

# HOUSING ENFORCEMENT POLICY

## 1.0 Introduction

- 1.1 The aim of this policy is to allow the consistent, transparent and fair enforcement of housing legislation and to raise standards in the private housing sector.
- 1.2 All enforcement action undertaken by the Environmental Services Team will be in accordance with the principles of the Local Authority Enforcement Concordat, which has been formally adopted by East Cambridgeshire District Council.
- 1.3 This policy is intended to provide general guidance, which will apply when enforcement action is taken.
- 1.4 This policy applies to Registered Social Landlords, private landlords, tenants, owners and occupiers.

## 2.0 Aims

- 2.1 The Local Authority is committed to protecting and enhancing public health and the environment to enable all residents to have access to housing suitable for their needs and to ensure that advice is available.

In order to achieve these priorities the Environmental Services Team:

- Will seek to ensure properties achieve the appropriate standards by working in co-operation with the owners/agents and tenants through the provision of clear advice, guidance, training, encouragement and the planning of improvements.
- Will utilise all appropriate enforcement action to achieve appropriate standards in properties found to be jeopardising the health, safety or welfare of individuals.
- Will regularly review its policy, standards, schemes and methods of assessing risk and will, in doing so, consider the views of interested parties and individuals. All such policies and standards, etc. will be made available to all interested parties.
- Will seek to carry out its responsibilities efficiently and effectively in a way that is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement.
- Will seek to keep tenants and occupiers informed within the process.

## 3.0 Decision making

- 3.1 Enforcement action in relation to private sector housing will be based on risk to health and safety and environmental protection. We must also have full regard to any statutory duty. Assessment of risk will be based on legislation and guidance.
- 3.2 Enforcement Officers will decide on appropriate action after considering the criteria within this Policy. A Principal Environmental Health Officer (or someone more senior) will give prior approval to all formal statutory action. Officers are required to make expert judgements and will be suitably trained for this responsibility.

- 3.3 On determining the appropriate action required, a Neighbourhood Renewal Assessment will only be deemed necessary if the cost of the works are in excess of £25,000.
- 3.4 All decisions regarding enforcement action will be impartial and will not be influenced by any view with regard to the race, politics, gender, sexual orientation or religious beliefs of any person we deal with.
- 3.5 Where a decision is made to seek authority to prosecute, a report will be prepared for the Head of Environmental and Housing Services. Any person subject to potential prosecution will be invited to send written representations to the Council before any final decision is made.

#### 4.0 **Enforcement Principles**

- 4.1 In considering any action Officers will have regard to the Enforcement Concordat produced by the Cabinet Office and adopted by East Cambridgeshire District Council. This recognises that whilst our primary role is to protect the public and the environment by enforcing legislation, this function must be carried out in an equitable, practical and consistent manner. The purpose of this policy is to supplement the concordat and set down the District Councils policy in relation to private sector housing legislation. All Officers will comply with the following broad principles in undertaking functions-
  - Consistency: to ensure that similar issues are dealt with in the same way
  - Fairness: to ensure a fair and even handed approach
  - Transparency: to ensure that the enforcement action taken by the team is easily understood by individuals, organisations and businesses.
  - Objectivity: to ensure that decisions are not influenced by the gender, race, disability, culture, religious or political beliefs, age, sexuality, financial status of any person we deal with.
- 4.2 Officers from Environmental Services recognise that most landlords want to comply with the law. We will therefore take care to help businesses, landlords and others meet their legal obligations without unnecessary expense. Wherever possible we will work in partnership with landlords, managing agents, RSL's and other interested parties to ensure that a supply of safe, well managed accommodation is available. To facilitate this the Council has set up a Landlord Accreditation scheme. If a landlord's property is not Accredited and justifiable complaints are received regarding the conditions within the properties then this will inevitably lead Officers to consider formal action, if necessary. It is more likely that any concerns about Accredited properties will be dealt with through the informal route first.
- 4.3 Wherever possible, Officers will endeavour to ensure compliance with legislation is achieved through informal means. Enforcement will be proportionate to the harm any offence has caused to individuals, the public and the environment as appropriate. Where we have discretion, we will apply the law by taking account of the circumstances of the case, the history of the case and the attitude of the parties concerned. Wherever possible we will strive for a positive working relationship and customers are encouraged to seek advice and further information from us at the earliest opportunity.
- 4.4 We will provide information and advice in plain language on the legislation that we apply and will disseminate this as widely as possible. We will promote making use of the Language Line where individuals require it.

