

Private rented sector housing

Purpose of report

For discussion.

Summary

The private rented sector is an important part of the local housing market. This paper introduces some of the challenges for councils and summarises recent changes to regulation. Proposals for next steps are set out for discussion.

Recommendation

That the Environment, Economy, Housing and Transport Board discusses the issues raised in the paper and proposals for next steps.

Action

As directed by the Board.

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Scale and importance of the private rented sector

1. The private rented sector is the second largest tenure in England. It has grown in size over the last few years and stands at 4.5 million households (20 per cent of all households). The majority of private renters (82 per cent) are satisfied with their accommodation¹. It remains an important sector for local government in providing choice and flexibility for residents. Distinct markets exist within the private rented sector, such as student accommodation. The sector offers high quality private rented housing as well as low cost options.
2. The buy to let market has brought new landlords to the market. However, recent changes to tax and incentives have met with a mixed reaction. Tax relief on mortgage interest payments is being phased out over a period from April 2017 until 2020². From 1 April 2016 government raised the rate of stamp duty land tax on the purchase of additional properties³ by 3 per cent and introduced higher rates of Capital Gains Tax. While some have welcomed the changes as a brake on speculative buy to let investment, others have raised concerns that it will restrict new entrants to this market and that existing landlords might respond by selling up or increasing rents to cover the costs.
3. There is strong anecdotal evidence of an increase in the number of houses subdivided to maximise rental income, for example as houses of multiple occupation (HMOs). Councils have noted that this can have a significant impact on the surrounding areas, such as increased flytipping and antisocial behaviour.
4. The cost of renting privately is increasing particularly for household incomes including an element of benefit.

Quality

5. The private rented sector has the largest proportion of non-decent homes (28 per cent in 2015) and the highest number of older properties compared to other tenures. The proportion of non-decent homes has improved over recent years but the actual number has grown to 1.35 million dwellings⁴. The estimated cost of bringing all privately rented homes up to standard is £8 billion (on average £7,700 per property).

¹ English Housing Survey, Private Rented Sector 2015-16

² <https://www.gov.uk/government/news/changes-to-tax-relief-for-residential-landlords>

³ <https://www.gov.uk/government/consultations/consultation-on-higher-rates-of-stamp-duty-land-tax-sdlt-on-purchases-of-additional-residential-properties/higher-rates-of-stamp-duty-land-tax-sdlt-on-purchases-of-additional-residential-properties>

⁴ Quality of Housing Research, LGA 2017

6. Investment in energy efficiency is available through the ECO scheme for households in fuel poverty. The ambition of the Green Deal as a funding mechanism has been much reduced since government funding was withdrawn, but it has returned to the market with backing from private finance. Council experience suggests that there are a number of barriers to using these products in rented housing, particularly the complexity of the funding streams. Landlords and their tenants may reject energy efficiency improvements even where full funding is offered, due to the potential for disruption and rent increases.

Regulation

7. The Environment and Housing Board commissioned and a policy paper on the private rented sector in 2014, “Supporting a thriving private rented sector”⁵. Government has adopted some of the recommendations of that report. For example, the Housing and Planning Act 2016 enabled councils to issue fixed penalty notices of up to £30,000 for certain housing offences. Further, the grounds for introducing selective private housing licensing schemes have been extended, for example to include areas where properties are in poor condition.
8. Other issues raised in the report are still outstanding:
 - 8.1. Prosecuting landlords for renting houses in unfit condition remains a risky and potentially expensive activity for councils. It is still common for magistrates to issue fines at a much lower than those expected by the prosecuting council, and for councils to be awarded less than their actual costs.
 - 8.2. The volume and complexity of the legal and regulatory framework for the private rented sector. The Board called on government to review the legal and regulatory framework so that councils can meet the expectation of tenants and landlords.
 - 8.3. Limited scope to attract investment into good quality private rented sector, for example through “build to rent” programmes
9. The Housing and Planning Act 2016 contained a range of measures to tackle rogue landlords. In addition to the introduction of civil penalties, the Act extended the power to issue rent repayment orders to cases of illegal eviction and certain other offences. These allow tenants to recoup rental income and councils to draw back housing benefit.

