

COMMITTEE - Housing & Environment

DATE – 24 August 2010

DIRECTOR - Pete Leonard

TITLE OF REPORT – Request for delegated powers and use of Work Notices

REPORT NUMBER: H&E/10/093

1. PURPOSE OF REPORT

The purpose of this report is to request that delegated powers be given to the Senior Private Sector Housing Officer (Scheme of Assistance) and the Private Sector Housing Manager to sign Work Notices and Maintenance Orders under the provisions of the Housing (Scotland) Act 2006, and approve the use of Work Notices and funding to contribute to Maintenance Accounts. The report also requests that delegated powers be given to the Senior Private Sector Housing Officer (Rented Sector) and the Private Sector Housing Manager to sign Rent Penalty Notices under the provisions of the Antisocial Behaviour etc. (Scotland) Act 2004.

2. RECOMMENDATION(S)

It is recommended that the Committee:

- (i) notes the content of the report, and
- (ii) delegates to the Director of Housing and Environment, the ongoing power to authorize the Senior Private Sector Housing Officer (Scheme of Assistance), the Private Sector Housing Manager, and other Officers as appropriate, to sign Work Notices and Maintenance Orders under the provisions of the Housing (Scotland) Act 2006, and for this to be added to the Scheme of delegation documents.
- (iii) approves the utilisation of £50,000 for the implementation of Work Notices, from the monies in the 2010/11 PSHG budget allocated for Serious Disrepair Notice enforcement works.
- (iv) agrees that the £50,000 allocated in the 2010/11 PSHG budget allocated to the serving & enforcement of Maintenance Orders, can also be utilised for Maintenance Accounts.

- (v) delegates to the Director of Housing and Environment, the ongoing power to authorize the Senior Private Sector Housing Officer (Rented Sector), the Private Sector Housing Manager, and other Officers as appropriate, to sign Rent Penalty Notices under the provisions of the Antisocial Behaviour etc. (Scotland) Act 2004, and for this to be added to the Scheme of Delegation documents.

3. FINANCIAL IMPLICATIONS

The Finance & Resources Committee, at their meeting on 28 January 2010, resolved to approve a budget of £50,000 for the serving & enforcement of Maintenance Orders during the financial year 2010/11. Budgets already exist for enforcement activity in respect of Notices of Serious Disrepair, and it is proposed to utilize £50,000 from this item in the PSHG budget for the implementation of Work Notices.

4. SERVICE & COMMUNITY IMPACT

This report supports the following National Outcome from the Aberdeen City Community Plan & Single Outcome Agreement 2008-2011, namely:

12. We value and enjoy our built and natural environment, and protect it and enhance it for future generations.

5. OTHER IMPLICATIONS

None identified.

6. REPORT

6.1 The previous Private Sector Housing enforcement legislation was repealed at midnight on 31st March 2010, and was replaced by the Scheme of Assistance regime under the Housing (Scotland) 2006 Act legislation.

6.2 Owners remain responsible for maintaining their properties, but where this is not happening, the Housing (Scotland) Act 2006 gives local authorities new powers to require owners to maintain their properties to a reasonable standard.

6.3 Maintenance Orders

6.3.1 Local authorities may serve a Maintenance Order where an owner(s) has not maintained, or is unlikely to maintain, their house to a reasonable standard. A Maintenance Order requires the owner(s) to submit a maintenance plan to the local authority. The plan requires owner(s) to demonstrate how they will secure the maintenance of the property for up to five years. The owner(s) is responsible for implementing the maintenance plan but the Local authority may undertake to carry out the works detailed in the maintenance plan in default of the Maintenance Order and recover costs where the owner(s) has failed to deliver on the required action. In this regard, it may be necessary for the Local authority to serve a Repayment Charge against

the property.

- 6.3.2** The Local authority is responsible for registering the Maintenance Order and maintenance plan in the appropriate Land Register. The cost of registering such a document is currently £30, and there is no provision in the Act for the Local authority to charge the owner for this cost unless enforcement powers are used.
- 6.3.3** Owners who have been served with Maintenance Orders have a statutory 21-day period after the date of service, to appeal the decision to the Sheriff.

6.4 Maintenance Accounts

- 6.4.1** Maintenance Accounts may be set up by part-owners of flatted properties for the purpose of paying repair & maintenance costs. Local authorities can pay monies into Maintenance Accounts to cover missing shares of costs in the circumstances where a part-owner is either unable to pay their share or it is unreasonable to expect them to pay the share, or where the part-owner cannot be identified. Local authorities must also be satisfied that the proposed maintenance is reasonable, before paying missing shares of cost.
- 6.4.2** Where the Local authority has paid monies into a Maintenance Account, it can seek to recover its costs by way of the serving of a Repayment Charge against the property in question.

