


FORM S & PP 3

 Walsall Council	REPORT OF THE ECONOMY AND ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE	DATE: 21.11.18 REF.NO:
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TITLE OF THE MATTER CALLED-IN: Financial Penalties Policy

DATE CONSIDERED BY CABINET: 24 October 2018

CABINET PORTFOLIO HOLDER: Councillor A. Andrew

DATE OF OVERVIEW AND SCRUTINY MEETING: 13 November 2018

Grounds under which the matter was called in for scrutiny:

Article 11 of the Council's Constitution which indicates how the Council conducts its decision making sets out the following:-

11.02 Principles of Decision Making

In particulate sections (b) due consultation and taking of professional advice; (d) a presumption in favour of openness.

The following extract from page 68 of the reports to Cabinet on Wednesday 24 October 2018 under paragraph 13 consultation and in particular 13.1 states:

A copy of the Policy will be available on-line and local estate agents and members of the Midland Landlord Accreditation Scheme will be advised of its adoption.

This we would argue shows a clear breach of the principles laid out in Article 11.02 (b) and (d) as outlined above.

Further the Executive is aware of the work being carried out by my Committees Working Group on Selective Licensing which is seeking to add value to policies and strategies affecting the Private Rented Sector. In carrying out its evidence gathering the working group is due to meet with local Private Sector Landlords along with representatives of their Regional and National Professional Organisations.

To date there has been an uneasy relationship between the Council and the Private Rented Sector Landlords. The objectives of this meeting was to seek common ground in resolving some of these long standing problems.

One of the criticisms that the landlords have levelled against the Council is the lack of any meaningful consultation or involvement in the policy making process.

The lack of pre-decision consultation as shown under 13.1 of the report to Cabinet can only add to an already unsatisfactory relationship.

Prior to the Cabinet meeting on Wednesday 24 October 2018 and the Chair of the Economy and Environment Overview and Scrutiny Committee requested that the report be deferred to enable pre-decision scrutiny to add value and weight to the recommendations in the report and to ensure that consultation takes place with external stakeholders and residents prior to the policy being adopted. This request was denied and Cabinet adopted the policy.

It is my view as the Chair of the Scrutiny Committee that by taking the action the Cabinet has failed to act in the spirit of the Council's Constitution as laid down under Article 11.02 Sections (b) and (d).

Record here the Overview and Scrutiny Committee conclusions and proposals:

As part of their considerations the Chair informed the Committee about the reasons for the 'call in' and heard representations from the Leader and Deputy Leader of the Council.

Following concerns expressed within the 'call in' notice, a report was presented to the Committee highlighting what consultation took place with landlords at the Walsall Landlord Forum as well as a selection of national and regional organisations. The Portfolio Holder reported that no objections had been received from any consulted organisation.

The Chair highlighted that the Committee in June 2018 had established a Private Rented Sector Housing and Selective Licensing Working Group to investigate housing standards in the Private Rented Sector. The Chair explained that it would have been desirable for the Working Group to have been able to consider the policy in context of its wider investigations.

Following a debate the Committee agreed to note the implementation of the Financial Penalties Policy, receive a progress update on the policy at a future meeting of the Committee and referred the policy for consideration to the Private Rented Sector Housing and Selective Licensing Working Group.

Record here the specific recommendations of the Overview and Scrutiny Committee:

That,

- 1. Committee note the range of consultation that has taken place on the proposed Policy;**
- 2. Support Cabinet in the use of Financial Penalties Policy relating to Housing and Planning Act 2016;**
- 3. A report be presented to a future meeting of the Committee summarising progress on the use of the Financial Penalties Policy;**
- 4. The Financial Penalties Policy be considered by the Private Rented Sector Housing and Selective Licensing Working Group as part of a wider discussion on the Private Rented Sector;**
- 5. Suitable checks take place to ensure that adequate consultation takes place prior to reports being presented to Cabinet.**

Explain here how the proposals/recommendations of the Overview and Scrutiny Committee differ from those of Cabinet:

Not applicable.

This form provides an accurate record of the meeting of the above named Overview and Scrutiny Committee.

Chair of Economy and Environment Overview and Scrutiny Committee



Signature: **Date:** ...19 November 2018

DATE: 13 November 2018

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Financial Penalties Policy relating to Housing and Planning Act 2016

Ward(s) All

Portfolios: Councillor A Andrew - Deputy Leader and Portfolio Holder
Regeneration

Report:

- 1.1 Cabinet adopted the Financial Penalties Policy in October 2018 and the report was 'called in' for consideration by Economy and Environment Overview and Scrutiny Committee on the grounds that it was considered that the decision making was not in line with Article 11.02 of the Constitution relating to the decision making process and specifically;
 - b) Due consultation and taking of professional advice;
 - d) A presumption in favour of openness.
- 1.2 This report provides Committee with additional information to re-assure them that appropriate consultation on the proposed Policy has taken place as detailed in para 1.3 to 1.6 below.
- 1.3 The Council and officers for many years have proactively promoted the benefits to private landlords of them joining relevant national bodies and or accreditation schemes, including for the receipt of information on changing laws and practices. In line with this the following organisations were consulted prior to cabinet and provided with a copy of the proposed Policy:
 - National Landlord Association (NLA)
 - Residential Landlord Association (RLA)
 - Midland Landlord Accreditation Scheme (MLAS)
 - Chair of the Walsall Private Landlord Forum.
- 1.4 The proposal to introduce a new Policy on this matter was also highlighted to the circa 50 landlords and agents who attended the 19 September 2018 Walsall Landlord Forum Evening.
- 1.5 The report was included on the Council's Forward Plan and publicised on the Council's website. The use of Civil Penalty Notices (CPNs) and Rent Repayment Orders (RROs) has also been highlighted to those landlords and agents who have been written to about their lack of:

- submission of an application for a House in Multiple Occupation Licence (since the law change on 1 October 2018) and;
 - an appropriately rated Energy Performance Certificate (EPC)
- 1.6 No objections have been received to the introduction of the Policy from the above.
- 1.7 A copy of the Policy will be available on-line and local estate agents and the NLA, RLA, MLAS and the Walsall Private Landlord Forum will be advised of its adoption.
- 1.8 The benefits of adoption of a CPN and RRO Policy were highlighted at a meeting on 26 October of the First Tier Tribunal chaired by Regional Judge David Jackson. The benefits are that an adopted Policy is seen as essential to reducing the risk of successful legal challenge to a CPN or RRO. The proposed Policy is in full accordance with the Council's already adopted Housing Enforcement Policy and Government issued Guidance on Civil Penalties (April 2018).

Recommendations:

That:

1. Committee note the range of consultation that has taken place on the proposed Policy;
2. Support Cabinet in the use of Financial Penalties relating to Housing and Planning Act 2016 Policy and;
3. A report for noting is provided to Committee (in circa 12 months) summarising progress on the use of the financial penalties.

Contact Officers:

David Lockwood
Manager Integrated Facilities
Management and Housing
Standards and Improvement

☎ 8459

✉ lockwooddavid@walsall.gov.uk

Appollo Fonka
Team Leader - Housing Standards

☎ 0947

✉ Appollonaris.fonka@walsall.gov.uk