

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

Private Sector Housing Enforcement Policy

Introduction

The Private Sector Housing Team is responsible for enforcing a wide range of statutory provisions relating to housing conditions affecting public health and safety.

The objectives of the service are to:

- improve the standards of homes in the private sector;
- assess local housing conditions;
- reduce the number of properties with serious risks to health and safety;
- reduce the number of vulnerable households living in non-decent homes;
- improve the energy efficiency and warmth of homes and to help reduce fuel poverty;
- improve standards in private rented accommodation;
- improve the standards in houses in multiple occupation (HMOs); and
- work closely with private landlords towards improving conditions and the standard of management of private rented housing.

In exercising their duties and other functions, officers will seek to do so in a firm but fair, open and consistent and helpful way. Any enforcement action will be compliant with relevant legislation and guidelines in line with the principles of good enforcement outlined in the service enforcement policy.

This policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

Principles of Good Enforcement

The Environmental Health and Housing Service (EHHS) have adopted an enforcement policy. The aim of the policy is to protect and improve public health, the environment and quality of life for everyone who lives, works or visits Tonbridge and Malling. The policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This accords with the Regulators' Compliance Code which implements the Hampton Principles. The Council has also adopted the Enforcement Concordat.

Housing, Health and Safety Rating System

The Housing, Health and Safety Rating System (HHSRS) as set out in Part 1 of the Housing Act 2004 (the Act) has introduced a risk assessment approach to assessing housing conditions. The Council will base enforcement decisions in respect of residential premises as defined in the Housing Act 2004, on assessments made under the HHSRS.

Action will be based on a three stage approach:

1. The hazard rating determined under HHSRS;
2. Whether the Council has a duty or power to act, determined by the presence of a hazard above or below a threshold prescribed by Regulations (Category 1 and Category 2 hazards); and
3. The Council's judgement as to the most appropriate course of action to deal with the hazard.

The Act contains new enforcement options which are available to local housing authorities. The choice of the most appropriate course of action is decided having regard to the Housing Health and Safety Rating System Enforcement Guidance (February 2006).

The hazard rating is expressed through a numerical score which falls within one of ten bands. Scores in Bands A to C (score 1,000 or above) are Category 1 hazards. Scores in Bands D to J (score below 1,000) are Category 2 hazards.

Enforcement of the Housing, Health and Safety Rating System

The Council has a duty to act when Category 1 hazards are found. It has a discretionary power to act in respect of a Category 2 hazard. The courses of action available where there is either a duty or a power to act are to:

- serve an improvement Notice requiring remedial works;
- make a prohibition order, which closes the whole or part of a dwelling or restricts the number or class of permitted occupants, or restricts its use;
- suspend either of the above, until a date or time specified;
- serve a Hazard Awareness Notice;
- take Emergency Remedial Action*;
- serve an Emergency Prohibition Order*;
- make a Demolition Order*; or
- declare a Clearance Area*.

**Only in respect of Category 1 hazards*

While the HHSRS hazard rating is based on the most vulnerable potential occupant, the Council will be able to take account of the circumstances of the actual occupant in deciding the most appropriate course of action. Where the Council takes action and the property owner does not comply, the Act allows the Council to act in default (ie carry out the work themselves and recover the cost from the owner of the property) and/or to prosecute. It also enables the Council to charge and recover its own costs incurred in taking the enforcement action.

The action the Council chooses to take must be the most appropriate course of action in relation to the hazard. With the exception of a hazard awareness Notice, each of the Notices and orders are declared on local land charge

searches and outstanding Notices may affect the sale or value of a property. The Council may revoke or vary Notices served.

In most cases informal action will be undertaken in the first instance. Informal action may include verbal advice given by officers, and advisory letters. The Private Sector Housing Team is very willing to offer help and advice and will explain the reasons for the Council's involvement and what should be done to improve the particular housing conditions. The preferred approach is to work with landlords and tenants to help to prevent the need for formal enforcement action.

It should be noted that it may not always be appropriate to adopt an informal approach. For example, there may be a risk to health and safety from a hazard of a nature which requires prompt formal enforcement action or there may be evidence of previous non-compliance with statutory provisions made under the Housing Acts or other housing related legislation.

Where informal action does not work or there is a need for immediate action then formal action will be taken. Formal action involves the service of enforcement Notices. Most Notices require the recipient of the Notice to commence and complete specified works within specified time limits. All Notices are accompanied by notes that explain the effect of the Notice and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the Notice and the reason for the service of the Notice.

