

## Report to the Cabinet



**Epping Forest  
District Council**

**Report reference:** **C-~~nnn~~011-  
20108/0911**  
**Date of meeting:** **~~99~~ Month  
~~Year~~19 July  
2010**

**Portfolio:** Housing

**Subject:** Private Sector Housing Enforcement Policy

**Responsible Officer:** Lyndsay Swan (01992 564149)

**Democratic Services Officer:** Gary Woodhall (01992 564470)

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### Recommendations/Decisions Required:

That the updated version of the Private Sector Housing Enforcement Policy be approved and adopted.

### Executive Summary:

The Council's existing Enforcement Policy relating to Private Sector Housing is now several years old and dates from the period when Private Sector Housing was part of the former Environmental Services. On 7 September 2009 the Cabinet approved and adopted a new Enforcement Policy for the Environment and Street Scene Directorate. A new Policy has now also been produced that relates solely to the Council's Private Sector Housing functions and this is attached as an Appendix to the Report. The new Policy sets out how officers in the Housing Directorate will carry out enforcement activities.

This is a key decision.

### 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 the Policy. This course of action would leave the Council open to criticism. We are already a signatory to the Government Cabinet Office Enforcement Concordat which requires us to demonstrate openness and fairness in our approach to enforcement.

### Report:

1. \_\_\_ Some years ago, as part of the Council's commitment to fair and equitable enforcement activity, an enforcement policy for environmental health was developed and put into practice. This was at a time prior to the Corporate restructure when Private Sector Housing functions were the responsibility of the former Environmental Services. As well as relating to Private

Sector Housing functions, therefore, it also included the Council's wider Public Health responsibilities, such as those relating to food premises. –The Policy was guided by the Government's Cabinet Office Enforcement Concordat, published by the Cabinet Office in 1998 and adopted by this Council, and the Regulator's Compliance Code issued under Section 22 of the Legislative and Regulatory Reform Act 2006.

2. \_\_\_ In September 2009, the Environment and Street Scene Directorate produced a new Enforcement Policy relating to the responsibilities of the former Environmental Services now under their control. The Cabinet approved the Environment and Street Scene Directorate's Enforcement Policy on 7 September 2009 (Ref: C-030-2009/10). This excluded private sector housing enforcement which had become the responsibility of the Housing Directorate in the restructure.

3. \_\_\_ It is now necessary, therefore, to have a Policy setting out the approach that the Housing Directorate will take in relation to enforcement upon matters concerning private sector housing. Some real examples of Private Sector Housing enforcement are:

- ~~(a)~~ Action to secure compliance with a Notice under the Environmental Protection Act 1990 \_\_\_ served on the landlord of a property where the boiler was not working. In this case the \_\_\_ Notice was complied with but had it not been, the Council would have the option of \_\_\_ arranging for remedial work to be carried out and charging the landlord the full costs \_\_\_ including administrative and officer time. The landlord could also be prosecuted with a \_\_\_ fine on successful conviction of £20,000.
- ~~(b)~~ To determine the action to be taken to remove the risk of occupants falling from the \_\_\_ unguarded flat roof of a privately-tenanted property. As this resulted in a Category 1 \_\_\_ hazard under the Housing Act 2004 and the family occupying the property included a \_\_\_ young child, officers arranged for immediate temporary remedial work to be carried out. \_\_\_ An Improvement Notice under s.11 of the Housing Act 2004 was served on the landlord \_\_\_ requiring him to carry out remedial work to secure the doors permanently.
- ~~(c)~~ To ensure that the landlord of a House in Multiple Occupation (HMO) did not let a room \_\_\_ that was smaller than the size required under the Council's space standard. The \_\_\_ Council served the landlord with a Prohibition Order under Section 21 of the Housing \_\_\_ Act 2004 making it an offence for the room to be let.

4. The new Private Sector Housing Enforcement Policy is attached ~~at~~ ~~an~~ Appendix 1. 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 three main principles are:

- (~~ia~~) *Consistency* – ~~t~~ Faking a consistent approach to achieving the required ends;
- (~~iib~~) *Proportionality* – ~~r~~ relating enforcement action to risks and the severity of the potential breach of the law; and
- (~~iiie~~) *Openness* – ~~e~~ explaining our actions in plain language and making a clear distinction between advice and guidance.

5. \_\_\_ It is also based around the key principles of the Enforcement Concordat which forms an Appendix to it.

65. In addition to the changes made necessary as a result of the restructure, since the publication of the original enforcement policy, the Government published the Hampton Review;

“Reducing Administrative Burdens: Effective Inspection and Enforcement” in March 2005 and the Rogers Review of “National Enforcement Priorities for Local Authority Regulatory Services” in March 2007. The findings of these reviews have been reflected within the new Policy.

#### **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 meet the principles of the Enforcement Concordat.

Other Directorates within the Council undertake enforcement activities and Directors will, over a period of time, be bringing forward reviews of their Directorate enforcement policies, including the overarching corporate enforcement policy.

