

LONDON BOROUGH OF RICHMOND UPON THAMES

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

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1. INTRODUCTION

- 1.1 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code under Section 22 of the Legislative and Regulatory Reform Act 2006 as it applies to Parts 2 and 5 of the Housing Act 2004. In certain instances we may conclude that a provision in the code is either not relevant or is out weighted by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.2 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, neighbour nuisance and the enforcement of various legal aspects of the relationship between neighbouring residents or landlords and their tenants.

2. PURPOSE AND SCOPE

- 2.1 The Private Sector Housing team deals with environmental health functions in relation to Private Sector Housing properties. Within the team there are a variety of separate but interrelated operational/functional areas. These are:
- Housing standards in the private rented sector
 - Licensing of Houses in Multiple Occupation
 - Public health in relation to domestic properties
 - Domestic noise and other statutory nuisance.
- 2.2 This document is the overall enforcement policy covering these disciplines. It outlines the approach to enforcement and lays down the principles that will be followed in deciding upon, and taking, action.

2.3 The policy applies to all officers and managers in the Private Sector Housing Team with enforcement responsibilities.

4. APPROVAL

4.1 The Cabinet Member for Housing and Community Safety approved this policy on _____

5. REVIEW

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

7. ACCESS TO THE POLICY

7.1 This Enforcement Policy is publicly available and a copy can be obtained by contacting the Private Sector Housing Team on 020 8487 5123 or by e-mail at privatehousing@merton.gov.uk . It is also available on the Councils' website <http://www.richmond.gov.uk/housing>

8. THE PRINCIPLES OF GOOD ENFORCEMENT

8.1 This document sets out what residents or landlords and others being regulated can expect from enforcement officers within the Private Sector Housing 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.

8.2 We recognise that most residents or landlords want to comply with the law. Therefore we aim 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.

8.3 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 Private Sector Housing Team and consequent enforcement action is consistent, balanced, transparent, fair and in accordance with the principles of the Concordat.

9. DECISION MAKING

9.1 In deciding what course of action to take when investigating a complaint, dealing with a House in Multiple Occupation (HMO) licence application or following a pro-active inspection, officers will have regard to various factors including:

- the risk to the 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.

9.2 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.

9.3 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 and landlords, voluntary organisations and charities. We will discuss general issues and specific compliance failures or problems, with anyone experiencing difficulties.

9.4 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
- give landlords, residents and others a contact point, telephone number and e-mail address for further correspondence
- encourage residents and landlords to seek advice /information from officers
- deal with representations, licence applications and grant applications efficiently and promptly
- ensure that, wherever practicable, the enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

9.5 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. The Council's complaints procedure is available from Council offices or from our website at https://www.richmond.gov.uk/council/have_your_say/complaints.

9.6 We will minimise the costs of compliance for residents and 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'.

- 9.7 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.
- 9.8 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 such as panel meetings to agree enforcement decisions under the Housing Act 2004. Other arrangements in place include liaison with other authorities and enforcement bodies such as the London Fire and Emergency Planning Authority (LFEPA) . Officers also keep abreast of good practice through information disseminated by the Chartered Institute of Environmental Health and LACORS (Local Authority Coordinators of Regulatory Services).

10. PROCEDURES

10.1 Transparency

- 10.1.1 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, over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.
- 10.1.2 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 by serving notices of intention to take action, where applicable. These preliminary notices encourage the recipient to discuss options with the case officer.
- 10.1.3 Occasionally we may have to serve a statutory notice in the first instance if action has to be taken in the interests of health and safety (e.g. unsafe gas or electrical installations) or where immediate action is required, for example to silence an intruder alarm.
- 10.1.4 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing with the notice.

10.2 Targeting

- 10.2.1 Resources will be targeted towards properties which give rise to the most serious risks or where hazards are least well controlled. Licensable HMOs will also be targeted in accordance with the legislative requirements.
- 10.2.2 Enforcement inspections will usually be in response to requests for a service from residents or programmed/targeted at particular properties or in particular areas. The frequency and priority of inspections will be 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.