If the recipient of a Notice does not comply, the Council has various sanctions it can impose. Depending on the type of Notice served, non-compliance can be:

- not doing any work at all;
- not starting the work by the time specified within the Notice;
- starting the work but then not making reasonable progress; or
- starting the work and then not finishing it.

Work in default is a power given to the Council, to ensure work is carried out to a property. If the recipient of the Notice does not do the work required by the Notice, the Council may employ a contractor to enter the property and carry out the work itself. The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.

It should be noted that carrying out the work in default does not exclude the Council from prosecuting the offender or administering a caution. The Council is entitled to ensure that the work is carried out and to consider if it is appropriate to take further action. There are penalties for obstruction.

There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of Notice that has been served. This can include invoicing for the work then recovering the debt through Court if necessary. The Council can also put a charge on a

property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a local authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale.

The ultimate method by which the Council can seek to reclaim its costs is to apply to the court to order the sale of the property over which it has a charge. The proceeds of the sale will be given to the owner less the amounts owed for the work in default and the costs incurred by the Council in selling the property.

Non-compliance with any of the Notices referred to in this policy document is generally a criminal offence. The Council is the prosecuting authority for such offences and as they are criminal in nature, proceedings are taken in the Magistrates Court.

A caution is an alternative to prosecution and further information is provided in the EHHS enforcement policy.

Use of Discretionary Powers

The Housing, Health and Safety Rating System: Enforcement Guidance, statutory guidance made under section 9 of the Housing Act 2004, gives advice on how local housing authorities should use their discretionary powers.

Having regard to the statutory guidance, in addition to the Council's duty to take action where a Category 1 hazard exists, the Council may exercise its discretion to take the most appropriate course of action where a Category 2 hazard exists in the following situations:

- Band D Hazards - There will be a general presumption that where a Band D hazard exists, officers may consider formal action;
- Multiple Hazards - Where a number of hazards at Band D or below appear, when considered together, to create a more serious situation, or where a property appears to be in a dilapidated condition, officers may consider formal action;
- Vulnerable Occupants – Where the property is occupied by the most vulnerable group, officers may consider formal action; and
- Exceptional Circumstances - In exceptional circumstances the Director or Health and Housing may authorise formal action.

Level of Improvement Required

The Housing Act 2004 requires only that the works specified to improve the conditions reduce a Category 1 hazard to Category 2 hazard. The Council will generally seek to specify works which, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard level and in particular will be to a standard that should ensure that no further intervention should be required for a minimum period of twelve months.

Tenure

In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling.

In normal circumstances, this will mean taking the most appropriate course of action against a private landlord (including a Registered Social Landlord) and in most cases this will involve requiring works to be carried out.

With owner occupiers, in most cases they will not be required to carry out works to their own home and the requirement to take the most appropriate course of action will be satisfied by the service of a Hazard Awareness Notice. However, the Council may in certain circumstances require works to be carried out, or use Emergency Remedial Action or serve an Emergency Prohibition Order, in respect of an owner occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others outside the household, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property.

Power to Charge for Enforcement Action

Section 49 of the Housing Act 2004 allows the Council to make a reasonable charge to recover certain administrative and other expenses incurred by them in taking enforcement action, such as

- 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.

There is no maximum charge and the charge may include for:

- determining whether to take such action (including the cost of any inspections);
- identifying any action to be specified in the Improvement Notice or Hazard Awareness Notice; and
- serving the Notice or serving copies of the order.

The Council will charge for taking enforcement action unless extenuating circumstances are exhibited; where it will be reported to the Director of Health and Housing for consideration and determination as to whether the charge will be reduced or waived.

Examples of extenuating circumstances are where the responsible person is providing accommodation for others and is:

- vulnerable due to their personal circumstances. This may include people who have physical or sensory impairments, learning difficulties; who suffer from mental illness or emotional distress or are frail older people; and who for any other reason are unable to care for themselves or protect themselves from significant harm or exploitation; or
- financially vulnerable i.e. in receipt of a means tested benefit.

The Council will make a reasonable charge in appropriate circumstances. The charge will be determined utilising an agreed methodology across North and West Kent.

Service Complaints

The Council endeavours to provide an excellent service and recognises that recipients of enforcement action may be dissatisfied with the service. However, each of the statutory Notices and orders that are used has appeal provisions which will be explained and where challenges to the enforcement action taken should be directed.

All complaints will be dealt with according to the Council's Corporate Complaints Policy as explained in the leaflet "*How to: Complain about, Comment on or Compliment Tonbridge and Malling Borough Council.*"