- 4.5 We will have regard to national guidance and liaise and consult on enforcement principles with relevant bodies such as the Fire Authority, Planning Authority, Environmental Agency, Chartered Institute of Environmental Health and others to ensure our services are effectively co-ordinated with other relevant services.
- 4.6 While Officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency. Internal case conferences are held before formal action is taken, and regular reviews of training requirements are held.
- 4.7 Persons upon whom enforcement action is taken will receive sufficient explanation from us to understand what is expected of them and what to expect from us. We will provide a contact point and telephone number for further dealing with us and we will encourage individuals to seek advice or information from us.
- 4.8 Data Protection Act 1998 and Human Rights Act 1998

Where collecting evidence generally, due regard will be given to matters of confidentiality. Where the Act applies, the Councils policies and procedures will be complied with and confidential information will only be divulged if required by law or by some other substantial reason. Regard will be given to the following principles.

Data shall be:

- Fairly and lawfully processed
  - Processed for limited purposes
  - Adequate, relevant and not excessive
  - Accurate
  - Not kept for longer than is necessary
  - Processed in line with an individuals rights
  - Secure
  - Not transferred to countries without adequate protection
- Everyone's rights under the Human Rights Act will be respected.

- 4.9 We will provide effective complaints procedures which are easily accessible. 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.

## **5.0 Enforcement options**

- 5.1 In order to achieve and maintain consistency in private sector housing enforcement the Officers will use the following range of enforcement options as appropriate:
- No action
  - Informal Action
  - Statutory Notices
  - Prosecution
  - Formal Caution
  - Works in Default

Any decision made by an Officer regarding enforcement options will be documented along with reasons as appropriate. It is likely that such decisions may need to be justified in Court.

Any tenant or other complainant (where appropriate) will be advised on the proposed course of action and reasons. Their wishes will be taken into account in the final decision making process.

Officers will also have full regard to any special vulnerability or social issues. However, since these may impact on pursuing a fair and consistent approach, they will only influence any decision if full and recorded liaison has been undertaken with interested groups including Social Services and a Principal Environmental Health Officer (or someone more senior).

## 5.2 Informal Action

Informal action will include verbal advice, advisory letters, and “Hazard Awareness Notices”. Informal action will be considered appropriate in the following circumstances:

- a) the act or omission is not serious enough to warrant formal action, or
- b) from the individual/company’s past history it can be reasonably expected that informal action will achieve compliance, or
- c) the consequences of non-compliance will not pose a significant risk to health and safety
- d) there are mitigating circumstances and the officer has demonstrated this is the best course of action.

Any letters or informal notices sent to individuals/companies will:

- i) indicate the legislation contravened (if appropriate) and the measures to be taken to ensure compliance with any legal requirements
- ii) contain all the information necessary to understand what work is required and why it is necessary
- iii) in the case of a Housing Act 2004 “Hazard Awareness Notice”, include an advisory warning providing full information on if and when the Council is proposing to take any further enforcement action in respect of the said matter and, should this take place, what the implications will be.
- iv) give individuals/companies the opportunity to contact the appropriate officer to discuss the matter further.

Officers giving verbal or written advice will ensure that they clearly differentiate between those items which are legal requirements and those which are recommended as good practice. Where necessary (or when requested), verbal advice will be confirmed in writing.

## 5.3 Statutory Notices

The principles of the legislation that we enforce are based on protecting the health and safety of the public and environmental protection. The decision regarding when to serve statutory notices depends on whether there is a power or duty to serve such a notice, and will also take into account the following criteria :-

- a) where informal action has not achieved the desired effect,
- b) there is a lack of confidence that the individual/company will respond to an informal approach. One particular example is where there has been no response within the initial time period allowed following a formal "Requisition for Information", validly served
- c) there is a history of non-compliance with informal action,

- d) standards are generally poor with little management awareness of statutory requirements,
- e) the consequences of non-compliance could be potentially serious to the health and safety of the public.

Officers serving statutory notices will be prepared to discuss the works specified with individuals/company representatives and will fully consider the availability and suitability of alternative solutions.

Where a formal Statutory Notice is served, the method of appealing against the notice (i.e. if the recipient feels that the notice is excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right (where appropriate) and what will happen if the notice is not complied with.

Statutory Notices are important legal documents. Once served, failure to take follow up enforcement action has serious implications having regard to the contents of this Policy. Failure to comply with a Statutory Notice will normally result in the seeking of authority to carry out works in default and/or prosecute, as described below. Any Officer decision to take no action in the case of a Statutory Notice which has not been complied with will only be made with the agreement of a Principal Environmental Health Officer (or more senior officer), which will be recorded for the file.

