

# **Private Sector Housing Renewal Policy**

## Test Valley Borough Council

Approved at Cabinet 26<sup>th</sup> May 2021

## Contents

- 1.0 Introduction
- 2.0 Identifying and Dealing with Unsatisfactory or Unsuitable Housing Conditions
- 3.0 Advice and Assistance
- 4.0 Grants and loans
- 5.0 Providing Adaptations to Meet the Needs of Disabled Residents in their Homes
- 6.0 Grants and Loans for Essential Repairs
- 7.0 Other Financial Assistance
- 8.0 HMO Licensing Scheme
- 9.0 Camping and Caravan Site Licensing Scheme
- 10.0 Enforcement Action
- 11.0 Smoke and Carbon Monoxide Detectors in Rented Housing
- 12.0 Civil Penalties for Housing Offences
- 13.0 The Targeting of Action in respect of Unsatisfactory and Unsuitable Housing Conditions
- 14.0 Comments and Complaints
- 15.0 Monitoring and Review

[Appendix 1 – Criteria and Conditions for Grants and Loans](#)

[Appendix 2 – Terms and Conditions for Grants and Loans](#)

[Appendix 3 – The Licensing of Houses in Multiple Occupation](#)

[Appendix 4 – Mobile Home Sites Licensing Fee Policy](#)

[Appendix 5 – Civil Penalties for Housing Offences Policy](#)

[Appendix 6 – Minimum Energy Efficiency Standards \(MEES\) Policy for Domestic Dwellings \(added 26<sup>th</sup> April 2022\)](#)

## **1.0 Introduction**

- 1.1 The purpose of this policy, which contributes towards supporting the aims of the Council's overarching Housing Strategy, is to outline the Council's intended approach to maintaining and improving the standard of private housing stock within the borough.
- 1.2 The policy applies to all privately owned homes, i.e. all dwellings (houses, flats, caravans etc.) that are not owned by the Council, including those owned or run by housing associations and it specifically outlines the Council's general approach to:
- Identifying and dealing with unsatisfactory or unsuitable housing conditions
  - Providing advice and assistance with regard to unsatisfactory or unsuitable housing conditions
  - Providing adaptations to meet the needs of disabled residents in their homes
  - Essential repairs for low income households
  - Providing financial assistance to achieve other housing policy aims of the Council
  - Maintaining standards by operation of licensing schemes for Houses in Multiple Occupation and Caravan Sites
  - Taking enforcement action including the use of civil penalties
  - Setting the civil penalty in respect of landlords' duties to install and maintain smoke and carbon monoxide detectors
  - Handling comments and complaints in relation to any of the Council's housing renewal functions
- 1.3 The Council also needs to ensure that it makes best use of, and maximises, any grant funding that is available for private housing stock with flexibility to utilise funds to best meet the changing needs of its customers. The policy will therefore set out the ways in which funding can be spent.
- 1.4 In developing this policy, the Council has considered the Regulators' Code (April 2014) made in accordance with Section 23 of the Legislative and Regulatory Reform Act 2006.

## **2.0 Identifying and Dealing with Unsatisfactory or Unsuitable Housing Conditions**

- 2.1 Unsuitable and/or unsatisfactory housing conditions may be identified from any of the following sources:
- Complaints or reports of housing defects or poor housing conditions, in particular by tenants in rented accommodation, or from partner agencies
  - Requests for assistance by owner occupiers in respect of tackling housing defects, conditions of concern or housing that is unsuitable by virtue of it not meeting the needs of the occupants

- Routine inspections made in connection with licensing regimes such as the licensing of Houses in Multiple Occupation and Caravan Sites
- Any housing surveys that may be undertaken by the Council.

2.2 There is a wide range of statutory provisions relating to housing standards and the associated powers and duties for securing compliance with required standards. The most important of these is the Housing Health and Safety Rating System (HHSRS) provided by the Housing Act 2004 and the associated guidance. Whilst the HHSRS is fundamental, housing legislation also covers matters such as the provision of smoke and carbon monoxide alarms in rented housing, energy efficiency, overcrowding, and the management of Houses in Multiple Occupation and caravan sites.

2.3 Where unsatisfactory or unsuitable housing conditions have been identified, the Council will aim to address the situation through a combination of:

- Giving advice and assistance; and/or
- Offering grants or loans, where available; and/or
- Operation of licensing schemes (applicable to Houses in Multiple Occupation and Caravan Sites); and/or
- Enforcement action.

2.4 The approach taken will depend on the individual circumstances of each case and this policy sets out the factors that are taken into account when determining the course of action that it is appropriate to take. The Council are not bound by the policy and may deviate where there are unusual circumstances that warrant that.

### **3.0 Advice and Assistance**

3.1 Where possible, the Council will provide suitable advice and assistance to householders with respect to any unsatisfactory or unsuitable housing conditions. The type of advice and assistance that is available will largely depend on the individual circumstances, and in particular the nature of the concern and whether the person concerned is a tenant, a landlord or an owner-occupier.

3.2 The Council's role may involve inspecting the property to investigate, giving advice about grants or loans that may be on offer, or signposting residents to other organisations that may be able to assist them. In some cases, the provision of advice may lead to the offer of financial assistance, where it is appropriate and available.

3.3 In general, except where financial assistance is available or urgent enforcement action is warranted, the Council will seek to secure improvements in housing conditions through advice, education, encouragement, promotion and other forms of awareness-raising. This will normally be the approach in respect of housing defects affecting:

- Dwellings inhabited by owner occupiers where there are no vulnerable occupants within the same dwelling; or

- Tenants in rented accommodation where the property owner co-operates to investigate and where appropriate rectify the cause for concern.

3.4 To target resources most effectively, the Council may undertake campaigns in order to achieve certain specific objectives, for example relating to energy conservation measures with a view to tackling fuel poverty and climate change.

#### **4.0 Grants and Loans**

4.1 Financial assistance, which comprises either a grant or a loan, is on offer in certain circumstances and aimed at supporting home occupiers with low incomes and/or meeting other policy priorities of the Council. This usually applies where either:

- A dwelling is in an unsatisfactory condition, or has unsatisfactory facilities, and requires essential repairs or improvements to bring it up to a satisfactory standard; or
- Adaptations are necessary or desirable to make the property suitable for the occupants. This might include adaptations to meet the needs of disabled occupants to provide safe access to and from, or within, the property, or to provide facilities suited to the occupants' needs.

4.2 In addition to mandatory grants which are prescribed by law, the Council will also offer discretionary grants and loans subject to the availability of funding and meeting criteria and conditions which are set out in Appendix 1. All grants and loans will also be subject to various terms and conditions (see Appendix 2).

4.3 The range of grants and loans on offer is subject to change, dependent on prevailing funding rules, the availability of funding, and the Council's policy position with regard to the exercise of discretionary powers at any given time.

4.4 One key principle of providing financial assistance is that the contract for the completion of the works (for which the grant or loan is given) will be between the applicant and the contractor appointed to complete the works. The Council will ensure that the work is completed prior to full payment of the grant or loan. The Council will not, however, monitor the work and any issues in relation to defective work will need to be resolved between the applicant and the contractor.

4.5 Grant work is approved on the basis of the lowest of tenders received except in cases where there are compelling reasons to do otherwise, or where the Council's standard Grant Schedule of Rates is used. The applicant would be liable for any cost difference between the lowest tender and their chosen contractor and for any additional works carried out at the request of the applicant.

4.6 The Council will not offer or give any specific financial advice. Accordingly, customers should seek independent financial or legal advice before entering into any legal agreement.

4.7 This policy sets out the Council's offer of discretionary funding as required by the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

## **5.0 Providing Adaptations to Meet the Needs of Disabled Residents in their Homes**

- 5.1 Disabled facilities grants or loans are available to provide home adaptations to enable disabled residents, whether owner occupiers or tenants, to stay safe and independent in their home. In addition, discretionary grants or loans may be available for other purposes, such as facilitating a timely hospital discharge or for the purposes of reducing the likelihood of hospital admission.
- 5.2 Mandatory grants may be governed by terms and conditions set in legislation or by conditions set by the Government or funding body, and not subject to control of the Council.
- 5.3 The processing of mandatory grants will normally be prioritised over discretionary grants and loans. In circumstances where additional discretionary grants or loans may be available in connection with an application already being processed for a mandatory grant, the Council will endeavour to consider the discretionary elements at the same time as the mandatory grant application.
- 5.4 The Council will aim to deal with grant enquiries in date order, except where the adaptation is identified as particularly urgent. Decisions relating to prioritising applications will, as far as practicably possible, take into account Occupational Therapist advice. Grants may also be processed taking into account the complexity of the case; some types of grant may take precedence above others depending on the availability of resources to deal with them.
- 5.5 The order of priority will generally be as follows (starting with the highest priority first):
- i. Adaptation required to facilitate discharge from a hospital or respite unit (or similar)
  - ii. Adaptation required to allow person access to toilet facilities (where no fixed facilities are available)
  - iii. Adaptation required to allow person access to maintain personal hygiene
  - iv. All other adaptations.
- 5.6 An administration charge will normally be applied based on the cost of the eligible works and added to the grant in line with the Housing Renewal Grants (Services and Charges) Order 1996, in cases where a caseworker service is provided by the Council in order to support the customer through the grant process. The caseworker service comprises giving practical assistance to the customer such as helping to determine the most appropriate type of adaptation needed, completing the application forms, obtaining cost quotations from contractors and liaising with contractors. This administration charge, expressed as a percentage of the cost of the grant works, will be reviewed and set annually as part of the Council's fees and charges scheme. The administration charge will be waived where there is a maximum grant, or where there is an architect or surveyor appointed to oversee the works to reflect the limited involvement of the Council.

