

Norwich City Council
SCRUTINY COMMITTEE

Item No 7

REPORT for meeting to be held on 22 February 2018

Housing conditions in the privately rented sector

Summary:

The council has a duty to tackle hazardous housing conditions in the privately rented sector.

A significant proportion of rented homes in Norwich are hazardous and consequently the council has to target its enforcement resources at the worst cases.

The government will extend the mandatory licensing scheme for houses in multiple occupation in October 2018 which will significantly increase the number which require a licence in Norwich.

The property registration scheme launched by the council in 2016 has not received sufficient support from local landlords and is therefore suspended.

Conclusions:

The report provides members with key information on housing conditions in the private rented sector.

Recommendation:

That the scrutiny committee considers the evidence presented at this meeting and considers any recommendations it may wish to make.

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Report

1. The council has a duty to keep its area under review with a view to identifying any action that may need to be taken by them to remedy hazardous housing conditions (Housing Act 2004)
2. To comply with that requirement, in 2014 the council commissioned a stock modelling report from the Building Research Establishment (BRE.) The report used a wide range of data sources, including the 2011 census, the English Housing Survey, Energy Performance Certificate records and Experian household data, to predict the tenure and condition of privately-owned homes in Norwich. All the figures quoted below come from the BRE report.
3. There are approximately 14,000 privately rented homes in Norwich. This represents 21% of all homes in the city. Of these, approximately 3,000 are houses in multiple occupation. A house in multiple occupation (HMO) is a shared house with unrelated occupants who share facilities, or a house which has been divided into a number of smaller units (bedsits.)
4. The sector has grown significantly in Norwich over the last 15 years as shown in the following table.

	2011 census	2001 census	Difference	% change
Total households	13,089	7,276	5,813	80
- One person household	4,395	2,859	1,536	54
- Couple no children	2,750	1,490	1,260	85
- Households with children	2,334	934	1400	150
- All student	1,356	666	690	104
- Other	2,254	1,327	927	70

5. How much does it cost to live in the private rented sector in Norwich?

	Private Rented Sector/ £ pcm (source: home.co.uk)	Council homes/ £ pcm
1-bed house	547	339
2 bed house	753	342
3 bed house	937	359
4 bed house	1,283	382
1 bed flat	723	286
Single room (in HMO)	454	243

Living Conditions

6. Housing standards are assessed using the Housing Health and Safety Rating System (HHSRS.) This system considers 29 hazards (ranging from cold, damp and fire, to entry by intruders and radon gas) and allocates a score based on the likelihood of harm to a vulnerable occupant. With some hazards such as carbon monoxide gas all occupants are equally vulnerable whilst others may be based on age. For example, the vulnerable group for 'excess cold' are those aged over sixty five and for lead it is the under threes. An assessment will be made on that basis even if no one from the vulnerable group is currently living on the premises.
7. Category 1 hazards are those which pose a serious risk to a person's health and safety. A Category 2 hazard does not pose an immediate risk but may indicate a greater risk than is normally acceptable in a dwelling.
8. The BRE report predicts that 2,755 dwellings in the private rented sector in Norwich have a Category 1 hazard. This equate to 20% of properties in the private rented sector. HMOs are generally in poorer condition and it is predicted that 25% of these have a category 1 hazard.
9. To put this into context. The BRE report also states that 20% of owner-occupied homes have a category 1 hazard. This is compared with the council's own stock which is currently free of category 1 hazards.
10. The main category one hazards in the privately rented sector are conditions that would lead to falls (staircases in poor condition etc.) and excess cold (due to a lack of adequate heating and/or insulation.) However, we also take action in relation to a significant number of 'high' category 2 hazards including damp and mould and fire.
11. The council has a statutory duty to take action to remedy a category 1 hazard and may take action to remedy a category 2 hazard. 'Action' for the purposes of the Housing Act 2004 means one of the actions shown in paragraph 17 below.
12. In the current financial climate, and in common with other local housing authorities, the council does not have the resources to tackle every hazardous home in the privately rented sector (or in the wider owner-occupied stock.) The private sector housing team comprises three environmental health officers who take targeted enforcement action in the worst cases. These cases come to the team's attention either through complaints made by tenants or by pro-actively targeting properties and landlords where there is a known problem. The team's annual target is to make 100 homes safe.

