

# HOUSING ENFORCEMENT POLICY

## 1.0 Introduction

1.1 The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector.

1.2 The policy is based around the Enforcement Concordat produced by the Cabinet Office which this Authority has adopted. The general principles of good enforcement which are set out in the concordat are to be adhered to by the Council in its housing enforcement activities.

1.3 All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti discrimination legislation. Local authorities have extensive powers to intervene where they consider housing conditions are unacceptable. The options are mostly contained in the Housing Act 1985, the Housing Grants, Construction and Regeneration Act 1996 and the Housing Act 2004. These interventions include:

- enforcement activity (e.g. serving notices on owners to defer action, repair, demolish or prohibit the use of dwellings);
- slum clearance;
- compulsory purchase order (e.g. for empty homes);
- renewal areas;
- works in default;
- disabled facilities grants; and
- house renovation grants.

1.4 Enforcement of housing standards is an integral part of the Council's Private Sector Housing Strategy.

This policy applies to Registered Social Landlords as well as private sector landlords.

This policy sets out to ensure the Council undertakes its housing enforcement role in a consistent, practical, open and transparent manner. When an officer is dealing with a house which is below acceptable standards, this housing enforcement policy will be followed.

The policy takes into account the Code of Practice for Crown Prosecutors.

1.5 The Housing Health & Safety Rating System (HHSRS) is a new system for assessing the living conditions of a property. The system is based on 29 possible hazards to the most vulnerable occupier.

The system moves away from prescribed standards such as reasons for unfitness in the old Housing Act 1985 and has been replaced by a new framework set out in part 1 of the Housing Act 2004. The new process is structured around an evidence based risk assessment process. Local Authorities have a duty to act on Category 1 Hazards they also have the power to take action in the case of Category 2 Hazards.

HHSRS is a technical assessment. It is a two-stage process, addressing first the likelihood of an occurrence and then the range of probable harm outcomes. The assessment will be based on the potential occupant who is the most vulnerable to that risk. The two stages are combined to give a rating in respect to each hazard, which is a numerical score. Hazard are then banded from A to J, A being the most severe. HHSRS does not provide a single score for the dwelling as a whole.

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A Category 1 Hazard means a hazard of prescribed description that is banded A, B or C. Category 2 Hazards are those banded D or lower.

## **2.0 Pre-formal enforcement action procedures**

2.1 While formal enforcement action is a necessary and important part of the enforcement process, it should generally be viewed as a last resort. In going about their private sector renewal activities where the Council identifies premises that contain a hazard or hazards, the Council will normally consider the case for drawing this informally to the attention of the owner or landlord as the case may be.

Where the Council has expressed an informal opinion it will normally provide a written explanation if requested by the owner or landlord. Such written explanation would include an explanation of:

- the remedial action which in the Council's opinion is needed and the timescale in which the Council considers such action needs to be taken;
- why the Council considers remedial action needs to be taken and the nature or the enforcement action the owner or landlord might be required to take in the future including the right to make representations before, and the right of appeal against such action.

The tenant will either be given advice or a one-off letter may be sent to the landlord and if the works are of a minor nature, the case will then be closed.

## **2.2 What is Expected of Tenants**

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to all tenants. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Copies of correspondence between the landlord and tenant should be provided for officers.

In certain situations tenants will not be required to write to their landlord first, e.g.:-

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/threatened eviction/poor management practice;
- where the tenant is old and frail or otherwise vulnerable, e.g. where there are pre-school children in the household;
- where the tenant's first language is not English and this is likely to cause them difficulty;
- where the tenant could not for some other reason be expected to contact their landlord/managing agent;

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking.

## **2.3 Situations where a service to tenants is not Provided**

Where any of the following situations arise consideration will be given to not providing either a service, or ceasing to provide a service:-

- where the tenant(s) are, of their own free will, shortly to move out of the property;
- where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works;

- where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair, etc.,
- where the tenant(s) only reason for contacting the Community and Housing Group is in order to get re-housed; if a tenant is not interested in their present accommodation being brought up to standard that service will not be provided;
- where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card. However account will be taken of the access/disability problems faced by some households.

### **3.0 Statutory Action**

3.1 Housing Act 2004 and the Housing Act 1985 are the principal Acts covering statutory action.

If a Category 1 Hazard is identified the Council has a duty to require the owner to remedy the situation. Although the Council has discretionary powers to deal with Category 2 hazards these will only be dealt with formally in exceptional circumstances relating to the health of a vulnerable person. The Principal or a Senior Housing Renewal Officer will verify these exceptional circumstances. Where an improvement notice is served the Council will require sufficient works to abate the hazard for five years.