5.7 Where an applicant is not eligible for a grant, a caseworker service may still be offered to ensure the resident is supported to get the right adaptation for his/her needs. The level of support may be dependent on the capacity of the service at that time.

## **6.0 Grants and Loans for Essential Repairs**

6.1 Discretionary grants and loans are potentially available to owner occupiers who are in receipt of a means tested benefit or who are on a low income and where the property either has a Category 1 hazard under the Housing Health and Safety Rating System or needs improvement to bring it up to a minimum acceptable standard.

6.2 Applications will be processed in date order of receipt subject to funding. Where there is a limit on funding, applications will be prioritised according to the severity of the hazard and whether any of the occupants are considered to be vulnerable, such as:

- a person in need of community care services by reason of mental or other disability, age or illness and/or may be unable to care for or protect themselves against harm or exploitation

6.3 Funding will generally only be provided where no alternate grants or low cost loans can be sourced e.g. funding for energy efficiency. Grants may be used in conjunction with other funding sources subject to meeting eligibility criteria.

6.4 In addition, an empty property loan can be offered in some circumstances for the purpose of making essential repairs to bring property up to a standard suitable for occupation, normally by a tenant to be nominated by the Council.

## **7.0 Other Financial Assistance**

7.1 Financial assistance may be given to other projects that are eligible to be funded from the Better Care Fund (or any subsequent or alternative funding source). These will generally meet at least one of the following objectives:

- Enabling vulnerable individuals to stay living independently within their own home;
- Reducing admissions to residential care homes;
- Reducing the cost of providing domiciliary care;
- Contributing to the wider prevention agenda of housing, social care, and health authorities by facilitating improvements in individuals' wellbeing and reducing hospital admissions.

7.2 The type of projects that could be included in this criteria are:

- Funding assessments for adaptations through, for example, trusted assessors or Occupational Therapists, either directly or indirectly employed by the Council.
- Funding services to assist those that are vulnerable in their home, for example by the provision of a handy person scheme for minor works

- Providing additional support to clients to assist with the process of applying for grants and other benefits
- The adaptation of temporary or supported housing accommodation to ensure that it is available to all people who may need it, and may also provide respite accommodation whilst work is being carried out
- Increasing publicity of Disabled Facilities Grants and Loans
- Discretionary special case funding for clients or items that aren't eligible for existing funding but whose needs cannot be met in another way
- Enabling bespoke adapted housing solutions for individuals or groups with specific needs whose needs cannot be met through traditional affordable housing delivery, or through private rented housing. For example, this could include the need to fund a higher build specification on a new-build affordable home to suit the bespoke needs of the customer, where mandatory DFG funding isn't available. Alternatively it could include the need to part fund an affordable housing model which enables a group of customers with specialist needs to be able to live in a small block of flats living independently with an onsite carer for the scheme.
- Setting up equipment rental systems to enable specialist equipment to be reused and provided faster than traditional methods.

7.3 Funding may also be given to projects aimed at tackling poor energy efficiency and fuel poverty, which helps the Council's objective to tackle climate change, through the Council's Capital programme or Better Care Fund as appropriate.

## **8.0 Houses in Multiple Occupation Licensing Scheme**

8.1 The Housing Act 2004 covers licensing of certain rented properties. In general (at the time of publication), mandatory licensing is required for all Houses in Multiple Occupation (HMOs) that have five or more occupants, comprising two or more separate households, but living within the same property and sharing some of the facilities.

8.2 There are discretionary licensing schemes that local authorities may choose to bring into force. The Additional HMO licensing scheme would apply in cases where it is expected that an especially high number of HMOs concentrated in any area would give rise to additional problems. Selective licensing can require any private rented property to have a licence where there is a particular need to control specific issues arising, for example in relation to housing conditions or crime. The adoption of such additional schemes would not be warranted within the Test Valley area currently, although this will be kept under review. Accordingly, at present the Council will operate the mandatory HMO licensing scheme only.

8.3 Details of the Council's HMO licensing scheme are given in Appendix 3.

## **9.0 Camping and Caravan Site Licensing Scheme**

9.1 The Caravan Sites and Control of Development Act 1960 requires the licensing of certain caravan sites which includes most mobile home parks. Such licences will

attach suitable conditions which are based on a set of national model standards relating to the standards of facilities that ought to be provided.

- 9.2 To cover regulatory costs, an annual licence fee may be charged and the applicable charges will be reviewed each year and set out in the Council's fees and charges scheme. In accordance with Section 10A(2) of the Caravan Sites and Control of Development Act 1960, the Council is obliged to prepare and publish a fees policy. This policy, which sets out the principle by which the fees will be determined, is provided in Appendix 4. The Council's annual fees and charges scheme will then provide annual updates of that policy.
- 9.3 A site owner, or nominated manager, must be a fit and proper person to lawfully operate a park home site. The Council will carry out checks as appropriate and necessary on application. Fees may be charged for this process and the fees will be included in the fees policy at Appendix 4. Fees are payable with the application and the application will not be considered until the appropriate fee has been received by the Council.
- 9.4 The Council will maintain a statutory register of persons deemed fit and proper to manage a park home site within the Test Valley Borough Council area. Entries on the register will last for up to 5 years. A person's status on the register may be reviewed at any time.
- 9.5 If a person is deemed not to be fit and proper, the site licence holder will be able to find a more appropriate person. The Council may nominate a manager on request. In certain circumstances the Council may apply to the Courts for the licence to be revoked.
- 9.6 The Council will also seek to license all relevant camping sites in line with requirements under the Public Health Act 1936. Conditions attached to the licence will cover facilities and amenities which must be provided.

## **10.0 Enforcement Action**

- 10.1 Enforcement action will be appropriate in some cases where there is a breach of a statutory obligation, most notably where a property owner has failed to provide to his/her tenants conditions and facilities that are safe and satisfactory. Enforcement action is usually discretionary but is mandatory in some prescribed circumstances, for example where a serious or imminent risk of harm exists.
- 10.2 It is recognised that some contraventions of housing law may be minor and/or inadvertent and appropriately tackled on an informal basis. With regard to decision-making, the Council will apply the principles of good enforcement practice set out in the Regulators' Code (April 2014). In this context, the Council aims to:
- Carry out its activities in a way that supports those that it regulates
  - Provide simple and straightforward ways to engage with those it regulates and hear their views

- Target resources based on risk and consider risk when making decisions about enforcement
  - Share information about compliance and risk where appropriate to avoid duplication of regulatory effort
  - Make available clear information, guidance and advice to help those it regulates to meet their responsibilities to comply with legal requirements
  - Ensure that the Council's approach to regulatory activities is transparent.
- 10.3 In the first instance the Council will generally seek to resolve situations by agreement in an informal manner and without recourse to formal enforcement action. This may involve giving advice to residents (tenants and owner-occupiers) and property owners.
- 10.4 Where properties are rented, the Council seeks to work in partnership with landlords to ensure properties are improved such that they meet required standards. Where possible, the landlord will be given an opportunity to carry out works within a reasonable timescale. This approach may not, however, be possible in some circumstances, for example:
- Where the situation requires urgent remedial action; or
  - The person responsible is not contactable; or
  - The proposed timescale for works is considered too long; or
  - The person responsible appears uncooperative and/or has a history of non-compliance.
- 10.5 Where properties are owned and occupied by the same household, the Council will seek to ensure that there are no vulnerable occupants exposed to serious hazards. The Council will normally seek occupants' views, where possible, and take these into account when deciding what action to take in relation to hazards.
- 10.6 In some circumstances it may be appropriate to take no action, for example where:
- The health and safety risk is sufficiently low and taking legal action would be disproportionate or inappropriate taking into account the circumstances of the case; or
  - The occupant does not want the Council to take action and it is considered appropriate in the circumstances to respect such wishes; or
  - It is more appropriate for another body or person to take action.
- 10.7 When deciding whether to take enforcement action, all of the circumstances will be taken into account, including the following (where known):
- The nature and severity of the defects
  - The risks to the occupants and/or people visiting the property
  - The tenure of the property
  - The views of the occupant(s)
  - The number of occupants, their ages and whether or not they are vulnerable

- The willingness and ability of the responsible person to carry out repairs within a reasonable time frame
- The management record of the owner and the number of other properties they control
- Whether the owner has been convicted of relevant offences previously and/or is listed on any database of rogue landlords (taking into account the Rogue Landlord Enforcement Guidance for Local Authorities).
- The use of any management agent and the number of properties they control

10.8 There are a number of options for formal action. The decision as to which may be the most appropriate will depend on the circumstances of the case, the relevant legislation and guidance, the risk to health and safety, and the required tests relevant to each option. In all cases the Council seeks to provide clear advice in plain language.

10.9 The Council will make an entry on to the National Rogue Landlord's database where a person has received two civil penalties within any 12 month period for offences occurring within Test Valley Borough Council's area; and also where a successful banning order has been made on application by Test Valley Borough Council.

## **11.0 Smoke and Carbon Monoxide Detectors in Rented Housing**

11.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced new legal duties on private sector landlords, most notably to install at least one smoke alarm on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, or wood burning stove).

11.2 The Council must serve a Remedial Notice where the Council has reasonable grounds to believe that there is a breach of a landlord's duty and, if that Remedial Notice is breached, the Council may impose a civil penalty charge. This is subject to procedures for review of the penalty charge if requested by the landlord and an appeals procedure to a tribunal which may quash or confirm the penalty charge notice, or may reduce (but not increase) the amount of the penalty charge. The amount of the penalty charge is left to the discretion of the Council but must not exceed £5000. The Council is required to prepare and publish a statement of principles which sets out how it will determine the amount of a penalty charge.

