

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

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1. INTRODUCTION

In June 2000 the London Borough of Richmond upon Thames signed up to the Enforcement Concordat as commended by the Cabinet Office and the Local Government Association, which lays down the principles of good practice to ensure fair, practical and consistent enforcement. The Best Value Performance Indicator 166 – Checklist for Enforcement Best Practice for Environmental Health and Trading Standards places a requirement on local authorities to have an enforcement policy approved by its members. The Residential Team has produced its enforcement policy in accordance with these principles.

This enforcement policy relates to the duties and powers vested in the Council to deal with substandard private sector housing, substandard management of private housing and the enforcement of various legal aspects of the relationship between neighbouring residents or landlords and their tenants.

2. SCOPE

The Residential Team forms part of the Social Services and Housing Directorate. The team deals with environmental health functions in relation to residential properties. Within the team there are a variety of separate but interrelated operational/functional areas. These are:

- Housing standards in the private rented sector
- Grant aid for owner occupiers
- Public health in relation to domestic properties
- Domestic noise and other statutory nuisance

This document is the overall enforcement policy covering all of these disciplines. It outlines the approach to enforcement and lays down the principles that will be followed in deciding upon, and taking, action. This policy is consistent with that adopted by teams within the Consumer Protection Unit which also carry out regulatory work.

It is intended that this policy will be supplemented by more specific enforcement policy documents, where appropriate, relating to the areas of work listed above and by detailed procedures and work instructions.

3. APPROVAL

The Lead Member for Social Services and Housing approved this policy on 18 March 2004

4. REVIEW

This Enforcement Policy will be reviewed annually and in response to new legislation or guidance.

5. ACCESS TO THE POLICY

In accordance with BVPI 166 - Checklist of Enforcement Best Practice for Environmental Health and Trading Standards, the Council will ensure this Enforcement Policy is open to the public, and officers will follow the policy and associated procedures.

A copy of this policy can be obtained by contacting the Residential Team on 020 8891 7892 or by e-mail at residentialeh@richmond.gov.uk. It will shortly become available on the Council's website <http://www.richmond.gov.uk/>.

6. THE PRINCIPLES OF GOOD ENFORCEMENT POLICY AND PROCEDURES

This document sets out what residents or landlords and others being regulated can expect from enforcement officers within the Residential Team. It commits us to good enforcement policies and procedures. Additional detailed procedures relating to the specialist operational/ functional areas within the team supplement this document and reinforce these objectives.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as residents 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.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. It is recognised that most residents or landlords want to comply with the law. Therefore care will be taken to help them to 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.

This Council has 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. Adopting the Enforcement Concordat commits us to ensuring that decisions regarding intervention by the Department and consequent enforcement action is consistent, balanced, transparent, fair and in accordance with the principles of the Concordat.

In deciding what course of action to take when investigating a complaint or following a pro-active inspection officers will have regard to various factors including:

- the risk to the residential occupiers or others
- the result of consultation with the occupiers affected
- the previous history of the resident or landlord concerned
- the level of knowledge about the risk or offence that the responsible person is known to have
- the consequences of non-compliance with the law
- the effectiveness of the various enforcement options
- the availability of other appropriate remedies e.g. private action for specific performance under the terms of a lease or an action for disrepair.

POLICY

Enforcement of legal requirements will be based upon the following principles:

- measuring performance against agreed standards
- openness in dealing with residents or landlords and others
- helpful, courteous and efficient enforcement officers
- publicised complaints procedures
- enforcement decisions taken in a proportionate manner
- high standards of consistency in enforcement action

Standards

In consultation with residents or landlords and other relevant interested parties, including technical experts where appropriate, we will draw up standards setting out the level of service and performance the public can expect to receive. We will publish these standards and the annual performance against them.

Openness

We will provide information and advice in plain language on the rules that apply and will disseminate this as widely as possible. We will be open about how we go about our work, including any charges that are made, and we will consult residents or landlords, voluntary organisations and charities. We will discuss general issues and specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with residents or landlords to advise on and assist with compliance. We will provide a courteous and efficient service and staff will identify themselves by name. We will provide a contact point, and telephone number and e-mail address for further dealings with the team and will encourage residents or landlords to seek advice /information from officers. Applications for grants etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, the enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints About Service

We will provide well-publicised, effective and timely complaints procedures easily accessible to residents or landlords. All complaints will be investigated in accordance with written procedures. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality

We will minimise the costs of compliance for residents or landlords by ensuring that any action required is proportionate to the risks involved or seriousness of any breach. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when determining action. We will have regard to various courses of remedial action and will consider what is 'reasonably practicable'.

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

Consistency

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, there will be arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies.

PROCEDURES

Transparency

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, over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

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 [by serving] by serving notices of intention to take action, where applicable. Occasionally we may have to serve a statutory notice in the first instance if action has to be taken in the interests health and safety.

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 (this advice will be issued with the notice).

