

## **Private Sector Housing Enforcement Policy Wiltshire Council**

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## 1.0 Introduction

- 1.1 There are a number of challenges that face the Private Sector Housing team as a result of the profile of the district and obligations placed upon it by Central Government. The main challenge is the number of properties that fall within the private sector that are considered to be in poor repair, non-decent and have serious hazards. It is the responsibility of the Private Sector Housing team to respond to these issues and facilitate improvements in the sector by use of education, enforcement and where possible, financial assistance.
- 1.2 The following details give an indication of the magnitude of the task of improving the quality of housing in the area.
- **There are 157,374 dwellings in the private sector.** These include owner-occupied and rented accommodation.
  - **Over 20,000 of these properties are in the private rented sector.** These constitute some of the poorest housing conditions in the district.
  - **36,963 properties in the whole of the private sector have at least one serious hazard.** Intervention by the PSH team may be necessary.
  - **There are approximately 300 houses in multiple occupation (HMOs) in the district. It is estimated that 50 will need a mandatory licence.**
  - **56,129 properties are considered to fail the decent home standard.** The Government has introduced a target requiring that 70% of homes occupied by identified vulnerable groups, in the private sector, must be decent by the year 2010.

[2008 BRE statistical modelling]

## 2.0 Legislation

2.1.1 The principal piece of legislation used by the Private Sector Housing team is the **Housing Act 2004** (referred to as “the Act”). However, there are circumstances where other pieces of legislation may be more appropriate in dealing with the identified problem. Officers are expected to use professional judgement to determine the most appropriate piece of legislation to use. In some cases it may be appropriate to use a range of enforcement tools.

### **Housing Act 2004 & The Housing Health and Safety Rating System (England) Regulations 2005**

2.2 Where the Private Sector Housing team has reason to enter a property we

- will inspect the whole property using the housing health and safety rating system (HHSRS). This system has been adopted by regulations as the prescribed methodology for assessing housing conditions. The aim is to identify deficiencies within dwellings that may lead to a hazard. Each hazard is assessed and assigned a band. These bands are translated into either a category one or a category two hazard.
- 2.3 The 2004 Act places a mandatory duty on the Council to take action where a category 1 hazard has been identified. There is a discretionary power to deal with category 2 hazards. The Act also provides a range of enforcement tools:-
  - 2.4 Improvement Notices – section 11 is used for category 1 hazards, section 12 is used for category 2 hazards. An improvement notice should be used where reasonable remedial works can be carried out to reduce the hazard sufficiently.
  - 2.5 Prohibition Orders – section 20 for category 1 hazards and section 21 for category 2 hazards. This order may prohibit the use of part or all of premises for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical. It may also be used to limit the number of persons occupying the dwelling, or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.
  - 2.6 Hazard Awareness Notices – section 28 for category 1 hazards and section 29 for category 2. This is used where a hazard has been identified but it is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.
  - 2.7 Emergency Remedial Action - section 40 – this is only acceptable for use where there is an **imminent** risk of serious harm and the hazard must rate as a category 1. The authority must undertake any necessary remedial works that are required to reduce the immediate risk. A warrant to enter the premises in order to carry out the work may be granted by a justice of the peace where he/she is satisfied that the authority would not be granted admission by the owner.
  - 2.8 Emergency Prohibition Order – section 43 – this is only acceptable for use where there is an **imminent** risk of serious harm, the hazard rates as a category one and where it is not practical to carry out the remedial works as in section 40. It can prohibit the use of all or any part of the premises with immediate effect.

- 2.9 Demolition Order – this can only be used in response to category 1 hazards, but not if the building is listed. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.
- 2.10 Clearance Area – All residential buildings in the proposed area must have at least one category 1 hazard. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.
- 2.11 Suspend Improvement Notices or Prohibition Orders – these notices may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes must be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at the very least every 12 months. The advantage of suspending a notice is that there is a record of the LHA's involvement and the situation must then be reviewed. It is also recorded as a land charge.
- 2.12 The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.

**Environmental Protection Act 1990 section 80**

- 2.13 Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance.

**Building Act 1984 section 59/60**

- 2.14 Used to deal with defective drainage issues in existing buildings.

### **Building Act 1984 section 64/65**

2.15 Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance.

### **Building Act 1984 section 76**

2.16 Used where the property is so defective so as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default).

### **Public Health Act 1936 section 45**

2.17 Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance.

