



DARLINGTON

Borough Council

Cabinet Agenda

5.00 pm

Tuesday, 13 June 2023

Council Chamber, Town Hall, Darlington DL1 5QT

Members and Members of the Public are welcome to attend this Meeting.

1. Introductions/Attendance at Meeting.
2. Timings of Meetings –
To consider the timings of meetings of this Cabinet for the Municipal Year 2023/24 on the dates agreed in the Calendar of Cabinet and Committee Meetings by this Cabinet at Minute C258/Feb/23
3. Declarations of Interest.
4. To hear relevant representation (from Members and the General Public) on items on this Cabinet agenda.
5. To approve the Minutes of meeting of this Cabinet held on Tuesday, 4 April 2023 (Pages 5 - 8)
6. Matters Referred to Cabinet –
There are no matters referred back for reconsideration to this meeting
7. Issues Arising from Scrutiny Committee –
There are no issues referred back from the Scrutiny Committees to this Meeting, other than where they have been specifically consulted on an issue and their comments are included in the contents of the relevant report on this agenda.
8. Key Decisions:-

- (a) Annual Procurement Plan Update –
Report of the Group Director of Operations.
(Pages 9 - 26)
- 9. Representation on Other Bodies 2023/24 –
Report of the Group Director of Operations.
(Pages 27 - 32)
- 10. Introduction of the Housing and Planning Act 2016 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 –
Report of the Group Director of Services.
(Pages 33 - 102)
- 11. Adaptation Plan –
Report of the Chief Executive.
(Pages 103 - 116)
- 12. Ingenium Parc - Proposed Development of Plot 1 –
Report of the Chief Executive.
(Pages 117 - 126)
- 13. Membership Changes - To consider any Membership Changes to Other Bodies to which Cabinet appoints.
- 14. SUPPLEMENTARY ITEM(S) (if any) which in the opinion of the Chair of this Committee are of an urgent nature and can be discussed at this meeting.
- 15. Questions.

EXCLUSION OF THE PUBLIC AND PRESS

- 16. To consider the exclusion of the Public and Press :- –
RESOLVED - That, pursuant to Sections 100A(4) and (5) of the Local Government Act 1972, the public be excluded from the meeting during the consideration of the ensuing items on the grounds that they involve the likely disclosure of exempt information as defined in exclusion paragraph 3 of Part I of Schedule 12A of the Act.

PART III NOT FOR PUBLICATION

A handwritten signature in black ink, appearing to read 'L. S. Smith', is centered at the bottom of the page.

Luke Swinhoe
Assistant Director Law and Governance

Monday, 5 June 2023

Town Hall
Darlington.

Membership

Councillors Harker, Curry, McCollom, McEwan, Porter, Dr. Riley, Roche and Wallis

If you need this information in a different language or format or you have any other queries on this agenda please contact Lynne Wood, Elections Manager, Operations Group, during normal office hours 8.30 a.m. to 4.45 p.m. Mondays to Thursdays and 8.30 a.m. to 4.15 p.m. Fridays (e-mail Lynne.Wood@darlington.gov.uk or telephone 01325 405803).

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**DECISIONS SHOULD NOT BE IMPLEMENTED BEFORE
TUESDAY 18 APRIL 2023**

CABINET
Tuesday, 4 April 2023

PRESENT – Councillors Dulston (Chair), Bartch, Clarke, Durham, Keir, K Nicholson, Renton and Tostevin

INVITEES – Councillors Curry, Harker and Snedker

NOTE - At the outset of the meeting, the Chair announced that the Ordinary Meeting of the Cabinet, scheduled to be held on Tuesday, 25 April 2023, had been cancelled.

C274 DECLARATIONS OF INTEREST.

There were no declarations of interest reported at the meeting.

**C275 TO HEAR RELEVANT REPRESENTATION (FROM MEMBERS AND THE GENERAL PUBLIC) ON
ITEMS ON THIS CABINET AGENDA.**

No representations were made by Members or members of the public in attendance at the meeting.

**C276 TO APPROVE THE MINUTES OF THE MEETING OF THIS CABINET HELD ON TUESDAY 7
MARCH 2023.**

Submitted – The Minutes (previously circulated) of the meeting of this Cabinet held on 7 March 2023.

RESOLVED – That the Minutes be confirmed as a correct record.

REASON – The represent an accurate record of the meeting.

C277 MATTERS REFERRED TO CABINET

There were no matters referred back for re-consideration to this meeting.

C278 ISSUES ARISING FROM SCRUTINY COMMITTEE

There were no issues arising from Scrutiny considered at this meeting.

C279 KEY DECISIONS:-

(1) (URGENT REPORT) HOUSEHOLD SUPPORT FUND 2023/24

The Cabinet Member with the Stronger Communities Portfolio introduced the report of the

Chief Executive (previously circulated) requesting that consideration be given to a programme of support to deliver the third extension of the Government funded Household Support Fund (HSF) for the period 1 April 2023 to 31 March 2024.

The submitted report stated that as part of a number of measures to provide help with global inflationary challenges and the significantly rising cost of living, the HSF would be extended from 1 April 2023 to 31 March 2024. It was noted that the current programme was being delivered effectively, and that the proposed programme delivered in this next round would take forward the elements in the current programme.

It was reported that authorities were required to send a delivery plan to the Department for Works and Pensions (DWP) by 17 May 2023, which outlined their intentions for the Fund.

A Member welcomed the third extension of the Government funded HSF, and, whilst acknowledging the increase in school holiday provision, expressed disappointment at the reduction in the food voucher. The Cabinet Member with the Children and Young People Portfolio stated that the Council could only allocate the funding received, and endorsed the prioritisation of the school holiday provision.

RESOLVED - (a) That the proposed programme and estimated costings, as outlined in the submitted report, be approved.

(b) That delegated authority be given to the Chief Executive, in conjunction with the Portfolio Holder for Children and Young People, to amend funding pots as necessary to ensure full utilisation of the grant within the time period.

(c) That a submission to government be made based on the programme, as outlined in the submitted report.

REASONS – (a) To address the criteria laid down in the guidance.

(b) In order to secure the grant funding.

(2) RELEASE OF CAPITAL 2023/24 - ESSENTIAL REPAIRS TO PLAY AREAS, A BRIDGE ACROSS THE SKERNE RIVER AND RELEASE OF ADVANCE DESIGN FEES

The Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Services (previously circulated) requesting that consideration be given to the release of capital funding approved in the Medium Term Financial Plan (MTFP) to undertake essential repairs to play areas, repairs to a bridge over the River Skerne and release advanced design fee funding to enable projects to be developed.

The submitted report stated that the MTFP 2023/24 to 2026/27 included the following financial allocations, namely £200,000 over the next four years for repairs to play areas over and above the annual revenue maintenance to replace/maintain play equipment to the required safety standard, and £50,000 to carry out essential maintenance work to a bridge over the River Skerne in the Parkgate area. It was also reported that the MTFP 2022/23 to 2025/26 included a financial allocation of £150,000 in 2022/23, and the same amount in 2023/24 for advanced design work on projects, to ensure projects are developed to

appropriate standards for funding applications and Council decision making processes. The Cabinet Member with the Resources Portfolio sought the release of the capital funding to deliver the works and projects outlined.

A Member requested that an inspection of North Lodge Park be undertaken, which the Cabinet Member with the Resources Portfolio duly noted.

RESOLVED – That it be recommended that the following amounts approved in the Medium Term Financial Plan be released :-

- (a) £200,000 for essential play area equipment replacement/ maintenance;
- (b) £50,000 for essential repairs to a bridge over the River Skerne; and
- (c) £300,000 of advanced design fees be released for the development of Council priority projects.

REASONS – (a) To ensure the play areas/equipment are safe for children to use.

(b) To ensure the bridge is in a safe condition to enable its ongoing use.

(c) To ensure that schemes which are Council priorities are progressed.

C280 MEMBERSHIP CHANGES - TO CONSIDER ANY MEMBERSHIP CHANGES TO OTHER BODIES TO WHICH CABINET APPOINTS.

There were no membership changes reported at the meeting.

**DECISIONS DATED –
TUESDAY 11 APRIL 2023**

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CABINET
13 JUNE 2023

ANNUAL PROCUREMENT PLAN UPDATE

Responsible Cabinet Member – Councillor Mandy Porter, Resources Portfolio

Responsible Officer – Elizabeth Davison, Group Director of Operations

SUMMARY REPORT

Purpose of the Report

1. To present the Annual Procurement Plan Update to Cabinet for approval. Cabinet is asked to consider and approve the assessment of contracts that are considered to be strategic or non-strategic.
2. To update Cabinet on the outcomes of procurement(s) previously designated as Strategic.
3. To update Cabinet about the decisions taken by the Procurement Board to waive the Contract Procedure Rules.

Recommendation

4. It is recommended that: -
 - (a) Members approve the assessment of strategic and non-strategic contracts as presented in **Appendix 1** and that:
 - (i) further reports/ updates on the procurement process for those contracts designated as strategic (including decisions made by the Procurement Board) be brought to Cabinet.
 - (ii) the contract award decisions for the contracts designated as non-strategic be delegated to the appropriate Directorate as listed in the plan at Appendix 1.
 - (iii) the contract award decisions for the contracts designated as strategic, as listed in the plan at Appendix 1, be delegated to the Procurement Board to approve and will be reported back to Cabinet.
 - (b) that Members note the contents of this report in respect of the update of strategic procurements, Procurement Board waiver decisions, and Social Value.

Reasons

5. In respect of strategic/non-strategic contracts, the recommendations are supported by the following reasons: -
 - (a) The Contract Procedure Rules require Cabinet to approve the designation of contracts as strategic and non-strategic and:
 - (b) Contracts designated strategic are of high value and high significance in respect of the impact on residents, Health & Safety and public safety.
 - (c) The contracts designated non-strategic are of a lower value and lower significance in respect of the impact on residents and public safety.
6. In respect of Procurement Board waiver decisions, the recommendations are supported by the following reasons: -
 - (a) In order to comply with the Contract Procedure Rules.
 - (b) To provide Cabinet with information about the decisions made by the Procurement Board.
 - (c) To supplement the reports that are taken to Cabinet about proposed spend over £100,000, that are set out in the Annual Procurement Plan and the in-year update to that report.

Elizabeth Davison
Group Director of Operations

Background Papers

No background papers were used in the preparation of this report.

Patrick Saunders: Extension 5493

S17 Crime and Disorder	This decision will not have any direct impact on Crime and Disorder
Health and Well Being	This decision will not have any direct impact on Health and Wellbeing
Carbon Impact and Climate Change	This decision will not have a direct impact on the Council's carbon footprint.
Diversity	This decision will not have any direct impact on Diversity
Wards Affected	This decision will not affect any wards
Groups Affected	This decision will not have an impact on any groups.
Budget and Policy Framework	This report does not recommend changes to the Budget and Policy Framework
Key Decision	This is a a key decision.
Urgent Decision	This is not an urgent decision.
Council Plan	Strategic oversight of procurement will help in the delivery of the Council's objectives
Efficiency	The production of the update to the Procurement Plan is designed to save Member and Officer time for requesting delegated powers to make contract award decisions.
Impact on Looked After Children and Care Leavers	This report has no direct impact on Looked After Children or Care Leavers

MAIN REPORT

Information and Analysis

Strategic Contracts

7. Any contract award decision with a value below £100,000 is delegated to officers. Under the Contract Procedure Rules an annual Procurement Plan is produced listing details of all existing and new contracts that are £100,000 or above and which require a tender process.
8. This then allows Cabinet to be advised of the contracts of £100,000 and over and to decide which of those contracts are strategic.
9. For those contracts designated strategic the final contract award decision will be approved by the Procurement Board and will be reported to Cabinet.
10. For the contracts designated non-strategic, the decision will be delegated to the relevant Directorate and detailed in the decision record.

Assessment of contracts

11. Details of which contracts are designated strategic, and which are designated non-strategic are detailed in Appendix 1. The contracts have been assessed against the criteria agreed by Cabinet, the criteria are provided at **Appendix 2** for information. However,

Members and Officers may decide to recommend other than what the score suggests. Anything else would be considered non-strategic.

12. Based on the criteria there are three contracts that are designated strategic in the update to the Annual Plan:

(a) **DPS Home to School, Special Educational Needs and Vulnerable Adult Passenger Transport Services**

The procurement will be via an open over threshold tender exercise. Market engagement will be carried out prior to publication.

(b) **Design, Build and Operate Office Space in the Former Northern Echo Building**

The procurement will be carried out via an open over threshold tender exercise. Market engagement has been carried out.

(c) **HUG2 - Home upgrade grant project**

Darlington will lead the collaborative procurement exercise on behalf of the Tees Valley Authorities.

Update on Procurements previously designated as Strategic

13. There was no strategic procurement activity detailed in the previous update.

(a) **NEPO508 Temporary Agency Staff**

A decision has been made to delay the re-procurement and extend for a further 24 months. Following the extension an open collaborative tender exercise will be carried out.

Procurement Board waiver decisions

14. Under the Contract Procedure Rules, the Procurement Board may waive the Contract Procedure Rules in specific circumstances and is required to report waiver decisions that have been made to Cabinet.

15. The Contract Procedure Rules can only be waived as an exception. The Contract Procedure Rules require the Procurement Board when considering requests for waivers to take into account the following:

- (a) The contract value and the length of the proposed contract.
- (b) What steps have been taken to satisfy that the best value duty has been complied with (for instance quotations, market testing).
- (c) The extent to which there are good reasons why it is not possible to undergo a competitive process (for instance, pressing need or urgency, where further work is required before going to market, where only a short contract extension is needed, or the lack of an available market).
- (d) Whether the new contract is intended to be a stop gap prior to undergoing a competitive process.
- (e) The availability of compliant alternatives to direct awards, such as frameworks.

- (f) Any other reason that is being given by the commissioning area.
- 16. This report details the circumstances and the reasons why the contract procedure rules have been waived by Procurement Board at **Appendix 3**, during the period 1st October 2022 – 30th April 2023. A briefing note at **Appendix 4** provides some additional information about Procurement Reference number PB2023-00924 (which is one of the entries in the Appendix 3 table)

Social Value

- 17. A further update on the social value generated within procurement activity, will be detailed in the October update.

Outcome of Consultation

- 18. No consultation was carried out in preparation of this report.

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							ASSESSMENT MATRIX (To be completed by Procurement)								
Item No	Procurement Board Number	Current Supplier or New Contract	Description of Contract	Contract Term in years	Approx Contract Value per annum	Approx Total contract Value	Cost	Impact on Residents (1)	Risk - Financial, Health & Safety, Public (2)	Innovative in design, New form of contract, Sustainability (3)	External Monitoring e.g. from funding body (4)	Total	Strategic	Delegation for Award of Contract (Director or Assistant Director)	Procurement Route if Known
1	PB2022-00829	New contract	Upgrade of Public CCTV and Networks	0.5	£ 530,000.00	£ 530,000.00	1	4	2	1	1	9	Non Strategic	Assistant Director Community Services	Over Threshold Open Tender Exercise
2		Various	DPS Home to School, Special Educational Needs and Vulnerable Adult Passenger Transport Services	4		£ 10,000,000.00							Strategic	Procurement Board	Over Threshold Open Tender Exercise
3		New contract	HUG2 - Home upgrade grant project	2		£ 5,200,000.00							Strategic	Procurement Board	Collaborative Further Competition on an other organisations Framework
4		New contract	Social Housing Decarbonisation Project	2	£ 1,500,000.00	£ 3,000,000.00	4	3	1	1	4	13	Non Strategic	Group Director of Services	Over Threshold Open Tender Exercise
5	PB2023-00980	New contract	Hire of large plant with operator	4	£ 425,000.00	£ 1,700,000.00	2	1	1	1	1	6	Non Strategic	Group Director of Services	Over Threshold Open Tender Exercise
6		New Contract	Design, Build and Operate Office Space in the Former Northern Echo Building	20		£ 5,000,000.00						15	Strategic	Procurement Board	Over Threshold Open Tender Exercise
7		New contract	Whinfield School ReRoofing Project	1	£ 600,000.00	£ 600,000.00	1	1	1	1	1	5	Non Strategic	Assistant Director Community Services	Tender to a minimum of 5

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ASSESSMENT MATRIX FOR STRATEGIC PROCUREMENT					
VALUE			SIGNIFICANCE		
Cost		Impact on Residents (1)	Risk - Financial, Health & Safety, Public (2)	Innovative in design, New form of contract, Sustainability (3)	External Monitoring e.g. from funding body (4)
=> £5,000,000		Automatically considered strategic			
Between £4,000,000 & £4,999,999	5	5	5	5	5
Between £3,000,000 & £3,999,999	4	4	4	4	4
Between £2,000,000 & £2,999,999	3	3	3	3	3
Between £1,000,000 & £1,999,999	2	2	2	2	2
Less than £1,000,000	1	1	1	1	1
Score	0	0	0	0	0
Total Score	0	This procurement is Non-Strategic			

Each procurement must be reviewed against the matrix above. Any contract with an overall value in excess of £5,000,000 will be considered strategic. For any procurement where the value of the contract falls below £5,000,000 the goods or services to be purchased must be assessed on the value and the significance in relation to the other 4 columns and marked accordingly, where 5 is considered to be high significance and 1 low significance. Once a score has been decided for each column it is put in the relevant cell (c17 - K17) the spreadsheet automatically collates the score and determines if the procurement is strategic or non-strategic. Anything that scores 15 or more considered to be strategic. If however a procurement comes out as non-strategic but officers feel they would still want political support for the decision they can choose to take a report to Cabinet.

Note 1: What is the impact on residents? Is it restricted to one street, or estate or is it much wider than that? Does it affect 2 or more wards?

Note 2: Is there significant financial risk to the authority? Is there a H&S risk e.g. care for vulnerable people? Is there a risk to the public? Reputational risk?

Note 3: Is the authority familiar with the form of contract being entered into? Is the contract innovative in its delivery? Are we changing the service?

Note 4: Are there any specific requirements from external funders that represent a risk to the authority e.g. Pathfinder projects for DFES?

