

Report to the Cabinet

Report reference: C-023-2015/16
Date of meeting: 3 September 2015



Portfolio: Housing
Subject: Private Sector Housing Enforcement Policy
Responsible Officer: Sally Devine (01992 564149).
Democratic Services: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) That the updated version of the Private Sector Housing Enforcement Policy, attached as an appendix, be approved and adopted.

Executive Summary:

The Council's existing Private Sector Housing Enforcement Policy is now several years old and was introduced in 2010 following the Council restructure and the transfer of private sector housing functions to the Housing Directorate. It is now appropriate to review and update the policy to reflect how officers in the new Communities Directorate will carry out private sector housing enforcement functions. The draft revised policy is attached as an Appendix to the Report

Reasons for Proposed Decision:

In order to ensure that service users are fully aware of what to expect from Council officers and can be satisfied that they will be treated fairly and proportionately.

Other Options for Action:

Not to adopt a Policy. This course of action would leave the Council open to criticism. The Legislative and Regulatory Reform Act 2006 requires the Council to have regard to the Central Government Regulators' Code when determining policies or principles that guide regulatory activities and to demonstrate openness and fairness in our approach to enforcement.

Report:

1. The current Private Sector Housing Enforcement Policy was approved by the Cabinet in 2010 (C-011-2010/11). This set out the approach that would be taken in relation to private sector housing enforcement matters following the 2008 corporate restructure.
2. It is necessary to review and update the existing enforcement policy to take account of changes that took place in the more recent corporate restructure. In addition, two new Codes, the Regulators' Code (which replaces the Regulators Compliance Code) and the Code Of Practice: 'Powers of Entry' have come into force and these must be taken into account when considering implementing any enforcement policy.

3. The new Private Sector Housing Enforcement Policy is attached as an Appendix. It sets out exactly what can be expected in the event that the Directorate finds it necessary to embark upon any form of enforcement action against an individual or organisation. The Policy's main principles are to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between the Council and those they regulate.

Resource Implications:

All costs are contained within current budgets.

Legal and Governance Implications:

The adoption of the revised Policy will ensure that Private Sector Housing Enforcement activities are fair and consistent and follow the principles of the Regulator's Code.

Safer, Cleaner and Greener Implications:

One of the main aims of the Council's Private Sector Housing function is to protect the health and safety of the residents of, and visitors to, private sector residential properties. Enforcing legislation and relevant standards appropriately is key to this.

Consultation Undertaken:

None.

Background Papers:

None.

Risk Management:

Failure to ensure compliance with legislation and relevant standards may compromise the health and safety of the residents of, and visitors to, private sector residential properties.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

The principle enforcement activities for officers dealing with private sector housing centre around:

1. Ensuring that properties are free from significant hazards, and are safe to live in; and
2. Investigating harassment and illegal evictions

Equality analysis has been carried out on these two activities and the findings form the basis of this Due Regard Record.

The Council carried out a Private Sector House Condition Survey (PSHCS) in 2011 which profiled residents in private sector housing, including the private rented sector, across the District. The results of the survey were compared where possible with the results of a PSHCS carried out in 2005 which shows an increase in the private rented sector as a percentage of all stock from approximately 3% in 2005 to 15% in 2011.

The PSHCS includes profiling against a variety of criteria including age, family income and disability. This demonstrates that a higher proportion of 'vulnerable residents' (e.g. families with children and/or older people on low incomes and/or disabled people) live in non-Decent homes in the private rented sector than in owner occupied homes.

Research and analysis from a broad range of statistical data, summarised in the Parliamentary Report on 'Housing and Health' suggests that living in poor housing can lead to an increased risk of cardiovascular and respiratory disease as well as to anxiety and depression. Problems such as damp, mould, excess cold and structural defects which increase the risk of an accident also present hazards to health.

The Housing Health and Safety Rating System sets the criteria for enforcement under the Housing Act 2004 and assesses the likelihood and extent of harm to the 'vulnerable' group for each potential hazard (of which 29 hazards are considered). This forms the basis for much of the enforcement activity of officers dealing with properties in the private sector.

An effective and robust enforcement policy is therefore a necessary and important tool in improving conditions in particular properties and in improving the conditions generally of the private sector housing stock.

There is no specific breakdown of data around harassment and illegal eviction but the Crime Survey for England and Wales 2011-12 and 2012-13 identify that the most common victims of hate crime centre around race (highest), religion, disability and sexual orientation.

Local statistics indicate that three wards in the district have BME populations above the national average and that in Grange Hill 10.5% of the population are Asian or British Asian. A local survey of on-site worker accommodation on nursery sites indicates that a large proportion of residents are Romanian and Polish.

The action to be taken by the Council in protecting residents from harassment and illegal eviction is dictated by specific legislation but a robust and effective enforcement policy is necessary to ensure that officer actions are consistent with legislative requirements and that residents can be satisfied that they are being treated fairly and proportionately.