⁵ <https://www.local.gov.uk/environment-and-housing-housing-supporting- thriving-private-rented-sector>

10. Measures contained in the Act but not yet implemented include:

10.1. A power for councils to seek a banning order for landlords and letting agents

10.2. A central database of landlords and agents who persistently offend, or are subject to a banning order. Councils will be responsible for data entry

10.3. A requirement for landlords to conduct mandatory electrical safety checks in all privately rented properties

11. DCLG consulted in 2016 on extending mandatory HMO licensing to cover all houses with five or more people from two or more households (removing the confusing element of the definition on the number of storeys). A decision on next steps is awaited. While the clarification would be welcome many smaller HMOs would still fall outside mandatory licensing.

12. Other legislation has covered the following areas of privately rented housing:

12.1. The Deregulation Act 2015 included new powers to protect tenants who complain about property conditions from so called “revenge” evictions.

12.2. Regulations introduced in 2015 require private landlords to install smoke alarms.

12.3. From April 2018 private landlords can only legally rent a home to new tenants if it has an EPC energy rating of E or above. A landlord can apply for an exemption in certain circumstances including cost grounds, which is likely to make any enforcement difficult for councils. Government is looking at the effectiveness of the regulations and may consult shortly on removing the principle of “no upfront cost” to landlords with an alternative arrangement.

12.4. A draft Tenants Fees bill has been published. This will enact the proposed ban on letting agent fees to tenants.

13. Wales and Scotland have introduced legislation on the private rented sector including:

13.1. The Private Housing (Tenancies) (Scotland) Act 2016 includes changes to tenancies and grounds for giving notice⁶. From 1 December 2017 new “private residential tenancies” are open ended with a longer notice period. Disputes between landlords and tenants will be heard in a specialist tribunal.

⁶ <http://www.parliament.scot/parliamentarybusiness/Bills/92310.aspx>

13.2. The Renting Homes (Wales) Act 2016 replaces tenancies and licences with an “occupation contract” intended to streamline existing legislation into one clear framework⁷.

Enforcement

14. Prosecuting a persistently poor landlord through the magistrates court is complex and can be costly for a council, an issue raised in the earlier LGA research project. The introduction of civil penalties in April 2017 provides an alternative, potentially faster route for enforcement action. Some councils have issued their first civil penalties, including Newham and Waltham Forest Councils in London.
15. While councils have a range of powers available to them, many of them require money upfront (such as undertaking safety work in a property where the landlord has failed to respond to enforcement action). Powers such as management orders require councils to take on responsibility for managing a property, as well as complex bureaucratic processes.
16. It is a source of frustration for council enforcement officers that they cannot easily identify the landlord of a rented property. Housing legislation requires that notices are served on the “person managing or in control” of a rented property. If this information is not willingly provided the council must then investigate sources of information such as council tax records, the electoral roll, and land registry information (at cost). A national register of landlords has been proposed by many organisations and exists in Scotland. The LGA has not supported this in the past on the grounds of cost, and limited evidence that it would improve quality.
17. Landlord licensing schemes place the responsibility of registering and providing contact details with the landlord. Councils have discretion over local licensing schemes and many have chosen to extend mandatory licensing to additional types of properties and areas. From April 2015, councils have been required to secure Secretary of State approval for licensing schemes that cover more than 20 per cent of the area or 20 per cent of privately rented homes. The flexibility for a local authority to be able to take forward whole area or area specific licensing schemes is crucial. The LGA has called for the process of setting up a licensing scheme to be streamlined to make it less costly and expensive.
18. Councils have responded in different ways to these pressures:
 - 18.1. Bournemouth Council has bought and refurbished HMOs through a housing company as part of their regeneration strategy. The Council is letting and managing the HMOs to ensure that they are well run.

⁷ <http://gov.wales/topics/housing-and-regeneration/legislation/rentingbill/?lang=en>

- 18.2. Blackpool Council has set up a housing company to purchase and improve HMOs in the most deprived parts of the borough. This is part of a range of strategies to tackle the impact of poor quality housing on health and the local economy.
- 18.3. Leeds Council has taken a neighbourhood renewal approach, targeting certain areas for investment and enforcement.
- 18.4. London Boroughs including Newham, Waltham Forest and Croydon have introduced borough wide licensing schemes. The London Borough of Waltham Forest launched a Private Rented Property Licensing Scheme in April 2015. They are actively enforcing the scheme through action days involving knocking on doors, identifying any breaches of the licence and identifying illegal structures such 'beds in sheds'. Public sector partners, including the police and UK Border Force, work together to enforce license conditions. In the first three months the council visited 6,000 properties, found 139 properties that will be subject to prosecution and issued 65 fixed penalty notices.
19. Many councils are using housing companies to provide good quality privately rented housing, including:
- 19.1. Birmingham City Council is building a scheme of 92 privately rented apartments through a wholly owned council company. The drivers for this include a strong demand for high quality private rented homes in the city centre and an inadequate supply, driving up standards of quality and design, as well as returning a surplus to the council.
- 19.2. The London Borough of Lewisham is developing a joint venture using council owned land for purpose built private rented housing. Homes are aimed at people who cannot afford to buy but are unable to access social housing, with the joint venture partner bringing investment and housing management expertise to the development.

