

**North East Derbyshire District Council**

**Cabinet**

**17 December 2020**

**Delegated powers under the Anti Social Behaviour, Crime and Policing Act 2014**

**Report of Councillor A Powell, Portfolio Holder for Housing, Communities and Communications**

This report is public

**Purpose of the Report**

To review and confirm the designation of Rykneld Homes Ltd as an authorised person to issue Community Protection Notices (“CPN”) under Section 43 of the Anti Social Behaviour Crime and Policing Act (“the Act”) on behalf of the Local Authority.

**1. Report Details**

- 1.1 Section 43 of the Act provides that Community Protection Notices can be served on individuals and businesses whose behaviour is having a detrimental effect on the quality of life of those in the locality. The behaviour must be persistent or of a continuing nature and be unreasonable.
- 1.2 The CPN can include requirements to stop conduct, take steps to do something or take steps to avoid the conduct which is unreasonable. A written warning has to be served prior to the CPN being served to allow the recipient time to cease the unreasonable conduct. If the recipient fails to cease the conduct in breach of the CPN, a fixed penalty notice can be served requiring them to pay £100 fine or the Council can prosecute. Payment of the fixed penalty notice is an opportunity for the recipient to avoid prosecution. If they fail to pay the fine, the Council can prosecute in the Magistrates Court for the original offence of failing to comply with the CPN. If found guilty, the Defendant will be subject to a maximum fine of £2500 and the Council have the opportunity to apply for a criminal behaviour order if the circumstances of the case meet the statutory test. The fine amount is entirely discretionary and dependant on income.
- 1.3 For Council tenants, Rykneld Homes can also take appropriate tenancy related enforcement action including tenancy warning letters, possession proceedings or injunction proceedings.
- 1.4 The Act limits who can serve the CPN and refers to this power being used by an “authorised person” which is defined in Section 53 of the Act as the relevant local authority (within whose area the conduct specified in the notice has taken place) or person who has been designated by the relevant local authority.

- 1.5 Subsection (4) provides that other persons may be delegated the power to serve CPNs and those such persons are set out in the Anti-Social Behaviour (Authorised Persons) Order 2015 which includes “housing providers”.
- 1.6 Rykneld Homes had been registered with the Regulator of Social Housing as a non-profit company since 6 June 2013 and therefore Rykneld Homes is defined as a “housing provider” (“in relation England, a non-profit private registered provider of social housing”) and therefore “an authorised person” within the meaning of the Act. This clarification was not set out in the report of August 2016 and it would be helpful for this to be reflected in any further delegation of power to Rykneld Homes.
- 1.7 On 3 August 2016, a report was presented to Cabinet about designating Rykneld Homes as an authorised person to issue a CPN on behalf of the Council pursuant to Section 43 of the Act. The Council resolved as follows:

*(1) Designate Rykneld Homes as an authorised person to issue Fixed Penalty Protection Notices under Section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014.*

- 1.8 An error was made within the resolution which referred to fixed penalty notices rather than the issuing of CPN. This was amended at the next meeting on 31 August 2016 which resolved as follows:

*215 Minutes of Last Meeting*

*It was agreed that the first resolution at Minute No 190 – Powers under the Anti-Social Behaviour, Crime & Policing Act 2014 – should state “Community Protection Notices” not “Fixed Penalty Protection Notices”.*

*RESOLVED – That the Minutes of the meeting of the Cabinet held on 3 August 2016 be approved as a correct record, subject to the amendment above, and signed by the Leader.*

- 1.9 The Council is seeing a slight rise in challenges to Community Protection Warnings and Notices and whilst the resolution/delegation is lawful, it would be more favourable to have a complete, unaltered and up to date resolution.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The CPN process is proving to be a successful and cost effective enforcement tool. It can be used to address a wide range of conduct and behaviour which impacts on the wider communities within the district. It allows officers to take swift and effective action against individuals and businesses, which in most cases stops the conduct from recurring.

## **3 Consultation and Equality Impact**

- 3.1 Any action taken using the powers in the Act will comply with the Equality Act duties.

#### 4 **Alternative Options and Reasons for Rejection**

4.1 To leave the resolution as is.

This option is not believed to be in the best interests of the Council. The current resolution could give rise to an appeal against a CPN being issued relating to the delegation and status of Rykneld Homes. This new delegation will be free from errors and will clarify the legal status of Rykneld Homes in accordance with the Act.

#### 5 **Implications**

##### 5.1 **Finance and Risk Implications**

There is a small risk of the current resolution being subject to a costly appeal process.