11.3 The Council's statement of principles in respect of penalty charges is as follows:

*The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord and a penalty charge only applies if, following discovery of the breach, the landlord does not comply with a subsequent Remedial Notice. In addition, the penalty charge is subject to an appeals process. Whereas the maximum potential penalty may present an excessive financial burden in some circumstances, it is also recognised that the charge serves as a deterrent against non-compliance and the penalty charge ought to be higher for repeat offenders. In the interests of simplicity and clarity for what landlords may expect, the scheme of penalty charges will be as follows:*

*£3,000 (the standard penalty charge) in the case of a first breach;  
£5,000 for any second or subsequent breach.*

*These penalty charges will be reduced by 50% if paid within 14 days of service of the penalty charge notice, except where stated on the penalty charge notice. If the Council considers that the landlord has obstructed Council officers in carrying out their duties at any point during its investigation then no discount will be offered and the penalty charge notice will state that no discount is offered.*

## **12.0 Civil Penalties and Banning Orders for Housing Offences**

- 12.1 The Housing and Planning Act 2016 amends the Housing Act 2004 to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences. Various procedures and statutory guidance have to be followed when issuing such penalties.
- 12.2 Where an offence has been committed under the relevant legislation and the Council is satisfied that there would be a reasonable prospect of conviction, the Council will then consider whether to proceed with a prosecution or issue a civil penalty. Where it is a first offence and the offender has admitted fault, it is likely that a civil penalty will be the preferred course of action. The level and seriousness of offence will be taken into account along with any aggravating factors. Where several significant offences occurred, either at the same time or on subsequent occasions, the Council may decide that a prosecution is more likely to be a deterrent to that offender, and other likely offenders in the area.
- 12.3 The decision as to which is the most appropriate and effective sanction will be taken on a case by case basis taking into account all relevant factors in each case.
- 12.4 The Council's policy on determining the appropriate level of financial penalty in such cases is given in Appendix 5.
- 12.5 The Council will consider applying for a Banning Order where a landlord has been a convicted of a relevant serious offence. In most instances this will be where landlords have committed other banning order offences, regardless of location, and the latest offence was particularly serious and caused or had the potential to cause severe harm for the tenant. Regard will be given to the circumstances of each case and the MHCLG guidance in force at the time.

## **13.0 The Targeting of Action in Respect of Unsatisfactory and Unsuitable Housing Conditions**

- 13.1 Given the high number of dwellings within the borough, it is not possible for the Council to identify and remedy every case of unsatisfactory or unsuitable housing conditions. Resources have to be targeted to the areas of highest priority.

13.2 Priority will be given to fulfilling the Council's statutory obligations. These cover a wide range of housing functions which include the following:

- The issuing of mandatory Disabled Facilities Grants
- The licensing of Houses in Multiple Occupation and Caravan Sites
- Investigating complaints and reports of housing defects and unsatisfactory housing conditions
- Remedying Category 1 hazards in accordance with the Housing Health and Safety Rating System.

13.3 Discretionary functions will be undertaken where there is capacity, without significantly impacting on the Council's mandatory functions. This discretionary work will be planned according to available resources. Such work will be targeted to meet one or more of the following aims:

- To provide non-mandatory grant assistance in respect of Disabled Facilities Grants.
- To assist vulnerable owner-occupiers in respect of unsuitable housing or poor housing conditions.
- To check compliance of minimum housing standards within privately rented accommodation not subject of a complaint. In particular, those owned or managed by a person who has persistently failed to manage the dwelling in accordance with legal requirements, or has failed to comply with informal or formal requests to meet minimum housing standards.
- To improve the efficiency rating of the least energy efficient homes and thereby help tackle fuel poverty and climate change.
- To meet the objectives of any initiatives aimed at maintaining and improving the standard of housing stock within the borough.

## **14.0 Comments and Complaints**

14.1 The Council strives to provide high quality services and welcomes feedback or comments about the customer experience and any suggestions for improvement. In cases of clear customer dissatisfaction then the customer will be offered the opportunity to discuss matters with the case officer or their manager.

14.2 Where the cause of dissatisfaction cannot be resolved with the case officer then the customer may request that the decision or case handling be reviewed by a manager.

14.3 The Council also offers a formal complaints procedure which is open to the customer at any time. Details of the Council's complaints procedure are provided on the Council's website at [www.testvalley.gov.uk](http://www.testvalley.gov.uk).

## **15.0 Monitoring and Review**

- 15.1 This policy will be reviewed periodically at least every five years.
- 15.2 Policy Reviews may be prompted by changes in legislation, guidance, resources available, or feedback.
- 15.3 Minor amendments to this policy will be approved by the Head of Housing & Environmental Health, in consultation with the Head of Legal & Democratic Services and the Portfolio Holder for Housing and Environmental Health. This includes any amendments made to reflect changes in the law and statutory guidance.

## Appendix 1 – Criteria and Conditions for Grants and Loans

The criteria should be read in conjunction with the terms and conditions.

The maximum funding limits shown in the table below will be applicable to all grants and loans awarded from 1<sup>st</sup> July 2021.

<b>Scheme</b>	<b>Assistance Available</b>	<b>Purpose</b>	<b>Scope of assistance</b>	<b>Eligibility</b>	<b>Scheme Conditions</b>
Home Improvement Grant (Essential Repair)	<p>Maximum Grant offered: £10,000 plus Legal Charge</p> <p>A maximum of 2 grants can be awarded per property in a 5 year period.</p>	To remedy Category 1 or serious Category 2 hazards as defined within the Housing Health and Safety Rating System (HHSRS); or to improve the energy efficiency rating of a property where the EPC rating is Category D to G	<p>Limited to necessary repair works in domestic properties as determined by TVBC.</p> <p>Relevant Professional fees (to a maximum of 15%)</p> <p>Will not include works where the applicant is entitled to apply for other public funding (for example but not limited to ECO funding or Government energy efficiency scheme)</p>	Applicants must: Own their own home; And occupy it as their only or main residence;	<p>Applicants must be in receipt of a means tested benefit, or on household income of up to £15,000 gross per annum and have savings of less than £10,000.</p> <p>A local land charge will be registered against the property for a period of 5 years from date of completion.</p> <p>Repayment may be required within 5 years from date of completion, see terms and conditions for more details</p>
Home Improvement Loan (Essential Repair)	<p>Maximum Loan offered: £10,000 plus Legal Charge</p> <p>A maximum of one Loan will be offered per property in a 5 year period.</p>	To remedy Category 1 or serious Category 2 hazards as defined within the Housing Health and Safety Rating System (HHSRS); or to improve the energy	<p>Limited to repair works as determined by TVBC.</p> <p>Relevant Professional fees (up to a maximum of 15% of the overall scheme)</p>	Applicants must: Own their own home; And occupy it as their only or main residence;	Applicants must have a household income of up to £20,000 gross per annum and have savings of less than £10,000.

		<p>efficiency rating of a property where the EPC rating is Category D to G; or to allow a disabled person to live independently.</p>	<p>Will not include works where the applicant is entitled to apply for other public funding (for example but not limited to ECO funding or Government energy efficiency scheme)</p> <p>Will not include works covered by the applicant's own building insurance.</p> <p>May include costs to register the property with Land Registry if required.</p>		<p>A charge will be placed on the property with Land Registry. Repayment in full will be required in certain circumstances, see terms and conditions.</p> <p>Interest charge will be applied for the term of the loan.</p>
Empty Property Loan	<p>Maximum Loan offered: £20,000 plus Legal Charge</p> <p>A maximum of one loan will be issued per property every 20 years from the date of completion and while in the same ownership..</p>	<p>To carry out necessary works to properties to bring them up to a standard suitable for letting either by remedying disrepair, making satisfactory internal rearrangements, central heating works and energy efficiency works.</p>	<p>Up to 50% of the costs of works will be paid. Up to 50% of specified approved fees (such as architect, structural engineers etc.) up to 15% of total works within the maximum loan amount.</p> <p>Limited to works agreed as necessary to bring the property up to standard, including basic decoration.</p>	<p>Applicants must be the registered owner of the empty property and agree to pay the difference between contractor's costs for the total of the eligible work and the amount of loan before the scheme will proceed.</p>	<p>Property must have been vacant for more than 12 months at time of application.</p> <p>Property must be let to a tenant nominated by the Council for the first 5 years following completion not exceeding a local reference rent.</p> <p>The loan will be secured against the property with the Land Registry.</p> <p>Repayment will be required, see terms</p>

					and condition for full details.
Park Home Grant	<p>Maximum Grant offered: £10,000</p> <p>A maximum of one grant will be offered in a 10 year period per property</p>	To carry out necessary thermal insulation works or similar works to improve energy efficiency of the home	Limited to energy efficiency works as deemed necessary by TVBC. Excludes work eligible under Government or National funding (e.g. ECO funding) although can be used in conjunction with such schemes where there is a shortfall of funding	Homes must be located on a site licensed by Test Valley Borough Council. Applicants must own and occupy the unit being improved as their only and main residence.	Applicants must have a household income of up to £20,000 gross per annum and have savings of less than £10,000.

