

CABINET

DATE OF MEETING: 6th August 2020

TITLE OF REPORT: DELEGATION OF COMMUNITY PROTECTION NOTICE POWERS

Report of: HEAD OF PLACE

Cabinet member: Councillor Sara Kinnell, Regulatory Services

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek Cabinet’s approval to delegate Community Protection Notice (CPN) powers to the Registered Provider (Housing Association) ‘Vivid Housing Limited’.
- 1.2 The delegation of powers falls under section 53 of the Anti-Social Behaviour Crime and Policing Act 2014 and the ‘Anti-Social Behaviour (Authorised Persons) Order 2015/749 to ‘Vivid Housing Limited’ acting in their capacity as a Registered Provider operating within the administrative area of Hart District Council.

2 OFFICER RECOMMENDATION

- 2.1 It is recommended that Cabinet approve the formal delegation of powers held by Hart District Council to include Vivid Housing Limited as an authorised body for the service of Community Protection Notices under Sections 43 and 53 of the Anti-Social Behaviour Crime and Policing Act 2014.

3 BACKGROUND

- 3.1 The Anti-Social Behaviour Crime and Policing Act 2014 introduced a wide range of powers designed to deal with anti-social behaviour and low-level community nuisance. It conferred a range of new powers to the Police, Local Authorities and Community Safety teams. Provisions within the Act were designed to provide a more flexible and effective way of dealing with the wide range of potential community nuisances. Nuisance commonly including matters such as noise, fly-tipping, graffiti, and general anti-social actions that affected a wider community.
- 3.2 The discretionary powers were designed to supplement existing legislation. Legislation that could often only deal with higher level impacts, or were too prescriptive, or inflexible in their application.
- 3.3 Within the Act was a conferred power to serve Community Protection Notices (CPNs). These were designed as a flexible low-level mechanism to provide authorised persons with a direct ability to tackle persistent anti-social actions. These could be served upon businesses, individuals, or any identifiable group. Community Protection Notices were specifically designed to fit

individual situations, and to enable reasoned restrictions, (or positive requirements), to be put on anti-social behaviours. [Please see Appendix 1 for further information on CPN powers and their application].

- 3.4** Hart District Council's Environmental Health Team have been at the forefront of adopting these new tools to supplement their powers in relation to nuisance.
- 3.5** Use of CPNs has become an increasingly efficient and effective tool for regulatory work within Hart. Compliance with served CPNs has proven high, and overall complexities of legal challenge have been reduced.
- 3.6** In Hart, Environmental Health work closely with a range of Registered Providers in dealing with noise and nuisance from tenanted properties. In a bid to promote joint working and increase the effectiveness of enforcement it is proposed to extend these powers to Vivid Homes Limited (Vivid).
- 3.7** Vivid are the largest social housing provider within Hart, owning 2,790 properties, with an additional 30,000 properties within Hampshire and surrounding counties. Existing enforcement powers available to Registered Providers are often slow and ineffective and there is a regulatory gap in how persistent low-level community nuisance can be actioned directly by Registered Providers
- 3.8** Hart's Environmental Health Team have led a series of meetings and training events with local Registered Providers to promote the potential benefits of CPN powers. This has also included hosting a multi-agency forum to engage with wider stakeholder groups. These have identified strong local support for the initiative.
- 3.9** It is considered that delegation of the CPN powers would provide a positive benefit to Hart District Council, Registered Providers and those residents impacted by low level anti-social behaviour. Registered Providers would have access to an enhanced enforcement mechanism to tackle and enforce nuisance concerns within managed housing stock at an early stage; dealing with low level issues before they escalate to more serious and complex issues that are inevitably more difficult to resolve. Hart residents would benefit overall from a more effective, better resourced and increasingly co-ordinated level of protection.
- 3.10** It should be noted that when introduced the Anti-Social Behaviour Crime and Policing Act was clearly focused at joint working and wider dissemination of anti-social behaviour controls. Registered Providers were specifically identified within the Act and its supporting guidance. These were named bodies who could use the powers, although specific delegation was required from a Local Authority.
- 3.11** Nationally Local Authorities have been slow on the up-take of these powers, however, this is now changing with increased awareness and growing base of case law. Hart facilitated early training to other Environmental Health and Community Safety services across Hampshire and the I.O.W and, as a result, the use of CPN provisions is becoming established practice.

