

ANGUS COUNCIL

NEIGHBOURHOOD SERVICES COMMITTEE – 8 OCTOBER 2009

PRIVATE HOUSING ISSUES – HOUSING BILL CONSULTATION

REPORT BY DIRECTOR OF NEIGHBOURHOOD SERVICES

<p><b>ABSTRACT:</b> This report provides Members with a copy of the Council's response to the Private Housing Issues, Housing Bill Consultation.</p>
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**1. RECOMMENDATION**

1.1 It is recommended that Members:

- i. Agree the submission as provided to the Scottish Government;
- ii. Agree that the consequences arising from this consultation are reflected in the Scheme of Assistance and reported to Committee.

**2. BACKGROUND**

2.1 Members have previously submitted their detailed response to the Draft Housing Bill Consultation Paper. This response provides comments on the supplementary Consultation.

**3. KEY ISSUES**

3.1 The "Private Housing Issues – Housing Bill Consultation" consultation paper deals with the Scottish Government's proposals for the possible inclusion of some private housing issues in the Housing (Scotland) Bill. These measures are largely to assist local authorities to enforce existing legislation more effectively. They have arisen from the Scottish Government's review of landlord registration and other comments on the registration system; suggestions for changes to house in multiple occupation (HMO) licensing; and points raised during the implementation of the powers in the Housing (Scotland) Act 2006 for local authorities to deal with disrepair in privately owned houses.

3.2 The issues for consideration in the consultation are:

**3.3 Landlord registration**

- Giving a local authority a power to obtain information from people connected with a property, in order to enable or assist it to exercise its landlord registration functions. This would be on the model of section 186 of the Housing (Scotland) Act 2006.
- Increasing the maximum fines for landlord registration offences, to bring them in line with the provisions on HMO licensing in the 2006 Act.
- Including information in the register about landlord registration applications that have not yet been processed or approved and cases where an applicant has been refused or deregistered. This could make the register more useful for tenants, neighbours and other members of the public.
- Allowing a local authority to charge a fee for the addition of an agent to a registration.

**3.4 HMO licensing**

- Changing the definition of a licensable HMO to deal with the problem of short-term lets, where residents are living and working in Scotland, particularly as regards the accommodation of migrant workers.

- Making planning permission (where it is required) a requirement for the grant of an HMO licence.

### 3.5 **Powers in the Housing (Scotland) Act 2006 for local authorities to deal with disrepair in privately owned houses**

- Maintenance powers - giving local authorities the power to pay a "missing share" in relation to a maintenance account for common maintenance, on behalf of owners who are "unwilling" to pay; to charge owners for drawing up maintenance plans where they fail to do so; and to charge owners for the cost of registering maintenance documents.
- Charging orders and repayment charges - a technical amendment to reintroduce a right of appeal against charging orders; and giving local authorities the power to charge owners the registration costs relating to repayment charges.
- Enforcement powers - removing the requirement that Housing Renewal Area draft designation orders must be approved by Scottish Ministers; extending situations where local authorities can provide assistance to include demolition; and ensuring energy efficiency measures are included as possible "improvements" which can attract assistance and be specified in work notices.

3.6 The issues considered under section two of the consultation (HMO Licensing) have been considered by the Civic Licensing Committee in Report 661/09.

## 4. **Proposed Response**

The detailed response is at Appendix 1. In this response Angus Council supports the drive for improvements in the quality of private properties and the management of those properties. The response backs charges for landlord's agents to protect tenants and prospective tenants and backs increases in the powers available to local authorities to drive improve standards. The response also backs the proposals that ensure the financial burden of neglect falls on those causing that neglect and not on local tax payers or those who could have expected to benefit from the monies available from private sector housing grant.

## 5. **FINANCIAL IMPLICATIONS**

5.1 There are no financial implications for the Council arising directly from the recommendation in this report.

## 6. **HUMAN RIGHTS IMPLICATIONS**

6.1 All implications of the European Convention on Human Rights have been considered in preparation of this report. The recommendations are considered to be proportionate.