<b>Scheme</b>	<b>Assistance Available</b>	<b>Purpose</b>	<b>Scope of assistance</b>	<b>Eligibility</b>	<b>Scheme Conditions</b>
Mandatory Disabled Facilities Grant (DFG)	£30,000 at time of writing (subject to changes in legislation)	To provide adaptations for disabled persons	Work determined as necessary and appropriate; and reasonable and practicable.	Medical need – determined by OT (or other relevant professional) Financial eligibility – determined by Government set means test	Local Land Charge placed on owner applications above £5,000 for 10 years.  Optional Caseworker service available – charge added to grant.
DFG Top up	Up to £15,000 grant available	To provide additional funding where grants exceed the maximum mandatory amount.	As per mandatory grant.	Must have full mandatory DFG approved.	Caseworker service charge added to the grant if applicable.
Disabled Facilities Loan	<p>Up to £20,000 loan available.</p> <p>Only one active loan per property.</p>	To provide adaptations for disabled persons.	Can be used to pay a personal contribution towards mandatory DFG or for a top up where cost of works exceed the grant limit; or for works that are not eligible for mandatory assistance; or to assist with	The property will be the applicant's only home, they must own it and occupy it as their main residence. Shared Ownership properties are eligible with consent of the RSL. Applicants (do not have to be the	<p>Optional caseworker service available – additional charge added to loan within the loan maximum.</p> <p>Charge registered at land registry.</p>

			relocation expenses (Legal, packing and moving charges) where current property cannot be adapted and support needed to move to appropriate accommodation; to pay for adaptations to a second home of a disabled child where a mandatory DFG doesn't apply.	disabled person) will be means tested using the Government set DFG means test and have an assessed contribution of less than £20,000 or will be in receipt of means tested benefit. The Disabled person will normally reside at the property as their main residence, exceptions will be made for example in cases of disabled children whose separated parents have shared custody arrangements.	Repayment required in certain circumstances, see terms and conditions.
Urgent care Grant	Maximum grant offered: £5000	For property improvements to aid hospital discharge. For example, adaptations, repair of heating systems, deep cleaning, clutter clearance. For adaptations for palliative care.	For works to the property as necessary to allow a person to be released from hospital. Does not include provision of carers.	Referral from Hospital or Rehabilitation care required to state that person is not able to return home until works carried out. Palliative cases where predicted life expectancy is 12 months or less will be eligible with confirmation from a medical professional	Optional caseworker service available – additional charge added to grant.
Adaptation Grant	Maximum grant offered: £7500.  One grant per applicant per property.	For property adaptations necessary to enable disabled persons to live independently.	To facilitate works to the property to allow independent living, such as level access showers, stair lifts, ramp access.	Applicants must not qualify for mandatory DFG either through type of works or through financial contribution.	Optional caseworker service – additional charge
Dementia Friendly Grant	Maximum Grant offered: £2000.	For property adaptations or		Any occupant of the property diagnosed	

	One grant per applicant per property.	improvements to support those affected to live in their own home safely.		with dementia and referred from adult social care or hospital teams.	
DFG Fees Grant	Maximum grant offered: £2000  One grant per applicant per property in a 10 year period.	For professional fees incurred before any DFG application can be made. This includes, not limited to, Private Occupational Therapy assessments; professional surveying and application fees.	To allow determination of whether works are necessary and appropriate and feasible to go ahead.	Occupants over the age of 18 of a property in Test Valley BC area who have been referred for a Disabled Facilities Grant.	

[Back to Contents Page](#)

## **Appendix 2 – Terms and Conditions for Grants and Loans**

These terms and conditions form part of the Councils Private Sector Housing Renewal Policy and will be applicable to all elements of it, except where otherwise stated. The terms and conditions applicable to Mandatory Disabled Facilities Grants are set by statute determined by central government and followed by local authorities

The terms, conditions and eligibility criteria for the grants and loans detailed within this policy are set down in writing for all applicants.

### **Eligibility**

1. The property for which financial assistance is sought must be within the boundaries of Test Valley Borough Council.
2. Commercial buildings are not eligible for funding, except where the residential part is fully separated and has its own entrance.
3. Properties subject to closing, demolition orders or Prohibition orders are not eligible for assistance.
4. Where the property is in shared or joint ownership (including with a Registered Social Provider), all owners must consent to the grant or loan, and the legal charge being placed on the property, before funding can be approved.
5. Professional fees include, but are not limited to, those incurred from Architects, surveyors, structural engineers, Home improvement agencies (who arrange the work and support the tenant), necessary application or licence fees that may be required.
6. Work that is covered by the applicant's own building insurance will not be eligible for funding.
7. Grant/Loan assistance will only be approved for the benefit of applicants who are able to provide evidence of a valid National Insurance Number.

### **General**

8. Properties must not be left vacant for more than six months once a loan has been granted and works completed.
9. Where multiple loans or grants are permitted on a property in a time period, the date will be calculated from the certified completion date of the previous grant or loan. However this does not prevent applications running concurrently as long as the number of active charges at the property will not exceed the maximum permitted upon approval.
10. Information provided to the Council by applicants as part of the application process will be checked thoroughly and may be shared with other Services of the Council and other organisations involved in any aspect of handling public funds to prevent and detect fraud or in investigation of the possible criminal activities.
11. In certain circumstances where the Council believes that actions of applicants may have been taken to deliberately defraud the Council a file will be passed to the Police for investigation.

12. Any loan or grant will be secured against the property and lodged with Her Majesty's Registry or the Land Charges Register, whichever is applicable.
13. If in any position whereby repayment of grant is required the applicant fails to make the necessary arrangements the Council will place a charge on the property, which will incur interest at 5% above base rate.
14. At any point where the Loan or Grant is still an active charge on the property, the applicant shall upon written request from the Council, reply in writing, within 21 days of the date of request state how she/he is complying with any of the terms and conditions of the grant or loan enquired about. Failure to comply with this item will be deemed a failure of the grant and loan conditions requiring total repayment of the grant/loan plus interest at 5% above base rate.
15. The Council reserves the right to withdraw any financial assistance package from offer if there is no budget funding available, up to the point of approval.
16. In considering applications for the benefit of people with disabilities the Council may choose not to grant aid adaptations for which County Council Social Services are responsible under the Chronically Sick and Disabled Persons Act 1970.
17. The Council may refer enquiries for assistance to an alternative Government or nationally funded scheme as appropriate.
18. The Council may from time to time utilize special funding from central government or other sources, aimed at specific subjects to target issues of local and national concern in accordance with any special conditions. Any special terms and condition applicable to such initiatives will be appended to the Private Sector Housing Renewal Policy as they will not significantly alter the Council's primary approach to the subject.
19. The Council reserves the right to re-consider any individual application against any of these terms and condition upon the authority of the Head of Housing and Environmental Health.

## **Application**

20. Applications will only be accepted on the prescribed forms of the Council.
21. Applicants must be 18 years of age or older at the date of application and in the case of joint applications, one must be over 18 at the date of application.
22. Proof of identity must be provided by showing a valid full passport or some other photographic identification. Where the applicant has no photographic identification, the Council may accept an alternative such as original birth certificate.
23. If there is a mortgage or registered financial charge in place on the property, the applicant must not be in arrears and must supply a current mortgage or loan statement with their application for discretionary grants and loans.
24. Consent of any mortgagee will be needed before an application can be approved.
25. In making an application for assistance, when applicants sign the application form, or tick the appropriate declaration on an electronic form, they are agreeing to all the terms and conditions as detailed by the Council.
26. All applications for assistance must be accompanied by a declaration which states that the applicant has or proposes to acquire a qualifying interest in the property subject to the application for assistance.

27. Proof of title shall also be required to enable property ownership to be confirmed.
28. In case of applications initiated by a qualifying tenant they must be accompanied by a tenants certificate stating that the applicant is a qualifying tenant of the dwelling and that she/he intends to live in the dwelling as their only or main residence. A tenant's application must also be supported by the landlord's completion of a certificate of intended letting unless such is not forthcoming and the works are required to remove risk to the tenant's health and/or safety. In all other circumstances work to a property will require the owner's written authority and that of the mortgagee.
29. Applications for Disabled Facilities Grant or Loans will only be considered complete when it is accompanied by a report from a medical professional such as Occupational Therapist recommending the necessary works.
30. The number of estimates/quotes accompanying an application for assistance for works costing in excess of £1,999 shall be at least two whilst at or below £1,000 at least one estimate/quote shall be provided. The exception to this will be where the work is for specific disabled adaptation where the Council has a prescribed schedule of rates. In these cases one estimate/quote will be accepted. The Council reserve the right to ask for more estimates/quotes if they are not happy with those submitted, or to accept a single quote where two would normally be required for work from specialist contractors.
31. An application for assistance towards works that have already been completed will not be processed. Any parts of works not commenced, which would otherwise have been considered for assistance will be processed for possible grant/loan assistance as long as work is not commenced prior to formal approval.
32. The Council may not consider applications from person or organisations where there is a possible alternative source of funding for maintaining properties.

### **Means Testing**

33. The financial eligibility criteria (means test) for Disabled Facilities Grants is set in legislation. The Council may use this method for means testing access to other financial assistance packages.
34. The income of the applicant (or relevant person if applicable) will normally be taken over the preceding 12 months from date of application.
35. The applicant must provide full details of income and savings on application.
36. The Council will normally request full evidence of income and savings to be submitted with any application.
37. If the means test identifies that an applicant is required to pay a contribution to the works, this will be taken into account when calculating the amount of grant/loan payable.

### **Approval**

38. The Grants/loans the Council awards are all subject to levels of available funding in each financial year and as such the Council reserves the right to defer approval, or even consideration, of applications for periods of time of its own choosing in order to properly manage its budgets.