- 3.12** North Norfolk is one of the first Local Authorities to have delegated powers to its Registered Providers. Feedback has identified that the delegation has been a positive success for both the Council and the delegated Registered Provider.
- 3.13** Vivid are keen to receive the delegated powers and have expressed their intention to use Hart as a trial authority area, before potentially seeking to request the same arrangements with other Hampshire and Surrey local authorities. Silva Housing Association have also expressed their interest and hope to follow Vivid's lead.
- 3.14** The adoption of this initiative within Hart has been raised with Hampshire and I.O.W. Environmental Control Advisory Committee (E.C.A.C) as a representing and co-ordinating body for Hampshire 'Environmental Protection' services. Progress is being reported to the group, with the intention that a successful implementation can be replicated across Hampshire.

4 CONSIDERATIONS

Implementation and Enforcement

- 4.1** It is proposed that the new delegation of powers will be limited to key individuals working within Vivid's 'Neighbourhood Enforcement Team'. These individuals will be named and subject to an approved internal scheme of delegation within Vivid Housing Association. The Scheme of Delegation will be subject to approval by Hart District Council.
- 4.2** Training will be facilitated by Hart District Council to approved individuals within Vivid. Training will be undertaken both internally, and, via an externally recommend programme of training packages to ensure that those using the powers are competent to do so.
- 4.3** An early review mechanism will be established between the Council's Environmental Health Team and Vivid to review cases and served CPNs. Vivid will ultimately be responsible for the enforcement action that they take under these powers, however, liaison will be maintained to ensure consistency of approach and appropriate application of the powers.
- 4.4** A Service Level Agreement will be drawn up between Hart District Council and Vivid to help implement the delegation, define working arrangements and to establish parameters of regulatory responsibility.
- 4.5** Enforcement of served Notices and incurred legal costs, will be the responsibility of the serving body.
- 4.6** Should the success of this initiative be demonstrated, we will seek to be replicate the arrangement with other suitable Registered providers operating within Hart.

5 FINANCIAL AND RESOURCE IMPLICATIONS

Is the proposal identified in the Service Plan?	Yes
Is the proposal being funded from current budgets?	Yes
Have staffing resources already been identified and set aside for this proposal?	Yes

- 5.1 There will be an initial resource requirement in relation to officer time to facilitate training; agree a Service Level Agreement, policies and procedures; and to hold partnership review meetings.
- 5.2 The initial set up costs will be a one-off cost that will be absorbed within current Environmental Health staff resources.
- 5.3 It is anticipated that the time resource allocated to this will be offset in the longer term by a reduction in the number and complexity of cases requiring the Council’s Environmental Health Team to enforce in Registered Provider properties.

6 ACTION AND NEXT STEPS

- 6.1 With approval, a service Level agreement would be drawn up between Hart District Council and Vivid Homes Limited. This would be put forward for agreement with both parties and their legal representatives.
- 6.2 A modification to the Councils written constitution and corporate scheme of delegation would be made.
- 6.3 A programme of officer training would be initiated by Vivid with the support of the Council’s Environmental Health team.
- 6.4 A formal scheme of delegation within Vivid would be produced for Hart District Council approval.
- 6.5 A programme of implementation and review meetings would be set up between Hart Environmental Health and Vivid. On-going meeting would be used to ensure consistency of approach.
- 6.6 Communication would be made to all impacted stakeholders. This may also include media releases, and advisories to other parties seeking to replicate.
- 6.7 The joint working initiative and any established procedures would be subject to an annual review by Environmental Health.