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APPENDIX 3

PROCUREMENT BOARD DECISIONS TO WAVE CONTRACT PROCEDURE RULES WITH A CONTRACT VALUE OVER £100K
OCTOBER 2022 - MARCH 2023

Procurement Board Reference Number	Approval Date	Description	Contract Term	Contract Value	Supplier
PB2022-00838	10 October 2022	Direct Award - Childrens Education Placement No suitable placements available on the Councils contracted provision	2 years and 10 months	£ 206,555.66	Embleton View
PB2022-00841	24 October 2022	Direct Award - Survey Work Neasham Road Benchmarking has been carried out	6 months	£ 150,000.00	Esh Homes Ltd
PB2022-00842	24 October 2022	Direct Award - Adult Residential Care placement No suitable placements available on the Councils contracted provision	1 Year	£ 234,000.00	ROC Group Ltd- Huntshorn
PB2022-00849	24 October 2022	Direct Award - Providing Fuel Vouchers by a Public Benefit Entity called Auriga. Continuation of a current contract	6 Months	£ 211,860.00	The Bread and Butter Thing (TBBT)
PB2022-00852	24 October 2022	Direct Award - Voluntary sector agencies providing holistic packages, distributed to vulnerable families Continuation of a current contract	6 months	£ 200,000.00	700 Club
PB2022-00854	24 October 2022	Direct Award - Service 16 Bus Service Benchmarking has been carried out	16 months	£ 170,533.00	Hodgsons
PB2022-00855	07 November 2022	Direct Award - Adult Residential Care Placement No suitable placements available on the Councils contracted provision	4 Years	£ 114,082.32	Sandrigham Care Home
PB2022-00858	07 November 2022	Direct Award - Childrens Residential Care Placement No suitable placements available on the Councils contracted provision	2 Years	£ 468,000.00	Evolve Residential Limited
PB2022-00860	07 November 2022	Direct Award - Childrens Education Placement No suitable placements available on the Councils contracted provision	5 years	£ 354,900.00	Embleton View
PB2022-00861	07 November 2022	Direct Award - Childrens Education Placement No suitable placements available on the Councils contracted provision	5 years	£ 354,900.00	Embleton View
PB2022-00864	07 November 2022	Direct Award - Childrens Education Placement No suitable placements available on the Councils contracted provision	5 years	£ 328,665.00	Hartwell School

		Direct Award - Adult Residential Care Placement			
PB2022-00865	07 November 2022	No suitable placements available on the Councils contracted provision	4 years	£ 206,679.20	Salutem Health Care
		Direct Award - The design and construction of remediation works to serve a future residential site.			
PB2022-00866	07 November 2022	Benchmarking has been carried out	4 months	£ 223,049.00	Keepmoat
		Direct Award - Adult Residential Care Placement			
PB2022-00867	21 November 2022	No suitable placements available on the Councils contracted provision	4 Years	£ 662,638.88	NEAS (North East Autism Society)
		Direct Award - Adult Residential Care Placement			
PB2022-00871	21 November 2022	No suitable placements available on the Councils contracted provision	4 Years	£ 140,648.69	Gainford Care Homes - Lindisfarne at Chester le Street
		Direct Award - Adults EMI Nursing Placement			
PB2022-00873	21 November 2022	No suitable placements on the Councils contracted provision	4 Years	£ 148,790.88	Redworth House Care Home
		Direct Award - Adults EMI Nursing Placement			
PB2022-00874	21 November 2022	No suitable placements on the Councils contracted provision	4 Years	£ 192,419.56	Richmond Court Care Home
Page 20		Direct Award - Project Management for the work for the recreation of the inaugural journey from Shildon to Stockton.			
	PB2022-00881	Continuation of the services already carried out, benchmarking has been carried out	3 years	£ 100,000.00	International Railway Heritage
		Direct Award - Adults Respite Placement			
PB2022-00882	05 December 2022	No suitable placements on the Councils contracted provision	4 years	£ 287,812.80	The Gardens Care Home
		Direct Award - Childrens Residential Care Placement			
PB2022-00886	05 December 2022	No suitable placements available on the Councils contracted provision	10 weeks with an option to extend for 4x10 weeks	£ 487,000.00	Aycliffe Secure Unit
		Direct Award - Adult Residential Care Placement			
PB2022-00889	05 December 2022	No suitable placements available on the Councils contracted provision	4 Years	£ 142,596.48	Redworth House Care Home
		Direct Award - Home Care and Support			
PB2022-00890	05 December 2022	No suitable placements on the Councils contracted provision	4 years	£ 265,358.08	Helping Hands
		Direct Award - Adult Residential Care Placement			
PB2022-00896	19 December 2022	No suitable placements available on the Councils contracted provision	4 Years	£ 310,754.40	The Gardens Care Home
		Direct Award - Adults EMI Nursing Placement			
PB2022-00897	19 December 2022	No suitable placements on the Councils contracted provision	4 Years	£ 148,790.88	Richmond Court Care Home

		Direct Award - Supply of Materials and Products for the Repairs & Maintenance to Council Housing and Public Buildings, inc. PPE			Jewson's MKM Crosslings Yesss Electrical
PB2022-00903	19 December 2022	To ensure continuation of service within the Borough of Darlington, benchmarking has been carried out	2 Years	£ 5,390,000.00	
		Direct Award - 2nr Adult Residential Care Placements			
PB2022-00906	19 December 2022	No suitable placements available on the Councils contracted provision	2 years	£ 694,387.00	St Cuthbert's Care
		Direct Award - Civil Engineering materials			
PB2022-00907	19 December 2022	To ensure continuation of service within the Borough of Darlington, benchmarking has been carried out	2 years + 2 x 12 month extensions	£ 1,600,000.00	MKM
		Direct Award - Home Care and Support			
PB2023-00913	16 January 2023	No suitable placements on the Councils contracted provision	4 years	£ 117,499.20	Blossom Home Care
		Direct Award - Adult Residential Care Placement			
PB2023-00914	16 January 2023	No suitable placements available on the Councils contracted provision	4 years	£ 169,842.92	The Courtyard
		Direct Award - Childrens Education Placement			
PB2023-00915	30 January 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 198,695.64	Hurworth House School
		Direct Award - Childrens Residential Placement			
PB2023-00919	13 February 2023	No suitable placements available on the Councils contracted provision	53 weeks	£ 345,745.00	Active Care - Huntercombe Group
		Direct Award - Childrens Residential Placement			
PB2023-00920	30 January 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 936,000.00	Arronbeth children's Home
		Direct Award - Provision of Residential Care for Adults and Older People and Older People with Mental Health Problems			
PB2023-00924	30 January 2023	Briefing note attached at Appendix 4	1 years	£ 16,000,000.00	Various- Residential Care Home in Darlington
		Direct Award - Adult Residential Care Placement			
PB2023-00928	13 February 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 267,999.60	Middleton Hall Retirement Village
		Direct Award - Adult Supported Living Placement			
PB2023-00931	13 February 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 144,532.08	Akari Care
		Direct Award - Adult Supported Living Placement			
PB2023-00932	13 February 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 382,081.92	Willow Green Care Home
		Direct Award - Adult Supported Living Placement			
PB2023-00948	13 March 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 217,732.48	Care Taylor Made
		Direct Award - Adult Supported Living Placement			
PB2023-00949	13 March 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 175,336.40	Care Taylor Made

		Direct Award - Childrens Education Placement			
PB2023-00951	27 February 2023	No suitable placements available on the Councils contracted provision	3 years 6 months	£ 220,772.93	Hurworth House School
		Direct Award - Recovery offer for Darlington based around supporting the recovery community to become more visible in borough			
PB2023-00956	13 March 2023	Benchmarking has been undertaken and a review of the service is required with a procurement exercise to be carried out	6 months	£ 150,000.00	Recovery Connections
		Direct Award - Sexual Health Services			
PB2023-00958	13 March 2023	Benchmarking has been undertaken and a review of the service is required with a procurement exercise to be carried out	8 Months	£ 500,000.00	CDDFT
		Direct Award - Individual Placement Support (IPS) employment support approach for people receiving structured community treatment for drug and alcohol dependence who are either unemployed or are employed but at risk of unemployment, conducted in several local authority areas.			
PB2023-00959	27 February 2023	Collaborative contract to ensure continuation of the service, benchmarking has been carried out	3 years	£ 262,784.00	Recovery Connections
		Direct Award - Adult Supported Living Placement			
PB2023-00961	13 March 2023	No suitable placements available on the Councils contracted provision	4 years	£ 304,345.32	Leonard Cheshire
		Direct Award - Adult Supported Living Placement			
PB2023-00963	13 March 2023	No suitable placements available on the Councils contracted provision	4 years	£ 254,739.36	Helping Hands
		Direct Award - Adult Supported Living Placement			
PB2023-00967	13 March 2023	No suitable placements available on the Councils contracted provision	4 Years	£ 1,191,008.00	Include in Autism
		Direct Award - Adult Supported Living Placement			
PB2023-00968	13 March 2023	No suitable placements available on the Councils contracted provision	4 years	£ 143,906.40	Bykare Services
		Direct Award - Design and build of chaldron wagons and coach for the RHQ project			
PB2023-00970	13 March 2023	Benchmarking has been carried out and the supplier is local to the Borough of Darlington	20 months	£ 370,000.00	NBR Engineering Services
		Direct Award - Provision of a volunteer driver service for social care			
PB2023-00972	13 March 2023	Only 1 suitable provider available locally to carry out the service	1+1+1	£ 147,631.15	Supportive
		Direct Award - Childrens Supported Living Placement			
PB2023-00974	13 March 2023	No suitable placements available on the Councils contracted provision	1 year	£ 202,904.00	ROC Transitions
		Direct Award - Adult Residential Care Placement			
PB2023-00975	13 March 2023	No suitable placements available on the Councils contracted provision	4 years	£ 1,548,349.44	Burbank Mews- Active Care Group
		Direct Award - Condition works to resurface the existing running track at Eastbourne Sports Complex.			
PB2023-00976	13 March 2023	Contractor is currently working on site and the appointment provides value for money, benchmarking has been carried out	4 months	£ 467,592.47	SIS UK Ltd

		Direct Award - Support to victims of domestic abuse and their children in refuges and other safe accommodation.			
PB2023-00988	13 March 2023	Benchmarking has been carried out	(3 years comprising) 2 + 1	£ 333,489.00	Harbour Support Services
		Direct Award - Adults EMI Nursing Placement			
PB2023-00990	27 March 2023	No suitable placements on the Councils contracted provision	4 years	£ 260,700.00	Mount Vale Care Home
		Direct Award - Interim accommodation for statutory homeless clients			
PB2023-00994	27 March 2023	Benchmarking has been carried out	12 months + 12 months	£ 140,000.00	Renovare Property Management Limited
		Direct Award - Provision of an Outreach Support Service for victims of Domestic Abuse			
PB2023-01010	03 April 2023	Benchmarking has been completed, for the service to continue with the contracted supplier	3 Years (2 years plus 1)	£ 353,310.00	Harbour Support Services
		Direct Award - Provision of a Consolidated Advocacy Service for Adults.			
PB2023-01011	24 April 2023	Benchmarking has been undertaken and a review of the service is required with a procurement exercise to be carried out	1 Year	£ 185,000.00	Darlington Association on Disability
		Direct Award - Specialist Pre Pool Tiling Works			
PB2023-01021	24 April 2023	Specialist contractor available in the required timeframe	11 Weeks	£ 249,769.98	P.Plunkett
		Direct Award - Foster Placement for sibling group			
PB2023-01026	24 April 2023	No suitable placements available on the Councils contracted provision	2 years	£ 263,043.04	A1 Foster Care

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Residential Care for Adults and Older People and Older People with Mental Health Needs

Procurement Board Number PB2023-00924

The agreement has been in place since 1st April 2013 and sets out the Council's requirements for the provision of residential care for adults and older people and older people with mental health needs in Darlington. The agreement will expire on the 31st March 2023.

All CQC registered care homes for older people and older people with mental health needs in Darlington can be included in the Agreement and 19 of the 20 registered care homes in these categories have currently elected to be so.

The home that did not elect to be included did not wish to accept the contract terms. Should this home reconsider its position, it would be able to join the agreement on the same terms as the other providers.

The number of registered beds across the 19 homes that is available to the Council is 891 with current occupancy rates sitting at 85.63%. This includes beds commissioned by other Local Authorities, health funded and privately funded individuals

Procurement and Legal advised a further award without going out to the market has a low risk of a challenge to the process, as all current and any new care homes in Darlington are able to join the agreement. The specification has been reviewed and updated and should any further changes be required, these can be progressed through engagement with providers at any point in the contract term.

Commissioning

1st February 2023

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CABINET
13 JUNE 2023

REPRESENTATION ON OTHER BODIES 2023/24

Responsible Cabinet Member
Councillor Stephen Harker, Leader of the Council

Responsible Director
Elizabeth Davison, Group Director of Operations

SUMMARY REPORT

Purpose of the Report

1. To consider this Council's representation on other bodies for the 2023/24 Municipal Year, to which Cabinet appoints.

Recommendation

2. It is recommended that the appointments to the other bodies, as detailed in paragraph 6 of the main report, for the 2023/24 Municipal Year, be approved.

Reasons

3. The recommendation is supported to comply with the nominations received from the Political Groups.

Elizabeth Davison
Group Director of Operations

Background Papers

No background papers were used in the preparation of this report.

Lynne Wood : Extension 5803

S17 Crime and Disorder	The report contributes to the prevention of crime and disorder, in a number of ways, through the involvement of local elected representatives in a number of outside bodies.
Health and Well Being	The appointment of local elected representatives to various outside bodies will enable the health and well-being of the people of the Borough to be highlighted through the work, policies and decisions of those bodies.
Carbon Impact and Climate Change	The appointment of local elected representatives to a range of key local and national bodies, will enable carbon impact and climate change to be considered in the development of policies and other decisions through those bodies.
Diversity	The report contributes to diversity in a number of ways through the involvement of local elected representatives on a range of key local and national bodies, and the development of policies and other decisions through those bodies.
Wards Affected	This report does not immediately affect any wards within the Borough.
Groups Affected	This report does not have any impact on any particular parts of the community.
Budget and Policy Framework	This report does not recommend a change to the Council's budget or policy framework.
Key Decision	This is a not a key decision.
Urgent Decision	This is not an urgent decision.
Council Plan	The report contributes to the delivery of the objectives of the Council Plan in a number of ways through the involvement of local elected representatives on a range of key local and national bodies, and the development of policies and other decisions through those bodies.
Efficiency	There are no direct efficiencies to the Council from the information contained within this report. There is cost to the Council in attendance to meetings of bodies outside Darlington.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers.

MAIN REPORT

Information and Analysis

4. Listed below are details of nominations made to other bodies which have, for ease of reference, been listed in alphabetical order.
5. In accordance with this Council's Constitution, a number of appointments will / have been made by Annual Council, and listed below are those appointments to be made by Cabinet.
6. The details show nominations received from the Labour, Conservative, Green and Liberal Democrat Groups for the 2023/24 Municipal Year.

Name of Body or Organisation	Labour Group Nomination(s)	Conservative, Green and Liberal Democrat Group Nomination(s)
Association of Rail North Partnership Authorities		
Rail North Ltd.	Councillor Harker (Leader of the Council) (as named substitute for the TVCAM)	
Rail North Committee	Councillor Harker (Leader of the Council)	
East Coast Mainline Authorities Group	Councillor Harker (Leader of the Council)	
County Durham and Darlington Foundation Trust – Board of Governors	Councillor Kane	-
Creative Darlington	Councillor McCollom (Cabinet Member with Local Services Portfolio) and Chair of Communities and Local Services Scrutiny Committee as named substitute	
Crown Street Library Trustee Board	Councillor Harker (Leader of the Council)	
Darlington Cares	Councillor McEwan	
Darlington Railway Museum Trust	Councillor McCollom (Cabinet Member with Local Services Portfolio)	-

Name of Body or Organisation	Labour Group Nomination(s)	Conservative, Green and Liberal Democrat Group Nomination(s)
Darlington Town Centre Deal Board	Councillor Harker (Leader of the Council)	
Durham County Pension Fund Committee	Councillor Porter (Cabinet Member with Resources Portfolio) and Chair of Economy and Resources Scrutiny Committee	-
Family Help Organisation	Councillors Ali, Crumbie, Kane	
Fostering Panel	Councillor Baker	
Maidendale Nature and Fishing Reserve (Associate Member)	Councillor Dillon (Ward Member)	
North East Ambulance Service	Councillor (Chair of Health and Well Being Board)	
North East Child Poverty Commission	Councillor Wallis (Cabinet Member with Children and Young People Portfolio)	
North East Regional Employers Organisation	Councillor Porter (Cabinet Member with Resources Portfolio), Chair of Economy and Resources Scrutiny Committee and Vice Chair of Economy and Resources Scrutiny Committee	-
Executive Committee	Councillor Porter (Cabinet Member with Resources Portfolio)	-
North East Strategic Migration Partnership	Councillor Wallis (Cabinet Member with the Children and Young People Portfolio) (Councillor Harker (Leader of the Council as named substitute))	-
Northern Housing Consortium	Councillor Roche (Cabinet Member with Health and Housing Portfolio)	-
Northumbrian Regional Flood and Coastal Committee	One Vacancy	

Name of Body or Organisation	Labour Group Nomination(s)	Conservative, Green and Liberal Democrat Group Nomination(s)
Poor Moor Fund/Charity	Councillor Porter (Cabinet Member with Economy Portfolio)	
RELATE North East	Councillor McCollom, Councillor Mahmud	
Teesside International Airport Limited - Board	Councillor Garner (to be appointed as Director) (Councillor McEwan named substitute Director)	-
Teesside International Airport Limited - Consultative Committee	Councillor McCollom (Cabinet Member with Local Services Portfolio)	-
Tees Valley Local Access Forum	Chair of Communities and Local Services Scrutiny Committee	-
Tidy North Regional Consultative Committee	Councillor McCollom (Cabinet Member with Local Services Portfolio)	-

Outcome of Consultation

7. No consultation, other than with the political groups, was undertaken on the contents of this report.

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CABINET
13 JUNE 2023

INTRODUCTION OF THE HOUSING AND PLANNING ACT 2016 AND THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

Responsible Cabinet Member -
Councillor Dr Amanda Riley, Stronger Communities Portfolio

Responsible Director -
Dave Winstanley, Group Director of Services

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to seek approval for powers to impose a civil penalty up to £30k under the Housing and Planning Act 2016 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 to be adopted as an additional means of enforcement to improve standards in the private rented housing sector, where private sector landlords do not take steps to improve standards.
2. To reflect these changes the 'The Private Sector Housing Enforcement Policy' has been updated (**Appendix 1**).