6.5 Work Notices

- 6.5.1** Under the Housing (Scotland) Act 1987, Local authorities could serve Serious Disrepair Notices and Improvement Orders. The Housing (Scotland) Act 2006 replaces these with a single Work Notice. Local authorities can serve a Work Notice on the owner of a house to bring the house up to a reasonable state of repair. The Work Notice will specify what remedial work the owner requires to undertake to bring the house up to a reasonable state of repair and meet the tolerable standard. Where an owner fails to carry out the work, the Local authority may undertake to have the work carried out and recover the costs, including administration costs, from the owner by way of a Repayment Charge. When serving a Work Notice, the Council no longer has a statutory obligation to provide grant assistance, unlike a Serious Disrepair Notice.
- 6.5.2** The Local authority must include Work Notices in the Building Standards Register. This is a public Register which mostly details Building Warrant decisions.
- 6.5.3** Owners who have been served with Work Notices have a statutory 21-day period after the date of service, to appeal the decision to the Sheriff.

6.6 Practical implementation of Maintenance Orders, Maintenance Accounts & Work Notices

- 6.6.1** It is proposed to serve Maintenance Orders on part-owners of tenement properties, where the Council has already identified that effective maintenance is not occurring. Maintenance Orders may also be used, to a lesser extent, in respect of houses where the condition of the house is having a negative effect on the neighbourhood.
- 6.6.2** It is proposed to serve Work Notices on part-owners of tenement properties where the majority of the part-owners within the tenement have agreed to carry out essential communal repairs but have failed to gain the co-operation of the minority of the part-owners OR where a part-owner of a tenement property is unable to finance his/her share of repair costs.
- 6.6.3** It is also proposed to serve a Work Notice on individual owners who refuse to co-operate with their co-owners in any tenemental properties contained within the Green Townscape Heritage Initiative, (Green THI) so that the owners can capitalise on the unique opportunity of grant funding that has been made available through; Heritage Lottery, Aberdeen City Council, Heritage Scotland and Scottish Enterprise.
- 6.6.4** In order for the above proposals to be taken forward, officers require delegated powers to serve Work Notices and Maintenance Orders.
- 6.6.5** If officers are to make effective use of Work Notices and Maintenance Orders, they will require to use the enforcement powers contained within the 2006 Act. The proposal is to utilise some of the monies from the underspend in the 2008/09 & 2009/10 PSHG budget programme which has been reserved by the Resources Management committee on 16th June 2009 for enforcement of Serious Disrepair Notices.
- 6.6.6** It is proposed that £50,000 will be utilised to cover payments where an owner has defaulted. These debts will be secured against the property by use of a Repayment Charge which can take up to 30 annual instalments to recover, although an owner may choose to settle the debt in full at any time during that period. Dependant on particular owners' circumstances, the Council may also choose to pursue recovery of the debt more quickly through normal debt recovery procedures. This is new legislation and as yet untested, the first cases will therefore be used to inform officers of the success or failure of these powers and to fine-tune operating procedures.
- 6.6.7** It is proposed that the £50,000 sum in the 2010/11 PSHG budget allocated to the serving & enforcement of Maintenance Orders, can also be utilised for paying monies into Maintenance Accounts to cover 'missing' shares of costs. Costs can be recovered by the Local authority by way of the serving of a Repayment Charge against the property in question.

6.7 Rent Penalty Notices

6.7.1 Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 concerns the registration of private Landlords, and allows Local Authorities to serve Rent Penalty Notices on Landlords who have failed to register. The effect of the Rent Penalty Notice is that no rent or other charges are payable by the tenant to the Landlord until the Rent Penalty Notice is revoked or overturned on appeal. A Landlord may appeal to the Sheriff Court against a Rent Penalty Notice, or against the refusal by a Local Authority to revoke a Rent Penalty Notice.

6.8 Practical Implementation of Rent Penalty Notices

6.8.1 Where it is confirmed that a Landlord is letting a property, and the Landlord is unregistered, a 1st letter will be sent to the Landlord advising of the legal requirement to register and the sanctions which the Council can impose for failure to register. The letter will set a 4-week deadline within which time the Landlord should either submit a paper application to the Council or register on-line.

Where no registration has occurred by the end of the 4-week period, a 2nd letter will be sent to the Landlord warning that registration must occur within the following 2 weeks, failing which a late application fee will be imposed (The Act allows this). The letter will also reiterate the sanctions available to the Council.

Where no registration has occurred by the end of the 2-week period, a 3rd & final letter will be sent to the Landlord advising that a late application fee must be paid upon registration. The letter will also state that if registration has not occurred with the following 1-week, the Council will serve a Rent Penalty Notice.

Prior to serving a Rent Penalty Notice, evidence will be gathered to confirm 1) proof by way of a Title Deed that the Landlord owns the property in question, and 2) that a Landlord/Tenant relationship exists. This will involve interviewing the tenant and obtaining the Tenancy Agreement where one exists.

7. REPORT AUTHOR DETAILS

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8. BACKGROUND PAPERS

The Scottish Government publication 'Implementing the Housing (Scotland) Act 2006: Advisory Guidance for Local Authorities'.
Resources Management Committee; 16th June 2009, Serious Disrepair Notice - Programme