### **Public Health Act 1961 section 17**

2.18 Where any drain, private sewer, water closet, waste pipe or soil pipe has not been maintained and can be repaired for less than £250.

### **Local Government (Miscellaneous Provisions) Act 1976 section 33**

2.19 Used where services such as the water supply are due to be, or have been, cut off to a domestic property.

### **Prevention of Damage by Pests Act 1949 section 4**

2.20 Used where there is evidence of or harbourage of rats or mice at a property.

### **Housing Act 1985 (as amended)**

2.21 Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the Housing (Management of Houses in Multiple Occupation) Regulations 1990. These have been revoked with regards to all types of HMO as described in section 15.0 of this policy, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.

### **The Management of Houses in Multiple Occupation (England) Regulations 2006**

2.22 These regulations have been introduced to deal with all other types of

HMO other than those mentioned in 2.21 above. Therefore, all licensable HMOs, smaller HMOs and flats in multiple occupation are covered by these regulations. Only self-contained flats are exempt as they fall under the regulations mentioned above.

- 2.23 The regulations cover the management and repair of the HMO. There are no notice provisions with these regulations therefore if a decision is made to take action under these regulations, the officer must go straight to prosecution.

### **Other Legislation**

- 2.24 The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence.
- 2.25 Local Government (Miscellaneous Provisions) Act 1976 section 16 - Used to formally request information about a premises or a person.
- 2.26 Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000 – used in relation to interviews under caution, prosecution and gathering evidence.

### **Mobile Homes**

- 2.27 Wiltshire has a significant number of permanent mobile home parks and mobile homes. Where poor conditions are identified in mobile homes, the route to improvement (or any other course of action) is not necessarily the same as if the mobile homes were permanent structures. The definition of *residential premises* in the Housing Act 2004 is unclear whether mobile homes could be considered within this definition. As such there is a degree of interpretation to be made when it comes to determining whether the powers in the new Housing Act extend to mobile homes of various types.. Where poor conditions are encountered officers will have to consult this guidance and determine which is the most appropriate legislation to deal with poor living conditions and any other problems with mobile home sites. The sites themselves are governed by the provisions of The Caravan Sites and Control of Development Act 1960, however the provisions of The Housing Act 2004 may be applicable in certain situations as may the provisions of statutory nuisance under The Environmental Protection Act 1990.

## **3.0 Enforcement Procedure**

### **3.1 Informal Action**

3.1.1 The aim of the Private Sector Housing team is to improve the housing conditions in the private sector by use of advice and education and where possible financial assistance. However, there are occasions where these methods are not successful in improving conditions and therefore, it is necessary to consider enforcement action.

3.1.2 In doing so, officers will be expected to follow the principles of the Enforcement Concordat, which encourages openness, proportionality and consistency. In order to achieve this, Officers will be expected to be transparent in the way they have made decisions by keeping clear records and file notes. All remedial work that is required must be sufficient to remove any risks but not so excessive as to be burdensome. Officers must ensure they follow procedures set out by this policy and any associated procedure documents and guidance.

3.1.3 In order to satisfy these principles it is expected that officers in the first instance will make informal contact with the person responsible for the property containing the hazard. It is anticipated that in many cases an informal approach using hazard awareness notices will achieve the desired outcomes.

3.1.4 However, informal action cannot be allowed to continue indefinitely and there must be a limit attached to the informal action. This is to ensure that there is not scope for further delays to works that are likely to be time intensive. Therefore, a suitable response should be required within 28 days of the date of the first letter. If a response is received and a timescale for completion of the works is agreed then it may not be necessary to serve a legal notice.

3.1.5 If remedial works have not been completed in the agreed time, then a notice must be served with reasonable timescales.

3.1.6 The delays incorporated within the informal approach are satisfactory where there is not a high risk or the agreed times are short, but where there is a serious hazard or this procedure provides for unacceptable delay, a notice should be served as soon as possible.

3.1.7 The officer will be required to use discretion on this matter but will be expected to be fully accountable for the decision and make detailed file notes justifying any time delays.

## **3.2 Decision to take enforcement action.**

3.2.1 An inspection of a property must be carried out and the deficiencies noted. As the principal piece of legislation, the Housing Act 2004 will be considered to assess whether there are category 1 or category 2 hazards within the property. Having made this assessment and dependent on the problems within the property consideration will be given to the most appropriate course of action to reduce the hazards to an acceptable level.

