



Regulator of Social Housing
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Our ref: RSH/2022/01
Date: 09 Feb 2022
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Dear Sir / Madam,

Self-referral for Regulatory Non-Compliance

Further to our telephone discussion on 7th February 2022 with Jonathan Driscoll, I am writing to formally notify you that East Suffolk Council believes it is in breach of the standards set out by the Regulator of Social Housing. In line with the Governance and Viability Standard 2015, section 2.3 states *“Registered providers shall communicate in a timely manner with the regulator on material issues that relate to non-compliance or potential non-compliance with the standards.”*

Following an in-depth review of the Housing Service during the last four months, which was conducted in line with the Regulatory (Rent) and Consumer Standards, we believe that we are in breach of the Rent Standard and potentially also the ‘Home’ Consumer Standard.

East Suffolk Council was created in April 2019, replacing the former Waveney and Suffolk Coastal District Councils. Prior to this, Waveney retained its housing stock, whereas Suffolk Coastal, had previously carried out a stock transfer. Therefore, given that the Councils were still separate sovereign councils at the time, a number of the legacy decisions relate only to Waveney District Council.

Rent Standard

In 2015, the Council entered into a Consortium with Orwell Housing Association Limited, Freebridge Community Housing Limited, Greenfields (now Eastlight Community Homes Limited), Saffron Housing Trust Limited and Ipswich Borough Council. Through the consortium, the Council entered into an Agreement with the Homes and Communities Agency, which allowed for up to 260 conversions from Social to Affordable Rented.

Waveney, and then East Suffolk Council (ESC), converted 1,374 tenancies, of which 15 have since been sold through Right to Buy (RTB). ESC has also acquired (purchased) or built an additional 83 properties and set the rent levels at Affordable Rent. With 260 conversions as an upper limit, we believe 1,114 tenancies were converted that should not have been.

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The issue of conversions was considered in 2019 and a Counsel opinion sought, which was received in early 2020. In Summary, the view of Counsel was that the issue was ambiguous, but that it is likely the conversions were not permitted and as a result ESC should seek clarification due to the ambiguity of the original guidance relating to conversions.

Following Counsel's advice, a letter was sent to Robert Jenrick MP, Secretary of State for MHCLG on 12th March 2020, which can be found in Appendix 1, at the end of this document. No acknowledgement or response was ever received.

In hindsight, this was the incorrect process and, following the advice from counsel, the self-referral should have been made to the Regulator of Social Housing. Unfortunately, within days of the letter being sent, the Country faced an unprecedented National lockdown and the work associated with Covid, and a change in Head of Service meant this issue was not reviewed again until very recently.

Throughout the last few years, whilst many tenancies have been converted from Social Rent to Affordable Rent, ESC has continued to provide data through the Local Authority Housing Statistics (LAHS) annually, which has not highlighted any potential issues with the conversion numbers. The published LAHS returns show transparency in the approach to the number of conversions taking place.

Due to the complex nature of the issues identified as part of our internal review, we appointed *David Tolson Partnerships (DTP)* to independently review our historic approach to rent conversions and also to assess whether there are/were any other areas of non-compliance against the rent standard. DTP are well regarded for their expert knowledge and ability to carry out audits against the regulatory standards. As an independent consultancy, we felt they would be best placed to offer the external, independent validation and advice required, to enable us to address this problem satisfactorily and provide us with the advice and guidance required to develop improved procedures which would prevent further non-compliance in the future.

As part of the review, we also identified that additional charges had been added to multiple rent accounts. These were to cover the servicing costs associated with gas, oil or electric heating. Historically, these were classified as "Service Charges" and Counsel advice was sought in 2018, following which a decision was made to re-define these charges as "de-pooled rental charges". These charges remain in place currently for both social and affordable rented properties. DTP believe this approach is unusual and have recommended a further legal opinion is sought on the matter. We have appointed Towers & Hamlins to provide that opinion. If it is determined that these charges should not have been applied, then remedial action will be required.

A copy of the 'Rent Review' conducted by DTP, dated 4th February 2022 has been included with this letter and is located in Appendix 2. It sets out a number of areas of non-compliance namely:

Social Rent

1. In 2015/16,

- a. we did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%
 - b. 33 properties had a rent increase, which we need to investigate further
- 2. In 2016/17,
 - a. we did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%
 - b. 27 properties had a rent increase, which we need to investigate further
- 3. In 2017/18, we did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%
- 4. In 2018/19, 37 properties had a rent increase, which we need to investigate further
- 5. In 2019/20, there was an inconsistent approach to rent setting, which included 20 properties having a rent increase when they already had a gross rent of higher than Formula Rent and 33 properties had a rent increase of more than 2.7%, which we need to investigate further
- 6. In 2020/21, there was an inconsistent approach to rent setting, which included 11 properties having a rent increase of 1.5% when they were already above formula rent, 88 had an increase in rent of more than 1.5% and 2 of those properties already had a gross rent of higher than Formula Rent, which we need to investigate further

Affordable Rents

- 7. ESC has incorrectly converted approximately 1100 properties from Social Rent to Affordable Rent
- 8. ESC has not obtained valuations from RICS for Affordable Rent properties to confirm the rent inclusive of service charges is no more than 80% of the market rent
- 9. ESC has charged additional charges for Affordable Rent properties, namely the de-pooled rental charges listed in 15a-d below
- 10. In 2015/16, ESC did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%
- 11. In 2016/17, ESC did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%
- 12. In 2017/18, ESC did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%
- 13. In 2018/19, ESC did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%
- 14. In 2019/20, ESC did not reduce the de-pooled rental charges by 1% and therefore the gross rent did not reduce by 1%

Additional Charges

- 15. ESC has potentially incorrectly charged 'de-pooled rental charges' to cover costs associated with:
 - a. Gas Boiler Services
 - b. Gas Fire Services
 - c. Electric Heating Services

d. Oil Heating Services

We are actively working to gain clarity on whether these charges have been levied appropriately. Again, we have instructed Trowers & Hamblins to provide us with the specialist advice we require.