Summary

3. Around 19 per cent of households in Darlington are in the private rented sector, the majority of which are well managed and provide safe and suitable housing for the occupiers. However, where they are not managed well there is a need for the Council to intervene.

Civil Penalties Enforcement Policy and Guidance note

4. The Housing and Planning Act 2016, referred to as "the 2016 Act" was introduced to help tackle rogue landlords and to improve the private rental sector. From April 2017, local housing authorities have had the power to issue civil financial penalties as an alternative to prosecuting landlords for failures under the Housing Act 2004. This action offers a more effective approach and enables a quicker resolution.
5. To enable the Council to introduce the powers, a policy has been developed (**Appendix 2**). This utilises best practice from other local authorities. The 'Civil Penalties Enforcement Policy and Guidance: Housing and Planning Act 2016' is referred to in this document as the "Civil Penalties Enforcement Policy and Guidance note"

Electrical Safety Policy

7. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, referred to in this report as “the Regulations”, are designed to reduce the effects of electrical hazards in rented properties. The regulations require Electrical Safety Condition reports to be carried out before any new tenancy is granted, affecting new tenancies and renewals since 1 July 2020 and all existing tenancies since April 2021.
8. The Regulations establish a minimum standard of electrical safety so that privately rented properties do not have serious defects that have been identified as C1 or C2¹. It now allows local authorities to issue a Notice of the Intention to impose a Civil Penalty of up to a maximum of £30,000. The aim of this policy is to improve standards of domestic rented properties.
6. To enable the Council to introduce the powers, a policy has been developed (**Appendix 3**). This utilises best practice from other local authorities. The ‘Civil Penalties Enforcement Policy & Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020’ is referred to in this document as the “Electrical Safety Policy”

Recommendations

9. It is recommended that: -
 - (a) Cabinet approves the use of the Housing and Planning Act as an additional means of enforcement to improve standards in the private rented housing sector.
 - (b) Cabinet approves the use of new enforcement powers contained within the Housing Act 2004 as amended by the Housing and Planning Act 2016 and approve the following:
 - (i) amendments to ‘The Private Sector Housing Enforcement Policy’ to reflect these new powers (Appendix 1), and
 - (ii) a new ‘Civil Penalties Enforcement Policy and Guidance: Housing and Planning Act 2016’ (Appendix 2) that has been produced to detail how the Council will use the new powers and the level of penalties, and

¹ When an inspection is carried out on the installation, the electrician will issue an Electrical Installation Condition Report (EICR), which will highlight any electrical hazards that need to be addressed. The classification codes on the report are:

C1	- Danger present, risk of injury (immediate remedial action required)
C2	- Potentially dangerous (urgent remedial action required)
C3	- Improvement recommended
FI	- Further investigation required without delay

- (iii) a new 'Civil Penalties Enforcement Policy and Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020' (Appendix 3) that has been produced to detail how the Council will use the new powers and the level of penalties.
- (c) Cabinet delegates to the Assistant Director of Community Services, in consultation with the Portfolio Holder for Stronger Communities and the Assistant Director of Governance and Law, authority to develop, implement and further amend the Council's detailed Policy and Procedure in respect of the imposition of Civil Penalties, such policy to be in accordance with Schedule 13A of the Housing Act 2004, and any other any guidance issued by the Secretary of State.

Reasons

10. The recommendations are supported by the following reasons:

- (a) To have a positive impact on the private rented housing sector by bringing about a change in landlord behaviour where necessary and where the current enforcement powers available are not as effective.
- (b) The recommendation is supported to improve the standards of domestic private rented properties; ensuring homes are of a certain standard.
- (c) The adoption of the new powers should mean that landlords comply more quickly and/or proactively in order to avoid financial and other penalties, which should result in fewer private tenants being exposed to housing conditions that have an adverse health impact.
- (d) Enable more effective and efficient action to be taken to address contraventions that impact negatively on tenants.

Dave Winstanley
Group Director of Services

Background Papers

Regulations

- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
<https://www.legislation.gov.uk/uksi/2020/312/contents/made>

Guidance

- Statutory guidance - Rent repayment orders under the Housing and Planning Act 2016
<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>
- Statutory guidance - Civil penalties under the Housing and Planning Act 2016
<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>
- Guide for landlords: electrical safety standards in the private rented sector
[Guide for landlords: electrical safety standards in the private rented sector - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/guide-for-landlords-electrical-safety-standards-in-the-private-rented-sector)
- Guide for local authorities: electrical safety standards in the private rented sector
[Guide for local authorities: electrical safety standards in the private rented sector - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector)

Christine Booth: Ext 6445

S17 Crime and Disorder	There will be a positive effect on crime and disorder as a result of this report including reducing behaviour adversely affecting the local environment.
Health and Wellbeing	The health and wellbeing of residents living in properties where positive enforcement action is taken will benefit from this project.
Carbon Impact and Climate Change	There are no direct environmental impacts from this proposal, but an indirect effect of the effective enforcement of minimum housing standards will be to cause landlords and agents to improve the energy efficiency of houses in the private rented sector. No mitigation measures will be necessary.
Diversity	There are no implications as a result of this report.
Wards Affected	All Wards have the potential to benefit from this scheme.
Groups Affected	Most vulnerable and low-income families have the potential to benefit from this project.
Budget and Policy Framework	There is no impact on the Council's Budget or Policy Framework.
Key Decision	Yes
Urgent Decision	No
Council Plan	Will have a positive impact on the Council Plan objectives
Efficiency	There is no impact on the Council's Efficiency agenda.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers. Those in the private rented sector will benefit.

MAIN REPORT

Information and Analysis

12. Around 19 per cent of households in Darlington are in the private rented sector, the majority of which are well managed and provide safe and suitable housing for the occupiers.
13. Non-compliance with Housing Act notices, regulations and licensing requirements can result in the local housing authority prosecuting the offender.
14. Powers to serve Civil Penalty Notices (CPN) and to apply for Rent Repayment Orders (RROs) under the 2016 Act came into force on the 6 April 2017. The government's statutory guidance for Councils on the powers were published the same day the powers came into force. The Council must have regard to this guidance in relation to the use of CPNs and RROs.
15. Section 126 and Schedule 9 of the Housing and Planning Act 2016 allows a civil penalty to be imposed by the local housing authority for offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
16. The powers to serve CPNs and apply for RROs are in addition to existing powers the Council has when taking formal action and will provide a range of enforcement options, which officers are currently using over and above those. Members of the Private Sector Housing Team have recently received additional enforcement training to be able to utilise these powers.
17. The details of the powers and duties now available to the Council, are set out in detail in the appendices.

Civil Penalty Notices (CPNs)

18. The Council can, as an alternative to prosecution, serve a CPN of up to £30,000 per offence on a landlord or agent where it can prove beyond reasonable doubt certain offences have been committed.
19. The new powers will enable the Council to serve notices that have Civil Penalties in respect of numerous contraventions detailed in the main report and Appendix 2.
 - (a) Failure to comply with an Improvement Notice
 - (b) Failure to licence or be licensed in respect of Houses in Multiple Occupation (HMOs)
 - (c) Failure to licence or be licensed in respect of the Landlords Selective Licensing Scheme
 - (d) Failure to comply with licensing conditions
 - (e) Failure to comply with an Overcrowding Notice

- (f) Failure to comply with a regulation in respect of an HMO
 - (g) Breaching a Banning Order
20. Once the decision to make a CPN has been made an interim notice is served which the landlord or agent has an opportunity to make representations on. The Council must take into account any representation made before deciding whether or not to serve the final CPN and the amount of any penalty.
 21. There is a statutory right to appeal the notice to the First-tier Tribunal (Property Chamber) Residential Property (there is a cost associated with this action).
 22. The statutory government guidance on CPNs states it expects Councils to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. The existing policies and new policies have been drafted for approval (Appendices 2 and 3).
 23. Under the 2016 Act the council can also serve a financial penalty notice of up to a maximum of £30,000 where it can prove beyond reasonable doubt offences of failing to:
 - (a) License a property or meet licence conditions or occupancy requirements.
 - (b) To comply with overcrowding or improvement notices.
 - (c) Meet the requirements of the management regulations for houses in multiple occupation.
 24. Civil Penalties can be used where a breach is serious and the Council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.
 25. That the Council will have regard to the requirements of the statutory guidance and will publish its own separate guidance on deciding how much a CPN will be in each case, as identified in the appendices to this report.

Rent Repayment Orders (RROs)

26. A Rent Repayment Order (RRO) is a legal order that allows a tenant or local authority to reclaim rent or housing benefit from a landlord who rents out an unlicensed property, such as a house in multiple occupation (HMO).
27. The Council has a duty to consider making an RRO when it becomes aware of certain specified offences. The Council has a power to apply for an RRO where it can prove beyond reasonable doubt that certain other offences have been committed.
28. Tribunals can order landlords to repay up to 12 months' rent. The Council may also assist tenants to make applications themselves.
29. An RRO can be applied for in addition to prosecuting a landlord or serving a CPN.

30. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).
31. Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12-months' rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property.
32. The relevant offences are:
 - (a) Violence for securing entry
 - (b) Illegal eviction or harassment of occupiers
 - (c) Failure to comply with an improvement notice or prohibition
 - (d) Failure to license a property which requires a licence
 - (e) For breach of a banning order
33. Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The Council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.
34. When deciding whether or not to apply for an RRO the Council's proposed policy is to:
 - (a) Treat each case on its own merits
 - (b) Ensure that applying for an RRO would meet the enforcement objectives in the Enforcement policy
 - (c) Consider the impact of the breach on the occupier or others affected by the offence committed
 - (d) Consider the likelihood of the application being successful
 - (e) The level of resources it will take to make a successful application
 - (f) Whether it is more appropriate for the tenant to apply for the order themselves
35. The Council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled 'Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities'.

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

36. The Housing and Planning Act 2016, introduced a range of measures to crack down on rogue landlords. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 further enhance these measures.
37. Councils have a statutory duty to enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. (See 'background papers' for access to a copy of the relevant Regulations).
38. Subject to relevant exemptions, these regulations introduce measures that are intended to be implemented by Private Sector Landlords.
39. Since 1 July 2020, for all new tenancies:
 - (a) Landlords are required to provide their tenants with electrical safety reports: in the case of new tenants, before they move in; to existing tenants within 28 days of receiving it; and to any prospective tenant within 28 days of their request to view the report;
 - (b) The Council has the power to demand sight of the report and the landlord must provide this within 7 days of the request. Failure to do so could result in a penalty charge;
 - (c) If the Council has reasonable grounds to believe that the landlord is in breach of the Regulations, it also has the power to serve a remedial notice on the landlord to compel them to comply with the Regulations;
 - (d) Landlords have 28 days to remedy the breach, and if the work is not carried out in time, then the Council has the power to carry out the required works themselves (on providing prior written notice to the landlord) and recover their costs from the landlord;
 - (e) Landlords failing to provide tenants with an electrical safety report at the start of their tenancies will be in breach of the regulations and may face a civil penalty of up to a maximum of £30,000, with the potential for multiple penalties to be imposed for a continuing failure.
40. Since 1 April 2021, these requirements were extended to all existing tenancies and require Landlords to ensure that the fixed electrical installations in their properties are inspected and tested at least every 5 years by a competent electrician.
41. Darlington Borough Council are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. The Council's Private Sector Housing section undertakes housing enforcement in the private rented sector and would enforce these regulations. Checks are made for each reactive service request received. This will be expanded to proactive checks being made possible by the anticipated introduction of a Privately Rented Property Portal by the Renters (Reform) bill.

42. To undertake this enforcement action, the Council will publish the 'Civil Penalties Enforcement Policy & Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020: (Appendix 3). This sets out the policy for how the Council will undertake the enforcement duties and arrive at decisions, ensuring they are fair and accountable.
43. The aim of adopting the Electrical Safety Policy is to increase the range of measures open to the Council, in tackling non-compliant landlords and to increase the Council's capacity to undertake enforcement where there is clear evidence that contraventions have been committed.

Authorisation of Officers

44. The 2016 Act powers and the amendments made to the Housing Act 2004 provides the power to make CPNs and to apply for RROs to the Local Housing Authority.
45. Darlington Borough Council therefore has the power to approve the policy changes proposed and to authorise officers in Private Housing to use these powers. An updated scheme of officer authorisations will be given to the Assistant Director of Community Services for approval.

Financial Implications

46. There will be additional costs in processing the civil penalty paperwork for each piece of legislation, responding to any representations and then defending appeals. It is anticipated that any additional costs will be met through the additional income generated through levying civil penalties as an alternative to prosecution proceedings.
47. The statutory guidance for the 2016 Act states: "Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations."
48. Any amount recovered under a rent repayment order which meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector must be paid into the Consolidated Fund.
49. Where applied it is anticipated that the Council will be subject to significant number of appeals to tribunals as a result in using these powers. A robust policy is important to assist us at Tribunal. Where decisions are confirmed by a first-tier tribunal there is a right of appeal to an Upper Tribunal.
50. Once any appeal avenue is exhausted the Council can use legal powers to recover unpaid debts from these civil penalties and Private Sector Housing Team will work closely with colleagues in Debt Recovery and Legal Services to do so.

51. It is difficult to be precise as to our ability to levy civil penalties as this will obviously be dependent on the level of compliance by landlords. Since 2016 there have been five successful prosecutions, if 80% of those switched to civil penalties then the gross income would be at least £20,000 (based on four civil penalties at £5,000). However, some landlords are likely to comply upon being given the first notice of intention to issue a penalty, which would reduce this figure.

Legal Implications

52. Section 126 of the 2016 Act allows financial penalties to be imposed as an alternative to prosecution for certain offences as set in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution.
53. The 2016 Act also introduces a number of other steps that may be taken by the Council to tackling landlords who do not comply with the law and improving the private rental sector.
54. The proposed amendments to the Council's Private Sector Housing Enforcement Policy and the new proposed policy on financial penalties are compliant with the relevant legislative changes and statutory guidance to which the Council must have regard.

Consultation

55. There is no requirement for the Council to consult regarding the adoption of the powers and obligations set out in the Housing and Planning Act 2016 or the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.



DARLINGTON
Borough Council

Private Sector Housing Enforcement Policy 2023



Community Safety
Private Sector Housing

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1 Foreword

- 1.1 The Private Sector Housing team sets out to maintain and improve the housing conditions in privately owned property in Darlington. This policy sets out the service's transparent approach to enforcement so that people understand how they will be dealt with by Private Sector Housing and its officers.
- 1.2 The Private Sector Housing's functions are aimed at improving and maintaining housing standards in Private Sector Housing across Darlington. The Private Sector Housing Team's usual approach is to give informal advice, assistance and information. Where this approach fails or it is necessary to meet its enforcement objectives, the service will take the necessary enforcement action.
- 1.3 Enforcement is particularly relevant to the private rented sector in Darlington, where we aim to ensure compliance with regulatory requirements. These currently include the licensing of houses in multiple occupation (HMOs), enforcement of the housing health and safety rating system (HHSRS), and public health issues. More recently it includes a focus on improving the professionalism of residential lettings and managing agents.
- 1.4 This policy promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens on businesses.
- 1.5 This policy is in accordance with Darlington Borough Council's Regulatory Services Enforcement Policy.
- 1.6 Any new legislation which comes into force relating to standards and management in privately owned housing which is undertaken by the Private Sector Housing Service will also fall within the general principles of this policy.

2 Aims of Policy

- 2.1 The aims of the policy are to:
 - set out the legal requirements, policies, principles and priorities that the Private Sector Housing Team will follow when enforcing legislation;
 - help provide safer and healthier Private Sector Housing;
 - increase public confidence in the quality and management of accommodation leading to a vibrant private rented sector in Darlington;
 - raise the profile and demonstrate the transparency of enforcement in the private rented sector.
 - improve the energy efficiency of private rented sector accommodation.

3 What is Enforcement Action?

- 3.1 Enforcement means an action carried out in exercise of or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, application for a rent repayment order or the issue of civil penalty notice.
- 3.2 It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation or to give advice to help comply with the law.

Enforcement Objectives

- 3.3 The Private Sector Housing Service primarily covers all privately owned residential accommodation. In normal circumstances enforcement action will be carried out with the objectives to ensure that:
- the Private Sector Housing Service meets the Council's statutory duties which it is responsible for or to carry out the powers it has adopted.
 - symptoms arising from empty homes are tackled to ensure the amenity of the area is not affected, the property is safe and secure and not causing a statutory nuisance;
 - tenants of a private landlord or a Registered Provider of Social Housing (RP) live in homes free of actionable hazards which affect their health and safety;
 - privately rented houses, including Houses in Multiple Occupation (HMOs), are managed in accordance with any relevant statutory regulations or other legal requirements.
 - all licensable rented properties are licensed and licence conditions are met;
 - where required privately rented accommodation meets minimum energy efficiency ratings and that Energy Performance certificates are provided.
 - letting professionals meet the legal requirements that apply to their business such as; to register with a Government Redress scheme; to advertise fees appropriately; and to comply with any other legislation that regulates services they provide.
- 3.4 This Enforcement Policy sets out general principles of good enforcement practice that should be followed by the Private Sector Housing Team. It follows the "Principles of good regulation" set out in the Legislative and Regulatory Reform Act 2006:
- regulatory activities should be carried out in a way which are transparent, accountable, proportionate and consistent;
 - regulatory activities should be targeted only at cases in which action is needed.

Targeting Enforcement Action

3.5 To ensure that we meet our policy and enforcement objectives effectively we will have regard to the principle that our formal enforcement activity should be targeted only at cases in which action is needed. These are some examples of how we may target action – this is not an exhaustive list.

3.6 Property type or occupation -

- empty properties - door to door surveys, Council Tax information or by our empty property priority system;
- Landlords whose tenants receive Local Housing Allowance/Universal credit.
- Properties of a low rental value - the standards in these properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers;
- Unlicensed properties;
- Poorly managed privately rented properties or those with anti-social behaviour linked to them.
- Construction type - where there is a problem with a particular method of construction, for example precast reinforced concrete (PRC) properties;
- Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC).

3.7 Areas

- Where there are particular problems in a specific locality. This can be on a street by street basis or an area of Darlington;
- Where an area of Darlington is identified as having adverse health or socioeconomic indicators;
- To provide a co-ordinated approach alongside other initiatives; for example, the Northgate initiative.