Appendix

Private Sector Housing Enforcement Policy

1.0 Introduction

1.1 Enforcement is considered to be the actions that are taken to achieve compliance with a statutory requirement. This Policy sets out the enforcement procedures that will be used to achieve statutory housing and environmental standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from the Council.

1.2 Anyone likely to be subject to formal enforcement action will receive a clear explanation of what they need to do to comply and will be given an opportunity to resolve issues before enforcement action is taken. Our aim is to encourage cooperation between the Council, property owners and tenants to help keep homes in good repair.

1.3 The Council expects landlords to support their tenancies, and for tenants to cooperate, throughout any enforcement action and if the tenant leaves the property, enforcement action will continue until the property is brought up to a satisfactory condition.

1.4 This Enforcement Policy promotes efficient and effective approaches to regulatory inspection and enforcement to secure compliance without imposing unnecessary burdens. Any enforcement action will be taken in line with the principles of good enforcement outlined in the Regulators Code April 2014 issued under the Legislative and Regulatory Reform Act 2006. This can be accessed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

2.0 How do we decide what to inspect or investigate?

2.1 We will target our programmed, routine and reactive inspections on those premises, nuisances and other public health matters that are statutory requirements and/or present the greatest risk to occupiers, neighbours and the public. Vacant private sector residential properties and sites will be identified and dealt with in the context of our Empty Property Strategy.

2.2 Some categories of complaints are urgent, such as those that might affect health and safety, and in some circumstances these may receive a response within 24 hours. Our Housing Charter explains how and when we aim to respond to all other complaints. The Housing Charter is contained within our Housing Service Standards, a copy of which is available on our web-site [[link to be inserted](#)] or a paper copy can be provided on request from the Civic Offices. Contact details are at the end of this document.

2.3 This Policy relates to enforcement action relating to homes in the private sector. Requests for advice and assistance on conditions in Council accommodation should be directed to the Housing Repairs Service.

3.0 General Principles

3.1 We will uphold the statutory principles of good enforcement and ensure that our regulatory activities will be;

- Consistent
- Transparent
- Proportionate
- Accountable
- Targeted

3.2 **Consistent:** means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, the history of compliance and the attitude and actions of those involved.

3.3 **Transparent:** We will clearly define our policies and procedures to ensure that they can be easily understood. We will provide full and clear reasons to explain why enforcement action is being taken. A clear distinction will be made between legal requirements and advice or guidance.

3.4 **Proportionate:** Relating enforcement action to the risks and severity of the breach of the law involved. Remedies should be appropriate to the risk posed and costs should be minimised wherever possible.

3.5 **Accountable:** We will answer for our actions. We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

3.6 **Targeted:** We will focus our attention on properties with the worst conditions. Directing resources toward the most significant problems. This will ensure that the most serious risks are targeted first.

4.0 Enforcement Options

4.1 A staged approach is taken to enforcement wherever possible to ensure solutions are initially sought through advice, co-operation and agreement. Support and advice will be offered to secure compliance with relevant legislative standards. However, where this is not successful there will be cases where formal action is necessary and this may ultimately lead to prosecution or other summary action.

4.2 There may also be circumstances, such as when there is an imminent risk to health, where it may be necessary to take formal action in the first instance. Section 4.3 below identifies the different courses of action that are available and the criteria that Officers will use to choose which are the most appropriate in each case.

Action	Circumstances
No action	<p>Complaints or allegations are unsubstantiated</p> <p>No contravention is found</p>
Verbal Advice	<p>There is insufficient evidence of breaches; and/or,</p> <p>Immediate action is taken to comply with failures</p>
Informal letters	<p>Past history of dealing with the relevant parties allows confidence that informal action will achieve compliance;</p> <p>Conditions are not serious enough to justify formal action; and/or,</p> <p>To notify the responsible person that action is required prior to taking formal action.</p>
Advisory notices	<p>The conditions are serious enough to justify formal action; and/or,</p> <p>Opportunity given to landlords and tenants to make representations.</p>
Formal notices	<p>There are significant failures of statutory requirements;</p> <p>There is a lack of confidence in the individual or management, i.e. the willingness to respond to an informal approach;</p> <p>There is obstruction or assault;</p> <p>There is a history of non-compliance;</p> <p>The Council is required to serve a statutory notice; and/or,</p> <p>The defect presents an imminent risk to health.</p>
Works in default – emergency remedial action	<p>There is an imminent risk to health and safety to the public; and/or,</p> <p>Prosecution would not adequately protect the public interest.</p>

Works in default – non compliance	We may choose to carry out works required by a notice if they have not been completed within the permitted time; and/or This may be taken in conjunction with, or followed, by a prosecution for non compliance of a notice
Offer of a Formal Caution	Where a prosecution is determined not to be in the public interest unless the offer is refused
Revocation of licences and approvals	The property manager is not a fit and proper person
Prosecution	There is sufficient and reliable evidence that an offence has been committed, and There is a realistic prospect of conviction, and The prosecution is in the public interest.