39. Subject to the Council's discretion, all formal offers of financial assistance will be valid for 6 months and all payments must be made within 12 months of date of approval of the application. The time period allowed may be exceeded on application, where the Council is satisfied that there has been extenuating circumstances and the applicant will be informed in writing of the revised time period.
40. The Council will hold final authority to determine what works are included on grant or loan schedules although it is acceptable for owners, tenant or their agents etc., to draw up initial schedules of work which may be reduced or added to by the Council in terms of work qualifying for possible assistance.
41. The Council will calculate the amount of grant to be paid.
42. The amount of grant/loan payable shall be the actual cost of undertaking the works plus any associated fees less any owner's etc. contribution, up to the total value of the grant/loan approved.
43. The council will include the cost of preliminary or ancillary services fees and charges within the calculation of assistance, each submission of fees will be individually considered for reasonableness. The payment of such fees is conditional on a grant/loan being approved and the completion of all specified works, otherwise the Council will not be held responsible for any fees incurred before or after approval.
44. Where an applicant's circumstances change or are confirmed as different from originally stated, after approval is issued, such that approval would no longer be given, the applicant must immediately inform the Council of their change in circumstances and then the grant/loan approval will be cancelled and no payments made, or no further payment made where interim payments have already been paid, except in exceptional circumstances when the Council may give authority to provide further funding so as to conclude work at a suitable and appropriate stage. Where payments have been made, the local authority may demand repayment together with compound interest from the date on which payment was made until repayment, at such reasonable rate as the Council may determine.
45. In any case where financial circumstances at the time of application are later confirmed differently to those submitted by the applicant/s, the applicant/s must inform the Council of their change in circumstances and if the change is such that after approval a new processing of information would lead to reduced assistance or denial of assistance then the original approval will be amended/cancelled and the local authority may demand repayment together with compound interest from the date on which payment was made until repayment, at such reasonable rate as the Council may determine to recover any over payment. In such circumstances the local authority may choose to cancel the whole approval or demand repayment of all monies paid, plus compound interest, despite the fact that a reduced level of assistance would have been approved, where it is felt the degree of error in the applicant completing the original means test forms is such to suggest a deliberate attempt to deceive.
46. The Council may specify in grant approvals involving the installation of specialised equipment for the benefit of people with disabilities that the equipment is to be

returned to the Council if within 10 years it is no longer needed. The grant recipient, or a representative, shall notify the Council as soon as the equipment is no longer needed and the Council or their agents may choose to remove it for re-use elsewhere, making good so far as is practicable any damage caused by its removal. Where the original grant was approved with a contribution from the applicant then the percentage of that contribution as an element of the total value of the agreed works shall be calculated and that percentage of the second hand value of the specialized equipment paid to the original applicant or their agent.

### **Eligible Works**

47. The applicant will be responsible for choosing the contractor to carry out work at the property.
48. It is the applicant who employs the builder or contractor to undertake agreed works and the Council has no contractual liabilities in that relationship as their role is only to administer the grant/loan process.
49. The applicant may choose to implement a more extensive scheme than the work included on the grant/loan schedule as long as the end result meets the appropriate needs. The applicant will be solely responsible for the costs of any additional works that are not approved by the Council as eligible works
50. The responsibility to gain all necessary approvals for works to be undertaken, with assistance, rests with the applicant or their agent. Such approvals may be Planning Permission or Building Regulation Approval or any of the matters raised within the terms and conditions of grant assistance.
51. The applicant will be responsible for ensuring the quality of the completed work, either directly or through an agent of the applicant or a Home Improvement Agency if used.
52. If an applicant submits an estimate/quote from a member of their family who then carries out the agreed works the grant/loan will only be paid on the basis of the cost of materials and not labour.
53. The Council will not undertake works on behalf of applicants, except where works may be due in default of an owner's or tenant's failure to comply with a statutory notice.
54. VAT on cost of work is eligible for funding
55. The Council will only consider payment towards unforeseen work where the total cost of the work does not exceed the loan or grant maximum. This will be in the event of unforeseen work being needed to allow completion of eligible works or associated works of a nature to protect the health and safety of occupiers, or evidenced increases in costs to the contractor from their suppliers etc. Additional funding for this unforeseen work must be agreed by the Council before work is carried out where practicable. A formal re-approval to a higher level of assistance will be required before any payment above the originally approved level is paid.
56. The grant/loan works must be carried out by one of the contractors whose estimates/quotes were submitted as part of the application process, the grant/loan having been calculated by normally using the lowest priced estimate/quote or on the Council Officers' assessment of reasonable cost, using local knowledge.

## **Payment**

57. All payments shall be conditional upon receipt of an acceptable invoice following agreement with the applicant that equivalent works to the appropriate stage have been satisfactorily completed.
58. The Council will ordinarily make payments direct to the contractor on completion of works and on production of a valid invoice, however will make reimbursement payment directly to the applicant on production of a receipt.
59. In the event of a dispute the Council retains the right to make a payment to the builder where they are satisfied with the quality of the work.
60. In a situation of dispute between the applicant and contractor, which is not resolved in a reasonable time period, the grant or part thereof, may be paid to the applicant at the discretion of the Council.
61. The Council will consider requests for interim payments such that no interim payment will be for more than 90% of the cost of completed work and in aggregate no more than 90% of the total approved amount before final completion.

## **Repayment General**

62. In the event of a recipient of assistance pursuing a successful insurance claim, action for legal damages etc., which covers the cost of work for which a grant was previously paid, the applicant will on demand repay the total value of grant paid relating to such works, or the value of the insurance payment/legal damages if lower.

## **Repayment Terms for Grants**

### 63a) Home Improvement Grants

- i. In the case of any grant, for which part or complete payment has been made, where an applicant disposes of the property before the conclusion of a 5 year period following the date of final payment then he/she shall repay to the Council on demand the amount of assistance that has been paid.

### 63b) Disabled Facilities Grants

- ii. Where a local land charge has been registered, repayment of the amount of grant above £5,000 (up to a maximum of £10,000) will be required to be repaid if the property is sold or transferred within 10 years of the date of completion of the grant. This is subject to restrictions set out in legislation with regard to grant recipients' situations.

## Repayment Terms for loans

64. The following terms apply to all loans, but there are further terms and conditions for repayment of the Empty Property Loan and Home Improvement Loan which are set out separately below.

### General Terms and Conditions:-

- There are no monthly payments.
- The loan can be repaid at any time but must be repaid in full
- The loan must be repaid when the property is sold or the last registered owner dies or goes into long term residential care, or if the terms and conditions have not been met

#### 64a) Empty Property Loan

- i. The property must remain in the ownership of the loan applicant for a period of 5 years following the certified date of completion. During the whole of this period each unit of accommodation must normally be let to a tenant nominated by the Council at the local reference rent, or as agreed by the Council.
- ii. Early repayment may be waived if the Council's nomination rights are assigned to the new vendor but the charge will remain on the property.
- iii. The property must be maintained in a good state of repair once the works are completed and for a period of at least 5 years.
- iv. No interest is payable where the terms and conditions have been complied with for the period of 5 years following certified date of completion.
- v. Where these terms and conditions are not met the loan must be repaid in full by the owner, together with interest at 5% above base rate.

#### 64b) Home Improvement Loan

- vi. The loan together with the total amount of interest must be repaid to the Council on disposal of the property. The loan together with the total amount of interest can be repaid at any time prior to property disposal.

## Specific Terms and Conditions – Empty Property Loan and Home Improvement Loan

### 65. Empty Property Loan

- a. Properties excluded from the scheme are:

- i. Those built or provided through conversion less than 10 years prior to the date of application.
  - ii. Properties in shared ownership with a Registered Social Landlord
  - iii. Leasehold Properties with less than 55 years remaining on their lease
  - iv. Properties subject to any Compulsory Purchase or Leasing Order
  - v. Properties where a legal notice relating to the condition of the property has been served by the Council in the 5 years prior to application and where the requirements of the Notice were not complied to the satisfaction of the Council.
- b. Applications will not be accepted from anyone who has an active Housing and Planning Act 2016 Banning Order, or who is listed on the Register of Rogue Landlords.

#### 66. Home Improvement Loan

- a. Interest rate is set at 2% above base rate.
- b. The loan repayment will be the capital, together with rolled up interest, calculated annually at the anniversary of the completion date.

#### **Right of Appeal**

67. Applicants who are not satisfied with the outcome of their grant or loan application may set out their case in writing to the Housing Development and Standards Manager for consideration. Applicants are entitled to use the Council's Complaints procedure for any subsequent disagreement.

[Back to Contents Page](#)

## **Appendix 3 – The Licensing of Houses in Multiple Occupation**

The Housing Act 2004 covers the licensing of Houses in Multiple Occupation (HMOs). Mandatory Licensing is required for all HMOs that have five or more occupiers living in two or more households where there is a sharing of some facilities.

### **Definition of HMO**

The full legal definition of a HMO is contained in sections 254 to 259 of the Housing Act 2004. Reference will always be made to the legislation in case of queries. However a summary of the definition is given below.

A HMO is a property that is occupied by three or more people who come from two or more families (separate households). The people living there have to pay rent (or some form of consideration), occupy the property as their main home and share an amenity such as kitchen, bathroom or toilet. A member of the same family means people who are married, or living together as if they were married, or related to each other. It is not relevant how the property is let i.e. the number of tenancy agreements, or how the tenants interact when determining if the property is a HMO.

Certain buildings that have been converted to separate units of accommodations will be classed as HMOs. The Council will seek to licence any such converted buildings where the building does not consist entirely of self-contained flats, for example where at least one flat in the HMO has a basic amenity situated across the common parts from the main unit of accommodation.

Certain buildings are designated under Schedule 14 of the Housing Act 2004 as not constituting HMOs for the purpose of the Act.

### **Unlicensed HMOs**

It is an offence to operate a HMO which requires a licence, without the appropriate licence. If a landlord is operating a HMO without a licence, consideration will be taken to instigating legal proceedings. If a landlord approaches the Council directly with valid reasons for the delay and submits a valid application within 28 days, an informal approach will be adopted.

If the Council find a HMO which requires licensing, and a valid application is submitted subsequently, the Council will apply a reduced licence period to the HMO licence. In other circumstances the Council will carry out an investigation and if appropriate will consider taking formal action. This will also apply to landlords who fail to make a valid application for a renewal of their existing licence within 28 days of the previous licence expiring.

