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**REPORT TO: ECONOMIC GROWTH, HOUSING AND ENVIRONMENTAL  
SUSTAINABILITY COMMITTEE ON 6 OCTOBER 2020**

**SUBJECT: NO ACCESS POLICY CONSULTATION**

**BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND  
FINANCE)**

**1. REASON FOR REPORT**

- 1.1 This report provides the Economic Growth, Housing and Environmental Sustainability Committee with a summary of the feedback received during the agreed consultation period and presents the No Access Policy for approval.
- 1.2 This report is submitted to the Economic Growth, Housing and Environmental Sustainability Committee following a decision of Moray Council on 17 June 2020 to agree a simplified committee structure as a result of the COVID-19 pandemic. In the case of this committee the combining of the delegated responsibilities of Economic Development and Infrastructure, Community Services (Housing and Property) and Finance (budget, capital and revenue monitoring) (para 9 of the minute refers).

**2. RECOMMENDATION**

- 2.1 It is recommended that the Economic Growth, Housing and Environmental Sustainability Committee:**
- (i) considers the feedback received during the consultation period set out in Section 4 and APPENDIX I;**
  - (ii) approves the revised No Access Policy as set out in APPENDIX II; and**
  - (iii) agrees that the revised No Access Policy will be implemented from 12 October 2020.**

**3. BACKGROUND**

- 3.1 On 3 March 2020 the Communities Committee agreed the draft No Access Policy, subject to a period of tenant consultation (paragraph 8 of the minute refers). The Committee also agreed that the consultation feedback and outcome of the public consultation would be presented to a future meeting of the Communities Committee. As per paragraph 1.2 above the report is now

presented to the Economic Growth, Housing and Environmental Sustainability Committee.

- 3.2 The draft No Access Policy was developed to ensure access to Council properties where required to meet any legislative, regulatory or contractual obligation. The policy adopts the same escalation and forced entry process as is currently in place for gas servicing. The draft policy also includes a focus on customer contact to make mutually convenient appointments wherever possible in an attempt to minimise the number of no access cases from the outset. Where there is no engagement from the tenant or co-operation, without a valid reason, the Council will follow the escalation process in an attempt to gain access. Where contact and access is repeatedly refused, the Council will ultimately exercise its legal right to gain access to the property. It is important to note that forced entry will always be a last resort while requirement to fulfil safety obligations remain paramount.
- 3.3 One of the main drivers of this policy was the introduction of the Housing Scotland Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019. This legislation extended the already high standard of protection regarding fire and carbon monoxide in social housing and placed a new duty on the Council to ensure all housing stock have satisfactory smoke, fire and carbon monoxide detectors by February 2021. Access to all Council properties is essential to meet this legal duty however due to the effect of the COVID-19 pandemic on a landlord's ability to now meet this tight deadline and on the planned maintenance schedule, the Scottish Government have extended this deadline by three months to May 2021.

#### **4. CONSULTATION RESPONSES**

- 4.1 The consultation period ran from 3 March 2020 to 24 March 2020. During this time the draft policy, along with an easy to read version, was published on the Council website and social media platforms. While a web-based survey was developed to seek feedback, hard copy surveys were sent to those who requested it.
- 4.2 All tenants were contacted by email or letter and given the opportunity to provide their feedback. Due to the sensitive nature of potentially having to force entry to their home Officers felt it was appropriate to give all tenants the opportunity to respond rather than a random sample.
- 4.3 A total of 342 responses were received from 5967 tenants. This is a response rate of 5.7%. The low return could be attributed to the timing of the consultation period, which coincided with the start of the coronavirus outbreak in the UK.
- 4.4 An overview of the feedback, including details of the questions asked, are included in **APPENDIX I**. A summary of the feedback for the No Access Policy is set out below:
- 224 respondents (68.5%) support the new No Access Policy. 37 (11%) do not support the policy and 66 (20.18%) either did not know or did not want to answer.

- 260 respondents (86%) stated that the policy was easy to read and understand. 19 respondents (6%) did not find it easy to read while 25 (8%) did not know or did not want to answer the question.
- 26 respondents (8.6%) thought that a section of the policy should be reworded. Please see below for more detail;
- 42 respondents (14.53%) thought something had been missed from the policy. Please see below for more detail.
- 16 respondents (5.67%) thought that something should be removed from the policy.

4.5 Tenants were given the opportunity to leave additional comments along with the answers to each question. Analysis showed that the comments generally fell into one of the following categories. The categories are listed from highest to lowest in relation to the number of comments under each category:

#### **General agreement with the policy**

4.5.1 The majority of respondent's comments were in support of the policy.

#### **Concerns regarding levels of contact and methods used to contact tenants**

4.5.2 The most common comments were in relation to the level of contact or methods of contact that tenants feel the Council should be using. Suggestions included text, email, WhatsApp, Facebook rather than just letters, particularly for those who work away from home. Some comments expressed concern that little or no contact had been made prior to no access letters or workmen turning up for appointments that the tenant had no knowledge of.

4.5.3 This will be raised with the relevant manager and any improvements identified will be implemented through the supporting procedures to ensure all available and/ or enhanced methods of communication are utilised to improve the service.

#### **Flexibility with appointments**

4.5.4 Several respondents requested consideration of more flexible appointments for tenants who work full time and are unable to take time off to allow access during the week. The Council offers late afternoon appointments to try and address this issue.