Management of privately let accommodation

13. The council has powers to tackle poor management in houses in multiple occupation through the HMO management regulations and HMO licensing. Licensing powers may also be extended to homes that are not HMOs provided that certain conditions are met (such as a significant proportion of the rented homes in a defined area being in poor condition)
14. Apart from the exception noted above, the council has no powers to deal with the management of privately rented homes that are occupied by one household (e.g. family homes.) Issues relating to disrepair and maintenance that do not directly lead to hazardous conditions are a civil matter between the tenant and landlord.
15. There are a number of specific regulations that apply to all rented homes including the requirement to install fire detectors and the forthcoming requirement to meet minimum energy standards. These regulations are used to a lesser extent often because a failure to comply with them creates a hazard which is dealt with through the use of an improvement notice. They do provide further sanctions, however, in the form of financial penalties (see below.)

Tackling hazardous and poorly-managed homes

16. There are a number of current approaches to improving conditions within the privately rented sector
 - a. Enforcement
 - b. Information and education
 - c. Industry self-regulation

Enforcement

17. Remedies available to the council:

Improvement notice	Requires a landlord to remedy a hazard within a defined period of time. This is the most common form of action used by the council. Improvement notices may be deferred if, for example, a property is safe for use by the current occupant who does not wish for improvements to be carried-out.
Prohibition order	Prohibits the use of the dwelling. This is rare because most hazards are able to be remedied at a reasonable cost. Where used, the council is liable for disturbance and home-loss payments which are not recoverable from the landlord.
Emergency powers	Where there is an immediate danger to life then the council may carry out the improvement works straight away and recover the costs from the landlord. Emergency prohibition orders similarly enable the council to act immediately to prevent premises from being occupied. Emergency prohibition orders do not require the council to pay any compensation to the displaced occupants. They are used sparingly, most commonly where there is an

	immediate danger from fire.
Hazard awareness notice	This simply explains to the owner that a hazard exists. They are most commonly used in the case of lower-level hazards in owner-occupied premises

18. Licensing

Mandatory HMO licensing	The council is currently required to implement a licensing scheme for HMOs with three or more storeys and five or more occupants. In Norwich, approximately 200 HMOs at any one time require to be licensed under this scheme. The Government has announced its intention to extend mandatory licensing to all HMOs with five or more occupants from October this year. This is likely to increase the number of licensed HMOs significantly. Although we haven't got information about how many HMOs fall into this category in Norwich, based on government estimates it is likely to be between 700 and 1000 HMOs.
Additional licensing	The council has the power to extend HMO licensing to some or all of those falling outside of the mandatory scheme if conditions can be shown to warrant it. Norwich doesn't currently operate additional HMO licensing.
Selective licensing	The council may require all rented accommodation in a defined area (not exceeding 20% of its district) to be licensed. Norwich does not currently have a selective licensing scheme.

19. Sanctions

Prosecution	Can be used for failure to comply with a notice or order, failing to licence an HMO or failing to comply with the HMO management regulations or licence conditions. Fines are unlimited but tend to be relatively low. Prosecutions are very resource-intensive and can take many months to come to a conclusion
Works in default	The council may carry out the required works and charge the landlord if a notice hasn't been complied with. This is very resource intensive and exposes the council to financial risk but can be a highly effective way of ensuring tenants' safety. A recent example was with a large HMO in Magdalen Street where extensive improvement works were carried out by the council which prevented the spread of a subsequent fire and undoubtedly saved lives. The council is, however, involved in protracted legal action to recover the costs.
Financial penalty	This is a new sanction, recently introduced for a number of the newer regulations but, most significantly, as an alternative to prosecution for failure to comply with a notice or a licensing or HMO management offence. Penalties may be up to £30,000 per offence and may be retained by the council to support its housing enforcement activities. Cabinet approved a financial penalties policy in 2017 and we have recently received our first payment of £6,000. A number of higher value penalties are currently being processed.
Other sanctions	Include the national rogue landlord database and banning orders. The database has now been legally implemented but the physical database has yet to be launched by the Government. A date has not been set for the implementation