The Council may prosecute or serve a civil penalty notice of up to £30,000 on a person who operates a HMO without a valid HMO licence. The fines awarded by the Courts are unlimited. The Council may also use Rent Repayment orders to claim back any Housing Benefit, or equivalent, that was paid whilst the property was unlicensed. Tenants will also be provided with information and advice to allow them to apply to the First Tier Tribunal Service for a Rent Repayment Order to claim back the rent they paid.

## Licence Applications

A valid licence application consists of:

- A fully completed application form
- A satisfactory gas safety certificate dated within 12 months prior to the date of application (where gas is provided to the property)\*
- A satisfactory electrical installation condition report dated within 5 years prior to the date of application\*
- Floor plans for the property (do not need to be to scale or professionally drawn)
- The relevant fee

\*The Council may request up to date certificates at any time prior to issuing the licence, or during the licence duration if it feels it is appropriate and necessary.

Other information may be requested during the licence process including, but not limited to:

- Fire alarm and Emergency lighting certificates
- Electrical Portable Appliance Test Certificates
- Fire risk assessment (under the Fire Safety (Regulatory Reform) Order

(Note: Landlords/managers are legally required to have carried out a Fire risk assessment for their property)

The application form can be completed online using the Gov.uk application form accessible via the Council website, or by hand on a form available on request. Either form is valid provided they are fully completed.

Any information provided on the form may be subject to verification checks. This may include consultation with other Council departments, or other local authorities, as appropriate.

The relevant fee for the licence will be in accordance with the current Council Fees and Charges which are agreed at full Council meetings annually. In line with recent Court decisions, the first part of the fee is payable at time of application (Stage 1), and the remainder (stage 2) is due when the decision to grant a licence is made. If the Council refuse to grant a licence the subsequent fee is not payable. The stage 1 application fee is non-refundable.

Applications for renewal licences can be made 3 months before the current licence expires. Once a licence has expired then the property will be treated in the same way as other unlicensed HMOs with regard to requests for a valid application to be made and necessary enforcement action.

If the landlord wishes to, licences may be applied for in advance of the property becoming an HMO, although this should be done no more than 3 months before the property is expected to be licensable. However the legal duty to make a licence application does not take effect until the property is occupied by 5 persons as a HMO.

A full refund of the application fee will only be made in the following circumstances:

- The property for which the application was made is not licensable under the mandatory HMO licensing scheme
- A duplicate application has been made;
- A renewal application has been made more than 3 months before the existing licence expires.

### **Suitability of the Property for Multiple Occupation**

The Council must satisfy itself that the property is suitable, or can be made suitable for the number of occupants either applied for, or specified on the licence.

An inspection will be carried out of the whole property to verify information provided, assess the condition and suitability and to ensure that the property is free of category 1 hazards as defined by the Housing Health and Safety Rating System.

Where there are minor deficiencies that can be put right by inclusion of a condition of the licence, this will normally be the chosen course of action. Such conditions can only be applied where they relate to provision of amenities, space standards or minor fire precaution works. If the Council believes that there is a Category 1 hazard present, it may use powers under Part 1 of the Housing Act 2004 to remedy the defects.

### **Fit and Proper Person**

Before 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. Such checks will be carried out as necessary to determine this.

A person's fit and proper status may be reviewed at any time if circumstances change. If it is determined, at the time of licence application, that a person is not fit and proper, the applicant will be offered the opportunity to find a more appropriate person in the first instance, rather than refusal of the licence application, although that remains an option. If it is determined during the course of the licence that a person is not a fit and proper person, this may result in revocation of the existing licence(s).

### **Duration of Licences**

Licences will normally be granted for a five year period. This may be reduced to an appropriate lesser period in the following circumstances:

- To take into account the time that the property should have been licensed (where it was not licensed);
- Where the Council discovered the HMO to be unlicensed (i.e. where the owner or manager had not approached the Council with a view to seeking a licence);
- Where the property has not been satisfactorily managed; or
- Where the Council is concerned that the proposed management arrangements may not be satisfactory and would like evidence that they are before a longer licence is granted;

- Where the property does not have the appropriate planning permission in place for the current use.

### **Breach of Licence**

HMO licences are issued with certain conditions that require the licence holder to comply with including the number or type of persons or households that are permitted to occupy, or improvements to be made to the condition or amenity levels at the property.

It is an offence to fail to comply with a licence condition or permitting over occupation of the property without a reasonable excuse. Offenders may be prosecuted or served with a civil penalty notice.

### **Temporary Exemption Notices**

The Council may grant a temporary exemption notice (TEN) on application by the owner or landlord for a period of up to three months in the following circumstances:

- The owner of a licensable HMO (that is not licensed) states in writing that they are taking steps to make it non-licensable; and
- The Council is satisfied that it will be non-licensable within the period of 3 months from the date of application.

One further TEN may be issued in exceptional circumstances at the discretion of the Council.

Any property that is likely to still be licensable after six months of the date of initial application will need to submit a full and valid licence application rather than a TEN application.

If a licence holder dies whilst holding a current licence, the property will be treated as if a TEN had been issued for a period of three months to allow the executors of the estate to prepare for an alternative licence holder.

[Back to Contents Page](#)

## **Appendix 4 – Mobile Home Sites Licensing Fee Policy**

### **Introduction**

The Caravan Sites and Control of Development Act 1960 (“the Act”) requires certain caravan sites (also referred to as Mobile Home Parks or Park Homes) to be licensed by Councils. The Mobile Homes Act 2013 amends this legislation and allows the Council to charge site owners a fee in specified cases. This Act came into effect on 26 May 2013.

Section 10A (2) of Act requires a Council to publish a Fees Policy before charging a fee. This fee policy details when a fee is payable, and how these fees have been calculated. The current fee will be published on the Council’s website in the Fees and Charges report.

In setting this policy, Test Valley Borough Council has had regard to the DCLG document “The Mobile Homes Act 2013 – A Guide for Local Authorities on setting site licensing fees” and the MHCLG guidance on Setting Fees for Fit and Proper Person checks.

### **Scope of the Licensing Fees**

Fees will apply to relevant protected sites who require a site licence under the Act.

A relevant protected site is defined in the Act as any land to be used as a caravan site other than one detailed in the exemptions.

The licence fee will not apply to the following sites:

- Sites for holiday use only
- Sites where conditions require that there are times of year when no caravan may be stationed on the land for human habitation
- Sites that are occupied only by the site owner and his/her family or by a person employed by the site owner except where under an agreement to which the Mobile Homes Act 1983 applies.

Fees will be charged for:

- i. applications to grant a new site licence,
- ii. applications to transfer a site licence;
- iii. applications to vary site licence conditions;
- iv. depositing of site rules with the Council;
- v. an Annual fee for administering and monitoring site licences
- vi. applications to be included on the local register of fit and proper persons to manage a site
- vii. annual charge for the existing entries on the register of fit and proper persons

In addition the Council is able to charge for enforcement activity and works in default which are not included in the licence fee. These fees are set at the hourly rate of officers for the time involved in the enforcement action.

## Calculation of the licence fee

Licence fees have been calculated on the cost to the Council for carrying out the specified activity. This includes officer time on site as well as work in the office and travelling. It will also include a cost for mileage for travel to the site as calculated from the Andover office.

The annual fee includes the cost to the Council for carrying out an annual site survey, and associated correspondence, and dealing with enquiries and complaints from residents (not including the taking of formal enforcement action). The annual fee is calculated for the cost of dealing with all licensed sites and proportioned according to the size of the site. This is using the methodology of option 2 in the MHCLG guide Section G.

The Council cannot make a profit on licensing fees. Charges must be limited to recovering the costs of exercising their licensing function as it relates to relevant protected sites.

## Licence Fees

The table below is provided to give an indication of the level of fees that may be charged by the Council. It is important to note that the fees included below were correct at the time of writing, but may have subsequently been subject to change. The fees set out below are not, therefore, to be considered a definitive guide.

<b>Number of units</b>	<b>Applicable to all sites</b>	<b>1-5</b>	<b>6-15</b>	<b>16-30</b>	<b>31-45</b>	<b>46 and above</b>
<b>New application for a site licence</b>	N/A	£556	£576	£615	£634	£693
<b>Transfer of Site Licence</b>	£136	N/A	N/A	N/A	N/A	N/A
<b>Varying site licence</b>	£484	N/A	N/A	N/A	N/A	N/A
<b>Annual Fee</b>	N/A	£235	£245	£321	£342	£364
<b>Depositing site rules with Local Authority</b>	£62	N/A	N/A	N/A	N/A	N/A
<b>Fit and Proper Person Register Application Fee</b>	£244	N/A	N/A	N/A	N/A	N/A
<b>Fit and Proper Person Annual Fee</b>	£0	N/A	N/A	N/A	N/A	N/A

## **Applications for Granting a Site Licence**

Fees are payable on application. Applications will not be processed until the correct fee is received.

## **Applications for Transferring a Site Licence**

Fees are payable on application. Applications will not be processed until the correct fee is received. Applicants should contact Test Valley Borough Council to establish if a transfer is permissible before application.

## **Applications for varying a Site licence conditions**

Fees are payable on application from a licence holder to vary the site licence conditions. Applications will not be processed until the correct fee is received. No fee is payable if Test Valley Borough Council decides on its own initiative to vary the licence conditions. Please note that an application to vary site licence conditions and payment of a fee does not mean that Test Valley Borough Council will agree to this variation. The fee is non-refundable in the event that the Council refuse the variation.

## **Applications for depositing Site Rules**

The Mobile Homes Act 1983 (as amended) requires a site owner to deposit the site rules with the local authority and for the local authority to publish them on its website. The cost for this takes into account the officer time required to do this. The fee is payable at the time of depositing site rules.

