



Regeneration Department

Private Sector Housing Enforcement Policy

29th June 2005

The Regeneration Department is committed to providing the best possible service to the customers of Wear Valley

This policy will enable us to improve the standard of homes in the private sector

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Wear Valley District Council is committed to the removal of all barriers preventing access to our services arising from ethnicity, religion, geographic location, special needs, language differences, learning difficulties, sexual orientation, gender, age or disability.

We can produce this document in other formats such as Braille, in large print, on audio tape, on CD Rom, or in other languages. You can request a copy from the Marketing and Communications Manager at Wear Valley District Council on (01388) 761 958.

Introduction

The Team

The Private Sector Housing Team is a leading team, not only in the Regeneration Department but also within the Council. The team provide a first class service to its customers and this Private Sector Enforcement Policy will assist us in improving the standards of private sector properties throughout the District.

We are fully committed to delivering a high degree of customer care and will assist customers as well as landlords in achieving decent homes in the private sector. This will be achieved through this policy and linking into the Private Sector grants policy.

The private sector housing team currently consist of the following team members:

2 Housing and Environment Officers – these officers are responsible for not only carrying out full property surveys for grant applications, managing landlord and tenant complaints and following up all of the associated tenders and paperwork. They are also at hand either over the telephone or face to face to answer any questions or queries that are sure to crop up.

2 Empty Properties Officers – the empty properties officers are committed to turning empty properties back into homes. On a daily basis they seek to see which properties are standing empty and falling into a state of disrepair they then contact and assist the owners in getting the properties back into use.

Administrative Assistant – the Administrative Assistant is responsible for ensuring that all documentation is managed correctly and the highest standard of customer care is delivered, this ensures your grant application runs smoothly.

Principal Housing Strategy Officer– responsible for the smooth running of the section and to develop new policies, procedures, ideas and initiatives relating to all aspects of private sector housing. Also responsible for the management of the Renewal Areas throughout the District.

The Private Sector Housing Team work in close partnership with the Wear Valley Landlords Association, Durham Dales Home Improvement Agency and other partners to deliver a first class service.

The Policy

The purpose of this enforcement policy is to ensure that people who own and let property within Wear Valley are aware of what they can expect from the Council and officers of the Private Sector Housing Team.

The Housing Act sets out a number of standards that must be adopted by landlords and the Council has a duty to ensure that these standards are met. The Council has powers to enforce the Housing Act where properties fall below the legal standards, this policy will detail these powers and how they will be used. Legal enforcement is only taken as a last resort and the council will always try and seek co-operation between landlords and tenants.

This policy should be seen as a positive document that will prove to be useful and meaningful and will be the basis for discussion and guidance.

Wear Valley District Council formally adopted this policy on the 29th June 2005 following consultation with partners, key stakeholders and customers.

Our Aims

- We will provide information in a jargon free and easily understandable manner; when contact or a complaint is received by the Private Sector Housing Team the customer will be sent a leaflet to explain the procedure.
- We will treat all of our customers equally and fairly.
- We will aim to ensure that people understand what is expected from them as well as knowing what they can expect from us.
- We will discuss customer complaints in an informative, customer focussed and friendly manner. When you contact a member of the team they will identify themselves by name. All staff visiting properties will carry identification.
- Where possible we will endeavour to minimise the costs of compliance with Notices by ensuring the action we take is proportionate to the risks. We will work with property owners so that they can meet their legal obligations without unnecessary expense.
- Although Officers have to exercise their judgement in individual cases, Officers will be consistent in their approach and decisions will be in line with this policy.

Housing Legislation

This chapter will set out under what legislation the policy will enforce. This is not an exhaustive list and other powers will be used if they best suit the situation. The legislation detailed below has been summarised and full policy wording is available from the Private Sector Housing Team on request.

Housing Act 1985 – Unfit Properties and Properties in Disrepair

The provisions of this Act apply to dwelling houses, houses in multiple occupation and buildings containing flats. The principal definition of unfitness for the purpose of these provisions is to be found in section 604 of the Housing Act 1985.