Information and education

20. We publish comprehensive information for landlords about our requirements and links to guidance and codes of practice on the council's website.
21. We also provide information for tenants about what action we can take and offer a toolkit to encourage and equip tenants to take action themselves. If a tenant makes a complaint we will usually discuss the problem with them and assess whether or not it requires immediate intervention. In the majority of cases, however, we provide the toolkit, which includes template letters. We always follow-up complaints to ensure that the tool kit has been successful and will generally inspect if a tenant is still experiencing problems.

Self-regulation

22. A number of professional landlord associations exist to train and assist landlords in their business. Many lettings agents are also members of professional bodies such as RICS which require minimum levels of training and performance. Wherever possible, therefore, we encourage landlords to join an association, employ a professional managing agent and to become familiar with their legal obligations.
23. Landlord and property accreditation is another popular method to encourage industry self-regulation and there are many examples of schemes around the country.
24. In the last 15 years Norwich has launched three accreditation schemes, the most recent being the property registration scheme (PRS) which was launched in 2016. The first two schemes only attracted small numbers of already compliant landlords who benefitted from incentives (e.g. grants) but who did not renew their membership in subsequent years.
25. The property registration scheme was launched with the intention of enabling tenants to be able to identify 'compliant' landlords and to enable the council to target enforcement resources at landlords who were not prepared to join and be held publically accountable. It received significant support from local lettings agents and property managers as well as the two principal landlord representative bodies, the Eastern Landlords Association and the National Landlords Association.
26. Despite support from industry representatives, very few landlords signed-up to the scheme and it has now been suspended. It is notable,

in fact, that despite negotiating 'approved status' and free membership for their landlord clients, two of the 'approved letting agents' failed to persuade a single landlord to join.

27. Further details from the PRS review are included in the appendix

Future priorities

28. The failure of the PRS scheme to deliver a self-regulation solution to the high incidence of sub-standard accommodation in Norwich suggests that a targeted enforcement approach is likely to be the best approach. This approach is supported at the national policy level by the Government's recent introduction of financial penalties and the promised extension of the mandatory HMO licensing.

29. The extension of licensing will require more resource to supplement the current enforcement team which comprises only three officers. The extra cost of doing so can be recovered through the HMO licence fee and there is potential to fund the extra enforcement activity that it will generate through charging for enforcement (which we already do) and the imposition of financial penalties.

30. Beyond that there is scope to introduce additional licensing to extend the regulatory regime to most or all HMOs in the city (i.e. those which have fewer than five occupants.) A good case can be made for this because the experience in Norwich is that the smaller HMOs can be just as hazardous as the larger ones. It is unlikely, however, that there will be sufficient resource to extend licensing beyond the mandatory scheme until all eligible properties have been licensed and inspected. The statutory timeframe for achieving this is five years.

31. There is potential to relaunch the property registration scheme and to use it in conjunction with additional licensing as a mechanism to reduce the resource required for such a comprehensive scheme. Broadly this would rely on the legal ability to exempt landlords from additional licensing if they have registered their property in the scheme. This would enable the council to divert resources away from those properties unless they were shown to be failing to meet the scheme's requirements. Under those circumstances they could be removed from the scheme and required to licence. This would provide a financial incentive for landlords to register with the PRS and to ensure that they comply with its requirements.

32. Preparations are being made now for the extension of mandatory HMO licensing in October 2018.

33. We will review progress after two years and consideration will be given to the need to introduce additional HMO licensing, possibly in conjunction with a relaunched property registration scheme.

Appendix 1.

