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## **7.0 Recommendations**

7.1 The Executive Board is asked to request the Director of Environment and Housing to report back to the February 2016 Executive Board on the development of a range of options for improving the regulation of the PRS development, specifically

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## **8.0 Background documents<sup>1</sup>**

- 8.1 Tackling rogue landlords and improving the private rental sector - A technical discussion paper - Department for Communities and Local Government (August 2015)

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.