A dwelling house is fit for human habitation unless it fails to meet one or more of the specified requirements that are detailed below: if the property fails to meet these standards then they will be classed as unfit for human habitation. The property must be:

- structurally stable
- free from serious disrepair
- free from dampness that is or could cause a health hazard
- adequate provision for lighting, heating and ventilation
- adequate supply of wholesome water
- suitably located water closet
- satisfactory facilities for preparation and cooking of food (including a sink with a satisfactory supply of hot and cold water)
- suitably located fixed baths or showers and wash hand basins with hot and cold water; and
- an effective system for the draining of foul, waste and surface water.

If the property is a flat, the building as a whole will be assessed and must:

- be structurally stable
- be free from serious disrepair
- be free from dampness
- have adequate provision for ventilation; and
- have effective system for the draining of foul, waste and surface water.

The property must also meet the criteria set out in the Hazard Health and Safety Rating System (HHSRS).

The fitness standard also applies to houses in multiple occupation (HMOs) in the same way it does to single dwellings.

When the council is informed of a property that is classed as being unfit it is bound to take the most appropriate course of action, having regard to the Department of the Environment Circular 17/96 and ODPM Housing Renewal Guidance issued in June 2002.

Enforcement action is viewed as an important part of resolving an issue, however, Wear Valley District Council view this as a last resort and every effort will be made by the Private Sector Housing Team to resolve the situation in an amicable way.

In deciding the most appropriate course of action an Authority needs to have regard to a wide range of factors explained fully in Annex B to Circular 17/96. Factors to be considered in arriving at a decision will vary according to the particular circumstances.

The Council will have to satisfy itself that a fitness enforcement decision represents the most appropriate course of action, be able to provide reasons for that decision, and be able to demonstrate that they have had regard to the Circular in reaching a decision. Failure to comply to official Action Notices is a criminal offence, if it can be shown that the person intentionally did not comply with it, and can lead to prosecution and/or the Council carrying out works in default, the full cost of which is passed to the person responsible or/and the recipient of the Notice.

Courses of Action

The courses of action available to deal with an unfit property include the following options:-

Section 189 - Repair Notice in respect of unfit houses

A repair Notice under this section requires the recipient of the Notice (usually the owner but not in all cases) to carry out certain works within a specified time scale. The Notice will specify what works are, in the opinion of the Council, necessary to render the premises fit for human habitation. It will also state that in the opinion of the Council, once the works are carried out the property will be fit.

Unless there is an appeal the Notice will become operative 21 days from service. In the event of an appeal, the Notice becomes operative on the court's determination of the appeal. If the person responsible or the recipient of the Notice does not comply with the Notice in the time allowed, the Council has the authority to enter the premises and to arrange to carry out the works in default. There are ancillary provisions to recover the expenses of such Action. Non-compliance means not commencing and completing the works within the time allowed (unless there is an appeal), or not making reasonable progress with works.

Section 190 - Repair Notice in respect of a house in a state of disrepair but not unfit

If a property is in a state of disrepair or will interfere with the personal comfort of the occupants, the Council can serve a Notice requiring work to be carried out within a specified time limit. If the Notice is not complied with, the Council can carry out the work in default and recharge the person upon whom the Notice was served. Not complying with a section 190 Notice is a criminal offence if it can be shown that the person intentionally did not comply with it. Notices served under this section do not deal with internal decorative repair.

Unless there is an appeal the Notice will become operative 21 days from service. In the event of an appeal, the Notice becomes operative on the court's determination of the appeal. If the person responsible or the recipient does not comply with the Notice in the time allowed, the Council has the authority to enter the premises and to arrange to carry out the works in default. There are ancillary provisions to recover the expenses of such action. Non-compliance means not commencing and completing the works within the time allowed (unless there is an appeal), or not making reasonable progress with works.

OTHER SANCTIONS FOR UNFIT PROPERTIES

Section 264 – Power to make a Closing Order

A Closing Order prevents the property from being used for any purpose not approved by the Council. This means that the property cannot be used for human habitation. This remains the case until works have been carried out and the property is made fit to the satisfaction of the Council at which point the Order is lifted.

The Order will become operative 21 days after service, unless there is an appeal, in which case the Order will become operative on the court's determination of the appeal. Use of the premises in contravention of the Closing Order may constitute a criminal offence (Housing Act 1985, section 277).

Section 265 – Power to make Demolition Order

Another option for the Council to deal with unfit properties is demolition. A demolition order requires the property to be vacated within a specific time and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly.