11. COMPLIANCE

- 11.1 All enforcement officers will be authorised and have the necessary training and competency to enable them to exercise the powers available to them. Officers are required to produce their authorisation and ID cards at the time of inspection/visits if required.
- 11.2 These officers may all assist in the decision-making process regarding the proposed course of enforcement action.
- 11.3 Prosecutions must be authorised by the Private Sector Housing Manager.

12. ENFORCEMENT OPTIONS

- 12.1 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 give advice either verbal or written
- to take informal action
- to serve a preliminary notice
- to serve a statutory notice
- to impose a financial penalty
- to prosecute
- to carry out works in default
- to seize equipment with regard to noise nuisance
- to exercise the power of entry.

- 12.2 Further options are available regarding the Licensing of Houses in Multiple Occupation:

- to serve a notice of intention to refuse, grant, revoke or vary an HMO licence
- to serve notice to refuse, grant, revoke or vary an HMO licence
- to serve a notice of intention to apply for an Interim Management Order
- to apply to the First Tier Tribunal Property Chamber for an Interim Management Order
- to serve notice of intention to make a Final Management Order
- to make a Final Management Order.

12.5 Option to take no action

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

12.6 Option to take informal action

- 12.6.1 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 for example:

- 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.

12.7 Option to serve a preliminary notice

- 12.7.1 In most cases, formal action under the Housing Act 2004 will be preceded by the service of preliminary 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 preliminary 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.
- 12.7.2 The preliminary notice invites landlords to complete an undertaking stating that they agree to the required works and the proposed timescales. If an undertaking is received, no further action will be taken unless the agreement is not adhered to.
- 12.7.3 The preliminary notice advises the landlord that a statutory notice will be served in 14 days if an undertaking is not received or if they do not make a representation. The statutory notice will list the same works as outlined in the preliminary notice.
- 12.7.4 With statutory nuisance and public health issues there is no provision for preliminary 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.
- 12.7.5 In cases where action is required immediately we will serve a notice in the first instance (e.g. blocked drains and noise nuisance). 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.

12.8 Option to serve a statutory notice

- 12.8.1 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 preliminary 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 e.g. gas or electrical hazards
- immediate action is required to deal with a public health matter or statutory nuisance e.g. blocked drains or silencing audible intruder alarms.

12.8.2 In all other cases statutory notices will only be served after preliminary notices have been issued.

12.8.3 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.

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

12.8.5 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, the issuing of financial penalties or works in default.

12.8.6 Statutory notices will set out details of the right of appeal against the notice as well as the time scale for an appeal and details of where to make the appeal. Appeals against Housing Act 2004 notices should be made to the Property Tribunal within 28 days. Appeals against other notices will usually be made to the Magistrates Court, or the County Court within 21 days of receipt of the notice.

12.9 Option to Prosecute or Impose a Financial Penalty

12.9.1 The Council has discretion whether or not to prosecute for an offence or impose a financial penalty and the decision will be based on the circumstances of each individual case. Regard will also be had to the Code for Crown Prosecutors.

12.9.2 Generally, prosecution will be used instead of a civil financial penalty where one or more of the following criteria apply:

- Aggravating features such as non co-operation, hostility or aggression towards tenants, third parties or officers
- Two previous financial penalties imposed by the same Council on the subject
- Multiple offences relating to the same or different properties committed by the same subject
- Belief by officer that a financial penalty will have little or no deterrent effect or impact on changing behaviour
- Serious injury or death caused by the offence(s)

In all other cases where a financial penalty is available in law, the financial penalty will normally be more appropriate than prosecution, provided there is believed to be sufficient evidence that a specified offence has been committed and that it will act as a sufficient deterrent against re-offending.

Prosecution will be related to risk, serious nuisance or other similar situations affecting any individual or the environment and will not be used as a punitive response to minor breaches.

12.9.3 The decision whether to impose a financial penalty and if so the amount of the penalty will take account of the Council's Procedure for Establishing Level of Financial Penalty under Housing Act 2004 s.249 as amended by Housing and Planning Act 2016 Schedule 9.

12.9.4 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.

12.10 Option to Carry Out Work in Default

12.10.1 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.

12.10.2 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.

12.10.3 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.

12.10.4 Certain works in default such as the silencing of audible intruder alarms require immediate action without prior notification. Such work in default will be undertaken in accordance with legislation and local procedures and residents will be advised in writing as to why the action was necessary.