Other than in exceptional circumstances the Council expects owner-occupiers, including long leaseholders to take their own action to remedy hazards at their own properties. The Principal or a Senior Housing Renewal Officer will decide whether there are exceptional circumstances in a particular case.

3.2 It is for the Council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors and also published guidance from the Office of the Deputy Prime Minister, and to the views of owners and tenants before formal action is taken.

3.3 The following actions are available to the Council when considering the most appropriate action:

- Serve an improvement notice
- Make a prohibition order
- Serve a hazard awareness notice
- Take emergency remedial action
- Make an emergency prohibition order
- Make a Demolition order (Housing Act 1985)
- Declare a clearance area (Housing Act 1985)

The Council cannot take more than one of these actions (unless it is an emergency action) at one time for a particular hazard, but can vary the action required if one of these action taken has provide unsuccessful. Emergency procedures cannot be used for Category 2 Hazards

3.4 All Notices and Orders will have a statement of reason attached to them. The statement should include why one type of enforcement taken was taken over another. A copy of the statement must accompany the notice of order. Before formal enforcement action is taken regarding a fire hazard the council will consult with the Fire Authority regarding works required to abate the hazard.

There is a right of appeal against any notice, order or decision made by the Council to the Residential Property Tribunal (RPT). The RPT may confirm, quash or vary any notice, order or decision.

- 3.5 The action specified in an improvement notice or prohibition order may in appropriate circumstances be suspended.
- 3.6 Local Authorities can make a charge as a means of recovering expenses incurred in serving an improvement notice, making a prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order or making a Demolition Order. These costs are in relation to the inspection of premises, the subsequent consideration of action to be taken and the service of notices etc. No maximum charge has been set by the Government in England. In South Lakeland the standard charge will be £300.00 for each notice or order made, although a lower charge or a charge not being made may be determined by the Principal Housing Renewal Officer depending on the personal circumstances of the person or persons against whom the enforcement action is being taken.

#### 4.0 **Licensing of Houses in Multiple Occupation**

- 4.1 Under the Housing Act 2004 certain types of House in Multiple Occupation (HMO) will require a licence to operate. An HMO is a building occupied by more than two households as defined in Part 2 of the Housing Act 2004.

HMO's of three or more storeys with five or more occupiers will, subject to specified exemptions, be required to be licensed.

Regulations and guidance published by the Office of the Deputy Prime Minister will be followed in the administration of the Council's HMO Licensing duties and enforcement of satisfactory conditions and standards.

- 4.2 Local Authorities have discretionary powers to licence other HMO's who fall outside the mandatory requirement and other types of residential properties in certain circumstances however problems in the Housing Stock in South Lakeland are not such as to require the use of these discretionary powers.
- 4.3 Local Authorities are able to make a charge for the cost of providing a HMO licence, The minimum charge for a licence is £330, each additional letting room above five rooms will cost an additional £25, up to a maximum charge of £500. If a landlord applies for a licence within 3 months of 6<sup>th</sup> April 2006 there will be 10% discount applied.
- 4.4 Following licensing, HMOs will be prioritised for assessment under the HHSRS. The owner must deal with all Category 1 hazards within five years of the licence being granted. If they do not, then the Council may use its enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued and information made available to help them identify and deal with Category 1 Hazards.

The Council will consider service of a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit until the HMO is licensed.

Where a landlord fails to license an HMO, the Council can consider taking a prosecution case to the Residential Property Tribunal (RPT). The RPT will replace the courts in judging cases relating to some offences and appeals under the Act. On conviction for failure to licence, the RPT has the power to make a Rent Repayment Order requiring that up to 12 months' rent is repaid to the tenant or to the council where a tenant is on housing benefits. The licensee has a right of appeal to the RPT against refusal to licence, licensing conditions and the maximum number of occupiers or households specified on the licence.

Where there is no prospect of an HMO being licensed, the act requires that the Council use its interim management powers. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the Council also having the power to grant tenancies.

- 4.5. If the Council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked. The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.

## 5.0 **General**

- 5.1 This policy will form part of the Council's Private Sector Housing Strategy.

- 5.2 The Principal and Senior Housing Renewal Officers will be authorised for the purposes of exercising any and all of the statutory powers and duties contained in the Housing Act 2004 and any Regulations, Orders, byelaws and statutory instruments from time to time made there under, including the entry of premises, service of notices and orders and the granting or refusal of licenses in section 64 of the above act.

This authorisation does not extend to the provisions in the Housing Act 1985 related to Demolition Orders and Clearance Areas.

- 5.3 Situations may arise where there is another authority or body with enforcement powers under other legislation regarding the unsatisfactory matter which may be dealt with by housing legislation. In this case full consultation will be made with that authority or body before housing enforcement action is taken.