The Order will become operative 21 days after service, unless there is an appeal, in which case the Order will become operative on the court's determination of the appeal. Use of the premises in contravention of the Demolition Order may constitute a criminal offence (Housing Act 1985, section 270).

Section 289 – Declaration of Clearance Area

A clearance area is an area that is to be cleared of all buildings. The Council shall declare an area to be a clearance area if all the buildings in the area are classed as unfit or by virtue of their bad arrangement, are dangerous. The Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.

Deferred Action Notice (Housing Grants, Construction and Regeneration Act 1996 – Section 81 & 84)

Such a Notice states that the property is unfit for human habitation but the Council does not require any work to be carried out at that stage. If the Council serves such a Notice, it can be reviewed at any time, and must be reviewed not later than two years after the Notice becomes operative, and at intervals of no more than two years thereafter. The property to which the Notice relates must be re-inspected for the purposes of reviewing a Deferred Action Notice.

Service of this Notice does not prevent the Authority from substituting it for another Notice at any time, should the circumstances change. Any of the following may substitute a Deferred Action Notice:-

Housing Act 1985, section 189
Housing Act 1985, section 190
Housing Act 1985, section 26
Housing Act 1985, section 265
Housing Act 1985, section 289

HOUSES IN MULTIPLE OCCUPATION (HMO)

HMOs are categorised in many different types and what the legislation requires can vary according to the type and particular risk. Some are more at risk to fire, for example. Please contact the Private Sector Housing Service for clarification and the interpretation of a HMO.

In addition to being fit for human habitation HMOs are required to be fit for the number of occupants.

The requirements are:

- There are satisfactory facilities for the storage, preparation and cooking food including an adequate number of sinks with a satisfactory supply of hot and cold water.
- There are adequate means of escape from fire.
- It has an adequate number of suitably located water closets for the exclusive use of the occupants.
- It has for the exclusive use of the occupants an adequate number of suitably located fixed baths or showers and wash-hand basins each of which is provided with a satisfactory supply of hot and cold water.
- There are adequate other fire safety precautions.

Failure to meet one or more of these requirements, having regard to the number of occupants, would render the HMO unfit for the number of occupants.

Under the Housing Act 1985, section 365 an Authority has powers to require houses in multiple occupation to be provided with satisfactory means of escape from fire and other adequate fire safety precautions. The Housing (Fire Safety in Houses in Multiple Occupation) Order 1997 details the powers available and which properties Local Authorities have a duty to inspect. In relation to certain, higher risk HMOs Council's are required to consult with the Fire Brigade for their guidance on appropriate fire safety measures. The fitness standard (Housing Act 1985, section 604) applies to all HMOs, with additional powers being available in Part XI of the Housing Act 1985. These include the following:-

Section 352 – Power to make a House in Multiple Occupation fit for the number of occupants

Where a House in Multiple Occupation fails to meet standards with respect to sufficient amenities for the number of occupants and fire safety, the Council may take Action to secure improvements. Where the property has 3 or more storeys (including the ground floor) and is occupied by more than four households, the Council has a duty to ensure that suitable fire safety arrangements are in place. If a Notice is served it will require certain works to be carried out within specified time limits. If the Notice is not complied with, the Council can carry out the works in default and recharge the person responsible or upon whom the Notice was served. Not complying with a Notice is a criminal offence and the Council has the power to prosecute the person who received the Notice if he or she` has wilfully failed to comply with it and/or carry out the works in default.

The Notice becomes operative in 21 days. In the event of an appeal, the Notice becomes operative following the court's determination of the appeal.

Section 352A – Recovery of expenses

Where the Council serves a Notice under section 352 of the Housing Act 1985, it is entitled to recover reasonable administrative expenses incurred in serving the Notice. The maximum the Council can charge is £300 for each Notice. The actual charge is based on officer time in dealing with the matter, determining whether to serve the Notice, identifying the works to be specified in the Notice and serving the Notice.

Section 354 – Power to limit the number of occupants in a house

As an alternative to serving a Notice under section 352 requiring works to make a property fit for the number of occupants, the Council can take steps to limit the number of people living in the property. It can do this by issuing a direction that specifies the maximum number of people that may live in the property in its existing condition. A person who does not comply with a direction (i.e. allows more people than specified to live in the property) is guilty of a criminal offence if he is found to have knowingly not complied and could face prosecution.