12.11. Seizure

12.11.1 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.

12.12 Exercising Powers of Entry

12.12.1 In order to enforce the various statutory provisions regarding Statutory Nuisance or the condition of private sector housing, Parliament has also made provision for differing powers of entry allow certain officers of the Private Sector Housing Team who are properly authorised in writing to require entry to:

- survey

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

12.12.2 These powers of entry usually involve the giving of notice to an occupier and/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.

12.12.3 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.

12.12.4 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.

12.12.5 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 for

- the purpose of survey and examination to determine if any powers should be exercised by the Council under the law
- the purpose of ascertaining if an offence has been committed
- works in default

12.12.6 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 must be satisfied that an application for admission would defeat the purpose of the entry.

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

- there has been a history of failure to provide access in response to informal and formal requests
- 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.
- 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
- the alleged offence involves a failure to comply with a requirement after reasonable notice
- 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 purpose of the inspection would be defeated by the service of a notice.

- 12.12.8 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.
- 12.12.9 If the premises subject to the warrant is 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.
- 12.13 Options regarding Licensing of Houses in Multiple Occupation (HMOs)**
- 12.13.1 All decisions in respect of HMO licensing will be taken in accordance with the Council's published policy and the appropriate legislation and guidance.
- 12.13.2 In all cases, a notice of intention will be served on the licence applicant setting out our decision to refuse, grant or vary a licence. These notices invite landlords to make representation if they disagree with the conditions of the licence. If representation is made against the licence conditions and an alternative proposal is agreed, another notice of intention 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.
- 12.13.3 The notice of intention will be followed by a notice to refuse, grant or vary the HMO licence. A notice of refusal will set out the grounds for the decision not to license the HMO. When a licence is granted or varied, specific conditions will be imposed and set out with the notice. In most cases a licence will be valid for five years.
- 12.13.4 If the Council intends to apply for an Interim Management Order to take control of an HMO which cannot be licensed, the Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the landlord before an application is to be made to the Property Tribunal for such an Order. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an Order, and an alternative proposal is agreed the application will not proceed. If representation is made and the alternatives are not agreed, the application for an Order will be made.
- 12.13.5 If the Council is satisfied that an Interim Management Order is the only suitable course of action, the notice of intention will be followed by an application to the Tribunal for an Interim Management Order.
- 12.13.6 If the Council intends to make a Final Management Order to take control of an HMO which has an Interim Management Order in place, the Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the landlord before the Order is made. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an Order, and an alternative proposal is agreed the application will not proceed. If representation is made and the alternatives are not agreed, the Order will be made.

12.13.7 If the Council is satisfied that a Final Management Order is the only suitable course of action, the notice of intention will be followed a Final Management Order.

12.14 Options regarding Empty Dwelling Management Orders (EDMOs)

12.14.1 All decisions in respect of EDMOs will be taken in accordance with the Council's policy and the appropriate legislation and guidance and subject to resources being available.

12.14.2 The Council will try to work with the owners of empty domestic properties to bring them back into use through a mixture of advice, information, grants and Council schemes.

12.14.3 In certain circumstances and in accordance with our policy, if there is no prospect of the property being returned to use, and all other options have failed, a notice of intention will be served on the owner setting out our decision to apply for an Interim EDMO to take control of the property. The Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the owner before an application is made to the Property Tribunal for such an Order. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an EDMO, and an alternative proposal is agreed, the application will not proceed. If representation is made and the alternatives are not agreed, the application for an EDMO will be made.

12.14.4 If the Council is satisfied that an Interim EDMO is the only suitable course of action, the notice of intention will be followed by an application to the Tribunal for an Order.

12.14.5 If the Council intends to make a Final EDMO to take control of an empty dwelling which has an Interim EDMO in place, the Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the owner before the Order is made. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an Order, and an alternative proposal is agreed the application will not proceed. If representation is made and the alternatives are not agreed, the Order will be made.

12.14.6 If the Council is satisfied that a Final EDMO is the only suitable course of action, the notice of intention will be followed a Final Order.

13.0 IMPLEMENTATION OF THE ENFORCEMENT POLICY

13.1 The Private Sector Housing Manager will be responsible for ensuring that all enforcement officers are familiar with the requirements and carry out their duties in accordance with this Enforcement Policy.

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