3.8 Individuals

Where a landlord, lettings professional, agent, individual or organisation('s):

- Persistently fails to manage privately rented accommodation in accordance with legal requirements;
- Repeatedly fails to comply with informal or formal requests to meet minimum legal requirements or commits offences under Private Sector Housing related legislation;
- Persistently fails to submit a valid licence application or meet licensing standards;
- Places tenants in overcrowded accommodation;
- Failure to register with a government approved Redress scheme;

3.9 In addition under the Housing and Planning Act 2016 where the individual is:

- on the government database of rogue landlords and agents;
- has a rent repayment order against them; or
- is subject to a banning order or a management order.

3.10 To ensure that there are checks and balances in our enforcement approach any targeted action will need to be agreed with a Private Sector Housing Manager before it is undertaken.

4 Licensing of Private Rented Sector properties

Mandatory HMO licensing

4.1 A Mandatory licence is currently required for HMOs with five or more occupiers living in two or more households sharing facilities.

Operating an unlicensed property

4.2 Systematic surveys using available relevant information held by the Council will be carried out to identify unlicensed properties.

4.3 We will consider any representations regarding exceptional circumstances that may have resulted in the application not being made. In other circumstances the Council will carry out an investigation and if appropriate consider taking formal action.

4.4 If a landlord has approached the Council for a licence an informal approach will be adopted so long as a valid application with the appropriate fee is subsequently duly made within 28 days.
Landlords who fail to reapply for a licence in properties that require a renewal of their licence or fail to provide the required information or the appropriate fee within 28 days may also be investigated for failing to licence a licensable property.

4.5 Fines for failure to license a property are unlimited. Where landlords have been convicted of the offence of operating an unlicensed property the Council may use Rent Repayment Orders to claim back any Housing Benefit or equivalent paid whilst the property was unlicensed. We may also provide tenants with information and advice on how and when they can apply to The First Tier Tribunal Service to claim back the rent they paid whilst the property was unlicensed.

4.6 Under the Housing and Planning Act 2016 (The 2016 Act) the council can also serve a civil penalty notice of up to a maximum of £30,000 for failure to licence a property.

Duration of Licences

- 4.7 Licences will normally be granted for the full five-year period. We may reduce the length of the licence from five years to an appropriate lesser period:
- to remove any advantage over those licence holders who applied at the appropriate time; or
 - where the property has not previously been satisfactorily managed; or
 - where we are concerned the proposed management arrangements may not be satisfactory.
 - There are Development Control (Planning), Building Control (Building Regulations) or Fire Safety requirements that have not been met.

Fit and Proper Person Policy

- 4.8 In granting a licence the Council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are fit and proper persons. A person's fit and proper status may be reviewed at any time if circumstances change. A finding that the person does not satisfy this standard may result in refusal of an application or revocation of existing licence(s).

Breach of licence requirements

- 4.9 Licences issued for rented properties include requirements on the number of persons or households that are permitted to occupy a property as well as licence conditions. Licence conditions may require works with regard to the physical condition of the property or in relation to the management of the property.
- 4.10 Knowingly permitting the over occupation of a licenced property or failing to meet licence condition(s) without reasonable excuse are a criminal offence(s).
- 4.11 The 2016 Act introduced civil penalty notices of up to £30,000 which the Council can serve on individuals as an alternative to prosecution.

Revocation of licences

- 4.12 Revoking a property licence under the Housing Act 2004 may be taken under the following circumstances:
- breach(es) of licence condition(s);
 - where the licence holder and/or manager are no longer considered to be Fit and Proper person(s) by agreement.
 - where there is a banning order on the licence holder.

5 Regulation of residential lettings and management professionals

- 5.1 In addition to having legal responsibilities in relation to the management of properties which are privately rented, business's letting and managing residential property are required to comply with a number of other legal requirements, some of which are regulated by the Council's Private Sector Housing Team.

6 Empty Properties

- 6.1 We recognise that some areas of the Borough suffer from higher levels of empty properties and housing need. The Private Sector Housing Team systematically identifies long term empty properties and will work with the owner to bring back into use.

The empty property policy statement sets out the detail of our priorities in this area:

- As the overall aim is to provide more accommodation of the type required in Darlington we will take action on empty properties within a procedure that could ultimately lead to bringing a property back into use.
- Action will be tailored to match housing need, nuisance issues and length of time the property has been empty;
- Where necessary, we will take enforcement action to deal with the symptoms that arise when a property is left empty.

7 Overcrowding

- 7.1 We will investigate complaints from private rented sector tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where overcrowded conditions are legitimately impacting on a neighbours' health, safety or welfare.
- 7.2 We will liaise with the Council's Housing Options Team where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.
- 7.3 When deciding on the most appropriate course of action each case will be judged on its own merits.
- 7.4 We may serve overcrowding notices in relation to HMOs if having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be, accommodated in the property.
- 7.5 Under the 2016 Act the council can serve a civil penalty notice of up to £30,000 on a person failing to comply with an overcrowding notice.

8 Providing Assistance, Information and Education

- 8.1 We start from the position of working with our service users to help them comply with their regulatory requirements. This is an efficient way of meeting our objectives. We will provide clear, accessible advice and guidance and provide contact details where further information is required. Information is provided in a range of formats such as leaflets and information on the Darlington Borough Council Website.

9 Enforcement Action

- 9.1 Where assistance, information and education has failed to ensure compliance with a statutory requirement or failed to ensure compliance with requirements made through use of our discretionary powers enforcement action may be taken. Enforcement actions include no action, informal action and formal action.

9.2 No action

In certain circumstances it may be appropriate to take no action. For example:

- When we decide that the health and safety risk is sufficiently low enough;
- Where there are extenuating circumstances regarding the person against whom we would take action on;
- Where taking legal action would be disproportionate or inappropriate taking into account the circumstances of the case.
- Where the tenant does not want us to take action and we consider it is appropriate not to take action in the circumstances.
- We may however make recommendations which are above the legal minimum requirements, advise if there are legal avenues open to persons to resolve the issues themselves or refer to another appropriate regulator or advice service.

9.3 Informal Action

In most cases, officers will endeavour to seek the desired improvements or protection of the public's health and safety in relation to Private Sector Housing by working initially on an informal basis with those involved.

Informal action may take a variety of forms, for example:

- verbal requests;
- letters or e-mails;
- schedules of work.

The advice will make clear what is expected to be done to meet a legal requirement and what is a recommendation which does not legally require action. It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

However, where the circumstances of the case justify it, officers will be expected to take a formal approach in the first instance. Formal action will also be taken where compliance with a statutory requirement has not been achieved by informal action.

9.4 Formal Action

Circumstances where it may be appropriate to take formal legal action include where for example:

- There is an actionable hazard which puts at risk a person's health and safety due to identified Category One Hazards:
 - risk of a fall leading to serious injury
 - no heating and or lack of insulation in cold weather;
 - the Energy Performance Certificate is not to the required standard;
 - no hot water to wash and prepare food safely;
 - exposure to damaged asbestos insulation board which means occupiers are likely to inhale or ingest asbestos fibres;
 - exposed live electrical wiring which people are likely to make contact with.
- there are a multiple hazards creating a more serious situation or there is an overall lack of repair or maintenance of a property resulting in it being run down.
- there is a hazard which presents risk serious of injury to someone occupying or visiting the property.
- a person refuses to or is likely not to carry out the works informally;
- there is history of failure to meet requests to carry out legally required works;
- there is history of a failure to manage a property in line with legal requirements;
- there is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management);
- it is necessary to safeguard and protect health and safety in the future;
- it is necessary to bring an empty property back into use when informal requests to do so have failed.
- A letting or managing agent has failed to meet legal requirements for instance but not exclusively in relation to requirements to be members of an appropriate redress scheme.

Under the 2016 Act;

- an individual is subject to a Banning Order
- on the database of rogue landlord and agents

The above is not intended to be an exhaustive list. Each case will be considered on its individual merits.

In an emergency, or where non-compliance has been previously encountered, an officer may decide it is more appropriate to take formal action first without giving an opportunity to resolve the issue informally, we would expect that the officer explains to the person concerned why formal action is being taken.

There are a number of options for formal action. The decision as to which is the most appropriate will depend on the circumstances of the case, the relevant legislation, the risk to health and safety and tests relevant to each option.

The options include:

- service of formal notice or order;
- emergency action;
- a penalty charge notice;
- simple caution;
- civil penalty notice;
- prosecution;
- work in default;
- revocation or refusal of a licence;
- management order;
- banning order;
- rent repayment order;
- obtain a warrant to enter;
- requiring the production of information, documents or other materials.

9.5 Service of formal notices or orders

Notices and orders will be served in accordance with the requirements of the relevant legislation. The person on whom the notice or order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are legally required, representations that may be made, relevant appeal periods, details of any charges (see below) and the consequences of noncompliance. Contact details will be provided so that the detail and requirements of the notice can be explained.

9.6 Emergency Action

In emergency situations where it is not possible to contact the relevant person and gain their co-operation, enforcement action may be taken immediately without notice, for example:

- where there is an imminent risk of serious harm to the health or safety of occupiers or others (Emergency Remedial Action under the Housing Act 2004);
- where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health (subject to the provisions of The Local Government (Miscellaneous Provisions) Act 1982.

9.7 Civil Penalty Charges

Certain legislation enables the Council to serve a Financial Penalty Notice. Failure to pay a civil penalty may result in the Council bringing prosecution proceedings or in the recovery of the charge as a debt through courts action.

Private Sector Housing is responsible for enforcing the following requirements which can be subject to a civil penalty:

- Failure to comply with a notice requiring the provision of a smoke or carbon monoxide detector (£5000 maximum).
- From 1st April 2018, failure to comply with new energy efficiency requirements for rented properties (£5000 maximum).
- From 1st July 2020, failure to comply with the new electrical safety requirements to rented properties (£30,000 maximum).
- Failure to be a member of a Government approved residential lettings or management redress scheme when required to do so. Government guidance states that the expectation is that for this contravention, a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the Council is satisfied that there are extenuating circumstances. It will be up to the Council to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a penalty.

The Council may issue more specific guidance in relation to these contraventions which will be made available on our website. Each case will be considered on its own merits and the relevant statutory appeal rights are provided with any notice served. See also civil penalties in the section below.

9.8 Simple Caution

Simple Cautions may be appropriate where someone has admitted to an offence, or where it is their first offence of this type or they have assisted officers in remedying the situation that led to the offence. For example applying for a licence as soon as they are able or quickly complying with the requirements of a notice. Simple Cautions warn people that their behaviour has been unlawful and makes them aware of the legal consequences should they commit further offences.

9.9 Prosecution

Recommending a case for prosecution is a serious step. Officers will carry out an investigation into any suspected offences to collect evidence, to establish if a statutory defence is available and reasons why the case may or may not be in the public interest to pursue further.

9.10 Civil Penalty Notices in the Housing and Planning Act 2016

The 2016 Act gives the council the power to issue a civil penalty can be considered as an alternative to prosecution for any of the following offences under the 2004 Act:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of HMOs (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Contravention of an overcrowding notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234).

The decision when to prosecute, agree a simple caution or when to issue a civil penalty will made on a case-by-case basis in line with this policy and the other guidance referred to.

Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

The government have issued statutory guidance to councils on the use of Civil Penalty notices under the 2016 Act. The council has also published its own policy (link to policy when published) on how it will decide on the level of financial penalty which is in accordance with the government guidance.

9.11 Fines Recovery of Costs and Proceeds of Crime

The upper limit for fines in the magistrates' court has been removed, this means if found guilty of an offence the court there is no maximum fine.

In some cases, the Council can apply to court to recover rent from a landlord if a property has been let illegally.

Officers will provide Legal Services with all the relevant information to enable the recovery of costs to be sought at Court. Any costs application made is likely to include the time officers have spent investigating a case and the legal costs involved.

10 Retaliatory Eviction

- 10.1 The Deregulation Act 2015, provides tenants protection from eviction in retaliation for making a complaint in relation to health and safety issues in their home. The protection only applies in certain circumstances please see link for further guidance.

- 10.2 The circumstances require that a relevant formal legal notice has been served under the Housing Act 2004. Private Sector Housing will only serve the relevant formal legal notices in line with this policy.

11 Publicising prosecutions

- 11.1 Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The Council will publicise sentences following prosecution on a case by case basis.

12 Work in Default

- 12.1 Where the Council has legally required to be completed, powers are available to carry out works in their default. The powers are provided in the legislation being used in relation to specific case.
- 12.2 In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once we have started works it is an offence for that person to obstruct us or any of the contractors that have been employed to carry out the works.
- 12.3 The complete cost of the works and all costs will be recovered in accordance with the relevant statutory provisions.
- 12.4 It should be noted that carrying out works in default does not prevent prosecution or civil penalty which may also be appropriate.

13 Rent Repayment Orders

- 13.1 Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12-months' rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property. The relevant offences are:
- Violence for securing entry
 - Illegal eviction or harassment of occupiers
 - Failure to comply with an improvement notice or prohibition order
 - Failure to licence a property which requires a licence
 - For breach of a banning order
- 13.2 Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.

When deciding whether or not to apply for an RRO the Council's policy is to:

- Treat each case on its own merits
- Ensure that applying for an RRO would meet the enforcement objectives in this policy
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- The level of resources it will take to make a successful application
- Whether it is more appropriate for the tenant to apply for the order themselves.

13.3 The council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities.

14 Charging for Enforcement Action

14.1 The Housing Act 2004 allows councils to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Other legislation also allows the recovery of costs covering officers' time and expenses accrued when determining works necessary in the case of works in default.

14.2 The Private Sector Housing Team is likely to seek to recover all costs and fees when formal action is taken, when we think it is reasonable to expect the owner or person required to carry out works.

14.3 The full costs of all officers' time, including overheads and any relevant expenses, will be charged. In some cases we may force the sale of a property to recover our cost. We will only do so if we have the power to and it is reasonable and proportionate to do so in the circumstances of that case.

15 Enforcement - general

15.1 We will use all available powers to meet the enforcement objectives within this policy. These include powers of entry, the ability to require the production of documents under the Housing Act 2004, the power to require information about a person's identity, or interest in land and the power to require certificates regarding gas and electrical safety in Houses in Multiple Occupation.

15.2 We will have regard to any relevant Government guidance as part of our enforcement activity.

15.2 When carrying out enforcement we will have regard to other legal requirements that might apply to our actions; for example, the Data Protection Act 2018, Regulation of Investigatory Powers Act 2000 and the codes of practice under the Police and Criminal Evidence Act 1984.

16 Consultation and Partners

- 16.1 We work with a wide range of partners and stakeholders such as private sector landlords and agents, residents, businesses, other Council teams, agencies such as Fire and Rescue Services and the Police and other local authorities.
- 16.2 The Fire Safety protocol sets out how both the Council and Darlington and Durham Fire and Rescue Service will take enforcement action in relation to fire safety in properties where there is an overlap between each organisation's duties and powers.
- 16.3 We value the partners we work with and will engage with them in relation to enforcement activity and procedures where the subject area is relevant and appropriate to them.

17 Appeals and Complaints Procedure

- 17.1 This policy and the guidance and other policies referred to in it will be relevant documents to consider when reviewing complaints in relation to our enforcement activity. It is important to stress that they are not the definitive list of guidance available and there may be more relevant or up to date guidance that should be considered in relation to any complaint.
- 17.2 We will inform all persons who are the subject of formal enforcement activity of their right of appeal; this will vary dependent on the particular legislation being used.
- 17.3 The Council's complaints process is available for complaints relating to the application of this policy where there is not an appeal procedure otherwise available. If you want to appeal against a formal notice or order you should use the statutory appeal rights open to you.

18 Approval of this policy

- 18.1 Cabinet approved this policy on (to be inserted) under the powers delegated in the Council's constitution.

19 Enquiries

For all enquiries about this policy please contact the Private Sector Housing Manager on

Email: PrivateSectorHousing@Darlington.gov.uk

Address: Private Sector Housing Team, SERVICES GROUP, Darlington Borough Council, Town Hall, Feethams, Darlington, DL1 5QT.

Direct line: (01325) 406 445

For more information on how the Private Sector Housing works please visit:

Website: <https://www.darlington.gov.uk/your-council/community-safety-team/>



DARLINGTON
Borough Council

Civil Penalties Enforcement Policy and Guidance

Housing and Planning Act 2016



Community Safety
Private Sector Housing

Civil Penalties Enforcement Policy & Guidance Housing and Planning Act 2016

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Civil Penalties Enforcement Policy & Guidance

Housing and Planning Act 2016

Version 1.0

Produced by Private Sector Housing, Darlington Borough Council

June 2023

This document has been produced as a guide to provide information and anyone affected should refer to the legislation for further information

Section 1

Introduction & Overview

1.1 Introduction

This document contains both policy and guidance.

Section 2 is policy and should be read as such, but all other sections are guidance only. Section 2 was created in accordance with Section 3.5 of the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' ("the DCLG Guidance")¹, published by the Department for Communities and Local Government. This statutory guidance recommends certain factors a local housing authority should take into account when deciding on the level of civil penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of civil penalty in a particular case.

This document is intended to work in accordance with the 'Darlington Borough Council – Enforcement Policy'.

In this document, the term "landlord" will be used to refer to the "owner", "person having control", "person managing" or "licence holder", as defined under the Housing Act 2004 ("the 2004 Act")².

The term "Landlord" will also be used to refer to tenants of houses in multiple occupation who have committed offences under section 234 of the Housing Act 2004.

The term "the Council" will be used to refer to Darlington Borough Council in its capacity as a Local Housing Authority.

1.2 What is a civil penalty?

A civil penalty is a financial penalty of up to £30,000 which can be imposed on a landlord as an alternative to prosecution for specific offences under the 2004 Act. The amount of penalty is determined by the Council in each case; section 2 sets out how the Council will determine the appropriate level of civil penalty.

The Council considers that the most likely recipients of civil penalty notices will be those persons who are involved in the owning or managing of private rented properties. However, the Council does have the power to impose them on tenants of Houses in Multiple Occupation, for offences under section 234 of the Housing Act 2004 and will consider doing so where it is deemed appropriate.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

² <http://www.legislation.gov.uk/ukpga/2004/34/contents>

1.3 What offences can civil penalties be imposed for?

A civil penalty can be considered as an alternative to prosecution for any of the following offences under the 2004 Act:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004).
- Offences in relation to licensing of HMOs (section 72 of the Housing Act 2004).
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004).
- Contravention of an overcrowding notice (section 139 of the Housing Act 2004).
- Failure to comply with management regulations in respect of HMOs (section 234 of the Housing Act 2004).
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

1.4 What is the legal basis for imposing a civil penalty?

Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“the 2016 Act”) enables the Council to impose a civil penalty as an alternative to prosecution for specific offences.