Section 358 – Service of Overcrowding Notice

When a house in multiple occupation is occupied by or likely to be occupied by an excessive number of people, having regard to the rooms available, the Council may serve an overcrowding Notice. Before doing so the Council must give at least 7 days written notice to the occupiers and any person known to be managing the property. The overcrowding notice will state the maximum number permitted to reside at the property.

Unless there is an appeal the Notice becomes operative 21 days from service. In the event of an appeal, the Notice becomes operative following the court's determination of the appeal. Non-compliance with an overcrowding notice is a criminal offence and could lead to prosecution.

Whilst an overcrowding notice is in force the Council may require, in writing, information regarding the number of occupants. To fail to give this information or to give false information is a summary offence, which could lead to prosecution and a fine.

Section 368 – Power to prevent part of a house being used

If the means of escape in a house in multiple occupation would be adequate if part of the house was not used, the Council can require that part of the house not to be used. It can do this in one of two ways. It can either accept an undertaking from the person managing the house or it can make a Closing Order. Knowingly breaching the undertaking or Closing Order is a criminal offence.

Section 372 – Power to require works to be carried out to remedy neglect of proper management

This section allows the Council to serve a Notice in respect of a house in multiple occupation when there has been a breach of the 1990 HMO Management Regulations, under section 369 of the 1985 Housing Act. These Regulations guide landlords to manage and maintain houses in multiple occupation to a proper standard. The Notice will require certain works to be carried out within specified time limits. If the Notice is not complied with, the Council can carry out the work in default and recharge the costs to the person upon whom the Notice was served.

Not complying with a Notice is a criminal offence and could lead to prosecution if the person who received the Notice has wilfully failed to comply with it.

Section 379 – Making a Control Order

Control orders apply only to houses in multiple occupation and can be made where the living conditions in the property are such that the health, safety and welfare of the tenants require protection. The making of a control order amounts to a virtual take over of the property by the Council. The order allows the Council to take possession of the property and do anything (apart from sell the property) that needs to be done to bring the house up to a satisfactory standard.

HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

Sections 81 & 84 – Deferred Action Notices

A Deferred Action Notice can be served on an unfit property if it is considered inappropriate to issue a Repair Notice and it is thought works are not required at that stage. Such a Notice states that the property is unfit for human habitation but it does not require any work to be carried out. The Council can replace the Notice at any time but it must be reviewed within two years and has the power to serve a further Deferred Action Notice after that time.

Section 87 – Power to Charge for Enforcement Action

When the Council serves Notices under any of sections 189, 190, 264 and 265 of the Housing Act 1985 or sections 81 and 84 of the Housing Grants, Construction and Regeneration Act 1996, it is entitled to recover reasonable administrative expenses incurred in serving the Notice. The maximum the Council can charge under Section 87 is £300. The actual charge is based on officer hours in dealing with the matter and in particular, determining whether to serve the Notice, identifying the works to be specified in the Notice and serving the Notice.

THE HOUSING (FITNESS ENFORCEMENT PROCEDURES) ORDER 1996

Article 3 – ‘Minded To’ Notices and Right to make representations

If the Council considers enforcement may be appropriate, it must first make its intentions known to the person or persons thought to be responsible. In most cases before issuing an Enforcement Notice under the Housing Act 1985 or the Construction and Regeneration Act 1996 the Council must issue what is referred to as a ‘Minded To’ Notice. This Notice advises the appropriate person of the action that the Council is considering taking and also advises them of the work that needs doing to bring the property up to a certain standard. The person is then entitled to make representations to the Council in respect of the proposed actions. If the Council can agree with the person a timetable for doing the work, the Council will not usually serve the Minded To Notice unless the work is not progressed as agreed.

The Council may issue Enforcement Notices without first issuing their intentions in cases where there is an emergency and where there is a significant immediate risk.

ENVIRONMENTAL PROTECTION ACT 1990

Section 80 – Statutory Nuisances

As far as the legislation enforced by the Private Sector Housing Service is concerned, a statutory nuisance is any house in such a state as to be prejudicial to health or a nuisance. Prejudicial to health is defined as injurious or likely to cause injury or is a serious health risk. This could include properties that are excessively damp or have other defects which could have an affect on the occupants health.