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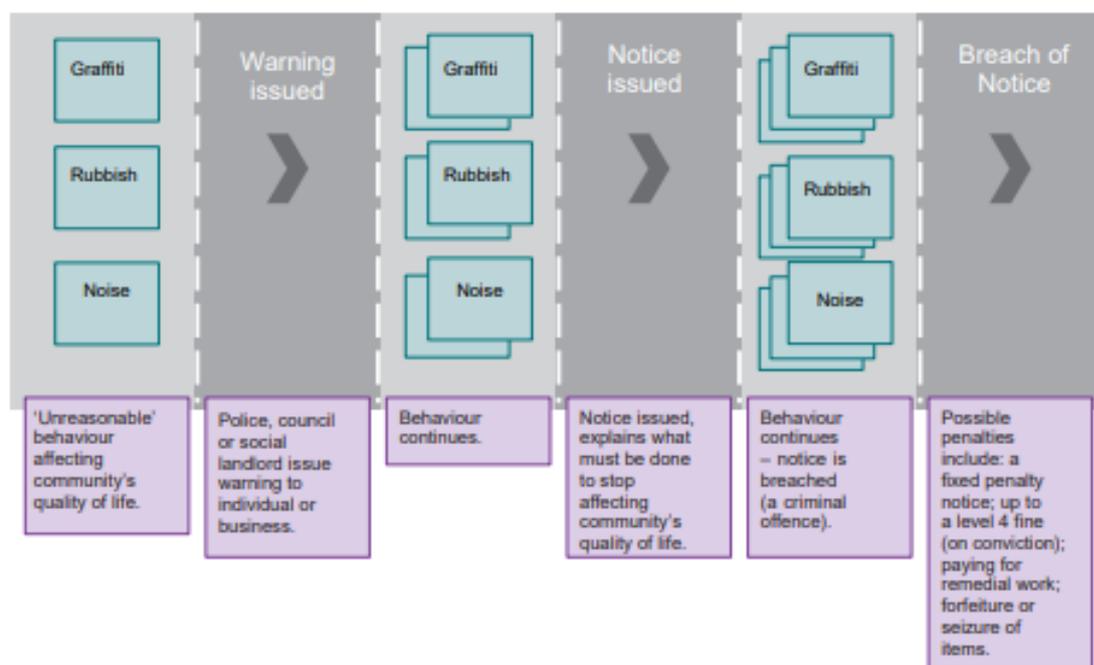
Appendix 1 - Summary of Community Protection Notices

Appendix 1

Summary of Community Protection Notices

Purpose	To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life.
Who can issue a CPN	<ul style="list-style-type: none"> • Council officers; • Police officers; • Police community support officers (PCSOs) if designated; and • Social landlords (if designated by the council).
Test	Behaviour has to: <ul style="list-style-type: none"> • have a detrimental effect on the quality of life of those in the locality; • be of a persistent or continuing nature; and • be unreasonable.
Details	<ul style="list-style-type: none"> • The Community Protection Notice (CPN) can deal with a range of behaviours; for instance, it can deal with noise nuisance and litter on private land. • The CPN can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again. • A written warning must first be issued informing the perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing. • A CPN can then be issued including requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour. • Can allow council to carry out works in default on behalf of a perpetrator.
Penalty on breach	<ul style="list-style-type: none"> • Breach is a criminal offence. • A fixed penalty notice can be issued of up to £100 if appropriate. • A fine of up to level 4 (for individuals), or £20,000 for businesses.
Appeals	<ul style="list-style-type: none"> • Terms of a CPN can be appealed by the perpetrator within 21 days of issue. • The cost of works undertaken on behalf of the perpetrator by the council can be challenged by the perpetrator if they think they are disproportionate.
The legislation	Sections 43 to 58 of the Anti-social Behaviour, Crime and Policing Act 2014.
Protecting the vulnerable	<ul style="list-style-type: none"> • Particular care should be taken to consider how use of the power might impact on more vulnerable members of society.

Community Protection Notice



Purpose

The Community Protection Notice can be used to deal with particular, ongoing problems or nuisances which are having a detrimental effect on the community's quality of life by targeting those responsible.

Who can issue a Community Protection Notice

Local councils have traditionally taken the lead in dealing with the sort of issues that can be addressed through the use of Community Protection Notices, but the police are also able to issue these Notices, as are social landlords where they have been designated to do so by the relevant local authority, recognising their role in responding to anti-social behaviour in the dwellings they manage.