#### **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:**

The Private Sector Housing Enforcement Policy including the Enforcement Concordat.  
The Regulator’s Compliance Code issued under Section 22 of the Legislative and Regulatory Reform Act 2006.

#### **Impact Assessments:**

##### 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.

##### Equality and Diversity:

*Did the initial assessment of the proposals contained in this report for relevance to the Council’s general equality duties, reveal any potentially adverse equality implications?* No

*Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?* N/A

*What equality implications were identified through the Equality Impact Assessment process?*  
N/A.

*How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?*

## Appendix 1

### 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 Council Officers.

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 co-operation between the Council and property owners to help keep homes in good repair.

1.3 The Council expects landlords to support their tenancies 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 In general, any enforcement action will be taken in line with the principles of good enforcement outlined in the Enforcement Concordat, a copy of which is attached as an Appendix to this document.

1.5 This Enforcement Policy promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code. In certain instances, we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

#### 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 which is available on our web-site 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 The three main principles that will determine the course of action to be taken are:

- Consistency;
- Proportionality; and,
- Openness.

3.2 **Consistency:** 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 **Proportionality:** means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.

3.4 **Openness:** means explaining our actions clearly in plain language. We will discuss any failure to comply with the required standards, or problems in meeting them, with anyone experiencing difficulties. A clear distinction will be made between legal requirements and advice or guidance.

3.5 There may be circumstances where shared, or complementary, enforcement action may be taken with other agencies. In these cases, regard shall be taken of policies and procedures of those agencies, and enforcement activity will be co-ordinated wherever possible.

### **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. 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.

### 4.3

<b>Action</b>	<b>Circumstances</b>
No action:	<ul style="list-style-type: none"><li>• Complaints or allegations of breaches of housing legislation or statutory nuisances are unsubstantiated; and/or,</li><li>• Formal action is inappropriate in the circumstances.</li></ul>
Verbal advice:	<ul style="list-style-type: none"><li>• There is insufficient evidence of breaches; and/or,</li><li>• Immediate action is taken to comply with failures.</li></ul>
Informal letters:	<ul style="list-style-type: none"><li>• Past history of dealing with the relevant parties allows confidence that informal action will achieve compliance;</li><li>• Conditions are not serious enough to justify formal action; and/or,</li><li>• To notify the responsible person that action is required prior to taking formal action.</li></ul>
Advisory notices:	<ul style="list-style-type: none"><li>• The conditions are serious enough to justify formal action; and/or,</li><li>• Opportunity given to landlords and tenants to make representations.</li></ul>
Formal notices:	<ul style="list-style-type: none"><li>• There are significant failures of statutory requirements;</li><li>• There is a lack of confidence in the individual or management, i.e. the willingness to respond to an informal approach;</li><li>• There is obstruction or assault;</li><li>• There is a history of non-compliance;</li><li>• The Council is required to serve a statutory notice; and/or,</li><li>• The defect presents an imminent risk to health.</li></ul>
Works in Default: -emergency remedial action	<ul style="list-style-type: none"><li>• There is an imminent risk to health and safety to the public; and/or,</li><li>• Prosecution would not adequately protect the public interest.</li></ul>
Works in Default – non compliance:	<ul style="list-style-type: none"><li>• We may choose to carry out works required by a notice if they have not been completed within the permitted time; and/or,</li><li>• This may be taken in conjunction with, or followed by, with a prosecution with a notice.</li></ul>
Formal (Simple) Caution:	<ul style="list-style-type: none"><li>• Where a prosecution is determined not to be in the public interest.</li></ul>
Revocation of licenses and approvals:	<ul style="list-style-type: none"><li>• The property manager is not a 'fit and proper person'.</li></ul>

Prosecution:

- There is sufficient and reliable evidence that an offence has been committed;
- There is a realistic prospect of conviction; and/or,
- 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:

- Clear information and advice to all relevant parties;
- Ensure 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; and,
- If there is an appeal against a notice then a charge will only be applied if the notice is upheld.

**5.0 Complaints:** In the event that an individual or company is not satisfied with the service or if does 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 Scheme. This is available on our web-site or a paper copy can be provided on request from the Civic Offices. Contact details are below.

**6.0 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 564072

E-mail: [privatesectorhousing@eppingforestdc.gov.uk](mailto:privatesectorhousing@eppingforestdc.gov.uk)

Website: [www.eppingforestdc.gov.uk](http://www.eppingforestdc.gov.uk)





## ***The Enforcement Concordat***

### **The Principles of Good Enforcement:**

#### 1.0 Policy and Procedures

1.1 This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

1.2 The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

1.3 The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

1.4 We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the Concordat, we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

### **Policy**

#### 2.0 Standards

2.1 In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

#### 3.0 Openness

3.1 We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organizations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

#### 4.0 Helpfulness

4.1 We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc. will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

#### 5.0 Complaints about Service

5.1 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.

#### 6.0 Proportionality

6.1 We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

6.2 We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

#### 7.0 Consistency

7.1 We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

#### 8.0 Procedures

8.1 Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice.

8.2 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

8.3 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

8.4 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).