A nuisance is taken to be anything that interferes with the use and enjoyment of a neighbouring property or which materially affects the comfort and quality of life of the public at large. Examples of nuisances include a hole in the roof of one property allowing rain to penetrate through and affect the neighbouring property.

Once the Council is satisfied that a statutory nuisance exists or is likely to occur, it is under a duty to take action to deal with it. This means that Private Sector Housing Officers must serve a Notice requiring the abatement of the statutory nuisance within certain time limits or preventing the occurrence of a statutory nuisance. In the case where a house is let, this is generally served on the landlord and/or management agent of the property. If such a Notice is served and not complied with, the Council has the power to carry out the necessary work in default and recharge the person upon whom the Notice was served. Not complying with a Notice is a criminal offence and the Council is able to prosecute the person who received the Notice if he or she has no reasonable excuse for not complying with it.

Section 82 – Action by persons aggrieved by a Statutory Nuisance

If after investigating a nuisance complaint this Department has been unable to substantiate the existence of a statutory nuisance it will be unable to take any further action. However, we do advise clients that it may be possible for them to take their own action in the Magistrates Court under Section 82 of the Environmental Protection Act, 1990. The process does not require a solicitor and need not be expensive. This council will give advice in a leaflet outlining how you can go about this.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Section 16 – Requisition for Information

If the Private Sector Housing Team intend to take enforcement action with regard to a property it is important that the team have all of the information required. To obtain this we will serve a requisition for information on the occupier and/or any person who has a legal interest in the property, or to the person who directly or indirectly receives rent, or is authorised to manage or acts as an agent for letting the property.

We will always indicate the Act and section of the Act that we are proposing to enforce. Generally speaking a Requisition for Information is served at an early stage to ensure that we are corresponding with the correct person or agent, but where the Council may have to take urgent enforcement action, it may be served at the same time as the formal Notice.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACTS 1982

Section 29 – Power to board up empty/derelict property

The prevalence of empty properties can be a target for vandalism, criminal damage and anti-social behaviour. If the owner fails to co-operate in securing the property the Council can carry out this work in default and recharge the owner for this cost.

The Council may carry out the works without serving a Notice.

BUILDING ACT 1984

Section 59 – Defective Drainage to Existing Buildings

Works required under this Act are usually enforced by the Council's Environmental Services, but officers from the Private Sector Housing Service may also use these powers in certain circumstances where it is more appropriate than requiring works under other Acts.

Notice may be served on the owners or occupiers of one or more premises draining into a private drainage system if one of the following apply:-

- satisfactory provision for drainage has not been and ought to be made
- drainage is insufficient or in such a condition to be prejudicial to health or a nuisance.

The notice can require a person to execute works on any of the following:-

- cesspool
- private sewer
- drain
- soil pipe
- rainwater pipe
- spout
- sink or other necessary appliance

- rainwater pipe being used for foul waste
- soil pipes from water closets not properly ventilated
- surface water pipes acting as vents to foul drains or sewers
- private drain or sewer communicating with a public sewer, so defective as to admit subsoil water

Unless there is an appeal the notice will become operative 21 days from service. If the person(s) served do not comply with the notice in the time permitted the Council may themselves carry out the works in default.

It is a criminal offence to fail to comply with such a notice.

APPEAL PROVISION

The majority of Notices that are served by the team are subject to appeal provisions. At the time of service, all Notices are accompanied with notes explaining the rights of appeal. These notes list the grounds of appeal and the time limit in which to lodge an appeal. The Notices will also indicate to which Court (Magistrates Court or County Court) an appeal should be directed. This can vary according to the type of Notice served.

The usual period for appeal is within 21 days from the service of the Notice, however, it is advised that all persons served with a notice should read the document fully and seek independent legal advice. Notices with a 21 day appeal provision become operative, if no appeal is brought, on the expiration of 21 days from the service of the Notice. Where an appeal is made the Notice does not normally become operative until after the court decision has been made.

If an appeal is lodged following receipt of a Notice under section 80 of the Environmental Protection Act 1990 requiring emergency or urgent works, the works may still be required before the appeal is heard.