Details

The legal tests: These focus on the impact that the behaviour is having on victims and communities. A Community Protection Notice can be issued by one of the bodies mentioned above if they are satisfied, on reasonable grounds, that the conduct of an individual, business or organisation:

- is having a detrimental effect on the quality of life of those in the locality;
- is persistent or continuing in nature; and
- is unreasonable.

Agencies should have sufficient evidence to satisfy themselves that the behaviour in question is genuinely having a detrimental effect on others' quality of life, in terms of the nuisance or harm that is being caused to others, rather than being a behaviour that others may just find annoying.

Similarly, decisions on whether behaviour is persistent or continuing in nature should be taken on a case by case basis. For example, where an individual is storing rubbish in their garden for many months, proving persistence will be relatively straightforward. However, there will be cases where behaviour is continuing over a much shorter time period and the individual has been asked to cease the behaviour but has refused to do so and persists with the behaviour.

The issuing officer must also make a judgement as to whether the behaviour in question is unreasonable. For instance, a baby crying in the middle of the night may well have a detrimental effect on immediate neighbours and is likely to be persistent in nature. However, it is unlikely to be reasonable to issue the parents with a Community Protection Notice if there is not a great deal that they can do to control or affect the behaviour.

There is significant merit in involving the local council, who will have many years of experience in tackling environmental issues, when deciding whether or not to serve a Community Protection Notice. In addition, the issuing body should be satisfied that it has sufficient evidence that the activity in question is having a detrimental effect on others' quality of life, is persistent or continuing and is unreasonable.

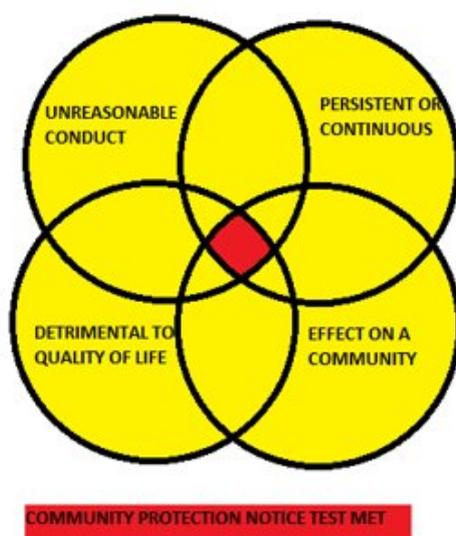
Who can a Community Protection Notice be issued to? A Community Protection Notice can be issued against any person aged 16 or over or to a body, including a business. Where a body is issued with a Community Protection Notice, it should be issued to the most appropriate person. In the case of a small business, it could be the shop owner whereas in the case of a major supermarket it may well be the store manager. The issuing officer will need to be satisfied that the person issued with the Community Protection Notice can be reasonably expected to control or affect the behaviour in question, taking into consideration all the available circumstances. There is also a need to have due regard to the Equality Act 2010.

The Community Protection Notice can be handed directly to the person in question or it can be posted. In circumstances where the owner or occupier cannot be determined, the issuing officer can post the Community Protection Notice on the premises and it is considered as having been served at that point. In such a scenario, the issuing officer would need to demonstrate that reasonable enquiries had been undertaken to ascertain the identity of the owner or occupier, for instance, checking with the Land Registry.

Partnership working: In many cases, the issuing agency will have already had contact with other partners in dealing with a persistent issue. For instance, in a case dealing with a build-up of litter, the council may have spoken to the local neighbourhood policing team or social landlord. However, in situations that develop more quickly, the relevant officer will have to decide whether there are other individuals or bodies that should be informed. In particular, for matters that could amount to a statutory nuisance it will often be advisable to seek the expert view of council environmental health officers before issuing a Community Protection Notice.

Appeals: Anyone issued with a Community Protection Notice has the opportunity to appeal it. Appeals are heard in a magistrates' court and the Notice should provide details of the process, how an individual can appeal and the timeframe to appeal (within 21 days of the person being issued with the notice). As the legislation makes clear, an appeal can be made on the following grounds:

Tests to be met in applying Community Protection Notices.



Reference:

Anti-social behaviour, Crime and Policing Act 2014: Statutory Guidance for frontline Professionals . Updated August 2019