## 7. **CONSULTATION**

7.1 The Chief Executive, the Director of Corporate Services, Director of Social Work and Health the Head of Finance and the Head of Law and Administration have been consulted in the preparation of this report.

## 8. **EQUALITIES IMPLICATIONS**

8.1 The issues contained in this Report fall within an approved category that has been confirmed as exempt from an equalities perspective.

## 9. **SINGLE OUTCOME AGREEMENT**

9.1 This report contributes to the following local outcomes contained within the Single Outcome Agreement for Angus:-

- We have tackled the significant inequalities in Scottish Society

## **10. CONCLUSION**

- 10.1 This response supports the quality argument and makes it clear that in the current financial climate the local authority resources must be prioritised to those most in need, particularly through the targeting of private sector housing grant. The report also highlights that local tax payers and residents should not be penalised as a result of neglect by private landlords or property owners. This response therefore supports realistic proportionality and makes it clear that Angus Council will be a partner as a default position but will not allow itself or its citizens to be a safety net for the minority of landlord or owners who do not take their burden of responsibility as seriously as the Council and the vast majority of its owners and responsible landlords..

**RON ASHTON  
DIRECTOR OF NEIGHBOURHOOD SERVICES**

**NOTE:** No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above Report.

**Hsg/NS/AMcK**

## **APPENDIX 1 – Full Response**

### **Landlord Registration**

**Question 1.1: Do you consider that a local authority should be able to require persons associated with a property to provide information to help it to carry out its landlord registration functions?**

Angus Council considers this to be a necessary requirement in the overall toolbox to enable the quality of the management and properties in the private rented sector continue to improve. We would also wish to explore a mechanism that would see all agents only able to accept landlords who could prove that they were registered as we believe landlords should retain the primary (but not sole) responsibility for registration and driving standards.

We are mindful of the resources needed to ensure the local authority is able to gather the required evidence particularly as the Private Sector Housing Grant is no longer ring fenced and the overall public sector finances are under considerable pressure. Any additional responsibilities or increase in tasks must be accompanied with sufficient resources to allow these responsibilities to be effectively discharged. We are also mindful that this should not be at the expense of the resources available to support the most vulnerable in our society and this may well prove to be a difficult balancing act.

**Question 1.2: Do you consider that the maximum fine for failing to register as a landlord or communicating with another person with a view to entering into a lease or an occupancy arrangement without being registered should be increased, and if so do you consider that £20,000 is the appropriate maximum level of fine?**

At present it is not necessarily the level of fine which is most important but as the consultation paper notes, the ability to collect sufficiently robust evidence to pursue a successful case. Whilst we would not object to the increase in the fine (perhaps this could be proportionate to the size of property portfolio over and above a base fine), and some return of the resources back into the local system, we would like to see some guidance produced to assist both landlords and local authorities in raising standards. We believe that the outcome of high quality properties and management is the crucial and our preferred route to this would be through partnership working and voluntary improvements in the first instance but we would not rule out enforcement where this is the appropriate route.

**Question 1.3: Do you consider that the landlord register should contain additional information, indicating (a) that an application has been received but has not yet been processed or approved, and (b) that a landlord has been refused registration or has been de-registered?**

We are not opposed to this. Our goal is a consistent trend of improvement and if certain quality criteria are included on a register to enable prospective tenants to be better informed about the landlord they wish to rent from then this would only be of benefit to consumers.

**Question 1.4: Do you consider that a local authority should have the power to charge a registered landlord a fee for nominating an agent? If so, what do you think would be a reasonable charge?**

Yes, we would welcome the power to be able to charge. There are instances where the local authority has to deal with both the landlord and the agent. This can be time consuming, frustrating and costly and some recognition of this in the manner suggested would not be unhelpful. Further

to this, whilst we believe landlords should retain the primary responsibility to improve standards, we believe there should be a charter for private landlords and agents setting out guiding principles and standards with only those signing up to the charter being allowed to register. A reasonable charge would be equal to the level applied to landlords at present with an up rating mechanism built in.