Affordability and homelessness

20. The private rented sector is increasingly unaffordable for people on low incomes. The number of homelessness acceptances due to loss of an assured shorthold tenancy has quadrupled from 4,580 in 2009 to 18,750 in 2016, now causing 30 per cent of homelessness in England and 40 per cent in London. Homelessness acceptances from causes other than loss of rented accommodation have remained flat since 2009/10.
21. Similarly there has also been a 40 per cent decrease in homelessness prevention and relief into the private rented sector by local authorities across England over the same period, reflecting local authorities' difficulties in securing access for homeless households into private rented sector accommodation.

22. The recent LGA report “Housing our Homeless Households” highlighted the pressure on councils from the rising levels of homelessness created by the end of a tenancy in the private rented sector. Councils are currently housing over 70,000 families including over 120,000 children in temporary accommodation. National data suggests the net cost for councils providing temporary accommodation has tripled in the last three years, though evidence from London suggests it could be much greater than that.
23. The Autumn Budget announced £20 million of funding for schemes to support people at risk of homelessness to access and sustain tenancies in the private rented sector, and increased funding targeted at unaffordable areas. While this is welcome, it does not tackling the underlying issues of rising rents and reduced welfare assistance. The LGA has argued that Government should continue to adapt the implementation of welfare reforms to reduce the risk of homelessness, including lifting the Local Housing Allowance freeze.
24. Some mortgage providers are including restrictions in buy-to-let mortgages that prevent the letting of properties to households in receipt of housing benefit or Universal Credit.
25. Many councils are seeking to strike relationships with landlords:
 - 25.1. Camden pioneered and hosts the London Landlord Accreditation scheme, and requires all landlords it works with to be accredited. The council provides a responsive service to landlords with any tenancy related issues and vets tenants before they put them forward for a private tenancy. Any potential tenants who are not deemed ready to sustain a private tenancy are accommodated elsewhere with additional support and are given pre-tenancy training.
 - 25.2. Plymouth Access to Housing (PATH) contributes to Teignbridge’s annual figure of between 250 and 300 homelessness preventions into the private rented sector. Discretionary housing payments (DHP) and charitable funding are both used to fund deposits and rent in advance, and tenants are supported to access a credit union.

Implications for Wales

26. Housing is a devolved issue. Legislation would apply to England only, except as noted above.

Financial Implications

27. None

Proposals

28. Members are asked to consider the following proposals for key issues raised in this report:

- 28.1. Pressing government for greater flexibility on local licensing schemes: reducing the cost and bureaucracy involved in introducing local licensing, and removing Secretary of State approval for larger local licensing schemes
- 28.2. Lobbying for the removal of restrictions in buy to let mortgages that prevent access to housing for households in receipt of welfare benefits

29. Members may also wish to consider:

- 29.1. Developing a refreshed evidence base on areas of concern for councils: for example poor quality HMOs and associated problems of waste and parking.
- 29.2. How financial incentives and powers could be devolved to local areas to help attract investment in good quality private rented housing.
- 29.3. Streamlined legislation: The LGA has called on Government to review and modernise the legislative and regulatory framework to support councils' ability to meet the expectations of their residents. The Tenants Fees Bill could provide an opportunity to highlight LGA key asks. Board members may wish to develop a position on areas of legislation that have been under scrutiny:
 - 29.3.1. Encourage more consistent fines from magistrates through the introduction of sentencing guidelines. Members may wish to consider the case for a minimum level of magistrates fines of £30,000, the upper threshold for civil penalties
 - 29.3.2. Members may wish to consider whether the needs of the private rented sector are best served by a risk based system such as the Housing, Health and Safety Rating System (HHSRS), or whether a set of minimum standards would be more effective in driving up quality. There are mixed views among councils, and different approaches locally to driving up standards.
 - 29.3.3. Extension of HMO licensing: the government could go further to extend mandatory licensing to all HMOs, not just larger properties