3.2.2 The most appropriate legislation must be identified for dealing with the hazard. Only where the Housing Act 2004 is not appropriate should other legislation be considered.

3.2.3 Consideration must also be given to whether consultation is required with other enforcing bodies. In particular where the hazard of fire is identified there is a duty to consult with the fire authority as prescribed under section 10 of the 2004 Act. Other bodies such as the Police and HSE may need to be contacted or other departments within the Council such as Environmental health, Planning, building control etc.

3.2.4 Regard must also be had to other schemes that are available to assist with housing repairs. Tenants and homeowners and landlords may be able to access a number of grants and loan schemes, which may negate the need for formal action to be taken. However, where the offer has been made and the landlord or owner subsequently refuses any offers of assistance it may be necessary to pursue enforcement action.

## **3.3 Section 8: Statement of Reasons**

3.3.1 Under section 8 of the Housing Act 2004, a statement must be prepared detailing which notice provisions are being considered. The statement must also include why the other options have been discounted at this stage. In making these decisions regard must be had to:

- the seriousness of the situation and the imminent risk to health and safety
- the type of hazard and whether it is a priority or target hazard (see paragraph 5.0)
- the current occupation and the impact the decision may have on the social exclusion of certain groups of people
- the turnover of tenants or occupants to the property
- the management of the property

- the occupants views
- the owners views
- the number of hazards within the property and whether they are category 1 or category 2.
- the enforcement policy and procedures, the private sector housing strategy and housing strategy.
- the decent homes standard

3.3.2 Where there are only category 2 hazards consideration must be given to the overall effect of the multiple hazards and whether they are indicative of a rundown property.

3.3.3 Once a decision has been made the appropriate notice procedure must be followed. When taking any form of action a covering letter and the statement of reasons under section 8 must also accompany the notice and the schedule of works.

3.3.4 Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupants or other affected persons. However, action will not be taken where a more appropriate contractual remedy exists. Where a Housing Health and Safety Rating inspection identifies a significant hazard, a hazard awareness notice may be served unless the Council is confident that the hazard will be removed or reduced to an acceptable level by other means. Where a significant hazard is identified which requires attention, and the person responsible for the property is unable to carry out the recommended works because of financial hardship, they will be made aware of appropriate financial assistance options available to them from the Council. Where the conditions at one property causes a health and safety hazard or statutory nuisance to the occupants of another property, or the general public, or others persons who might reasonably be expected to visit the property enforcement action will be considered regardless of property tenure. The council may use enforcement action to encourage owners of empty properties to bring them back into use.

## **4.0 Priorities**

- 4.1 The Housing Act 2004 and subsequent HHSRS regulations 2005 have identified a number of hazard categories that have been found within the home. There are 29 hazards that arise from disrepair, lack of maintenance or poor design. The health effect from these hazards range from death to mental stress and the HHSRS provides the opportunity to compare unrelated hazards such as fire with other hazards such as damp and mould growth. This is done through the calculation of a hazard score. The higher the score is the higher the risk posed by the hazard.
- 4.2 This enforcement policy sets the following prioritisation scheme for dealing with hazards (see table one). This will be subject to regular review. The principal behind this is detailed below.
- All category 1 hazards will be dealt with as a priority over category 2 hazards.
  - Where there are multiple category 1 hazards, those with the highest scores will be a priority over the lower scores.
  - Where there are category 2 hazards, the higher scored category 2 hazards will be dealt with first, unless target hazards have been identified in the property.
  - Where an officer has identified deficiencies and felt it necessary to hazard-rate them, even if the result is a low category 2 hazard, the officer must consider at the very least offering advice, or serving a hazard awareness notice. Where the hazard is a target hazard, any necessary remedial works should be considered.
- 4.3 When a complaint is received an officer will prioritise the complaint based on the information provided by the complainant. Where insufficient information has been provided the complainant should be contacted within 5 working days in order to gain the appropriate information to prioritise the complaint.
- 4.4 Using professional judgment and knowledge of the HHSRS the senior officer will prioritise the complaint as a P1, P2, P3 or P4. Complaints classed as P1 require an immediate response as these are considered an emergency. P1 classifications are likely to be very rare. P2 complaints are those that are suspected to be category 1 hazards. These should be responded to within 10 working days. P3 complaints should be responded to within 1 month and P4 complaints within 3 months.
- 4.5 In times of high service demand it may not be possible to adhere to these timescales. The complainant should be kept informed as to the potential waiting time and it may be necessary for the senior officer to implement the measure in paragraph 4.7.