Evaluation of the property registration scheme

Background

1. In March 2014 the Council asked Cabinet to:
 - a. examine the case for using a system of accreditation and licensing as a way of setting of standards and incentivising landlords to manage their properties in an acceptable manner thereby offering the opportunity for prospective tenants to make informed choices;
 - b. continue to use enforcement paths when appropriate to act against landlords who have failed to meet acceptable standards.
2. In July 2015 the council sought views on its proposals (see appendix 2) to introduce a property registration scheme for the private rented sector in Norwich and the subsequent enforcement actions that may be taken as a result. The online consultation ran from 25 June to 24 July 2015 and received 100 responses.
3. Overall the consultation showed that there was much support for the proposed approach from landlords, agents, tenants as well as the wider community. Whilst there were some concerns regarding the fee, the council is allowing agents and existing accreditation schemes to apply to become an Approved Organisation (certain criteria will have to be met) which will allow their members and landlords to register properties in the scheme for free.
4. There was also support for the council to take a hard line approach with landlords and agents who do not comply with legislation. The more properties in the scheme will enable the council to target its resources on properties that are not registered or licensed.
5. In summary many respondents recognised the aims of the scheme and its intention to provide landlords and agents with a transparent voluntary method to set themselves apart from non-compliant landlords and agents, as well as enabling prospective tenants to make an informed choice when considering whether to rent a property.
6. The property registration scheme was launched on 21 March 2016 to the council's private rented sector working group members with the official launch taking place at the NLA and Norwich City Council joint landlord forum on 11 May 2016. It was agreed that the scheme's success would ultimately be judged against one of the following likely outcomes:

- a. a significant number of landlords and managing agents have registered with the scheme, complied with its terms and conditions, and properties are managed and maintained to the required standards
- b. a significant number of landlords and managing agents have registered with the scheme, but are not complying with the terms and conditions, and resulting in little improvement in how properties are managed and maintained
- c. the majority of landlords and managing agents have not registered with the scheme.

Assessment

7. The property registration scheme is a trust-based scheme and therefore properties will not be routinely inspected. However, it was intended that a small sample would be inspected to check on the scheme's effectiveness, based on the table¹ below, and any serious complaints would be investigated.

	2016-17	2017-18	2018-19	2019-20	2020-2021	Annualised
Target no of applications	300	1,000	1,500	2,000	2,5000	1,460
Annual evaluation visits	169	88	90	92	93	

8. To date there have been no complaints received and due to the low numbers of registrations, 26 per cent of the year one target, no inspections have been carried out. The table below gives an overview of the properties registered in the scheme. Registration lasts for 12 months and we have received no renewals, therefore the 14 properties registered during quarters one and two of 2016/17 are no longer current.

Type of property	Q1 2016/17 sign ups	Q2 2016/17 sign ups	Q3 2016/17 sign ups	Q4 2016/17 sign ups	Q1 2017/18 sign ups	Q2 2017/18 sign ups	Total
HMO	0	1	37	19	1	0	58
Non-HMO	5	8	4	3	1	0	21
Total	5	9	41	22	2	0	79

¹ The sample size is greater for year one to provide confidence in the results for the purposes of making a decision about the success of the scheme and what subsequent enforcement approach the council may consider (see appendix 1 point 3b for details). From year two onwards, the sample size can be reduced since it will be more of a basic check that the scheme is operating satisfactorily.

9. The table below shows further evaluation of the 79 properties that have registered with the scheme.

Evaluation criteria	Outcome
Type of applicants	<ul style="list-style-type: none"> • 2x letting agents (19 properties) • 1x landlord representative body (2 properties) • 1x student representative body (52 properties) • 6x individual landlords (6 properties)
Approved organisations: <ul style="list-style-type: none"> • ArnoldsKeys • Abode • Martin & Co • NLA • UEA SU Home Run 	<ul style="list-style-type: none"> • 5x organisations approved of which 3 registered a total of 73 properties (92% of all properties in scheme) at zero cost • 4x organisations applied but didn't return signed agreements

Recommendation

10. The majority of landlords and managing agents have not registered with the scheme, and those that have registered were passported onto the scheme. It is therefore recommended that the scheme is suspended while the council reviews its options.