Officers will conduct themselves in accordance with this enforcement policy. Residents or landlords and customers will be advised of what to expect when visited by an officer from the team and what rights they have to make a complaint.

A copy of the Council's leaflet on how to make a complaint will be given on request.

Targeting

Resources will be targeted towards properties which give rise to the most serious risks or where hazards are least well controlled.

The frequency and priority of inspections of properties will be in response to requests for a service from residents or programmed and targeted inspections based on a risk rating system, the Council's corporate objectives and national and local initiatives. Risk rating will be determined in accordance with advice and guidance issued by the Government and advisory bodies.

7. SECURING COMPLIANCE WITH THE LAW ENFORCEMENT OPTIONS

Compliance should normally be sought through selecting the most appropriate mix of verbal advice, letters and reports and formal action. Our aim is to achieve co-operation and promote a positive culture to achieve compliance with legal requirements.

Authorisation of Officers

All enforcement officers will be authorised and have the necessary training and competency to enable them to exercise the powers available to them. Authorisation will be in writing signed by the Assistant Director (Housing)/ Residential Services Manager who has the appropriate delegated authority. Officers are required to produce their authorisation and ID cards at the time of inspection/visits.

The designations of officers who may carry out enforcement action are:

- Assistant Director (Housing)/ Residential Services Manager
- Private Sector Team Leader
- Senior / Environmental Health Officers
- Graduate Environmental Health Officers
- Senior Neighbour Nuisance Officer
- Housing Surveyors

These officers may all assist in the decision-making process regarding the proposed course of enforcement action.

Prosecutions must be authorised by the Assistant Director (Housing)/ Residential Services Manager and the Head of Legal Services

Enforcement Options

The options that are available to officers, having considered all the relevant information and in accordance with written procedures, are:

- to take no action
- to take informal action
- to serve a Mindful To Notice
- to serve a formal notice
- to prosecute
- to carry out works in default
- to seize equipment with regard to noise nuisance
- to exercise the power of entry

Option to take no action

If on investigation it is found that there is no breach of relevant legislation, the residents are not especially vulnerable and there is no risk to health, then no further action by the Council may be required.

Option to take informal action

This option may involve providing advice, verbal warnings, recommendations for action contained in a letter or referral to another agency for action or an alternative remedy. Informal action is appropriate only where the consequences of non-compliance will not pose a significant risk to the residents or the public at large. This may be where:

- the housing defect or breach of duty is not serious enough to warrant formal action
- the complainant or resident elects to take up an alternative remedy
- previous history of the resident or landlord involved suggests that informal action will achieve compliance within a suitable time
- confidence in the landlord is high and they are members of the accreditation scheme for landlords and they continue to adhere to proper standards of management

Option to serve a Mindful To notice

Certain powers to require works under the Housing Act 1985 allow for the service of Mindful To notices by which the Council sets out a proposed schedule of works and time scales for completion of the work. These notices invite landlords to make representation if they disagree with the requirements of the notice or if they wish to suggest an alternative course of action. If representation is made against the notice and an alternative proposal is agreed, another Mindful To notice will be served with the agreed amendments. If representation is made and the alternatives are not agreed, the landlord will be advised of the reasons for this in writing.

The Minded To notice advises the landlord that a statutory notice will be served in 6 weeks if representation is not made. The statutory notice will list the same works as outlined in the Minded To notice.

With statutory nuisance and public health issues there is no provision for Minded To notices. Where possible we will send a letter to advise residents that we are investigating a complaint and depending on the outcome we may serve a statutory notice.

In cases where action is required immediately we will serve a notice in the first instance (e.g. blocked drains and noise nuisance). Where immediate action is considered necessary, an explanation for such action 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.

Option to serve a statutory notice

Statutory notices will only be served in the first instance when one of the following situations apply:

- there is no provision in the legislation for the service of a Minded To notice
- there is a lack of confidence in the individual or residents or landlords to respond to an informal approach
- the consequences of non-compliance present a serious risk to residents or the public
- effective action needs to be taken as quickly as possible to remedy conditions that present a serious risk and are deteriorating or likely to deteriorate.

Statutory notices will only be served by officers who are authorised under the scheme of delegation. Notices will be served in accordance with written procedures, any relevant statutory guidance and codes of practice.

Wherever possible the officer serving the notice will attempt to discuss the need for and requirements of the notice with the person responsible for compliance. All notices will specify realistic time limits for compliance.

Failure to comply with a statutory notice will, in general, result in the institution of legal proceedings and/or the carrying out of works in default of the person responsible for compliance. Authorised officers will be in possession of sufficient evidence to enforce any statutory notice before it is served and be prepared to pursue non-compliance through prosecution or works in default.

The Department will be prepared to discuss the need for and requirements of statutory notices informally before formal appeals.

Statutory notices will set out details of the right of appeal against the notice. This will usually be made to the County Court within 21 days of receipt of the notice.