ENFORCEMENT

The actions available to the Private Sector Housing Service to improve the standards of private sector housing are broadly divided into two categories:

- Informal action
- Formal action

The sanctions available (but not limited to), should people not comply with legislative requirements, include:-

- Work in default
- Prosecution

The Private Sector Housing Team are authorised to operate the service according to this policy and prepare enforcement work on behalf of the Council. Authorisation to approve Enforcement Action is delegated by the Council to the Head of Housing.

ENFORCEMENT ACTION

Informal Action

Informal action will include verbal advice given by Officers, advisory letters and minded to Notices.

The Private Sector Housing Service is committed to offering help and advice. We will explain the reasons for the Council's involvement and what should be done to improve the particular housing conditions.

It should be noted that it is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken straight away. An example of this is the service of a Notice under section 80 of the Environmental Protection Act 1990 where there is a statutory nuisance.

Formal Action

Formal action involves the service of Enforcement Notices. Most Notices served by the Private Sector Housing Team require the recipient of the Notice to commence and complete specified works within specified time limits. All Notices are accompanied by notes that explain the effect of the Notice and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the Notice and the reason for the service of the Notice.

SANCTIONS

If the recipient of a Notice does not comply with the Notice, the Council has to determine intentionally on the part of the person responsible and has various sanctions it can impose. Depending on the type of Notice served, non compliance can be:

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

Works in Default

Councils have the power to carry out works in cases of non-compliance. If the recipient of the Notice does not do the work required by the Notice, the Council may employ a contractor

to enter the property and carry out the work itself. The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done. It should be noted that carrying out work in default does not exclude the Council from either issuing a formal caution or prosecuting the offender. The Council is entitled to ensure that the work is carried out and to consider if it is appropriate to take further action.

There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of Notice that has been served:-

Sundry debtor method

Using this method the Council will send the appropriate person an invoice requesting payment. If this is not paid within one month, a reminder invoice is sent requesting payment immediately. If the invoice is not paid within two weeks of the reminder being sent, the matter, depending on the size of the debt, will be referred to the Council's Legal Services Section for possible County Court action. If matters are pursued by way of a civil claim through the County Court the Council will seek a Judgement Order in respect of the whole of the debt together with further claims for interest and costs. Once a Judgement Order is secured, yet remains outstanding, enforcement proceedings will follow. Enforcement proceedings include the following:-

Charge on the property

For most official action Notices a charge is placed on the property in question at the time of service. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a Local Authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale. These are known as fist charges and debts to the Council are repaid before any other.

Sequestrating rents

The Council is entitled to serve a Notice on the appropriate person to reclaim the costs of the work in default. In some cases, if this Notice is not complied with (i.e. the costs are not paid) the Council can then serve a Notice on the tenant requiring him to pay the rent direct to the Council until such time as the costs are recovered.

Forcing sale of the property

The ultimate method by which the Council can reclaim its costs is to bring about the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default and less the amount incurred by the Council in selling the property.

Prosecution

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

6.0 Procedure

6.1 When we will take Enforcement Action

Notices are served as a last resort when there is no alternative or means to resolve the complaint. There are legitimate instances when the Private Sector Housing Team must take formal action because the legislation requires them to do so.

On other occasions, officers are required to take informal action first, by serving Minded To Notices. Each case is looked at individually and although this list is not exhaustive, the following factors are examples of what must be taken into account:

- The effects of the situation on the health and safety of those affected
- The intentions of both the landlord and the tenant in respect of the letting of the property
- Any previous complaints about the owner of the property or his agent
- The future life of the property
- The willingness of the owner to put right any problems without the need for formal enforcement action.

Where the Private Sector Housing Team are required to serve certain formal Notices under the Housing Act 1985, the Council may charge the recipient of the Notice in order to recover reasonable administrative expenses incurred in serving the Notice.

In some cases, the Council is required to consult with other bodies when taking enforcement action. An example of this is where we take action under section 352 of the Housing Act 1985 to improve fire safety in a house in multiple occupation. We are required by law to consult with the Fire Authority.

WHEN WE WILL IMPOSE SANCTIONS

In all cases where an offence is committed, consideration will be given as to whether a sanction should be imposed and if so, which one. In some cases it may be appropriate to impose two sanctions for example, carrying out work in default and also prosecuting the offender. In all cases meriting further action the person responsible is called in for a formal interview in the presence of a Council legal representative.