- 4.6 In all circumstances consideration should be given to whether there are other schemes or assistance that may be available that is more appropriate than serving formal notice.
- 4.7 Where high volumes of work are experienced it is likely that P3 and P4 cases will be kept on a waiting list. In some cases the senior officer may make the decision that certain cases will not be dealt with by Private Sector Housing. Where possible these cases will be forwarded to alternative schemes for assistance or encouraged to take their own action using provisions under the Environmental Protection Act 1990 or the Landlord and Tenant Act 1985.

### Prioritisation of Hazards and Options for Action

Priority (P)		Main options for Action	Other options available for consideration
<b>Category one</b>			
<i>Immediate action</i>	P1 Highest band A+  Imminent risk to health and safety.	<ul style="list-style-type: none"> <li>• Emergency Action</li> <li>• Prohibition Order</li> <li>• Improvement Notice</li> <li>• Demolition Order</li> </ul>	<ul style="list-style-type: none"> <li>• Clearance</li> <li>• Suspend notices</li> <li>• Hazard awareness Notice</li> </ul>
<i>High Priority</i>	P2 Hazard Bands A – C  Including target hazards	<ul style="list-style-type: none"> <li>• Improvement notice</li> <li>• Prohibition Order</li> </ul>	<ul style="list-style-type: none"> <li>• Clearance</li> <li>• Demolition</li> <li>• Suspend notices</li> <li>• Hazard awareness Notice</li> </ul>
<b>Category two</b>			
<i>Medium Priority</i>	P3 - Target Hazards Bands D – J High bands D - F	<ul style="list-style-type: none"> <li>• Improvement notice</li> <li>• Suspend notices</li> <li>• Hazard awareness Notice</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibition Order</li> </ul>
<i>Low Priority</i>	P4 - Low bands G - J	<ul style="list-style-type: none"> <li>• Hazard Awareness Notice</li> <li>• Suspend notices</li> </ul>	<ul style="list-style-type: none"> <li>• Improvement notice</li> <li>• Prohibition Order</li> </ul>

## **5.0 Required level of remedial works**

- 5.1 As a minimum, category 1 hazards must be reduced to a low category 2.
- 5.2 Where this is not possible all reasonable steps must be taken to reduce the hazards as far as reasonably practicable. In some cases, such as listed buildings, category 1 hazards may remain. This scenario should have been considered when deciding which course of action is most appropriate and may influence the officer's decision as to which type of enforcement action to take.
- 5.3 Target hazards should be improved to the ideal where this is possible and reasonable to do so.
- 5.4 When deciding on the remedial works, regard must be had to the seriousness of the hazard, the ideal that the property should achieve, and the level of work required that is reasonable to reduce the hazard significantly without incurring excessive cost.
- 5.5 For the hazard of fire, where the property is an HMO, section 10 of the Housing Act 2004 states that the LHA must consult with the Fire Authority before taking any action and deciding on the remedial works. A working protocol is to be developed to ensure that this process does not become burdensome to both parties.

## **6.0 Local land charge**

- 6.1 Notices will be placed on the local land charges register.

## **7.0 Charging for notices**

- 7.1 The Housing Act allows charges to be made for notices. The council will investigate charging with a view to introducing charging for notices in the life of this policy.

## **8.0 Appeals**

- 8.1 Once the officer has made the decision to serve a notice and has followed the correct procedure the notice should be served with a copy of the s8 statement of reasons.
- 8.2 All correspondence must detail the appeal procedure for the action being taken. This is slightly different for each notice/order and care should be taken to ensure the correct information is included.
- 8.2 The person served with the notice/order has the right to appeal against the notice/order on any grounds. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate.
- 8.4 Appeals are made to the Residential Property Tribunal (RPT). The intention is that the tribunal will be able to make a decision based on paperwork and statements supplied by both parties. On occasion a hearing will be held where both parties must present their cases. There is no requirement for legal representation. The RPT may request to visit the property in question.

## **9.0 Offences**

### **9.1 Housing Act 2004**

9.1.1 Failure to comply with an improvement notice without reasonable excuse – the notice recipient commits an offence and is liable to prosecution. On summary conviction they can be fined up to level 5 on the standard scale. The obligation to carry out the remedial works continues despite the fact that the period for completion has expired.