Option To Prosecute

The Council has the discretion whether or not to prosecute for an offence and the decision to prosecute will be based on the circumstances of each individual case. Regard will also be had to the Code for Crown Prosecutors. The criteria for prosecution must be related to the risk or the seriousness of the offence rather than being a punitive response to minor technical transgressions. Not every breach of legislation will result in legal action. Circumstances that warrant prosecution will include at least one of the following:

- that the alleged offence involves a flagrant breach of the law such that the safety, health or well being of residents or others is put at risk
- that the alleged offence involves knowingly or wilfully failing to comply in full or in part with the requirements of a statutory notice, statutory instrument or other legal duty
- that the alleged offence involves a failure to comply with a requirement after having been given reasonable opportunity to do so
- that there is a history of similar offences involving risk to the safety, health or well being of residents or others or breach of legal duty

The following factors will be taken into account:

- the seriousness of the alleged offence
- the previous history of the resident or landlord concerned
- the ability of witnesses and their willingness to co-operate
- the willingness of the party concerned to prevent recurrence of the offence
- the probable public benefit of prosecution
- any explanation offered by the alleged offender

Officers investigating offences will seek to ensure that their investigations and decision making is not unduly prolonged and that complainants, witnesses and other parties are kept informed of progress with the case.

Option To Carry Out Work In Default

Failure to comply with a notice may also result in the Council deciding to carry out works required by a notice and recovering the cost incurred.

Where it is legally possible, the Council will consider the need for work in default in each case where a statutory notice is not complied with. Such consideration may be in addition to or instead of the prosecution policy set out above. There will be situations that arise when it is appropriate to carry out work in default because of the urgent nature of the required work or because work has still not been carried out after a previous prosecution.

Notification of the intention of the Council to carry out work in default will be given to all interested parties in accordance with relevant statutory provisions. Tendering processes and contractors engaged by the Council to carry out work in default will be in accordance with the Council's Financial Limits and Procedures. The schedule of rates for the relevant works will apply when determining the reasonableness of any estimate from a contractor and professional and administration fees will be added to determine the final cost on completion of the work in default.

Exercise Of Powers Of Entry

In order to enforce the various statutory provisions regarding the condition of private sector housing, Parliament has also made provision for differing powers of entry allow certain officers of the Department who are properly authorised in writing to require entry for:

- survey
- valuation
- to determine if the Council should use enforcement powers
- to determine if a notice has been complied with
- to carry out work in default
- to determine if an offence has been committed.

These powers of entry usually involve the giving of notice to an occupier or owner that an authorised officer wishes to gain entry for a specified purpose on a specified day.

There are differing minimum periods of notice for different powers of entry. These powers will normally only be used where informal requests for access have not resulted in access being provided. Failure to provide access as requested may result in an offence of obstruction being committed.

Formal requests for access under powers of entry requiring notice will be made in the prescribed form, stating the purpose for which entry is required and be signed by an authorised officer.

Obstruction of an officer or of a worker or contractor employed by the Council to carry out work in default will be considered for prosecution in accordance with the policy set out above.

Certain powers of entry also provide for a justice of the peace (JP) to issue a warrant authorising entry by force, if needed. The JP must be shown on sworn information in writing, that such entry is necessary

- (a) for the purpose of survey and examination to determine if any powers should be exercised by the Council under the law, or
- (b) for the purpose of ascertaining if an offence has been committed
- (c) or to do works in default

The JP can only grant the warrant if satisfied that admission to the premises has been refused, or would be refused, or cannot be obtained. Evidence will also be required that the appropriate notice before entry has been given. Alternatively the JP should be satisfied that an application for admission would defeat the purpose of the entry.

No application for a warrant to enter will be made unless at least one of the following applies:

- that there has been a history of failure to provide access in response to informal and formal requests
- that the alleged offence involves a flagrant breach of the law such that the safety, health or well being of residents or others is put at risk.
- that the alleged offence involves knowingly or wilfully failing to comply in full or in part with the requirements of a statutory notice, statutory instrument or other legal duty
- that the alleged offence involves a failure to comply with a requirement after reasonable notice
- that there is a history of similar offences involving risk to the safety, health or well being of residents or others or breach of legal duty
- that the purpose of the inspection would be defeated by the service of a notice

Execution of warrants for entry will be notified to the relevant police office and where appropriate the police may be asked to assist in the execution or to prevent a breach of the peace. Entry may be undertaken by force if necessary.

If the premises subject to the warrant are unoccupied or the occupier is temporarily absent, the Council will leave the premises as effectively secured against trespassers as it was found if it was entered by force. If new locks have been fitted to secure the premises, information will be left on how to obtain the keys.

Seizure

We have the power through legislation to seize equipment responsible for causing nuisance to residents. Officers conducting a seizure will do so in accordance with team procedures and the requirements of the relevant legislation.

8. IMPLEMENTATION OF THE ENFORCEMENT POLICY

The Assistant Director (Housing)/ Residential Services Manager will be responsible for ensuring that all enforcement officers are familiar with the requirements of and carry out their duties in accordance with this Enforcement Policy.