1.5 What is the burden of proof for a civil penalty?

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. This means that before a civil penalty can be imposed, the Council must be satisfied beyond reasonable doubt that the landlord committed the offence(s) and that if the matter were to be prosecuted in the magistrates’ court, there would be a realistic prospect of conviction.

In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to the Darlington Borough Council - Enforcement Policy and the Crown Prosecution Service Code for Crown Prosecutors, published by the Director of Public Prosecutions. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including whether the evidence is admissible, reliable, and credible and the impact of any defence.

See Appendix III for an Excerpt from the Crown Prosecution Service Code for Crown Prosecutors on the Evidential Stage of the Full Code Test for criminal prosecutions.

1.6 What must be done before a Civil Penalty can be considered?

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be properly served by imposing a civil penalty.

The following questions should be considered:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the Council?

- Has the evidence been reviewed by the Council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e., the offence is particularly serious, and the landlord has committed similar offences in the past and/or a banning order should be considered.

See Appendix II for an Excerpt from the Crown Prosecution Service Code for Crown Prosecutors on the Public Interest Stage of the Full Code Test for criminal prosecutions.

1.7 When will the Council consider civil penalties an enforcement option?

The Council will consider Civil Penalties for all landlords that are in breach of one or more of the sections of the 2004 Act listed in section 1.3. Enforcement action will be considered on a case-by-case basis in line with the Darlington Borough Council - Enforcement Policy.

1.8 The Totality Principle

Where a landlord has committed multiple offences, and a civil penalty could be imposed for each one, consideration should be given to whether it is just and proportionate to impose a penalty for each offence.

When calculating the penalty amounts for multiple offences, there will inevitably be a cumulative effect and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences involved.

The landlord may also have committed multiple similar offences or offences which arose from the same incident. In these cases, consideration should be given to whether it would be more appropriate to only impose penalties for the more serious offences being considered and to prevent any double counting.

Having regard to the above considerations, a decision should be made about whether a civil penalty should be imposed for each offence and, if not, which offences should be pursued. Where a single more serious offence can be considered to encompass several other less serious offences, this is the offence that will normally be considered for the civil penalty. Deciding not to impose a civil penalty for some of the offences does not mean that other enforcement options, such as issuing a simple caution, cannot be pursued for those offences.

Section 2
Determining the Civil Penalty Amount

2.1 Overview

The Council has the power to impose a civil penalty of up to £30,000; this section sets out how the Council will determine the appropriate level of civil penalty in each case. The actual amount levied in each case should reflect the severity of the offence and take into consideration the landlord’s income and track record.

The civil penalty will be made up of two distinct components. The first is the penalty calculation; this is where the severity of the offence, the landlord’s track record and the landlord’s income are considered. The second considers the amount of financial benefit, if any, which the landlord obtained from committing the offence. These two components are added together to determine the final penalty amount that will be imposed on the landlord.

This process is broken down into four main stages:

- **Stage 1** determines the penalty band for the offence. Each penalty band has a starting amount and a maximum amount.
- **Stage 2** determines how much will be added to the penalty amount as a result of the landlord’s income and track record.
- **Stage 3** is where the figures from **stage 2** are added to the penalty band from **stage 1**. The total amount at this stage cannot go above the maximum amount for the particular penalty band.
- **Stage 4** considers any financial benefit that the landlord may have obtained from committing the offence. This amount will be added to the figure from **stage 3**.

Stage 1
Determining the Penalty Band

2.2 Stage 1 Overview

This stage considers the landlord’s culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property.

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations and/or their actions were deliberate. Landlords are running a business and are expected to be aware of their legal obligations. There are four steps to this process and each step is set out below.

2.3 Step 1: Culpability

Table 1 sets out the four levels of culpability that will be considered: each level has accompanying examples of the behaviours that could constitute that particular level.

The behaviour of the landlord should be compared to **Table 1** to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

Table 1 - Levels of Culpability

Very high	Deliberate breach of or flagrant disregard for the law
High	Offender fell far short of their legal duties, for example, by: failing to put in place measures that are recognised legal requirements or regulations. Ignoring warnings raised by the local Council, tenants, or others. failing to make appropriate changes after being made aware of risks, breaches, or offences. Allowing risks, breaches, or offences to continue over a long period of time. Serious and/or systemic failure by the person or organisation to comply with legal duties.
Medium	Offender fell short of their legal duties in a manner that falls between descriptions in 'high' and 'low' culpability categories. Systems were in place to manage risk or comply with legal duties, but these were not sufficiently adhered to or implemented.
Low	Offender did not fall far short of their legal duties, for example, because: significant efforts were made to address the risk, breaches, or offences, although they were inadequate on this occasion. they have offered a reasonable defence for why they were unaware of the risk, breach, or offence. Failings were minor and occurred as an isolated incident

2.4 Assessing a landlord's culpability

When assessing culpability, consider all the evidence gathered as part of the investigation into the offence and identify any aggravating or mitigating factors which may be relevant to the assessment of culpability.

Aggravating factors could include:

- Previous convictions for similar offence/s, having regard to the time elapsed since the conviction
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation i.e., record of having to take enforcement action previously whether complied with or not
- Record of poor management/inadequate management provision
- Lack of a tenancy agreement/rent paid in cash

- Evidence of threatening behaviour/harassment of the tenant.

Section 2.12 below provides further guidance regarding when it is appropriate to consider past enforcement action taken against the landlord.

Mitigating factors could include:

- Cooperation with the investigation e.g., turns up for the PACE interview
- Voluntary steps taken to address issues e.g., submits a prompt licence application
- Willingness to undertake training
- Level of tenant culpability
- Willingness to join recognised landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- Vulnerable individual(s) (owners not tenants) where their vulnerability is linked to the commission of the offence
- Good character i.e., no previous convictions and/or exemplary conduct

Using these factors, consider each category of culpability in **Table 1** and identify the one that the landlord's behaviour falls within; where a landlord's behaviour could meet more than one of the categories, choose the highest one of those met.

2.5 Step 2: Seriousness of Harm Risked

Table 2 separates the seriousness of harm risked into three levels and each one has an accompanying description to illustrate what would constitute that level of harm risked.

The harm risked by the offence should be compared to the Table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

When using the Table to determine the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred.

Table 2 - Seriousness of Harm Risked

Level A	The seriousness of harm risked would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System ³ .
Level B	The seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes in the 'Housing Health and Safety Rating System ³ .
Level C	All other cases not falling within Level A or Level B (e.g., where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B).

Further information about the classes of harm under the Housing Health and Safety Rating System can be found in appendix I.

³ Office of the Deputy Prime Minister: London (2006), *Housing Health and Safety Rating System Operating Guidance*, page 47

2.6 Step 3: Penalty Levels

Using the already determined level of culpability and the seriousness of harm risked, find the appropriate penalty level (1 – 5+) in **Table 3**.

Table 3 - Penalty Levels

Seriousness of Harm Risked	Culpability			
	Very high	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

2.7 Step 4: Penalty Bands

Table 4 - Penalty Bands

Penalty Level	Penalty Band
1	£600 - £1200
2	£1200 - £3000
3	£3000 - £6000
4	£6000 - £15,000
5 / 5+	£15,000 - £30,000

Compare the penalty level from Step 3 to **Table 4** and this will give the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation.

Stage 2
Considering the landlord's income and track record

2.8 Stage 2 Overview

There are two elements to consider in stage 2: the landlord's income and the landlord's track record. Each of these will affect the penalty calculation and further details are set out below.

2.9 The Landlord's Finances

Although the Council is permitted to consider all of a landlord's income and assets when calculating a civil penalty, full financial investigations will normally only be considered for the more serious offences. For penalties that fall within bands 5 and 5+, a financial investigation of the landlord may be carried out and all sources of income received by the landlord can be considered as 'relevant income' for the purpose of calculating the civil penalty. Specifically, the average weekly income of the landlord for the 12 months preceding the date of the offence will be used.

For penalties that fall within bands 1 to 4, the landlord’s income will still be considered but the ‘relevant income’ will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where the offence occurred and at the time the offence occurred.

For property agents, the relevant income will be any fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

IMPORTANT: although the Council will not normally consider carrying out a full financial investigation where the offence falls within penalty bands 1 to 4, the Council does reserve the right to do so where it considers it reasonable and proportionate to the circumstances.

2.10 How is the increase as a result of the landlord’s income calculated?

This is a two-step process with step 1 determining what counts as relevant weekly income and step 2 determining what percentage of this relevant weekly income should be added to the penalty amount. These steps are set out in more detail below.

Table 5 - Defining relevant weekly income

Penalty Level	Relevant Weekly Income
1	Gross rental income or management fees for the property where the offence occurred
2	
3	
4	
5 / 5+	All income for the offender (Carry out a financial assessment)

Step 1 - take the penalty band, as determined in Stage 1, and compare it to Table 5: this will state what can be considered as relevant weekly income for the offence.

Table 6 - % of relevant weekly income

Penalty Level	% of Relevant Weekly Income
1	50% of relevant weekly income
2	100% of relevant weekly income
3	150% of relevant weekly income
4	250% of relevant weekly income
5	400% of relevant weekly income
5+	600% of relevant weekly income

Step 2 - take the penalty band, as determined in Stage 1, and compare it to Table 6. This will give the percentage of the landlord's relevant weekly income will be added to the civil penalty.

2.11 What if tenancy agreements or management contracts are not available?

Tenancy agreements and property management contracts can be requested using the Council's existing powers and this should be done where copies are not already available.

In cases where the landlord is not forthcoming with this information or documentation, an estimate of the average weekly income will be used instead, and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

Representations against estimated incomes will only be accepted where sufficient evidence of the landlord's income is provided to support these claims. Estimates of average weekly income will be calculated on a case-by-case basis but they will generally be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

IMPORTANT – the Council will not normally consider a landlord's assets but does reserve the right to consider assets in any cases where the Council considers it reasonable and proportionate to do so. Each of these cases will be dealt with on a case-by-case basis.

2.12 The Landlord's track record

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; as such, the track record of the landlord will be an important factor in determining the final amount of the civil penalty that is imposed. Below are questions that must be asked for each landlord that will receive a civil penalty.

- 1) Has the landlord had any relevant⁴ notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years? If so, how many times have they been subject to such enforcement action in that timeframe?
- 2) Has the landlord had any civil penalties imposed on them in the last 2 years? If so, how many civil penalties have been imposed on them in that timeframe?

⁴ any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'.

- 3) Has the landlord accepted any cautions for relevant¹ offences in the last 2 years? If so, how many cautions for relevant offences¹ have they accepted in that timeframe?
- 4) Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?
- 5) Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?
- 6) Has the landlord breached any relevant⁵ notices, which resulted in works in default being carried out, in the last 2 years? If so, how many times have works in default been carried out under such circumstances in that timeframe?
- 7) Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?
- 8) Has the landlord been prosecuted for any relevant⁶ offences in the last 2 years? If so, how many times have such prosecutions taken place in that timeframe?
- 9) Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?
- 10) Has the Landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?

IMPORTANT – question 1 refers to all relevant notices served during the two years: this means that where the offence is failure to comply with an improvement notice, that notice should also be included in the answer to the question.

2.13 How is the increase as a result of the Landlord's track record calculated?

Table 7 – Weightings

Category	Weighting
Category 1 (Least serious)	1
Category 2 (Moderately Serious)	5
Category 3 (Very Serious)	10
Category 4 (Most serious)	20

Each of the questions will be placed into one of four categories, based on the seriousness of the offence or enforcement action to which the question refers. Each category of question is given a weighting that increases with the seriousness of the category. **Table 7** shows the four categories and the weighting which is applied to each one.

⁵ any notices served under any legislation relating to housing, public health, or environmental health.

⁶ any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

Any questions where the answer is 'no' will have a weighting of zero but 'yes' answers will accrue the weighting for that particular question. E.g., the weighting for a question is 10 and the answer to that question is 'yes' so the score for that particular question will be 10.

For those questions where the number of occasions is relevant, the total weighting for a 'yes' answer will be the weighting for that question multiplied by the number of occasions. E.g., if a question has a weighting of 5 and the landlord has committed the offence 3 times, this will give a total score of 15 for the question. **Table 8** shows the category which each of the questions falls within and the subsequent weighting that is applied as a result.

Table 8 - Questions & Weightings

Questions	Weighting for a 'Yes' answer	Multiplied by the number of occasions?
Has the landlord had any relevant ⁷ notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years?	1	Yes
Has the landlord had any civil penalties imposed on them in the last 2 years?	5	Yes
Has the landlord accepted any cautions for relevant ⁸ offences in the last 2 years?	10	Yes
Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?	5	No
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5	No
Has the landlord breached any relevant ⁹ notices, which resulted in works in default being carried out, in the last 2 years?	10	Yes
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10	No
Has the landlord been prosecuted for any relevant ³ offences in the last 2 years?	20	Yes
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20	No
Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?	20	No

⁷ any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'.

⁸ any notices served under any legislation relating to housing, public health, or environmental health.

⁹ any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

Table 9 - % Increase

Score	%	Score	%
0	0%	21	55%
1	5%	23	60%
3	10%	25	65%
5	15%	27	70%
7	20%	29	75%
9	25%	31	80%
11	30%	33	85%
13	35%	35	90%
15	40%	37	95%
17	45%	39+	100%

Once all the questions have been answered, the weighting for each is totalled and compared to Table 9: this gives the percentage increase that will be applied to the penalty amount. The increase will be a percentage of the starting amount for the penalty band that the offence falls within. E.g., the total score for the questions is 23 and so the corresponding percentage increase in Table 9 will be 60%.

IMPORTANT - the penalty calculation will never be increased past the upper limit of the penalty band: however, where the landlord has a history of non-compliance, it is appropriate to factor this into the assessment of their overall culpability. This could affect the initial assessment of the appropriate penalty level and lead to a higher penalty band being used as the starting point.

Stage 3

Adding Income and Track Records Amounts to the Penalty Band

2.14 Stage 3 Overview

Stage 1 gives the penalty band for the offence, and this determines the starting amount and the upper limit for the penalty calculation. Stage 2 gives the amount that should be added as a result of the landlord's income and the amount that should be added as a result of the landlord's track record.

2.15 How are the figures from stage 1 and stage 2 combined?

To get the amount of the penalty calculation, the two figures from Stage 2 should be added to the starting amount for the penalty band. E.g., if the increase for income is £500 and the increase due to the landlord's track record is £1000, these two figures are added to the starting amount for the penalty to get the penalty calculation amount.

If the amount calculated, by adding the figures for the landlord's income and track record, is less than the upper limit for the penalty band, then this is the amount that will be used. However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used instead.

Stage 4

Financial benefit obtained from committing the offence

2.16 Stage 4 Overview

A guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed should never be less than it would have reasonably cost the landlord to comply in the first place.

2.17 How is the financial benefit determined?

Calculating the amount of financial benefit obtained will need to be done on a case-by-case basis but the Table below gives some examples of potential financial benefit for each of the offences.

Offence	Examples of potential financial benefit
Failure to comply with an Improvement Notice (section 30)	The cost of any works that were required to comply with the improvement notice but which have not been removed by works in default.
Offences in relation to licensing of HMOs (section 72)	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offences in relation to licensing of houses under Part 3 of the Act (section 95)	Rental income whilst the property was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offence of contravention of an overcrowding notice (section 139)	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMOs (section 234)	The cost of any works that are required to avoid breaching the regulations.

2.18 How is financial benefit added to the penalty amount?

The Council will need to be able to prove that financial benefit was obtained before it can be included in the civil penalty calculation. However, where it can be proven, the amount obtained should be added to the penalty calculation amount from Stage 3 and this will give the final civil penalty amount that will be imposed on the landlord.

IMPORTANT – where the landlord has obtained financial benefit in the form of rental income and this full amount has been added to the total penalty, it will be appropriate to take this into consideration when deciding whether to pursue a Rent Repayment Order. For more information on Rent Repayment Orders, see government guidance at www.gov.uk.

Section 3

Imposing a Civil Penalty

3.1 Where is the process for civil penalties set out?

Schedule 9 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a civil penalty.

3.2 Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a 'notice of intent' on the landlord in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty.
- The reasons for proposing to impose a civil penalty.
- Information about the Landlord's right to make representations to the Council.

3.3 Representations

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior colleague. Representations must be submitted in writing (except in exceptional circumstances).

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g., tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case-by-case basis and responded to where the Council considers it necessary.

3.4 Final Notice

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the notice of intent, but it cannot be a greater amount.

The imposing of a civil penalty involves serving a final notice and this notice must contain the following information:

- The amount of the financial penalty.
- The reasons for imposing the penalty.
- Information about how to pay the penalty.
- The period for payment of the penalty.

- Information about rights of appeal.
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

3.5 Withdrawing or Amending Notices

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case-by-case basis.

3.6 Appeals to the Tribunal

If a civil penalty is imposed on a landlord, that Landlord can appeal to the First-tier Tribunal (“the Tribunal”) against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

Information on how and where to make an appeal can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748815/t543-eng.pdf

3.7 Payment of a Civil Penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given (“the 28-day payment period”), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice.

3.8 Other consequences of having a Civil Penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person’s involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12-month period, each for a banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

“Banning order offence” means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016.

3.9 Recovering an unpaid Civil Penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control for amounts up to £5000;
- A Third-Party Debt Order
- A Charging Order
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, and the amount of the order is over £1000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the Landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court. Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

3.10 Income from Civil Penalties

Any income from Civil Penalties is retained by the Local Housing Council which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument 367 (2017)¹⁰.

¹⁰ <http://www.legislation.gov.uk/uksi/2017/367/contents/made>

Section 4

Worked Examples

4.1 Worked Example 1

Landlord A owns and operates an unlicensed HMO. Landlord A has been made aware of the need to apply for an HMO licence but has failed to do so and has continued to operate unlicensed for the past 6 months. The rental income received by Landlord A during this 6-month period is £7500. This is not the first time that Landlord A has been the subject of enforcement action, having previously been cautioned for operating another unlicensed HMO a year ago and being served improvement notices on two separate occasions in the last 12 months. Both notices were complied with.