In relation to the potential overpayments of rent, we believe this to be approximately £2.58M and, if the additional service / de-pooled rental charges were not permitted, this equates to a further £380,000. However, we need to conduct a forensic audit, looking at every account line by line and until that is completed, we will not be able to confirm a definite figure, and the split of overpayments between those paid by tenants and paid via housing benefit.

Home Standard

As part of our internal review, we have also been reviewing the compliance requirements within our housing stock and have identified some areas where we believe there may be a breach of the expected standards. At present, we do not hold sufficient data to enable us to ascertain whether we meet compliance requirements or not.

As a result, we have employed a Compliance Consultant, who is working with us full-time, to ensure we have the right policies, processes and mechanisms for monitoring in place to provide assurance that our stock is compliant and remains compliant in the future.

Fire

ESC does not appear to have been actively conducting adequate or appropriate Fire Risk Assessments on relevant buildings, including our Retirement Living Schemes. These were last risk-assessed in 2019 and while some significant work has been done, we are unable to find evidence of all of the recommended work being carried out.

We have recently appointed *Ensure Safety and Compliance* to conduct Fire Risk Assessments in 90 buildings across a six-month period. They commenced FRA's on our Retired Living Schemes during January and further are booked for February. We have developed mechanisms to ensure we are carrying out recommended works, so any identified risks are mitigated.

We are currently developing a new Fire Strategy, which we will be asking Cabinet to approve shortly. This will ensure the effective management of our stock to reduce the risk of fires.

We are also in the process of producing a Technical Fire Safety Standard. The overall purpose of this Standard is to support East Suffolk Council's Fire Safety Strategy and incorporates a range of minimum standards designed to meet the requirements of The Regulatory Reform – Fire Safety – Order 2005, within properties owned and/or managed by East Suffolk Council and takes into account, where relevant, published guidance on Fire Safety in purpose-built blocks of flats (2011), LACORS – Housing – Fire Safety and Fire Safety in Specialist Housing (2017) etc.

Compliance

We are currently undertaking a thorough audit of all aspects of compliance, including Gas, Electrical, Legionella, Asbestos and Lifts, to understand the current level of compliance and the development of an action plan to ensure we reach full compliance. Our external compliance consultant is working closely with us, to ensure we meet the expected standards. However, at this moment in time, I cannot provide proof of compliance, due to the current records held. We hope to have a better picture of compliance over the next month.

Next Steps and Remedial Action

We have developed an Action Plan, which can be found in Appendix 3. This sets out the steps we will be taking to rectify these issues to ensure we will reach compliance with the relevant Regulatory Standards.

The action plan covers a number of key areas, including the development of a robust Rent and Service Charge Policy, a forensic audit of all tenancies and the creation of a comprehensive governance process.

We will be considering whether there has been any detrimental impact on tenants as a result of the issues that have arisen, ensuring that we rectify any detriment as soon as practicably possible.

In regard to the Rents Issues, DTP are assisting us with dedicated external support to conduct a forensic audit of every single tenancy, dating back to 2014, to ensure correct rental charges are in place and any overpayments repaid to the tenant, or housing benefits, as required.

ESC will also be commissioning a comprehensive, external, independent Governance review to be carried out to understand how these issues were not identified sooner, or why more decisive action was not taken following the Counsel advice in early 2020. We want to ensure lessons are learnt and more robust mechanisms are put in place to prevent any issues such as this re-occurring in the future.

To ensure that ESC's housing service makes significant progress over the coming months, enabling it to become compliant with the Rent and Consumer Standards, we have developed three key groups:

Group	Members	Purpose
Strategic Project Board	Chief Executive, Strategic Directors, Head of Housing, Monitoring Officer, s151 Officer, Head of Audit, Communications	To monitor and ensure progress, provide scrutiny and challenge and be able to approve additional resources as required.
Members Project	Leader, Deputy Leader, Cabinet Holders for Resources and Housing and the	To ensure key Councillors have oversight of the project and can

Board	Leaders of the Opposition Groups	provide challenge to senior officers.
Operational Project Board	Key operational staff from Rents, Tenant Involvement, Customer Experience, Audit, Finance, Programme Management	To support the external investigation, deal with the transactional arrangements relating to refunds, system improvements and the development of new processes and procedures.

We are also in the process of making two senior appointments to support the level of work required, one with a focus on Housing Maintenance and the other with a focus on Rent compliance. We hope to have these on board by April.

I would like to take the opportunity to assure the Regulator that these matters are being treated with the upmost importance and will be prioritised over other work to ensure no unnecessary delays in resolving these issues.

We will continue to update the Regulator as we continue with our analysis of these issues and would suggest that we provide our next update within four weeks of this letter. However please do let us know if you wish to receive any additional information from us before then.

I look forward to hearing from you and discussing this in more detail in due course.

Yours sincerely

Stephen Baker | Chief Executive
East Suffolk Council

Heather Tucker | Head of Housing
East Suffolk Council

Appendices

1. Letter sent to MHCLG, 12 March 2020
2. Rent Review Report from DTP
3. Action Plan