#### **Issues already addressed and considered within Policy**

4.5.5 Some comments related to concerns regarding tenants who have specific vulnerabilities, physical or mental health issues and would require enhanced communication as well as support and assistance. Section 7 of the policy addresses this and commits the Council to working with the tenant to try and find a mutually convenient solution to allow the work to be carried out with minimal disruption or, where possible, delay the work to a more convenient time. Officers will consider the recording of such vulnerabilities, with the tenant's consent where required, to ensure all cases are dealt with appropriately.

#### **General disagreement with the policy**

4.5.6 A few tenants disagreed with the policy in general.

### **Legislative notice periods for landlord gaining access to tenant's home**

- 4.5.7 Several comments suggested that the council either do not have the right to force entry or they should increase the 24 hour notice period for forcing entry to 48 or 72 hours. The landlord's right to access the property and the 24 hour notice period is set out in legislation - Schedule 4 of the Housing (Scotland) Act 2001 and Section 5 of the Scottish Secure Tenancy Agreement. It is important to note that this 24 hours is the notice period at the final stage before forced entry. There would have already been multiple attempts to make contact with the tenant prior to this stage that would have spanned across several weeks or up to 2 months.

### **Disagreement with re-charges**

- 4.5.8 As set out in section 4.8 of the Policy, the legally binding Scottish Secure Tenancy Agreement sets out that the tenant will be liable for the costs of any damage reasonably caused by the Council due to forcing entry to the property where the tenant has already been given every reasonable opportunity to give access.

### **Wording of letters**

- 4.5.9 A few tenants expressed concerns that the letters that are sent regarding forced entry could be re-worded to make them more explanatory. This is something that can be addressed during the development of the procedures and finalisation of any supporting letters.

### **Pets**

- 4.5.10 A few tenants expressed concern at forcing entry when there are pets in the property. This further justifies the need for tenants to communicate and agree a suitable appointment.

- 4.6 Having given full consideration to the comments returned during the consultation, no changes have been made to the No Access Policy. The above mentioned issues will be discussed with relevant managers and any improvement action identified will be incorporated during the procedure development to ensure they are robust.

- 4.7 The No Access Policy **APPENDIX II** is provided for Committee's approval.

## **5. POLICY IMPLEMENTATION**

- 5.1 Subject to Committee's approval, Officers will develop an implementation plan. This will primarily focus on access to homes to meet the new legislative requirements regarding smoke alarms and carbon monoxide alarms. Further phases of implementation will include servicing, required improvement works, new build defects and property condition inspections.

- 5.2 Supporting procedures will be developed, which will incorporate safe working practices for staff and tenants during the continuing coronavirus pandemic. Detail within the procedures will ensure that no forced entry takes place where the tenant or any member of their household are displaying coronavirus symptoms or are self-isolating. The procedures will ensure the policy can be applied consistently with staff training provided where necessary.

- 5.3 Information resources will be developed to advise tenants of their responsibility to provide access to their homes and keep their contact details up to date. Officers will continue to highlight the Council's legal right of access for essential work in an attempt to raise tenants' awareness around the implications of no access cases to the tenant and the Council, as well as promoting the provision of support and assistance for tenants who need it. This information will be incorporated at sign-up interviews as well as articles in the Tenants' Voice newsletter and Council social media pages to encourage higher access rates.

## **6. SUMMARY OF IMPLICATIONS**

**(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The No Access Policy supports Priority 1 of the LOIP 'Growing, diverse and sustainable economy' and Priority 4 of the Local Housing Strategy to improve the condition and energy efficiency of social housing stock.

**(b) Policy and Legal**

This policy has been developed in line with the legal provisions set out within the Housing (Scotland) Act 1987, as amended by the Housing (Scotland) Acts 2001 and 2006 and the Housing Scotland Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019.

**(c) Financial implications**

There are no financial implications arising from this report.

**(d) Risk Implications**

Non-compliance by the Council in respect of their statutory duties under the Housing Scotland Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019 in relation to satisfactory smoke and carbon monoxide alarms presents a number of significant risks. It can lead to serious injury to life for those living in a non-compliant property. This risk also extends to neighbouring properties. The Council need to safeguard their tenants and minimise the risk to the Council of any potential prosecution or intervention from the Scottish Housing Regulator.

**(e) Staffing Implications**

Due to the scale of the improvement programme, external contractors are required and have been appointed through the necessary procurement process.

**(f) Property**

There are no property implications arising from this report.

**(g) Equalities/Socio Economic Impact**

Article 1 and 8 of the Human Rights Act 1998 provides basic rights to property and privacy. The policy content would provide objective justification to impede these rights due to the Council using proportionate means to adhere to legal duties in relation to tenant safety.

**(h) Consultations**

Consultation on this report has taken place with the Acting Head of Housing and Property Services, Housing Services Manager, Building Services Manager, Property Services Manager, Housing Strategy and Development Manager and Officers within the Housing Service, Legal Services Manager, Deborah O'Shea (Principal Accountant), the Equal Opportunities Officer and Lissa Rowan, Committee Services Officer. Any comments have been incorporated into the report.

## **7. CONCLUSION**

**7.1 This report provides the Economic Growth, Housing and Environmental Sustainability Committee with an overview of the feedback received from the consultation on the No Access Policy to ensure compliance with the legislative provisions amending the tolerable standard in relation to smoke alarms and carbon monoxide detectors.**

Author of Report: Emma Armit, Senior Housing Officer (Policy)  
Background Papers: With author  
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