## **Annual Site Licence Fee**

The Annual Fee will apply from 1 April each year. Requests for payment will be sent out in April or as soon as possible afterwards and are expected to be paid within 28 days of the date of the invoice.

Site licences which are issued part way through the year will not be required to pay an annual fee until the following April.

If a fee is not paid within the 28 days, the Council will apply to the tribunal for an Order requiring its payment by a date specified. If the fee is not paid as directed by that Order the Council may enforce the Order in the County Court, and after a period of 3 months of the date specified in that order if it still remains unpaid, apply to the First Tier Tribunal for an Order revoking the site licence.

The Council will review the cost to the Council in dealing with licensed sites in each financial year as part of its process to establish fees and charges. The licensing fees may be subject to change from year to year as a result of this process but will always be established on the basis of cost recovery only.

## **Fit and Proper Person register**

Fees are payable on application from the licence holder. The level of fee will be charged in accordance with guidance from the Ministry of Housing Communities and Local Government (MHCLG). Applications will not be considered valid and therefore not processed until the correct fee is received.

No refunds will be given in event the Council does not approve an application for entry onto the register.

The Council has calculated the fees based on the expected time taken to process the applications on average. It has taken into account factors as included in the MHCLG guidance. It does not include costs relating to the exercising of other functions under the Caravan Sites and Control of Development Act 1960.

All relevant protected sites, except those only occupied by members of the same family and not run as a commercial residential site, will be subject to the fit and proper person test and will be required to pay a fee. Sites operated by Test Valley Borough Council will not be required to pay a fee.

Fees may also be applied where the Council put in place a manager to oversee the site. These will be charged at cost and will be advised when appropriate.

## **Annual Fees for entries on the Fit and Proper person register**

On setting the annual fee the Council has taken into account matters as specified in the MHCLG guidance.

Annual fees will be requested in the April after the entry appears in the register and will apply until the entry on the register has expired.

The Council will take into account costs in operation of the scheme from the previous year and may adjust the subsequent annual fee accordingly.

## **Enforcement Fees**

Any enforcement action cannot be included in licensing fees. The Mobile Homes Act 2013 amends the Act to include provision for charging for enforcement. The Council is entitled to recover its costs in deciding to and in the service of a compliance notice. This includes costs incurred in inspections, preparing the notice and obtaining expert advice on it (including legal costs) and any interest the authority intends to charge. This will be calculated on an individual case basis and the demand for recovery will be sent with the compliance notice.

The Council can and will recover the costs involved in respect of work in default and emergency works including the cost of serving notices.

## **Review of Fee Policy**

The fee policy came into force in the 2016/17 financial year. The fees are amended each financial year to take into account the actual costs incurred by the Council.

Changes to the calculation of annual fees as a result of surplus and deficit will be determined by the Head of Housing and Environmental Health in conjunction with Finance.

The fee levels will be reviewed each year as part of the Council's Fees and Charges report to take into account the effect of inflation and any other alteration in cost to the Council, either higher or lower and will be published on the Council's website following the Council's decision.

In requiring payment of annual site licence fees each year the Council will inform the site owner of the extent to which they have had regard to any surpluses/deficits from the previous year and will confirm to the site owner the annual fee for the forthcoming year.

## Appendix 5 – Civil Penalties for Housing Offences Policy

### Introduction

The Housing and Planning Act 2016 amends the Housing Act 2004 to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences. It is important to specify that the burden of proof required to issue a civil penalty is the same as for a prosecution. Therefore the Council must be satisfied that there would be a realistic prospect of conviction should the case be prosecuted in the Magistrates' Court in line with the Crown Prosecution Service Code for Crown Prosecutors.

These housing offences are:

*Housing Act 2004:*

- Section 30 (failure to comply with improvement notice)
- Section 72 (licensing of Houses in Multiple Occupation (HMOs))
- Section 95 (licensing of houses under Part 3)
- Section 139(7) (failure to comply with overcrowding notice)
- Section 234 (management regulations in respect of HMOs)

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

- Regulation 3 (Failure to comply with the duties placed on a private landlord)

Schedule 13A has been introduced into the 2004 Act and prescribes the procedures that a local housing authority must follow before imposing a financial penalty, for imposing the penalty, the appeal process and the procedure for recovery of the penalty.

The government has issued statutory guidance – Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities (MHCLG April 2018). Local housing authorities must have regard to this guidance. It recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and also recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

This is Test Valley Borough Council's policy on determining the appropriate level of financial penalty.

There is no specific guidance on the levels of penalties that should be issued. The Council has therefore decided to follow the principles set out in the Sentencing Council Definitive Guideline – Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences. The Sentencing Council have set out a range of fines which are linked to culpability of the offender and the actual and potential harm resulting from the offence.

The policy is set out using the Sentencing Council guidance and MHCLG statutory guidance to ensure that the penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

The funds from financial penalties are required to be used to fund further private rented sector team enforcement activity to maintain standards in the private rented sector within Test Valley. (The Rent Repayment Orders and Financial Penalties (Amounts

Recovered)(England) Regulations 2017 and The Housing (Management Orders and Financial Penalties)(Amounts Recovered)(England) Regulations 2018)

## **Process**

The financial penalty will be determined in a series of steps to take into account the relevant factors including the culpability of the offender, the level of actual or risk of harm, the financial status of the offender, and other aggravating factors including previous convictions and record of management, as well as mitigating factors including record of management and cooperation with the investigation.

The process builds in a checking process to ensure that the proposed level is proportionate to the overall means of the offender and it reflects the seriousness of the offence. It is important that the financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence. It should not be cheaper to offend than to take the appropriate precautions.

## **Obtaining Financial Information**

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence that it has received and from all the circumstances of the case, which may include the inference that the offender can pay any financial penalty.

Where an offender owns one or more properties and claims that they are unable to pay a financial penalty and shows that their income is small, consideration will be given to properties owned that can be sold or refinanced.

### Step 1 – Determining the offence category

The offence category will be determined using the culpability and harm factors as outlined below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

## **Culpability**

### *Very High*

Where the offender intentionally breached, or flagrantly disregarded, the law or who has a high public profile and knew their actions were unlawful.

### *High*

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken. Ignoring concerns raised by others (including occupants, the Council or other regulatory bodies)

### *Medium*

Offence committed through act or omission which a person exercising reasonable care would not commit

### *Low*

Offence committed with little fault, for example, because:

- Significant efforts were made to address the risk although they were inadequate on this occasion
- There was no warning/circumstance indicating a risk
- Failings were minor and occurred as an isolated incident

## **Harm**

Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

### *High Likelihood of harm – category 1*

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable

### *Medium likelihood of harm – category 2*

- Adverse effect on individual(s) (not amounting to category 1)
- Medium risk of an adverse effect on individual(s) and/or having a widespread effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

### *Low Likelihood of Harm – category 3*

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

Definition of Harm – for avoidance of doubt, the meaning of harm will be used from the Housing Act 2004: Health and Safety Rating System – Operating Guidance (2006). This states that “*Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm.*”

## **Step 2 – Starting Point and Category Range**

Having determined the category, reference will be made to the following starting points to reach an appropriate level of civil penalty within the category range. The Council will then consider further adjustment within the category range for aggravating and mitigating features.

## Starting points and ranges

		Range	
	Starting Point	Minimum	Maximum
<b>Low Culpability</b>			
Harm Category 3	£50	£25	£175
Harm Category 2	£125	£50	£350
Harm Category 1	£300	£125	£750
<b>Medium Culpability</b>			
Harm Category 3	£350	£175	£750
Harm Category 2	£1,000	£350	£2,000
Harm Category 1	£2,500	£750	£4,500
<b>High Culpability</b>			
Harm Category 3	£1,000	£500	£2,250
Harm Category 2	£3,000	£1,000	£5,500
Harm Category 1	£6,250	£2,500	£12,500
<b>Very High Culpability</b>			
Harm Category 3	£2,500	£1,250	£4,500
Harm Category 2	£6,250	£2,500	£12,500
Harm Category 1	£15,000	£6,250	£30,000

The starting point will be adjusted within the range taking into account the following factors:

### *Factors Increasing Seriousness*

- Previous convictions, having regard to
  - o The nature of the offence to which the conviction relates and its relevance to the current offence; and
  - o The time that has elapsed since the conviction
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements
- Refusal of free advice or training
- Member of accreditation scheme or professional body

### *Factors reducing seriousness or reflecting personal mitigation*

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to remedy problem
- High level of co-operation with the investigation, beyond the expected level
- Good record of maintaining and management of property
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence

- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or a lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives.

### Step 3 – Review of Financial element and proportionality

Check whether the proposed level of financial penalty is proportionate to the overall means of the offender.

The fine should reflect the seriousness of the offence and take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

The Council may increase or reduce the proposed fine reached at Step 2, if necessary moving out of the range in the table above.

In finalising the fine, the Council should have regard to the following factors:

- The profitability/income
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step 2.
- Whether the fine will have the effect of putting the offender out of business or forcing sale of the property will be relevant; in some bad cases this may be an acceptable consequence.

### Step 4 – Other factors that may warrant adjustment

Consider any factors which indicate a reduction in the penalty, including those relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- Impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- Impact of the financial penalty on employment of staff, service users, customers and local economy.

### Step 5 – Reduction for early admission of guilt

The Council will take into account a potential reduction in the penalty for an admission of guilt prior to the financial penalty being issued. The following factors will be considered in setting the level of reduction:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one third. In some circumstances there will be less or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviours.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

### Step 6 – Additional Actions

In all cases the Council must consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The Council cannot take a prosecution case for the same conduct as is the subject of a financial penalty notice.