#### 5.4 Prosecution

The Environmental Services Department recognises that the decision to prosecute is significant.

Legal proceedings will only be instigated where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction and that prosecution for the offence is in the public interest.

Any decision to authorise prosecution will be made by the Head of Environmental Services and Housing.

An Officer will seek to obtain authorisation to commence prosecution proceedings having full regard to this Enforcement Policy. At this stage a report will be prepared for the Head of Environmental Services and Housing and the District Councils Legal Section.

In making the decision to seek authority to prosecute a two stage test is applied. The first stage is the evidential test. If the case does not pass this, it must not go ahead, no matter how serious or important it may be. Next, the Officer must consider whether a prosecution would be in the public interest.

The following factors will be taken into account in making any decision. These have been developed having regard to the Code for Crown Prosecutors, issued by the director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985.

##### Evidential Test

- What the law actually states
- Whether or not an offence has been committed

- What the offence is
- Who is responsible under the Act
- Who has power of enforcement
- Who investigates
- Who decides to prosecute (this will not be the investigating officer)
- Sufficient evidence
- Reasonable chance of success
- Avoidance of undue delay

#### Public Interest Test

- a) The seriousness of the offence;
  - The risk to health
  - Identifiable victims
  - Failure to comply with a statutory notice served for a significant breach of legislation
  - Failure to comply with statutory management responsibilities resulting in a significant risk to health
  - Disregard for the public health for financial reward
  - The likely penalty on conviction
- b) The previous history of the proprietor or company concerned;
  - Offences following a previous history of similar offences
  - Failure to respond positively to past warnings, including informal action (see above)
  - Failure to comply with statutory notices
- c) The ability of witnesses and their willingness to co-operate

#### 5.5 Formal Caution

The decision to offer a formal caution is made by the Head of Environmental Services and Housing. They are likely to be rare and typically will only be considered where the evidential test is met but the public benefit criteria are not. Mitigating factors will be identified and taken into account when coming to this decision.

Therefore formal cautions will only be used where:-

- a) there is evidence of the offenders guilt sufficient to give realistic prospect of conviction
- b) the offender admits the offence and
- c) the offender clearly understands the significance of a formal caution and gives informed consent to being cautioned
- d) the use of a formal caution is considered to be in the public interest

#### 5.6 Works in default

Works in default are not considered to be an enforcement option as such. The decision to undertake them will be made separately and in addition to consideration of other appropriate enforcement action.

The Council may carry out works in default of a statutory notice where

- a) there is an imminent risk to health and safety, such that the consequences of not taking immediate and decisive action would be unacceptable, or
- b) it is the officers opinion that this is the most appropriate option and this has been agreed by the Principal Environmental Health Officer (or someone more senior)
- c) other exceptional circumstances have been agreed in consultation with the Head of Environmental Services and Housing.

## **6.0 The Housing Health and Safety Rating System**

- 6.1 The HHSRS is the system for assessing the living conditions of a property. The system is based on 29 possible hazards to the most vulnerable occupier and is structured around an evidence based risk assessment process. Local Authorities have a duty to act on Category 1 hazards and have the power to take action in the case of Category 2 hazards.
- 6.2 The HHSRS is a technical assessment, based on two stages – the first to address the likelihood of an occurrence and the second to look at the range of probable harm outcomes. The assessment is based on the potential occupant who is the most vulnerable to that risk. The two stages are combined to give a rating in respect of each hazard, which is a numerical score. Hazards are then banded from A to J, A being the most severe. Category 1 hazards mean hazards of prescribed description that are banded A; B or C. Category 2 hazards are those banded D or lower.
- 6.3 While formal enforcement action is a necessary and important part of the enforcement process it should generally be viewed as a last resort. If the Council identifies premises that contain a hazard the case for informally drawing this to the attention of the owner or landlord in the first instance will be considered. This will normally be followed up in writing, including an explanation of the remedial action, which, in the Councils opinion, is needed, and the timescale in which the Council considers such action needs to be taken.
- 6.4 The Council expects tenants to have contacted their landlord about any problems first, as landlords can only carry out their obligations once they are aware of the problem. There are certain situations however where tenants will not be required to contact 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 etc

Where the tenant is frail or vulnerable

Where the tenant cannot for some other reason be expected to contact their landlord/managing agent.

- 6.5 There may be certain situations that arise when the Council will not be able to assist directly e.g

Where the tenant is of their own free will shortly to move out of the property.

Where the tenant unreasonably refuses access to the landlord, their managing agent or any builder to arrange or carry out the works

Where the tenant has, in the opinion of the Council clearly caused the damage to the property they are complaining about.