Offence: Operating an unlicensed HMO

Culpability: 'Very High' (Deliberate breach of or flagrant disregard for the law)

Justification: Landlord A is aware of requirement to licence the property and the consequences of not doing so but has chosen not to comply anyway.

Seriousness of harm risked: 'Level C'

(All other cases not falling within Level A or Level B)

Justification: the specific offence of operating an unlicensed HMO does not implicitly mean that there are any defects or deficiencies in the property. As such, the seriousness of harm risked would not meet the descriptions of 'Level A' or 'Level B'.

Penalty band: 4 - £6000 to £15,000 ('Very High' culpability and 'Level C' harm)

Increase due to the landlord's track record: £1800

(30% of the starting point for the penalty)

Justification: in the last two years, Landlord A has accepted 1 caution for a relevant offence and has been served 2 relevant notices, under Part 1 of the Housing Act 2004. This gives us a score of 12 and an increase of 30% of the penalty amount. This is an increase of £1800.

Increase due to the landlord's income: £721.15

(250% of weekly rental income from the property where the offence occurred)

Justification: the penalty band is 4 and Landlord A is the owner of the property where the offence occurred. As such, the relevant income for consideration is the weekly rental income for the property and 250% of this will be added to the penalty amount. In this case, the relevant weekly income is £288.46 and so £721.15 will be added.

Penalty calculation amount: £8521.15 ($£6000 + £1800 + £721.15 = £8521.15$)

Financial benefit obtained from committing the offence: £7500

Justification: Landlord A has received £7500 in rental income from the property during the time that it has been unlicensed and so this can be considered the financial benefit received from committing the offence.

Final amount of the civil penalty: £16021.15 ($£8521.15 + £7500 = £16021.15$)

4.2 Worked Example 2

Landlord B owns and manages a single-family dwelling. During an inspection, a category 1 hazard (falls on stairs) and multiple category 2 hazards were identified at the property. The stairs were in an extremely dangerous condition but could be made safe easily. An improvement notice was served on Landlord B and some of the works to reduce the category 2 hazards were carried out but the remainder of the works on the notice were not. Works in default were carried out at the property with a total cost of £2000. Landlord B was also prosecuted 18 months ago for failing to comply with an improvement notice. A financial investigation into Landlord B found that they have received an annual income of £50,000.

Offence: Failing to comply with an improvement notice.

Culpability: 'Very High' (Deliberate breach of or flagrant disregard for the law)

Justification: Landlord B was aware of the need to comply with the Improvement Notice as some of the works were completed. Landlord B is also aware of the consequences of failing to comply with the notice as previous enforcement action has been taken against them for this reason.

Seriousness of harm risked: 'Level A'

Justification: The condition of the staircase creates a Category 1 hazard and if someone were to trip or fall on the stairs, they could reasonably end up with harm outcomes that meet the descriptions of Class 1 and Class 2 harm outcomes under the Housing Health & Safety Rating System. This means that the seriousness of harm risked meets the description of 'Level A'.

Penalty band: 5+ - £15,000 to £30,000 ('Very High' culpability and 'Level A' harm)

Increase due to the landlord's track record: £12,000
(80% of the starting point for the penalty)

Justification: in the last two years, Landlord B has been prosecuted for a relevant offence, has been served 1 relevant notice under Part 1 of the Housing Act 2004, and has been subject to works in default. This gives us a score of 31 for his track record and an increase of 80% of the penalty amount. This is an increase of £12,000.

Increase due to the landlord's income: £5769.23
(600% of the Landlord's average weekly income)

Justification: the penalty band is 5+ and so a financial investigation was carried out to identify all of Landlord B's income. The investigation found they received a total annual income of £50,000 and 600% of their average weekly income will be added to the penalty amount. In this case, the average weekly income is £961.54 and so £5769.23 will be added.

Penalty calculation amount: £30,000 ($£15000 + £12000 + £5769.23 = £32,769.23$)

Financial benefit obtained from committing the offence: None

Justification: works in default were carried out at the property and the cost of these works, plus an administration fee, were charged to Landlord B. As such, it cannot be said that Landlord B obtained financial benefit from committing the offence.

Final amount of the civil penalty: £30,000
($£15000 + £12000 + £5769.23 = £32,769.23$ - civil penalties are capped at £30,000)

4.3 Worked Example 3

Landlord C is the appointed manager of a three-bedroom licenced HMO. The company is paid £90 per month to manage the property on behalf of the owner. During a compliance inspection, it was found that they had neglected to display any of the manager's details anywhere in the property. They were warned about this one year ago and stated that they were aware of the requirement, but an oversight meant that they missed this property when displaying details. They have not been the subject of any formal enforcement action in the last 2 years and the property was otherwise in a satisfactory condition.

Offence: Failure to comply with management regulations in respect of Houses in Multiple Occupation.

Culpability: 'Low' (Failings were minor and occurred as an isolated incident)

Justification: the company does not have a history of non-compliance and the breach was minor and easily rectified.

Seriousness of harm risked: 'Level C'

(All other cases not falling within Level A or Level B)

Justification: The seriousness of harm risked to the tenants was low and so it would not meet the descriptions of harm found in 'Level A' or 'Level B'.

Penalty band: 1 - £600 to £1200 ('Low' culpability and 'Level C' harm)

Increase due to the landlord's track record: None

Justification: in the last two years, Landlord C has not been the subject of any formal enforcement action and so there is no increase in the penalty amount due to their track record.

Increase due to the landlord's income: £10.39 (50% of weekly rental income from the property where the offence occurred)

Justification: the penalty band is 1 and Landlord C is the manager of the property where the offence occurred. As such, the relevant income for consideration is the weekly management fees received for the property and 50% of this will be added to the penalty amount. In this case, the relevant weekly income is £20.77 and so £10.39 will be added.

Initial penalty calculation amount: £610.39 ($£600 + £10.39 = £610.39$)

Financial benefit obtained from committing the offence: None

Justification: the cost of displaying Landlord C's management details would be negligible and so it would not be reasonable to claim that financial benefit was obtained from committing the offence.

Final amount of the civil penalty: £610.39 ($£600.00 + £10.39 = £610.39$)

Appendix I – Classes of Harm (HHSRS)

The following is an extract from the Housing Health and Safety Rating System Operating Guidance (pages 47 - 48), published by the Office of the Deputy Prime Minister (2006).

“Examples for the Four HHSRS Classes of Harm

- C1 The Classes of Harm used for the HHSRS are based on the top four Classes of Harm as identified in A Risk Assessment Procedure for Health and Safety in Buildings (2000) BRE. While this work identified seven Classes of Harm, only the top four are used for the purposes of the HHSRS as these are harms of sufficient severity that they will either prove fatal or require medical attention and, therefore, are likely to be recorded in hospital admissions or GP records.
- C2 Work on developing and refining the Statistical Evidence supporting the Rating System involved classifying a more comprehensive list of harm outcomes.
- C3 The examples given below are intended for guidance only. It should be noted that some of the harm outcomes may appear in more than one Class depending on the severity of the condition. For example, respiratory disease will be in Class II or III depending on the severity and duration.

Class I

This Class covers the most extreme harm outcomes including Death from any cause; Lung cancer; Mesothelioma and other malignant lung tumours; Permanent paralysis below the neck; Regular severe pneumonia; Permanent loss of consciousness; 80% burn injuries.

Class II

This Class covers severe harm outcomes, including Cardio-respiratory disease; Asthma; Non-malignant respiratory diseases; Lead poisoning; Anaphylactic shock; Cryptosporidiosis; Legionnaire’s disease; Myocardial infarction; Mild stroke; Chronic confusion; Regular severe fever; Loss of a hand or foot; Serious fractures; Serious burns; Loss of consciousness for days.

Class III

This Class covers serious harm outcomes, including: Eye disorders; Rhinitis; Hypertension; Sleep disturbance; Neuro-psychological impairment; Sick building syndrome; Regular and persistent dermatitis, including contact dermatitis; Allergy; Gastro-enteritis; Diarrhoea; Vomiting; Chronic severe stress; Mild heart attack; Malignant but treatable skin cancer; Loss of a finger; Fractured skull and severe concussion; Serious puncture wounds to head or body; Severe burns to hands; Serious strain or sprain injuries; Regular and severe migraine.

Class IV

This Class includes moderate harm outcomes which are still significant enough to warrant medical attention. Examples are I Pleural plaques; Occasional severe discomfort; Benign tumours; Occasional mild pneumonia; Broken finger; Slight concussion; Moderate cuts to face or body; Severe bruising to body; Regular serious coughs or colds.”

Appendix II – Public Interest Stage of the Full Code Test

The following is an extract from pages 7-10 of The Code for Crown Prosecutors (January 2013, 7th Edition) issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985.

The Public Interest Stage

- 4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases, the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.
- 4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.
- 4.10 The explanatory text below each question in paragraphs 4.12 a) to g) provides guidance to prosecutors when addressing each question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.
- 4.11 It is quite possible that one public interest factor alone may outweigh several other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead, and those factors put to the court for consideration when sentence is passed.
- 4.12 Prosecutors should consider each of the following questions:

a) How serious is the offence committed?

The more serious the offence, the more likely it is that a prosecution is required.

When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18).

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of, and the harm caused to the victim?

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim.

A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation, or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should consider the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, considering the victim's views.

However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

e) What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

f) Is prosecution a proportionate response?

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest based on this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)

Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations, or national security. It is essential that such cases are kept under continuing review.

Appendix III – The Evidential Stage of the Full Code Test

The following is an extract from pages 6-7 of The Code for Crown Prosecutors (January 2013, 7th Edition) issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985.

The Evidential Stage

- 4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.
- 4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- a) the likelihood of that evidence being held as inadmissible by the court; and
- b) the importance of that evidence in relation to the evidence.