9.1.2 Failure to comply with a Prohibition Order – an offence is committed if the premises is used in contravention to the order, or permission is given for the premises to be used in contravention to the order. On summary conviction fines up to level 5 on the standard scale may be levied. In addition there is a further fine of up to £20 per day for every day or part day after conviction that the property is used in

### **9.2 Environmental Protection Act 1990**

Failure to comply with a notice under s80 – the notice recipient commits an offence and is liable to prosecution. On summary conviction the fine can be up to level 5 together with a further fine of an amount equal to one-tenth of that level for each day after conviction the notice is not complied with.

### **9.3 Management of Houses in Multiple Occupation (England) regulations 2006**

Failure to comply is an offence and is liable to prosecution. On summary conviction the fine can be up to level 5.

### **9.4 Building Act 1984**

Failure to comply with a notice under s59/60, s64/65 & s76 - the notice recipient commits an offence and is liable to prosecution. On summary conviction fine can be up to level 4 with a daily charge of £2 until works are complete.

### **9.5 Public Health Act 1936**

Failure to comply with a notice under s45 - the notice recipient commits an offence and is liable to prosecution. On summary conviction where steps other than work is required the fine is up to level 1 & £2 a day after conviction. Where work is required the fine can be up to level 4 and £2 a day after conviction.

### **9.7 On the standard scale, the fines currently stand at**

Level 4 is currently up to £2,500.

Level 5 is currently up to £5,000

## **10.0 Formal Cautions**

- 10.1 The Council will consider the use of a formal caution as an alternative to a prosecution. Cautions can be mentioned to the Court when sentencing the same offender for a later offence.

## **11.0 Prosecution**

- 11.1 Where there is a breach of a notice or an order the officer must investigate the offence and prepare the case for prosecution. This may involve interviewing relevant people under caution, following the relevant parts of the Police and Criminal Evidence Act 1984.
- 11.2 If there is sufficient evidence and it is considered in the public interest to prosecute, the case will proceed to prosecution.

## **12.0 Works in Default**

- 12.1 The Housing Act 2004 makes provisions for the Council to carry out the works to a property where the person responsible has failed to comply with a notice.
- 12.2 Works in default can be carried out either instead of a prosecution or in addition to a prosecution. The works in default procedure should be followed

- 12.3 This is a discretionary power. Discussions will be required with the Head of Private Sector Housing due to the cost implications of this procedure. Although it is anticipated that the cost of the works will be recovered, it is not guaranteed that this money will be paid back promptly.
- 12.4 It is proposed that works in default should be used where there is an imminent risk to health and safety and where the remedy is relatively easy to achieve. If it is to be used in other circumstances, full justification based on the merits of the case will be required.
- 12.5 It is also proposed that it should be used in conjunction with prosecution where it is appropriate to do so. This would be dependant on the nature of the hazard but should be considered due to the delays often experienced during the prosecution procedure. The delays often result in the remedial action being postponed leaving the occupier living in unacceptable conditions.
- 12.6 In deciding whether works in default is an option, the officer must consider: the imminent risk to health and safety and whether undue delay would put the occupier, visitors or the public at increased risk. They must also consider whether there are finances in place to carry out the work and what the minimum works required would be to remove the risk. Works in default cannot be carried out if, as a result of the action a second, different hazard will result. Any remedial works must be extensive enough to remove the hazard and leave the property in a safe condition.

### **13.0 Action by Agreement**

- 13.1 The Housing Act 2004 also makes provision for remedial works to be carried out by agreement. This is where the local authority arranges for the works to be carried out at the request of the person responsible and they are then charged for the full cost. When it is carried out in default without agreement the local authority can recover expenses reasonably incurred plus interest.
- 13.2 In order to use this provision the officer must be confident that the cost of the works will be repaid in full once the work is complete.
- 13.3 The budget must be in place for this procedure. If the costs incurred cannot be paid they must be placed as a charge against the property. The Enforced Sale Procedure may then be used if considered appropriate.

### **14.0 Exercise of power of entry**

- 14.1 Where using the formal powers of entry If an officer decides of their own accord that it is necessary to carry out a survey or examination of premises under the 2004 Act and that the inspection does not fall within the exemptions specified in section 239(6) & (7), then the authorised person must give at least 24 hours notice of his intention to

do so to the owner of the premises (if known) and to the occupier (if any).

- 14.2 Where entry is consistently refused application will be made to the magistrates court for a warrant to enter premises.