Where the tenant has, in the opinion of the Council, only contacted the Department in order to get re-housed and they are not requesting their present accommodation be brought up to an appropriate standard.

6.6 With respect to the potential for further formal action following the initial informal approach it is for the Council to determine the most appropriate course of action in relation to the hazards posed. Consideration is given to all relevant factors and also published guidance. The following actions are available to the Council when considering the most appropriate action:

- Serve an improvement or suspended improvement notice
- Make a prohibition or suspended 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 emergency action) at one time for one particular hazard, but can vary the action required if one route has proved unsuccessful. Emergency procedures cannot be used for Category 2 hazards.

6.7 All Notices and Orders will have a statement of reason attached to them. The statement should include why one type of enforcement action was taken over another. Before formal 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 decisions made by the Council to the Residential Property Tribunal (RPT). The RPT may confirm, quash or vary any notice, order or decision.

6.8 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. No maximum charge has been set by Central Government. At the present time East Cambridgeshire District Council will not charge for any such formal action. However the situation will be kept under review and charges may be introduced in the future.

## **7.0 Houses in Multiple Occupation**

7.1 We will seek to identify all HMO's in the District and will, in the first instance, assess each property under our approved risk assessment process. We will endeavour to re-assess properties at least once every 5 years and owners, agents and occupiers will be encouraged to assess their own houses and to agree to carry out phased improvements. The risk

assessment and any resultant schedule of works will be in accordance with the Councils adopted standards for HMO's.

- 7.2 We will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose him or her to enforcement action through lack of understanding or information. However properties inspected which fail to meet the relevant standards will be subject to appropriate enforcement action to remedy all deficiencies where the defects put the residents or others at imminent risk or where no satisfactory undertaking to complete the necessary works are given by the landlord or the works are not undertaken within the specified time frame.
- 7.3 It is the policy of this Council to seek to ensure that premises, which require a mandatory licence under the provisions of the Housing Act 2004, are properly licensed in order to protect the health, safety and welfare of the occupants. Where a licence is not applied for or the conditions within a licence are breached Officers will decide on appropriate action by considering the criteria within this policy. Any decision to authorise prosecution will be made by the Head of Environmental Services and Housing. In addition to any enforcement action a management order may also be made.

## **8.0 Caravan Sites**

- 8.1 Caravan sites present a special case. Conditions are attached to the site licence.
- 8.2 Any decision concerning breaches of Licence Conditions is likely to be complex and at the discretion of the case officer. Works involving alterations to site layout or design often need to be undertaken over a lengthy time period. There may need to be negotiation with residents and the site owner. An informal approach would be considered in the first instance and the Council wants to work with site owners to improve conditions. The only alternative option is direct prosecution, leading eventually to removal of the site licence and closure of the site, rendering residents "homeless". This action is viewed as the last resort.
- 8.3 An Officers interpretation of breaches of Site Licence conditions will have regard to any report from the Fire Authority, when considering those conditions which relate to fire precautions.

## **9.0 Empty Properties**

- 9.1 The Environmental Services and Housing Department is committed to reducing the number of empty homes, thereby increasing housing choice, reducing homelessness, increasing affordable homes, improving environmental conditions, reducing statutory nuisance and reducing the fear of crime. Full details of the Councils actions are contained within the councils Empty Homes Strategy that is available on the web site or on request.

The formal options available to Local Authorities are:-

- Compulsory Purchase Order (CPOs). This is where the Council can consider taking over the ownership of the property.
- Empty Dwelling Management Orders (EDMOs). This is where East Cambridgeshire District Council can consider to purchase a lease on a property where the owner will not co-operate in bringing the property back into use. The property can then be let for social housing.

To be consistent with the Councils' Enforcement Concordat an informal approach will be carried out initially in each case. The formal routes for empty properties are very costly to the Council with regard to general resources and officer time and a cost/benefit assessment should be considered in any exceptional circumstances where the formal route is considered.

## **10.0 Summary**

East Cambridgeshire's aim is to provide, transparent, consistent and fair enforcement of housing legislation to improve housing standards within the private sector. We aim to keep all parties informed of the progress of our inspections and in the process of enforcement, if enforcement is taken.

Where possible, officers in line with this policy and the Enforcement Concordat will work together with Registered Social Landlords, Private Landlords, occupiers and owners of properties informally and enforcement action will only be taken when all informal routes have failed. Enforcement will only be considered if it is demonstrated that this is the most appropriate action. A brief flow-chart summarising the general procedure for housing complaints can be seen in Appendix A.