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence

The flowchart outlines the process for imposing a civil penalty, starting from a 'Start Here' arrow. It begins with the question 'Has an offence been committed?'. If 'No', the process leads to 'Take no further enforcement action'. If 'Yes', it asks 'Is it an offence for which a Civil Penalty can be imposed?'. If 'No', it leads to 'Consider alternative enforcement options'. If 'Yes', it asks 'Has the offence been proven beyond reasonable doubt?'. If 'No', it asks 'Can the offence be proven beyond reasonable doubt?'. If 'Yes / Don't Know', it leads to 'Carry out further investigations'. If 'Yes', it leads to 'Pass the evidence bundle to a senior colleague for review'. If 'No', it leads to 'Has the evidence been reviewed by a senior colleague?'. If 'Yes', it leads to 'Carry out further investigations'. If 'No', it leads to 'Does the senior colleague agree that the burden of proof has been met?'. If 'Yes', it leads to 'Has the evidence been reviewed by legal services?'. If 'No', it leads to 'Pass the evidence bundle to legal services for review'. If 'Yes', it leads to 'Does the evidence need to be reviewed by legal services?'. If 'Yes', it leads to 'Is there a public interest in pursuing a prosecution over a civil penalty?'. If 'Yes', it leads to 'Pursue a prosecution'. If 'No', it leads to 'Withdraw the 'Notice of Intent''. If 'Yes', it leads to 'Have sufficient grounds to amend the penalty amount been offered?'. If 'Yes', it leads to 'Serve a 'Final Notice' with a reduced amount'. If 'No', it leads to 'Withdraw the 'Notice of Intent''. If 'Yes', it leads to 'Have sufficient grounds to withdraw the 'Notice of Intent' been offered?'. If 'Yes', it leads to 'Serve a 'Final Notice''. If 'No', it leads to 'Have any representations been received within the 28 day period?'. If 'Yes', it leads to 'Calculate the civil penalty amount'. If 'No', it leads to 'Does the senior colleague agree that the penalty has been correctly calculated?'. If 'Yes', it leads to 'Serve a 'Notice of Intent''. If 'No', it leads to 'Serve a 'Final Notice''. The flowchart also includes a central box for reviewing the case file to determine the following: The culpability of the offender; The seriousness of harm risked by the offence; Any financial benefit the offender received from committing the offence; The offender's relevant income for the offence; Details of the offender's track record.

```

graph TD
    Start([Start Here]) --> Q1{Has an offence been committed?}
    Q1 -- No --> A1[Take no further enforcement action]
    Q1 -- Yes --> Q2{Is it an offence for which a Civil Penalty can be imposed?}
    Q2 -- No --> A2[Consider alternative enforcement options]
    Q2 -- Yes --> Q3{Has the offence been proven beyond reasonable doubt?}
    Q3 -- No --> Q4{Can the offence be proven beyond reasonable doubt?}
    Q3 -- Yes --> A3[Pass the evidence bundle to a senior colleague for review]
    Q4 -- Yes / Don't Know --> A4[Carry out further investigations]
    Q4 -- Yes --> A3
    Q4 -- No --> Q5{Does the senior colleague agree that the burden of proof has been met?}
    A4 --> Q5
    Q5 -- Yes --> Q6{Has the evidence been reviewed by legal services?}
    Q5 -- No --> A5[Pass the evidence bundle to legal services for review]
    Q6 -- Yes --> Q7{Does the evidence need to be reviewed by legal services?}
    Q6 -- No --> A5
    Q7 -- Yes --> Q8{Is there a public interest in pursuing a prosecution over a civil penalty?}
    Q7 -- No --> A5
    Q8 -- Yes --> A6[Pursue a prosecution]
    Q8 -- No --> A7[Withdraw the 'Notice of Intent']
    A5 --> Q9{Have sufficient grounds to amend the penalty amount been offered?}
    Q9 -- Yes --> A8[Serve a 'Final Notice' with a reduced amount]
    Q9 -- No --> A7
    A7 --> Q10{Have sufficient grounds to withdraw the 'Notice of Intent' been offered?}
    Q10 -- Yes --> A9[Serve a 'Final Notice']
    Q10 -- No --> Q11{Have any representations been received within the 28 day period?}
    Q11 -- Yes --> Q12[Calculate the civil penalty amount]
    Q11 -- No --> Q13{Does the senior colleague agree that the penalty has been correctly calculated?}
    Q13 -- Yes --> A10[Serve a 'Notice of Intent']
    Q13 -- No --> Q12
    Q12 --> Q14[Review the case file to determine the following:  
• The culpability of the offender;  
• The seriousness of harm risked by the offence;  
• Any financial benefit the offender received from committing the offence;  
• The offender's relevant income for the offence;  
• Details of the offender's track record.]
    Q14 --> Q15[Pass the penalty calculation to a senior colleague for review]
    Q15 --> Q16[Has the evidence been reviewed by a senior colleague?]
    Q16 -- Yes --> A4
    Q16 -- No --> A3
  
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DARLINGTON
Borough Council

Civil Penalties Enforcement Policy and Guidance:

The Electrical Safety Standards in the Private Rented Sector Regulations 2020



**Community Safety
Private Sector Housing**

Civil Penalties Enforcement Policy & Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020

Version 1.0

Produced by Private Sector Housing, Darlington Borough Council

June 2023

This document has been produced as a guide to provide information and anyone affected should refer to the legislation for further information.

This document should be viewed in conjunction with the Civil Penalties Enforcement Policy and Guidance: Housing and Planning Act 2016

Financial Penalty Policy and Guidance for Domestic Private Rented Properties in relation to The Electrical Safety Standards in the Private Rented Sector Regulations 2020

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Section 1

Introduction & Overview

1.1 Introduction

This document contains both policy and guidance.

This policy sets out how the Council will use notices of intention and civil penalties where landlords fail to meet or improve the electrical safety standards of Private Rented Properties to the required standard.

The aim of the policy is to improve the standards of domestic private rented properties. Ensuring homes are of a certain standard, and that they are free of serious electrical hazards and meet the minimum level of electrical safety conditions.

This Policy outlines:

- (a) The regulations;
- (b) How the council will undertake the enforcement duties and make decisions ensuring they are fair and accountable and within the legislation framework;
- (c) A summary of the available penalties;
- (d) Factors in determining the level of Civil Penalty;
- (e) How a landlord can appeal the decision.

The **Electrical Safety Standards in the Private Rented Sector Regulations 2020** are referred to in this Policy as “the Regulations”.

The Regulations are designed to tackle the most hazardous electrical safety conditions in England and Wales – those with C1 or C2 defects¹ on their Electrical Installation Condition Report (EIRC).

The minimum level of electrical safety conditions means that landlords of privately rented accommodation must:

- (a) Ensure national standards for electrical safety are met. These are currently set out in the [18th edition of the ‘Wiring Regulations’](#), which are published as British Standard 7671.
- (b) Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years.

¹ When an inspection is carried out on the installation, the electrician will issue an Electrical Installation Condition Report (EICR), which will highlight any electrical hazards that need to be addressed. The classification codes on the report are:

C1 - Danger present, risk of injury (immediate remedial action required)
C2 - Potentially dangerous (urgent remedial action required)
C3 - Improvement recommended
FI - Further investigation required without delay

- (c) Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- (d) Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- (e) Supply a copy of this report to a new tenant before they occupy the premises.
- (f) Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- (g) Supply the local housing authority with a copy of this report within 7 days of receiving a written request for a copy.
- (h) Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- (i) Where the report shows that further investigative or remedial work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- (j) Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works.

Darlington Borough Council intends to identify landlords that are not meeting the minimum requirements and determine if it is then appropriate to make a financial penalty.

As part of a proactive enforcement approach, the Council will also carry out visits under the Housing Act 2004, to undertake assessments under the Housing Health and Safety Rating System. This approach will enable the Council to advise landlords on what actions are necessary for them to take in order for them to be compliant.

Private Sector Housing Officers are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. This document outlines the Council's Civil Penalty Policy and protocol in relation to the Regulations.

1.2 Outline of the Regulations - Local housing authorities' duties and powers

The **Electrical Safety Standards in the Private Rented Sector Regulations 2020**, introduced a duty of local authorities to enforce section 4 of the regulations and a power to arrange remedial action in section 6.

Section 2**How the council will undertake the enforcement duties****2.1 Informal Action**

In the first instance the Council will informally advise Landlords who rent properties with an EICR with C1 and C2 recommendations that they do not meet the minimum standard and are therefore committing an offence under the Regulations.

Landlords will be given an appropriate time, normally 14 days, to respond to this advice, either showing evidence that they now have a compliant EICR or to set out a plan to achieve the required standard.

They will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered, both under the Regulations and the Housing Act 2004, Part 1.

- (a) The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.
- (b) The enforcement authority may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light.
- (c) The enforcement authority may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.
- (d) It is the decision of the enforcement authority or its authorised officer to determine what action is appropriate when they determine that breaches of the regulations are being committed.
- (e) It may be that providing advice and information is sufficient to ensure compliance.
- (f) However, in some cases, it may be that only imposing a penalty will do. It is for the enforcement authority or its authorised officer to decide what is the appropriate action in the circumstances.

2.2 Section 4 - Duty of local housing authority to serve a remedial notice

Where a local housing authority has reasonable grounds to believe that, in relation to residential premises situated within its area, a private landlord is in breach of one or more of the duties under the regulations and the most recent report does not indicate that urgent remedial action is required, the authority must serve a remedial notice on the private landlord within 21 days beginning with the day on which the authority decides it has reasonable grounds.

2.3 Section 6 - Power of local housing authority to arrange remedial action

Where a local housing authority is satisfied, on the balance of probabilities, that a private landlord on whom it has served a remedial notice is in breach of the duty under regulation 5(1), the authority may, with the consent of the tenant or tenants of the premises in relation to which the remedial action is to be taken, arrange for an authorised person to enter those premises to take the remedial action specified in the remedial notice and to recover their costs.

2.4 Remedial action following non-compliance with a remedial notice

Otherwise, they must serve a remedial notice requiring the landlord to take remedial action within 28 days. Should a landlord not comply with the notice the local housing authority may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Before the remedial action is taken the local housing authority must serve a notice on the private landlord specifying -

- (a) The premises in relation to which the remedial action is to be taken by the authorised person and the nature of that remedial action;
- (b) The power under which the remedial action is to be taken by the authorised person;
- (c) The date when the remedial action will be taken by the authorised person; and
- (d) The right of appeal under regulation 7 against the decision of the authority to arrange for an authorised person to take the remedial action.

The local housing authority must arrange for an authorised person to take the remedial action within 28 days of:

- (a) The end of the notice period in regulation 7(3) where there is no appeal; or
- (b) An appeal decision that confirms or varies the decision of the local housing authority where there is an appeal.

An authorised person must:

- (a) Give not less than 48 hours' notice of the remedial action to the tenant or tenants of the residential premises on which it is to be taken; and
- (b) If required to do so produce evidence of identity and authority.

The remedial notice should:

- (a) Specify the premises to which the notice relates
- (b) Specify what the local housing authority believes the landlord has failed to do
- (c) Specify what needs to be done

- (d) Require the landlord to take action within 28 days from the day the notice is served
- (e) Explain the landlord's entitlement to make written representations within 21 days
- (f) Specify the person and address, or email address, that representations can be sent to
- (g) Explain provisions about financial penalties and rights of appeal

A landlord is **not in breach** of the duty to comply with a remedial notice if the landlord can show they have taken all reasonable steps to comply.

A landlord could show reasonable steps by keeping copies of all communications they have had with their tenants and with electricians as they tried to arrange to carry out the work, including any replies they have had. Landlords may also want to provide other evidence they have that the electrical installation is in a good condition while they attempt to arrange works. This could include the servicing record and previous condition reports.

A landlord who has been prevented from accessing the premises will not be required to begin legal proceedings against their tenant in order to show that all reasonable steps have been taken to comply with their duties.

Landlords have rights to make written representation and appeal against remedial action. The local housing authority can recover the costs of taking the action from the landlord and may also impose a financial penalty of up to £30,000 on landlords who are in breach of their duties.

2.5 Urgent remedial action

Within 7 days of the authorised person starting to take the urgent remedial action the local housing authority must either:

- (a) Serve a notice on the landlord and all occupiers of the premises in relation to which the authorised person is taking urgent remedial action; or
- (b) Fix a notice to the premises

The notice must specify:

- (a) What action is going to be undertaken
- (b) The address of the property where the action will be undertaken
- (c) The legal power
- (d) The date when that urgent remedial action was or will be started
- (e) Rights of appeal and the period of time within which an appeal may be made

- (f) Details of any financial penalty and the right of appeal against the financial penalty

Section 3

Financial penalties

3.1 Financial penalties

Following failure to comply with the Regulations, a local housing authority can impose a financial penalty of up to £30,000 on a landlord. Proceeds of financial penalties can be used to carry out private rented sector enforcement.

The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending.

3.2 How a landlord can appeal a decision

A landlord has the right to ask the enforcement authority to review its decision to serve a penalty notice.

Where the penalty has been amended following a review. The landlord will be served a Notice after the review with an explanation of any adjustment made.

A landlord has the right to ask the enforcement authority to review its decision to serve a penalty notice.

Any request for review must be submitted to the Council within 28 days of the Penalty Notice being served.

Requests for review after the prescribed time will be considered at the Council's discretion if there is good reason for failing to comply with the time limit set in the Notice.

Appeals concerning penalties are initially to be made to the Council. This request must be made in writing (by a period of fourteen days beginning with the day after that on which the notice was given) to: Private Sector Housing, Feethams, Darlington Town Hall, DARLINGTON, DL1 5QT.

When the Council receives the request, everything the landlord has said in the request will be considered and a decision will be made whether or not to withdraw the penalty notice.

On a review the Council may:

- (a) Waive a penalty;
- (b) Allow the landlord additional time to pay any financial penalty;
- (c) Substitute a lower financial penalty where one has already been imposed; or
- (d) Modify the application of a publication penalty.

The Council must serve a further notice on the landlord withdrawing the penalty notice if, on a review the Council:

- (a) Ceases to be satisfied that the landlord committed the breach specified in the penalty notice;
- (b) Is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice; or
- (c) Decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on Landlord.

If the Council does not decide to withdraw the penalty notice, a decision may be made to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty, and must explain the appeals process and how financial penalties can be recovered.

The Council will inform the landlord of the decision reached in writing. If the Council upholds a penalty notice on appeal.

3.3 Appeals against remedial action

An appeal must be made to the First-Tier Tribunal within 28 days from the day on which a remedial notice is served. The Tribunal may allow an appeal to be made after this date if it is satisfied there are good reasons for the failure to appeal on time.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance when the notice was served. If a landlord appeals, the remedial notice is suspended until the appeal is finally determined or withdrawn.

3.4 Appeals against urgent remedial action

An appeal to the First-Tier Tribunal must be made within 28 days from the date the urgent remedial action was, or was to be, started.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance when the urgent remedial action started.

3.5 Appeals against demands for the recovery of costs

An appeal must be made within 21 days from the day on which the demand is served.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance with the notice when the local housing authority gave notice of their intention to enter and take the remedial action.

3.6 Appeals against a financial penalty

An appeal must be made within 28 days beginning with the day after that on which a final notice to impose a financial penalty was served.

Landlords can appeal the decision to impose the penalty or the amount of the penalty. On appeal the final notice is suspended until the appeal is determined or withdrawn.

3.7 A summary of the available penalties & Factors in determining the level of Civil Penalty

If breaches under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This protocol provides guidance on how officers will determine the appropriate penalty.

The process for determining the financial penalty to be imposed has two steps.

3.8 Seriousness of the offence

The more serious the offence the higher the penalty.

Offence	Band 1	Band 2	Band 3
Electrical Safety Standards Regulations 2020	Reports not obtained and supplied within required timescales before tenancy.	Inspection and testing not completed at intervals of no more than 5 years;	Required electrical safety standards not met; failure to carry out remedial work required by an inspection report where the installation is unsatisfactory; failure to comply with a Remedial Notice.

3.9 Factors in determining the level of Civil Penalty

In determining the Civil Penalty amount, Darlington Borough Council will have regard to the statutory guidance outlined above and also to the Civil Penalty Policy (taking into account Culpability of the offender and the potential for tenant harm) to ensure a cohesive approach is taken.

The culpability of the offender as set out in the regulations and the level of severity taking into account the potential for tenant harm. Collectively these factors identify the seriousness of the offence. The seriousness is then categorised, which then will be used to determine the amount of penalty as shown in the tables below.

3.10 Level of severity

Band	Band 1	Band 2	Band 3
Low	£1,000	£5,000	£6,000
Medium	£2,000	£10,000	£14,000
High	£3,000	£15,000	£22,000
Very high	£4,000	£20,000	£30,000

The level of severity within the allotted band determines the level of the financial penalty.

3.11 Consideration of Aggravating and Mitigating Factors

Officers may consider it appropriate to adjust the penalty from that determined in the table either up or down. If there are particular aggravating or mitigating factors such as landlord has a previous history of non-compliance with housing related regulatory requirements. Factors may come to light as part of the investigation for the breaches these adjustments will be made and included in the Financial Penalty.

Factors affecting severity can include:

- (a) First breach under these regulations, no previous history of non-compliance of with Housing related regulatory requirements.
- (b) Complex issues partially out of control of the landlord have led to noncompliance
- (c) More than two Category C1 hazards.
- (d) No vulnerable tenants and/or short period of non-compliance.
- (e) A determination of the offender's history of legal compliance.
- (f) Landlord has failed to comply with requests to comply with these regulations.
- (g) Knowingly or recklessly providing incorrect information in relation to exemptions to these regulations.
- (h) Vulnerable tenants occupying property and/or, extended period of time since non-compliance.

Details of these factors will be included in the Penalty Notice. In addition factors may be provided in representations from a landlord in his request to review after the Penalty Notice has been served. Officers will have regard to these factors and adjust the penalty to increase (up to the Maximum of £30,000) or to reduce the penalty as they feel appropriate.

The Council must check whether the level of penalty is proportionate to the overall means of the defendant. If necessary the initial amount may be amended to ensure it fulfils the general principles outlined above.

The Council will, when issuing a financial penalty for more than one offence, or where an offender has also been issued with another financial penalty, consider the total penalties are just and appropriate to the offending behaviour and make adjustments accordingly. The overriding principle is that the overall penalty must be just and proportionate.

3.12 Financial penalties

Following failure to comply with the Regulations, a local housing authority can impose a financial penalty of up to £30,000 on a landlord. Proceeds of financial penalties can be used to carry out private rented sector enforcement. Any amount that is not used in this way must be paid into the Consolidated Fund, the government's general bank account at the Bank of England.

3.13 Recovery of financial penalties

If a landlord does not pay a financial penalty imposed on them, the enforcement authority may take the landlord to court to recover the money. In proceedings for the recovery of a financial penalty a certificate signed by or on behalf of the person with responsibility for the financial affairs of the enforcement authority and stating that payment of the financial penalty was or was not received by a given date, will be accepted as evidence of the landlord's non-compliance with the penalty notice.

The Council may not take the landlord to court to recover the money:

- (a) During the period in which the landlord could ask the enforcement authority to review their decision to serve the penalty notice, or while they are reviewing their decision to serve the penalty notice; or
- (b) During the period in which the landlord could appeal to the First-tier Tribunal, or while there is an ongoing appeal to the First-tier Tribunal, against the penalty notice.

3.14 Further Guidance

[Electrical Safety Standards in the Private Rented Sector \(England\) Regulations](#)

[Guide for tenants: electrical safety standards in the private rented sector](#)

[Guide for landlords: electrical safety standards in the private rented sector](#)

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CABINET
13 JUNE 2023

ADAPTATION PLAN

Responsible Cabinet Member -
Councillor Steve Harker, Leader of the Council

Responsible Director -
Ian Williams, Chief Executive

SUMMARY REPORT

Purpose of the Report

1. To seek Cabinet approval of the adaptation plan to ensure continued resilience to climate change.

Summary

2. Darlington Borough Council's climate change strategy and action plan sets out our ambition to be a carbon neutral council by 2050. It is vital for our residents that we can continue to deliver our services and for our staff to be able to do their jobs in a safe environment. Since 2020, we have changed some of our working practices and staff have proved their flexibility in successfully delivering their services remotely.
3. Blended working and flexible hours are important additions to our resilience. However, we cannot be complacent. Projected temperature rise is likely to lead to more storms, heatwaves, droughts and flooding. The adaptation plan attached, relates to actions in the adaptation section of the council's climate change action plan.
4. A spreadsheet was developed and circulated via senior management teams for completion. There are some activities that are relevant across the council, so they have been pulled out as generic activities. The service specific actions will be included in the next iteration of the action plan and reported on alongside the carbon reduction actions.

Recommendation

5. It is recommended that Cabinet approves the adoption of the attached adaptation plan.

Reason

6. The recommendation is supported by the following reason – adaptation to climate change is vital for us to continue to deliver services that our residents and businesses rely on.

Ian Williams
Chief Executive

Background Papers

No background papers were used in the preparation of this report

Margaret Enstone: Extension 6229