**Powers in the Housing (Scotland) Act 2006 for local authorities to deal with disrepair in privately owned houses**

**Question 3.1: Where a local authority prepares a maintenance plan because the owner has (or owners have) failed to submit a satisfactory plan by the date specified in the maintenance order, do you consider that the authority should be able to charge the owner (or owners) the cost of doing so?**

Yes. This is a serious matter which will see the local authority exposed to financial risk and the landlord responsible should be aware of the financial burden their neglect is placing on wider local communities through their inaction. We believe that the price should be based on an open, actual hours, book level with an additional punitive charge similar to that applied via court expenses or benchmarked against several local providers of a comparable service for cost comparison. The local authority should not be seen as, or allowed to become, a default provider of service as a result of a landlord's or landlord's agents neglect.

**Question 3.2: Do you consider that local authorities should have powers to charge owners their expenses in registering documents relating to maintenance? Should this apply to all the documents mentioned in paragraph 29 above, or only some?**

Where a landlord's neglect has resulted in the local authority taking action it is reasonable to make a charge for that action. That charge should extend to all additional works resulting from the landlord's neglect. Given the pressure on budgets and staff time is highly likely that to carry out these duties local authorities will either have to find additional capacity or prioritise this work over something else. In both instances there is an opportunity cost and the landlord should meet this cost. We are however mindful of the need for openness and transparency and would not wish to see wide divergence of costs between authorities so would welcome discussions with the Government and landlord representative bodies on the level of charge to be levied and how that charge should be broken down.

**Question 3.3: Do you consider that the situations in which local authorities can pay a missing share into a maintenance account should be extended to include situations where an owner is unwilling to pay?**

We do but only on the basis that there is a swift return of that outlay plus reasonable expenses. The two main sources of funding to cover such costs will be the Private Sector Housing Grant (PSHG) or the General Fund. It is not desirable, to see tax payers, or in the context of the new focus for the PSHG, the most vulnerable who are to be prioritised for these resources, have to cover the costs of neglect. Therefore a quick repayment process must be established and authorities empowered to recover any financial outlay.

**Question 3.4: Do you support the restoration of the right of appeal against charging orders?**

In the interests of openness and fairness we have no objection to the inclusion of a right of appeal via the local authority.

**Question 3.5: Do you support the proposal to allow (though not oblige) local authorities to pass on the expenses of registering repayment charges and discharge of repayment charges?**

Yes provided the costs are reasonable.

**Question 3.6: What are your views on removing the requirement that Scottish Ministers must approve draft Housing Renewal Area designation orders before they can be made?**

As the lead Community Planning Authority we have no objection to this. In Angus any move to establish a Housing Renewal Area would not be taken lightly and would be subject to considerable public and political debate, including public consultation. We welcome the commitment from the Government to provide ongoing support where this is required.

**Question 3.7: Do you consider that the situations in which local authorities can provide assistance under section 71 should be extended to include demolition? If so, do you think this should be restricted to non-financial assistance? Would this be demolition only in pursuit of demolition notices as part of an HRA, or demolition more broadly?**

We are open minded on this aspect of the consultation and believe that each case must be considered on its merits and would expose major decisions above a de minimis level to political scrutiny (this has yet to be established in our Scheme of Assistance). We would be similarly open minded on extending our assistance outside HRAs where this would be the best outcome for a local community provided there is no net unacceptable loss to the Council.

**Question 3.8: Do you support the specific inclusion of energy efficiency measures in "improvement" and "work" in the 2006 Act?**

We agree with this but would wish to make explicit in our scheme of assistance what form that assistance would take and would be minded that it focussed on non financial assistance.