Appendix 2

Consultation: Proposed Approach to Enforcement of the Housing Act in the Private Rented Sector.

Summary

1. Recent stock modelling carried out for the council by the Building Research Establishment has shown that 20% of privately rented homes in Norwich and 25% of houses in multiple occupation contain a category 1 hazard to health. The council has a statutory duty to take enforcement action to remedy those hazards and must, therefore, take steps to regulate the private rented sector.
2. The council recognises that most private rented accommodation is satisfactory and requires no intervention by the council. The lettings industry is becoming more professional and is taking significant steps towards self-regulation, for example through the national private rented sector code of practice which has been agreed by all the main landlord and managing agent organisations and landlord accreditation schemes. In carrying out its duties, therefore, the council will seek to minimise the impact on landlords who already comply with the law.
3. The council is therefore proposing a two-tier approach to regulating the private rented sector in Norwich.
 - a. **Property accreditation:** Landlords will be able to submit their properties to the scheme for a small annual charge (currently proposed to be £25 per property.) In doing so, they will agree to adhere to the national private rented sector code of practice and a small number of local conditions. If a property does not yet comply, it can still be placed in the scheme provided that an improvement plan is in place. The property will be listed on the council's website which will be a useful tool for tenants seeking good accommodation whilst allowing compliance with the scheme to be open to challenge. This will be a trust-based scheme and properties will not, therefore, be routinely inspected. A small sample will, however, be inspected each year to check on the scheme's effectiveness and serious complaints will be investigated. Where a property is found to not comply it may be removed from the scheme. However, in the case of minor infringements landlords will be given the opportunity to remedy the problem before enforcement action is taken. The scheme will also include a mechanism for resolving complaints about property conditions informally.
 - b. **Enforcement:** Properties that are not listed in the property accreditation scheme will be targeted for formal enforcement action. The choice of enforcement approach will be made following a review of the accreditation scheme's effectiveness and may include one or more of the following

options. Before any decision is made on licensing, a full statutory consultation will have to be carried out:

- i. Additional HMO licensing (either area-based or city-wide)
 - ii. Selective licensing of all privately rented accommodation in a particular area (current rules prevent a city-wide approach)
 - iii. Targeted enforcement using existing Housing Act powers
 - iv. A combination of all three
4. There will be costs associated with running a property accreditation scheme but these will be kept to a minimum through the use of technology and by minimising the number of inspections that need to be carried out. The council is allowed to recoup these costs through charging a fee although it is not allowed to make a surplus. It is also not allowed to include enforcement costs in the charge (although these may be charged directly to the relevant landlord or agent.) The council does not have the resources to run a free scheme.
5. However, the council recognises that many landlords ensure that their properties are properly managed either by employing competent, professional managing agents or through membership of a landlord accreditation scheme. On the assumption that these properties will not require enforcement action by the council it is proposed to allow them to be registered in the scheme for free. The council will consider any scheme or managing agent on its merits but expect to include:
 - a. Landlord accreditation schemes where there is a requirement for training and continuing professional development (e.g. the NLA accredited landlord scheme)
 - b. Managing agents who are members of a recognised professional body with clear requirements relating to competence and conduct (e.g. RICS, ARLA, NALS) and signed up to a government recognised property redress scheme
 - c. Norwich Students Union Home Run scheme.
6. The principal benefits to the council of the proposed approach are:
 - a. The ability to identify all properties managed in accordance with the national private rented sector code of practice. This will enable enforcement resources to be concentrated on properties where there is no commitment to follow the code or to comply with the law. It is expected that the majority of the properties with hazards will fall outside of the accreditation scheme.

- b. A wider range of enforcement powers through the licensing of properties that are not part of the scheme. This will provide an incentive to landlords who are otherwise unwilling to comply with the law (currently it is not a criminal offence to let a property with a category 1 hazard unless it is required to be licenced.)
- c. The council will be able to recoup some of its regulatory costs, which are currently a general charge to Norwich's council tax payers, through the licence fee without unfairly charging landlords who comply with the law.