S17 Crime and Disorder	There is no expected impact on crime and disorder in Darlington
Health and Wellbeing	According to the WHO, climate change is the greatest threat to global health in the 21st century. This plan sets out how we will adapt our services, to ensure that the Council can continue to support and provide services to Darlington's residents.
Carbon Impact and Climate Change	The Council has recognised the need to consider the carbon impact of decisions it makes. This plan covers how we will adapt our services to the unavoidable effects of climate change.
Diversity	Climate change affects everyone, but has a disproportionate impact on areas of deprivation. This plan covers how the Council will ensure that we can continue to deliver services in the face of climate change.
Wards Affected	This plan covers how the Council will ensure resilience of its services. It will not affect any particular ward.
Groups Affected	This plan covers how the Council will ensure resilience of its services. It will not affect any particular groups.
Budget and Policy Framework	This plan does not represent a change to the budget and policy framework.
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
Council Plan	The adaptation plan will enable us to continue to deliver on targets in the Council Plan in the face of climate change.
Efficiency	The plan sets out a different way of doing things, taking into account increasing unpredictability and extremes of weather. The cost of not taking action could ultimately lead to greater costs in service delivery.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

MAIN REPORT

Information and Analysis

7. Darlington Borough Council's climate change strategy and action plan sets out our ambition to be a carbon neutral council by 2050. However, we are still at risk from unavoidable climate change resulting from greenhouse gas emissions already in the atmosphere and we are already seeing the impacts of climate change in recent unpredictable weather.
8. It is vital for our residents that we can continue to deliver our services and for our staff to be able to do their jobs in a safe environment. Our business continuity plans provide us with the tools to deal with emergencies but planning for future scenarios now will mean that we will not have to trigger those plans so often, we will save money over time if we invest in our future now and, most importantly, our most vulnerable residents will still receive the services they rely on.
9. Since 2020, we have changed some of our working practices and staff have proved their flexibility in successfully delivering their services remotely. We are, therefore, in a better position than we might have been, as we already have systems in place that do not necessarily require us all to be in the town centre.
10. Blended working and flexible hours are important additions to our resilience. However, we cannot be complacent. Some staff have to be on site, whether that is at an office building, at a depot or out in the community. We must make sure that these staff are safe and able to continue to deliver their services.
11. Projected temperature rise is likely to lead to more storms, heatwaves, droughts and flooding. We need to make sure that the Council is ready.
12. The adaptation plan attached, relates specifically to two actions in the climate change action plan:
 - (a) A11 Conduct a gap analysis of current activity to identify further actions which could be undertaken
 - (b) A12 Integrate adaptation measures in statutory plans, strategies and functions
13. A spreadsheet was developed and circulated via senior management teams for completion. The questions were designed help to understand what we are already doing to prepare and enable us to set out additional activities that each department will make to ensure we are able to continue to provide the services our residents and businesses depend on.
14. Responses were received from:
 - (a) Adult Social Care
 - (b) Asset management
 - (c) Building Services
 - (d) Community Safety

- (e) Environment
- (f) Housing
- (g) Learning & Skills
- (h) Leisure Services
- (i) Planning Policy

15. The responses have been pulled together to create the plan attached at **Appendix A**.
16. There are some activities that are relevant across multiple teams, so they have been pulled out as generic activities.
17. The service specific activities will be included in the next iteration of the action plan and reported on alongside the carbon reduction actions.

Financial Implications

18. Most of these activities require changes in the way we do things, rather than investment, so there should be minimal, if any, financial implications.

Legal Implications

19. Defra is currently consulting on whether to include local authorities in round 4 of the adaptation reporting power under the climate change act. If this is taken forward by government, we need to be ready.

HR Implications

20. None.

Carbon Impact and Climate Change

21. These activities relate to adapting to climate change rather than mitigation, so will have little impact on our climate emissions. In some cases, for example, encouraging better orientation of buildings and improving building fabric, will impact on both mitigation and adaptation.

Equalities Considerations

22. Adaptation is about making sure that our services can continue to be delivered in the face of climate change. Not adapting will put our most vulnerable residents at greater risk, relative to the least vulnerable.

Consultation

23. The adaptation plan was put together in consultation with teams across the Council.

ENSURING A RESILIENT COUNCIL

Darlington Borough Council's climate change strategy and action plan sets out our ambition to be a carbon neutral council by 2050. However, we are still at risk from unavoidable climate change resulting from greenhouse gas emissions already in the atmosphere and we are already seeing the impacts of climate change in recent unpredictable weather.

It is vital for our residents that we can continue to deliver our services and for our staff to be able to do their jobs in a safe environment. Our business continuity plans provide us with the tools to deal with emergencies but planning for future scenarios now will mean that we will not have to trigger those plans so often, we will save money over time if we invest in our future now and, most importantly, our most vulnerable residents will still receive the services they rely on.

Since 2020, we have changed some of our working practices and staff have proved their flexibility in successfully delivering their services remotely. We are, therefore, in a better position than we might have been, as we already have systems in place that do not necessarily require us all to be in the town centre.

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Blended working and flexible hours are important additions to our resilience. However, we cannot be complacent. Some staff have to be on site, whether that is at an office building, at a depot or out in the community. We must make sure that these staff are safe and able to continue to deliver their services.

Projected temperature rise is likely to lead to more storms, heatwaves, droughts and flooding. We need to make sure that the Council is ready.

There are 57 adaptation actions in the climate change action plan. The activities below relate specifically to two actions in the action plan:

- A11 Conduct a gap analysis of current activity to identify further actions which could be undertaken
- A12 Integrate adaptation measures in statutory plans, strategies and functions

Teams identified what activities were already underway to aid resilience in service delivery (see Appendix 1) and what additional activities could be undertaken in light of expected impacts of climate change.

As with the climate change action plan, this document is intended to be organic and will be amended as and when necessary.

APPENDIX 1**ACTIVITIES**

GENERIC ACTIVITIES	
	Ensure all staff understand and recognise the symptoms of heatstroke and heat exhaustion/stress
	Take note of other services' actions and put relevant ones in place within own teams
	Ensure blinds are functioning and office areas are adequately ventilated for hot spells
	Ensure home working staff have appropriate space to work
	All staff responsible for communicating messages to their customers (internal and external). Additional training may be needed
	Include a wellness check in with 1:1s
	Use of technology to reduce need to travel where possible
All services with staff who work outside	Consider working hours, earlier starts, split shifts and encourage regular breaks Provide water and appropriate clothing
Services with outside areas	Provide shaded areas for staff/customers

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Service specific activities

ADULT SOCIAL CARE	
Business operations	Escalation if required via emergency services Contact carers Link with voluntary and community sector. Ensure adequate staffing, rotas adjusted if required.
Opportunities	Signpost and advise how to access local facilities
Health & wellbeing staff	Flexible hours Awareness raising re signs of heat exhaustions or cold.
Health & wellbeing customers	Review ability to deal with increased numbers of vulnerable people

ASSET MANAGEMENT	
Health & wellbeing staff	Sun safety and cover up policy checked and updated at the start of Summer

APPENDIX 1

COMMUNITY SAFETY	
Business operations	<ul style="list-style-type: none"> Scan older documents to reduce risk of damage from flood Office reconfiguration Online appointment booking Transfer front counter to contact centre Promote green spaces in planning applications Encourage raised electrics and concrete flooring during refurbishments Promote low carbon heating, high energy efficient appliances and efficient orientation of buildings Increase promotion and availability of solar panels through energy efficiency schemes
Opportunities	<ul style="list-style-type: none"> Utilise increase in community engagement to strengthen community confidence in the local authority and use existing and new partnerships to manage any increased demand An increase in sunlight hours will give greater capacity for engagement events where residents feel safer than in darkness Policy reviews: Licensing Act, Street Traders Policy, Pavement Café Policy
Business sector	<ul style="list-style-type: none"> Encourage private rented sector to move to EPC C before legislation changes and enforce once minimum standards are enacted Promote green spaces Encourage raised electronics and concrete flooring during refurbishments Encourage green roofs and reflective walls Promote gas boilers capable of working on 10% hydrogen gas for new gas boiler installations Encourage taxi proprietors to renew their vehicles with those that are emission free for air conditioning without carbon emitting engines.
Health & wellbeing staff	<ul style="list-style-type: none"> Risk assessment to take excessive heat into account Extend flexible working hours to later hours Increased use of remote inspections for initial assessments
Health & wellbeing Customers	<ul style="list-style-type: none"> Trading Standards could consider a local test purchase exercise to check that factor rating on sunscreen to see if they are accurate. This would have to be done in collaboration with Primary Authorities and the Office for Product Safety and Standards. Consider noise impact from licensed premises when windows/doors are open to allow heat escape Promotion of life long homes through the planning process

APPENDIX 1

BUILDING SERVICES	
Business operations	(a) Be more flexible in our approach to tenants if risks remain for a prolonged period. (b) Consider split shifts or temporarily increase operatives.
Health & wellbeing Customers	a) Where possible, have an understanding of people's health. Work with carers, nurses and relatives to ensure people are not alone. (b) Have a plan to deal with flooding, including assessment of halls/leisure centres which could provide temporary accommodation (providing sleeping bags, hot food and drink) and have people on hand to provide advice and guidance. Agreements with and use of local establishments (B&Bs, hotels) could also be considered for extreme conditions. (c) Work with Emergency Services. (d) Have as many people as possible First Aid trained. (e) Give regular updates; communication is key.
Buildings	(a) To improve on building quality, so dwellings are cool in the summer and warm in the winter. (Simple ideas can include installing shutters on windows, so during the summer months they can be closed and the windows remain open.) (b) The quality of the build is key. Consider proven methods for existing properties for how buildings can be adapted to take extreme weather changes.
ENVIRONMENT	
Business operations Risks	Consider more resource on gully cleaning Consider more out of hours service Longer growing/cutting season impacts on grounds maintenance teams - consider how that could be funded
Business sector	Monitor impact on income from servicing if increased numbers of businesses fail
Health & wellbeing staff	Consider change of hours
Customers	Monitor potential loss of income from reduced cremations/burials through fewer winter deaths
Infrastructure	Increased clearance of gulleys etc as response to increased rainfall
	Scarcity of bottled water could be an issue, consider supplying all staff with re-usable bottle(s)
	Increase number of trips for gritters spreading sand on melting roads
Natural environment	Alter grass cutting regime in drought periods Change planting in horticultural areas to drought resistant Potential public safety from stressed trees dropping branches?

APPENDIX 1

HOUSING	
Business operations	Review responsive repair times
Risks	Review budgets for repairs
Opportunities	Drop communal area temps down 1°C Continue solar panel installations
Business sector	Plan for potential increase in insurance premiums Potential disruption to building Potential for council tax issues
Health & wellbeing staff	Potential issues with building services & construction
Buildings	Continue work with Northumbrian Water on flood risk areas

LEARNING & SKILLS	
Health & wellbeing Staff	Negotiate further adaptations by landlord as required
Customers	Negotiate further adaptations by landlord as required

LEISURE SERVICES	
Business operations	Review due on Business Continuity Plan following restructure
Risks	Ensure Climate Change Readiness Review is captured and considered within future business planning
Opportunities	Draft financial impact from changes in building operating hours and capture in Dolphin Centre Business Plan Business case around extended hospitality offer and footprint is being pulled together Invest to save business case to be submitted to DBC for solar panels
Health & wellbeing staff	Ensure any updates are completed to risk assessments Flexible hours and agile working. Train staff to recognise symptoms and deal with heat exhaustion for staff and customers Education around effects from extreme weather caused due to Climate Change and what we can do to help ourselves
Customers	Review Emergency Rest Centre role alongside Emergency Planning Team Train staff to recognise and deal with symptoms of stress/heat exhaustion - could be incorporated within our ongoing staff

APPENDIX 1

	training programme
	Identify any vulnerable customer groups that could be at higher risk for example G.P. Referral clients and agree what measures would be put in place for these customers
	Consider Climate Change readiness information included within tenancy agreements and hire agreements

PLANNING POLICY	
Customers	Review of local plan Include information in health impact assessment

APPENDIX 1

Appendix 1: Activities put in place by teams across the Council

- Access to counselling, health and wellbeing initiatives for staff
- Additional breaks and access to water can be implemented now at the discretion of management
- Advice given to all council house tenants on hot weather
- Agency details in case additional staff is needed
- All local care providers have their own contingency plans
- All training centres are in low risk areas for flooding by rivers or surface water
- Alternatives for catering suppliers in case of supply failure
- Business continuity plans in place across the council Can switch Learning & Skills online delivery if necessary or use alternative sites
- Corporate communications protocol
- Corporate support through Alliance available
- Customer engagement electronic
- Double glazing in nearly all properties
- Education on new technologies such as air source heat pumps
- Emergency Rest Centre procedure is in place but may need to review if demands for these rise
- Emergency Rest Centre Protocol - plan exists for customers/staff stranded in the Dolphin Centre
- Encourage breaks, exercise, self care, access to water
- Encourage customers to exercise outdoors and meet with friends etc
- Energy efficiency scheme promotes solar panels
- Ensure patrolling staff have opportunities for rest from heat, cold and rain and keep well hydrated
- Extreme weather risk assessments in place for Eastbourne Sports Complex
- Home working and use of online/phone contact with customers
- Hot & cold weather plan for Lifeline, with increased contact
- Increased digital services
- Increased pavement cafes and premises using outside space
- Increased solar panels on social housing
- Increasing insulation
- Inspections assess for excess heat and for ventilation in properties
- Insurance premiums on all buildings
- LED lighting at Eastbourne Sports Complex currently being installed
- Minimum energy standards enforced
- Natural environment captured with planning process for any developments
- Natural ventilation
- Old windows being replaced across the front of the building
- Ongoing staff meetings and 1:1s feature climate change
- Opening windows during hot spells
- Outside workers provided with PPE and water
- Partnership working between Horticulture Team and Eastbourne Sports Complex
- Plan for relocation to alternative buildings if required
- Promotion of improved insulation, double glazing, draught proofing
- Promotion of mental health first aiders and health & safety champions
- Providing fans, using window shades, access to water
- Responsive to severe weather damage
- Signposting for customers to keep safe, warm, cool etc
- Software failure protocol
- Solar panels currently being explored for the Dolphin Centre

APPENDIX 1

- Sun safety training, cover up policy
- Support provided for people who need to move into temporary accommodation
- Update on M&E within building 2023/2024
- Use of local suppliers as part of social value
- Use of lone working safety devices
- Waste collection routes adjusted according to the weather
- Water hanging baskets and bowling greens
- Water stations available for staff and in key areas such as the gym customers
- Wellbeing checks for customers including environmental checks, signposting to warm home initiatives, encourage use of fans/shade when hot

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CABINET
13 JUNE 2023

INGENIUM PARC - PROPOSED DISPOSAL OF PLOT 1

Responsible Cabinet Member -
Councillor Chris McEwan, Economy Portfolio
Councillor Mandy Porter, Resources Portfolio

Responsible Director -
Ian Williams, Chief Executive

SUMMARY REPORT

Purpose of the Report

1. To seek approval for the disposal of approximately 3.24 hectares (8 acres) of land at Ingenium Parc by way of a long lease, as shown hatched on the attached plan at **Appendix A**, subject to the grant of planning permission for the development of a distribution centre of approximately 59,250 sqm (circa 638,000 sqft).

Summary

2. On 11 October 2022, Cabinet approved a proposal to dispose of 4.56 hectares (11.28 acres) at Ingenium Parc with associated infrastructure. An exclusivity agreement was subsequently entered into with that developer. This proposal has now fallen away, and the exclusivity agreement has been terminated.
3. A new proposal has been received from a different developer to purchase 3.24 hectares (8 acres) of land by way of a long lease, for the construction of a 59,250 sqm (circa 638,000 sqft) distribution centre. The developer has an identified end user, and on completion of the building, the leasehold interest will be sold to the occupier; a company that will initially support up to 215 jobs with scope for increases in future and has sustainability as a key priority.
4. The developer will install an access road to adoptable standards on land owned by the Council shown shaded grey on the plan at Appendix A, the cost of construction is included in the purchase price.
5. The disposal will generate a capital receipt.
6. Terms have been provisionally agreed with the proposed developer, please refer to **Appendix B Part III** for details.

Recommendations

7. It is recommended that:-

- (a) The disposal of approx. 3.24 hectares (8 acres) of land at Ingenium Parc by way of a long lease be approved on the terms set out in Appendix B Part III of this report, and;
- (b) The Assistant Director of Economic Growth be authorised in consultation with the respective Portfolios Holders to agree terms in line with those in Appendix B Part III and the Assistant Director for Law and Governance be authorised to document the sale of the property accordingly and associated matters.
- (c) TVCA's interest in the site be noted and the Assistant Director of Economic Growth be authorised to reimburse their portion of any receipt, accordingly.

Reasons

8. The recommendations are supported by the following reasons:-

- (a) To achieve development of Plot 1 and generate new income through business rates
- (b) To assist business development and job creation in Darlington

Ian Williams
Chief Executive

Background Papers

Cabinet Report 11 October 2022: Ingenium Parc – Proposed Development Update

Sarah Wayman

S17 Crime and Disorder	The report has no implications for crime and disorder
Health and Well Being	The report has no implications for health and well being
Carbon Impact and Climate Change	There is potential for any new Building to be easily accessible by sustainable transport modes which will help ensure the carbon footprint of the development is acceptable.
Diversity	No implications
Wards Affected	Eastbourne Ward
Groups Affected	All Groups affected
Budget and Policy Framework	The resolutions in this report will not make changes to the Budget and Policy framework.
Key Decision	This is a not a key decision.
Urgent Decision	This is not an urgent decision.
Council Plan	Supports the Council Plan by bringing jobs to Darlington, and facilitating development
Efficiency	The workload resulting from the recommendations in this report assumes resources at existing levels.

MAIN REPORT

Information and Analysis

9. Ingenium Parc comprises over 40 acres of Council owned industrial development land at Salter's Lane South situated to the rear of the Cummins factory. The development of this key employment site will directly contribute to the Council's priority strategic objective of economic development by way of job creation and Business Rates generation.
10. Infrastructure works to enable the site's development, including the extension of Salter's Lane South, associated utilities works and sustainable drainage work are almost complete. Additional infrastructure will be required within the site to enable each development plot to be fully serviced.
11. On 5 July 2022, Cabinet agreed to dispose of plots at Ingenium Parc on a direct sale basis or through Expressions of Interest.
12. On 11 October 2022, Cabinet agreed to dispose of 4.56 hectares (11.28 acres) for industrial development and associated infrastructure following an enquiry from a developer. An exclusivity agreement was subsequently entered into with that developer. This proposal has now fallen away, and the exclusivity agreement has been terminated.
13. A new proposal has been received from a different developer to purchase Plot 1 which comprises 3.24 hectares (8 acres) of land by way of a long lease, for the construction of a 59,250 sqm (circa 638,000 sqft) distribution centre and access road.
14. The proposed road will allow access from Salter's Lane into the subject plot and crucially, provide a stub end for later extension further into the site, opening up land to the east for disposal and future development. The road will be constructed to an adoptable standard and will remain within the ownership of the Council. The cost of constructing the road has been accounted for in the purchase price. The road is shown shaded grey on the plan at Appendix A.
15. The developer has an identified end user, and on completion of the building, the leasehold interest will be sold to that occupier who is relocating to Darlington from elsewhere in the North East. The development and occupation by the identified company will initially support 215 jobs (some may be relocations) with scope for increases in future. The occupying company aims to be an industry leader in sustainability, the building will be rated BREEAM Very Good and will include environmentally friendly design features.
16. The developer has a proven track record of delivering the same product elsewhere for the same occupier having just completed one elsewhere in the North of England in 2022. It is proposed that the development will be completed and operational by Q1 2025.
17. Terms are being negotiated and are summarised at Appendix B Part III to this report.

Valuation Comment

18. It is considered that the provisionally agreed purchase price represents the best consideration available in line with the provisions of S.123 of the Local Government Act 1972.

Planning Comment

19. Planning permission will be required for the proposed development. A planning application will be assessed in the context of local and national planning policies although the principle of the proposals in this location is acceptable.

Financial Implications

20. The sale of this land will achieve financial benefits for the Council, including a capital receipt, which is inclusive of the cost of the access road, and new income from business rates.

Legal Implications

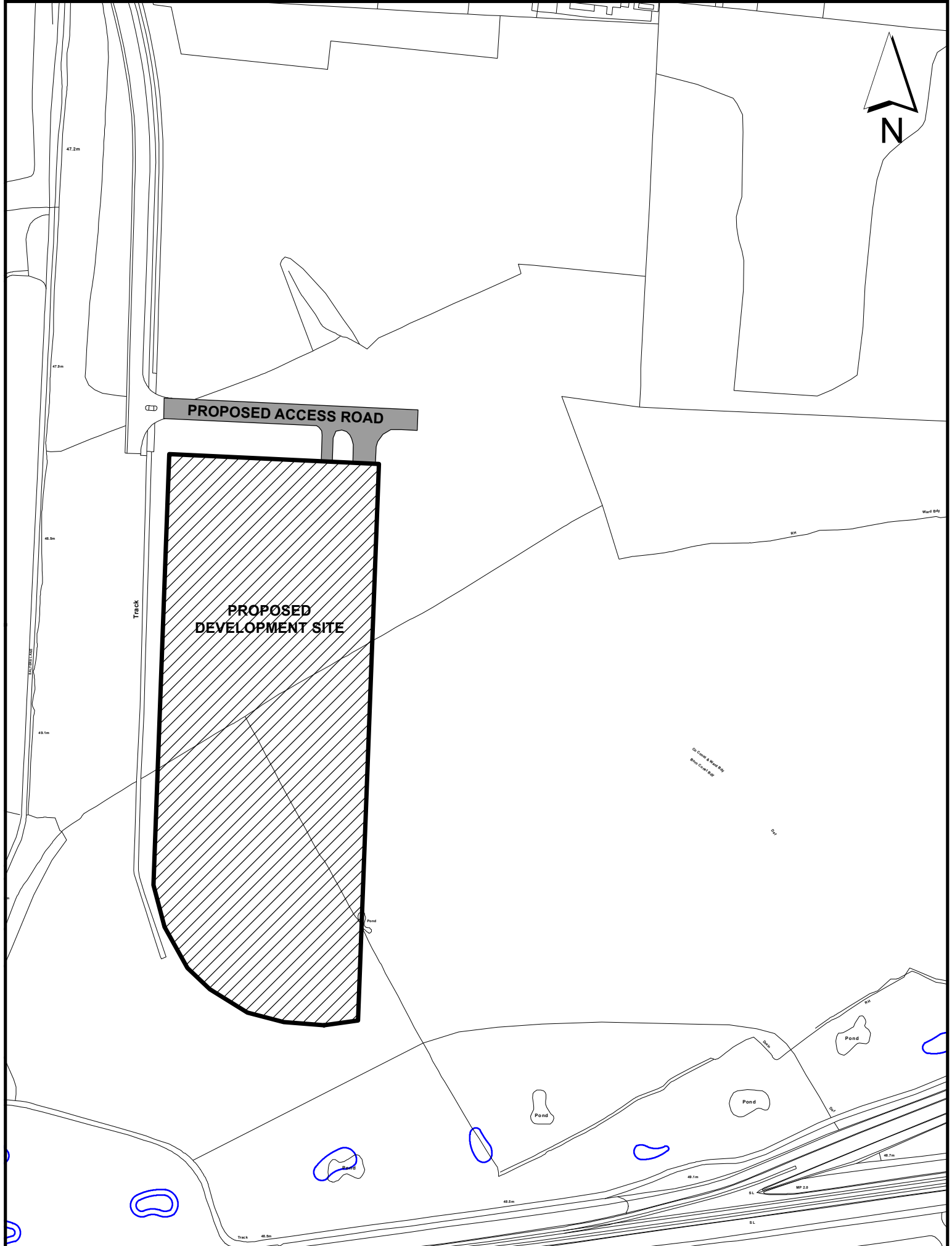
21. The Council has the power to sell land pursuant to s 123 Local Government Act 1972 and the proposed sale complies with the requirements of that Act as a sale for full value.
22. The Assistant Director, Law and Governance, will be required to document the sale of the property and deal with any issues arising from the legal process.

Procurement Implications

23. The land sale is in line with the Public Contracts Regulations 2015.

Consultation

24. External consultation will take place as part of the normal planning process. Internal consultation has raised no objections to the proposed sale.



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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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