Work in Default

When determining if work in default is appropriate, officers will consider the following, this is not an exhaustive list and other factors may be taken into account:

- The reason for non compliance to the original Notice,
- The effects of not carrying out the work on the health and safety of the occupant of the property concerned
- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place.

Legal Action

The decision to take legal action is one that is not taken lightly. Officers recognise that their decision is significant and could have far reaching consequences upon the alleged offender and others. Each case is unique and must be considered on its own facts. However, there are general principles that apply to the way in which Officers decide whether an action should be applied and if so which one.

There are two overarching tests used by this Service in determining whether to impose a sanction. These are the evidential test and the public interest test.

The Evidential Test

The Private Sector Housing Team must be satisfied that there is enough evidence to provide a realistic prospect of conviction. This is an objective test and means that a court is more likely than not to convict the offender of the charge alleged.

In deciding whether there is a realistic prospect of conviction, consideration is given to matters such as:

- Is the evidence admissible in court? There are certain legal rules that might mean that evidence that seems relevant might not be used at a trial
- Is the evidence reliable? Officers have to consider whether there is evidence that may detract or support any admission by the offender. Equally, Officers have to consider the witnesses they may use and whether there are concerns about their accuracy or credibility.

The Public Interest Test

If the evidential requirements are met, Officers must then consider whether the public interest requires a prosecution. It is not the case that Officers will prosecute simply because an offence has been committed. There should generally be a public interest in bringing such an offence to Court.

The following are examples of factors taken into account when determining public interest:

- The seriousness of the offence. In housing terms, this will mean Officers looking at the effect of not complying with a Notice for example
- Whether there was violent or intimidating behaviour on the part of anyone involved during the time of committing the offence
- The vulnerability of the victim of the offence. This is a particularly important consideration when harassment or unlawful eviction has also occurred and the victims are elderly, suffering ill health or disability or it has affected young children
- Whether the offence was motivated by discrimination. Consideration as to the nature of the sanction imposed will be determined by whether the offender was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation
- The history of the offender. In particular, Officers will have regard to whether Notices have been served in the past, the response to those Notices and any previous housing based convictions
- The likely penalty. Consideration will be given to whether the offence is such that it would only attract a nominal penalty from the Courts
- Reason for the offence occurring. Although there may be, on the face of it, a breach of the law, there may be a statutory defence available in housing offences. For example, failure to comply with a Notice may only be an offence if the person intentionally failed to comply with it. Other factors will also be considered. For example, if the offence results from genuine mistake or misunderstanding these may be factors against prosecution but would be balanced against the seriousness of the offence.

The Council must satisfy itself that taking the case to court is the correct course of action, this will be done by considering the points above.

SERVICE COMPLAINTS

How to complain if you are unhappy with our service

If you are dissatisfied with the service you have received, please let us know. We are committed to providing good quality services and we would welcome your suggestions and comments about how you think we can improve the service we provide. You can write to the Council, all comments will be considered and we will always reply in writing. If necessary we will also contact you by telephone. You can also use the Council's Corporate Complaints System if you have any specific grievance.

What we will do

Wherever possible we will attempt to resolve your complaint informally through the officer dealing with the case in consultation with the Principal Housing Strategy Officer, If we cannot do this, you will be informed about the Council's Complaints System. We will keep you regularly updated of progress until your complaint is resolved. Alternatively, you can discuss your complaint with your local Ward Councillor, or Member of Parliament.

The Local Government Ombudsman

If you think that you have been unfairly treated by us, you can ask the Local Government Ombudsman to investigate.

7.2 How to contact us:

We can be contacted in writing or by calling in person

Wear Valley District Council
Private Sector Housing Team
Civic Centre
Crook
County Durham
DL15 9ES

By telephone 01388 765555

E-mail r.roddam@wearvalley.gov.uk

You can find some useful information about this service and other council services on our website www.wearvalley.gov.uk

8.0 CONFIDENTIALITY.

The Council will at all times strive to maintain the confidentiality of people using our service and adhere to the Data Protection Act.

9.0 MONITORING THE POLICY

It is essential that this policy is followed by the officers of this service. Random checks will be made by the Principal Housing Strategy Officer to ensure officers follow a consistent approach to our work and adhere to the direction of this policy. Any alterations made to this policy will be approved by the Council's elected members.