### Step 7 – Totality Principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour.

Cost to the Council of issuing financial penalty will be calculated and added on at this stage.

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on Offences taken into Consideration and Totality (The Sentencing Council)

*“The total financial penalty is inevitably cumulative. The Council should determine the financial penalty for each individual offence and taking into account the circumstances of the cases including the financial circumstances of the offender so far as they are known, or appear, to the Council. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the council should consider how to reach a just and proportionate financial penalties. There are a number of ways in which this can be achieved.*

*For example:*

- *Where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;*
- *Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences, the council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.*

*Where separate financial penalties are passed, the Council must be careful to ensure that there is no double-counting.”*

## Step 8 – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed. All decisions will be checked and verified by a more senior officer.

## References

MHCLG Civil penalties guidance  
The Sentencing Council: H&S offences  
The sentencing council: Totality

## **Appendix 6 - Minimum Energy Efficiency Standards (MEES) Policy for Domestic Dwellings**

*This appendix was added on 26<sup>th</sup> April 2022, and was approved by the Portfolio Holder for Housing & Environmental Health (including Diversity and Inclusion) in consultation with the Head of Housing & Environmental Health and the Head of Finance & Revenues, as per the delegated authority approved in the Cabinet report dated 26<sup>th</sup> May 2021.*

### **Introduction**

The Energy Efficiency (Private Rented Property) (England And Wales) Regulations 2015 (as amended) are designed to tackle the least energy efficient properties in the private rented sector, that is those that have an Energy rating of F or G on their Energy Performance Certificate (EPC). The regulations establish a minimum standard for the energy efficiency of domestic privately rented properties, which were introduced from April 2018 for new tenancies and from 1 April 2020 for all existing tenancies.

The minimum level of energy efficiency means that landlords of relevant domestic privately rented properties may not grant a new tenancy or renew an existing tenancy, or continue to let if the valid EPC has a band of F or G.

There are exemptions to this requirement which are detailed further below.

### **Energy Performance Certificates (EPC)**

Energy Performance Certificates (EPCs) are needed whenever a property is built, sold or rented, and before it is marketed for sale or rent. An EPC contains information about a property's energy use and typical energy costs; and recommendations about how to reduce energy use and save money. A property is given an energy efficiency rating from A (most efficient) to G (least efficient). The EPC is valid for 10 years from date of registration and can be used for multiple occurrences within that period. Once expired it is only required that a new one is commissioned when the property is sold or let to a new tenant.

Trading Standards at Hampshire County Council are responsible for enforcement where a property is sold or let without an EPC.

For the purposes of this policy, a valid EPC is as stated in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as an EPC that was entered on the register no more than 10 years before and no other EPC for that property has been entered on that register.

Certain properties may not need an EPC, as stated in the Energy Performance Act, Energy Performance of Buildings (England and Wales) Regulations 2012. If a property is not legally required to have an EPC they will not fall under the MEES Regulations. In cases where this may apply, the owner will be invited to prove that is the case.

## Tenancies covered under the MEEES Regulations

The regulations apply to domestic privately rented properties in England and Wales that are let with the following tenancies:

- Assured tenancy issued under Housing Act 1988
- A regulated tenancy defined in Rent Act 1977
- A domestic agricultural tenancy as defined in the Energy Efficiency (Domestic Private Rented Property) Order 2015 which includes:
  - A tenancy that is an assured agricultural occupancy for the purposes of section 24 of the Housing Act 1988
  - A tenancy that is a protected occupancy for the purposes of section 3(6) of the Rent (Agriculture) Act 1976

## Exemptions

If landlords are unable to comply with the regulations, they may be able to register an exemption on the Private Rented Sector (PRS) Exemptions Register. The exemption may last for up to 5 years from the date of registration. The following scenarios would enable an exemption to be registered:

- **Improvements made** – where all relevant improvements have been made and the property still remains below an EPC band E, an exemption may be registered. These improvements can be listed on the EPC, a surveyor's report, or a Green Deal advice note.
- **High cost** – an exemption may be registered if the landlord can show that they have spent at least £3500 on recommended energy efficiency improvements since 1 October 2017, and the property is still rated below E, or where the cheapest recommended improvements would cost more than £3500, and no third party funding is available.
- **Third party consent** – if the landlord has not been able to obtain consent from a third party for carrying out the works, for example the tenant, or a freeholder, or where planning/ listed building consent which has been refused.
- **Property devaluation** - An exemption may be registered where a report from a chartered surveyor indicates that the installation of energy efficiency measures would reduce the market value of the property by more than 5%.
- **Change of landlord** - A temporary exemption of 6 months can be applied for where the landlord has recently become the landlord of the property, and the property was already let when they took it on.
- **Wall insulation** – an exemption may be registered where there is written expert evidence that the wall insulation measures would negatively impact the fabric or structure of the building.

The Register is a self-certification scheme and the Council may audit exemptions during the life of the exemption and any time up until 12 months after expiry. Landlords may be contacted by the Council to provide additional information relating to the exemption in order that the Council may determine whether or not it is relevant when pursuing action under these regulations.

### **Breaches of MEES Regulations**

The following circumstances are breaches of the MEES Regulations:

- Where a property with an EPC band below E has been privately let to a new or existing tenant from 1 April 2018 and that property does not have an exemption registered on the PRS Exemptions Register
- Where a property with an EPC band below an E has been privately let from 1 April 2020 and that property does not have an exemption registered on the PRS Exemptions Register
- Where a landlord has registered false or misleading information for an exemption on the PRS exemptions register.

### **Enforcement Action**

If we believe that a landlord has failed to fulfil their obligation set out in the MEES Regulations, and one or more of the above breaches has occurred, the Council can take appropriate enforcement action. Initially the Council will make contact with the landlord by letter to informally request information.

In the event that a landlord fails to engage with the Council through informal measures, the Council may serve a Compliance Notice. A Compliance Notice gives the landlord a set timescale in which to provide the Council with all relevant information to help us to establish whether or not there has been a breach of the regulations. A Compliance Notice may be served up to twelve months after the suspected breach has taken place.

The following information may be requested:

- A copy of the EPC certificate that was valid when the property was rented out
- A copy of the tenancy agreement provided when the property was rented out
- Detail of any energy improvements that the landlord has made to the property
- A copy of an Energy Advice Report for the property
- Any other documents that may help establish whether or not a breach has occurred.

This information will assist in our decision making as to whether a breach of the regulations has occurred. If no breach has been determined, no further action will be taken.

Compliance Notices can be withdrawn or amended by the Council if they become aware of new legislation.

## Penalties for breaching MEES Regulations

The Council may serve a financial penalty notice or publication notice if we are satisfied that there has been a breach of the MEES Regulations.

A financial penalty can be served for up to eighteen months after the breach has occurred. The penalties can be applied for each breach and for each property where a breach has occurred. The landlord has a right to request a review of the financial penalty, and if they remain unsatisfied, they will have a right of appeal to a First Tier Tribunal. The procedures for appeal are explained in further detail in the next section.

As well as, or instead of the financial penalty, the Council can publish details of the breach on the PRS Exemptions Register. This is referred to as a publication penalty. The details are published for a set time of at least 12 months. The Council will choose to issue publication penalties except where there is a good reason not to.

### How the penalty will be calculated

The financial penalties are for each breach of the regulations and are:

<b>BREACH</b>	<b>PENALTY</b>
Letting out a non-compliant property for less than 3 months	£2,000 and/or a publication penalty
Letting out a non-compliant property for 3 months or more	£4,000 and/or a publication penalty
Providing false or misleading information on the PRS Exemptions Register	£1,000 and/or a publication penalty
Failure to comply with a compliance notice	£2,000 and/or a publication penalty

The Council will charge the full penalty on each occasion, unless there are extenuating circumstances demonstrated by the landlord, where the penalty may be reduced accordingly, and at the Council's discretion.

The maximum financial penalty per landlord per property is £5,000. However, if a landlord is fined up to £5000 for breach of the Regulations, and then proceeds to unlawfully let the sub-standard property on a new tenancy, the Council may enforce a further penalty of up to £5,000. Where there are joint landlords the Council will consider whether it is appropriate to serve a financial penalty on one or more depending on the circumstances.

### Review of Penalty Notice

The recipient of a penalty notice has the right to request a review from the Council. Details of who to contact will be included on the notice. If as part of the review, the Council:

- Ceases to be satisfied that that person committed the breach specified in the penalty notice;
- Is satisfied that the person named in the notice took all reasonable steps and exercised all due diligence to avoid committing the breach specified; or
- Decides that in the circumstances of the case it was not appropriate for a penalty notice to be served

the Council will serve a notice withdrawing the penalty notice.

As part of a review the Council may not decide to withdraw the penalty notice, but would have the option to:

- Waive a penalty
- Allow additional time to pay the penalty
- Substitute a lower financial penalty than the one originally imposed,
- Or modify the application of a publication penalty

### **Right of Appeal**

If after a review, the penalty notice is upheld, the recipient may appeal to the First Tier Tribunal. Whilst the appeal is ongoing the penalty notice is suspended.

The Tribunal may quash the penalty notice, or affirm the penalty notice, either in its original form or with modifications.

### **Payment of Penalties**

Once the period for a review has passed, and if there has been no request for review, the penalty becomes payable. Alternatively if a review is requested, and the Council subsequently determines that the financial penalty notice should not be withdrawn, the penalty becomes payable after the expiry of time permitted to appeal to the First Tier Tribunal.

If the recipient of the financial penalty notice fails to make payment in accordance with that notice, and the case has not been overturned through a review or appeal to the First Tier Tribunal, the Council may take the landlord to court to recover the debt.

[Back to Contents Page](#)