##### 5.2 **Legal Implications including Data Protection**

As contained in the report.

##### 5.3 **Human Resources Implications**

None

#### 6 **Recommendations**

6.1 Rykneld Homes be designated as an authorised person (as defined by Sections 20 and 53 of the Anti Social Behaviour Crime and Policing Act 2014, and Anti-Social Behaviour (Authorised Persons) Order 2015), to issue Community Protection Notices under Section 43 of the Anti Social Behaviour Crime and Policing Act 2014.

#### 7 **Decision Information**

|  |     |
|--|-----|
| <b>Is the decision a Key Decision?</b><br>A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:<br><i>BDC: Revenue - £75,000</i> <input type="checkbox"/><br><i>Capital - £150,000</i> <input type="checkbox"/><br><i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/><br><i>Capital - £250,000</i> <input type="checkbox"/><br><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i> | No  |
| <b>Is the decision subject to Call-In?</b><br>(Only Key Decisions are subject to Call-In)  | No  |
| <b>Has the relevant Portfolio Holder been informed</b>   | Yes |
| <b>District Wards Affected</b>   | All |

|   |     |
|---|-----|
| <b>Links to Corporate Plan priorities or Policy Framework</b> | All |
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**8 Document Information**

| <b>Appendix No</b>       | <b>Title</b>  |
|--------------------------|---|
| 1                        | Extracts from the Anti Social Behaviour Crime and Policing Act 2014 |
| <b>Background Papers</b> |   |
|                          |   |
| <b>Report Author</b>     | <b>Contact Number</b>   |
| Gill Callingham          |   |

Report Reference –

## Appendix 1

### Extracts from the Anti Social Behaviour Crime and Policing Act 2014

Section 20 of the Act defines “housing providers” as follows:

“housing provider” means—

- (a) a housing trust, within the meaning given by section 2 of the Housing Associations Act 1985, that is a charity;
- (b) a housing action trust established under section 62 of the Housing Act 1988;
- (c) in relation to England, a non-profit private registered provider of social housing;
- (d) in relation to Wales, a Welsh body registered as a social landlord under section 3 of the Housing Act 1996;
- (e) any body (other than a local authority or a body within paragraphs (a) to (d)) that is a landlord under a secure tenancy within the meaning given by section 79 of the Housing Act 1985;

#### 43 Power to issue notices

- (1) An authorised person may issue a community protection notice to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that—
  - (a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and
  - (b) the conduct is unreasonable.
- (2) In subsection “authorised person” means a person on whom section 53 (or an enactment amended by that section) confers power to issue community protection notices.
- (3) A community protection notice is a notice that imposes any of the following requirements on the individual or body issued with it—
  - (a) a requirement to stop doing specified things;
  - (b) a requirement to do specified things;
  - (c) a requirement to take reasonable steps to achieve specified results.
- (4) The only requirements that may be imposed are ones that are reasonable to impose in order—
  - (a) to prevent the detrimental effect referred to in subsection from continuing or recurring, or
  - (b) to reduce that detrimental effect or to reduce the risk of its continuance or recurrence.
- (5) A person (A) may issue a community protection notice to an individual or body (B) only if—
  - (a) B has been given a written warning that the notice will be issued unless B’s conduct ceases to have the detrimental effect referred to in subsection, and
  - (b) A is satisfied that, despite B having had enough time to deal with the matter, B’s conduct is still having that effect.
- (6) A person issuing a community protection notice must before doing so inform any body or individual the person thinks appropriate.
- (7) A community protection notice must—
  - (a) identify the conduct referred to in subsection;
  - (b) explain the effect of sections 46 to 51.
- (8) A community protection notice may specify periods within which, or times by which, requirements within subsection (3)(b) or (c) are to be complied with.

#### 53 Authorised persons

- (1) A community protection notice or a fixed penalty notice may be issued by—
  - (a) a constable;
  - (b) the relevant local authority (see subsections (2) and (3));
  - (c) a person designated by the relevant local authority for the purposes of this section.
- (2) For a community protection notice, “the relevant local authority” means the local authority (or, as the case may be, any of the local authorities) within whose area the conduct specified in the notice has, according to the notice, been taking place.
- (3) For a fixed penalty notice, “the relevant local authority” means the local authority (or, as the case may be, any of the local authorities) within whose area the offence in question is alleged to have taken place.
- (4) Only a person of a description specified in an order made by the Secretary of State for the purposes of subsection (1)(c) may be designated under that subsection.