4.4 Consistency and adherence to this Policy are maintained through the Council's internal case review procedures.

4.5 Where formal action is required officers will provide:

- Will provide clear information and advice to all relevant parties;
- Ensure that an opportunity is given to discuss what is required before formal action is taken (unless urgent action is required);
- Advise the relevant parties of the named officer responsible for dealing with their case;
- Give a written explanation of any rights of appeal at the time the notice is served;
- Notify the relevant parties about any financial charge that the Council may apply and seek to recover as part of the enforcement process (see attached appendix for charges); and,
- If there is an appeal against a notice then a charge will only be applied if the notice is upheld.

5.0 Powers of entry

5.1 Where officers exercise their legal rights of entry during routine inspections and investigations, due regard shall be had to the Home Office Code of Practice December 2014.

5.2 Where it is appropriate and practicable to do so, reasonable notice should be provided (usually not less than 24 hours) to the owner or occupier before exercising a power of entry.

5.3 A "Notice of Powers and Rights" will be provided to the owner and/occupier.

5.4 In the event that access to a property is refused, then officers may apply to the local Magistrate's court for a warrant to enter. A warrant will only be issued if the Magistrate is satisfied that the reasons for entry are valid.

6.0 Complaints

6.1 In the event that an individual or company is not satisfied with the service or if they do not agree with the action taken by the investigating officer they should first contact the Private Housing Manager (Technical). If this does not resolve their complaint the Council also has a formal Compliments and Complaints Policy. This is available on our web-site or a paper copy can be provided on request from the Civic Offices. Contact details are below.

7.0 Monitoring

This Policy will be reviewed at least annually and more frequently if circumstances dictate.

Contact Details:

Private Sector Housing (Technical),
Housing Directorate,
Epping Forest District Council,
Civic Offices,
High Street,
Epping
CM16 4BZ
Tel: 01992 564348
E-mail: privatesectorhousing@eppingforestdc.gov.uk
Website: www.eppingforestdc.gov.uk

Appendix 1

Charges and Fees

1. Charges for the Service of Statutory Notices and Orders under Part 1 Housing Act 2004

Section 49 of the Housing Act 2004 permits local authorities to make a reasonable charge for notices served under Part 1 of that Act. This includes notices to improve housing conditions, prohibition orders and emergency action. The system of charging is based on officer time and the size and condition of property. This means if you own a one bedroom flat with one hazard, you will not be charged the same as an owner of a large 6 bedroom house with numerous defects.

The charges in the table below have been agreed by the Council from 1 April 2015. They will be reviewed by the Finance and Performance Management Cabinet Committee on an annual basis.

Schedule of Charges: Notices served under Part 1 of the Housing Act 2004 on or after 1 April 2015

	Costs for 1-4 hazards	Cost for >5 Hazards
1 bed Flat	£342.00	£427.50
2 bed Flat/house	£384.75	£470.25
3 bed Flat/house	£427.50	£513.00
4 bed House	£513.00	£612.75
5/6 bed HMO	£555.75	£655.50
Large >6 HMO	£669.75	£726.75

The Private Sector housing manager reserves the right to exercise discretion regarding charges in exceptional circumstances.

2. Charges for carrying out work in default

The Council is given powers to carry out works in default where a person has been required to do works but has failed to do so. The cost of the works will be recovered in accordance with the relevant statutory provisions. The Council is also entitled to recover the costs of officer time in administration, arranging and supervising the work.

3. Expenses for compliance notices under the Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013

Where a local authority considers that a park owner is failing or has failed to comply with a site licence condition it can serve a compliance notice on the park owner listing the steps that need to be taken, within a specified time period, to comply with the requirements of the site licence. A local authority may impose a charge on the occupier as a means of recovering expenses incurred by them. Please note there is a separate fee structure for the annual licensing of Residential Park home sites.

The following can be included for charging:

- a) Deciding whether to serve the notice, and
- b) In preparing and serving the notice.

Taking this into consideration the Council has agreed that charges should include:

Inspection: surveying and examination of the site before and after service of the compliance notice including photographs, taking measurements, sketch plans and notes

Admin: obtaining accurate ownership details; telephone calls; updating the Council's database, downloading photographs, collating the file; printing and postage costs

Notice preparation: drafting schedule of non-compliance and schedule of works to remedy the licence contraventions and statement of reasons. The time taken is then charged at our officers' normal hourly rate

4. Recovery of Debts

Where charges for enforcement action are levied they will be registered as a local land charge against the owner's property. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). This includes smaller debts where the cost of recovery is greater than the debt owed.

To recover debts the Council will use some of the following means where appropriate;

- The enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs.
- Use tracing services to track down debtors and secure judgments to recover debts.
- Demand rents are paid to the Council instead of the landlord to recover outstanding debts in accordance with the Council's debt recovery policies that are in force at the time (where the legislation allows and it is appropriate to do so).