

Runnymede
BOROUGH COUNCIL



Housing and Community Services

Private Sector Housing Enforcement Policy

Jan 2010

1. Background

A clear Enforcement Policy which is monitored, regularly reviewed and updated is required to ensure that all those who work and live in Runnymede have a clear understanding of the Private Sector Housing section's enforcement standards.

2. Introduction

This Enforcement Policy forms part of the Councils Private Sector Renewal Strategy. The aim of this policy is to set out how the councils' Private Sector Housing Team deal with hazards found in private sector dwellings in the Borough and how it uses its enforcement duties and powers.

The Private Sector Housing Team is part of the Housing and Community Services Department of the Runnymede Borough Council. The aim of the teams work is to ensure the standard of private sector housing is safe and suitable for the occupants. One method by which the Private Sector Housing Team achieves the aims of the strategy is by enforcement. Enforcement action can be taken against landlords and owner-occupiers alike.

The aim of this enforcement policy is to ensure that people who own and rent property within the borough of Runnymede are aware of what they can expect from officers of the Private Sector Housing Section. The policy is designed to ensure fair, consistent, and transparent delivery of enforcement activity from the Private Sector Housing Team.

The Private Sector Housing Section raises housing standards by responding both reactively and proactively.

In the case of reactive enforcement work, the section responds to:

- Complaints from private sector tenants who contact the Council complaining about deficiencies found in the properties they live in;
- Complaints about private sector properties that are causing problems for neighbouring occupiers;
- Requests for service from private sector landlords;
- Requests for service from owner occupiers.

Proactively the private sector housing team:

- Identifies and inspects houses in multiple occupations (HMO's) by carrying out surveys of the district and prioritising inspections by focusing on high risk HMO's.
- Operates a compulsory HMO Licensing Scheme for High Risk HMO's.
- Operates an Accreditation scheme applicable to rented accommodation let to students.

3. Principles of Good Enforcement

Runnymede Borough Council is committed to the principles of the Government's Enforcement Concordat, which provides the basis for fair, practical and consistent enforcement. It is based on the principles that anyone subject to enforcement regulation should receive clear explanation of what they need to do to comply and have an opportunity to resolve difficulties before formal enforcement action is taken. In forming this policy due consideration has been paid to the Department for Business Enterprise & Regulatory Reform (BERR) Statutory Code of Practice for Regulators published 17 December 2007. (See Appendix A)

4. Approach to enforcement action

There are two types of enforcement work the Private Sector Housing Team engage in: Formal and Informal.

4.1 Informal Action

Informal action usually involves officers undertaking one or more of the following actions:

- No action where complaints or allegations of breaches in housing legislation are unsubstantiated or formal action is inappropriate in the circumstances;
- Verbal advice;
- Verbal request for action;
- Written request for action;
- Written warning of formal action if faults are not corrected.

Circumstances in which informal action is likely to be appropriate include situations where:

- The landlord is willing to undertake the required remedial action;
- The act or omission is not serious enough to warrant formal action;
- The individual or company's past history suggests informal action will achieve compliance;
- The Officers confidence in the management of the property or premises is high;
- Standards are generally good suggesting a high level of awareness of statutory responsibilities; and
- The consequences of non-compliance with standards are acceptable e.g. minor matters, or the time period allowed to seek compliance does not present a significant risk to public health.

A re-visit may be carried out where informal action has been agreed to confirm that identified faults have been corrected.

4.2 Formal Action

The use of formal enforcement action will at all times be consistent with the principles set out in the Enforcement Concordat. Formal action usually consists of one or more of the following:

- Service of appropriate statutory notices;
- Undertaking emergency remedial works;
- Undertaking works in default of a statutory notice;
- Issuing formal (simple) cautions;
- Prosecution.

In coming to a decision Officers will in every case have regard to:

- The seriousness of the hazard;
- Whether the Council has a duty or a discretionary power to take action;
- The individual's or company's past history in terms of compliance;
- The Officers confidence in the management of the property or premises;
- The consequences of non-compliance in terms of risk to people, property or the environment;
- The likely effectiveness of the various enforcement options; and
- The risk to public health or the health and safety of the occupant(s).

Power to Take Action without Agreement

Where the Council considers that reasonable progress is not being made for completion of an action specified in an improvement notice, the Council may consider serving a notice before entering the premises for the purpose of taking action in relation to the hazard.

The Council will take action to recover expenses in all cases where action is required in default of a statutory notice.

Simple Caution where an offence is admitted

The use of a simple caution offers an alternative to prosecution and will be considered during any decision to prosecute. Before issuing a caution, the following conditions must be satisfied:

- There must be evidence of guilt sufficient to give a realistic prospect of conviction if the case were to be taken to prosecution
- The offender must understand the significance of the simple caution and consent to it
- The offender must admit the alleged offence by signing a simple caution form.

A simple caution is a serious matter, which will influence any future decision should the company or individual offend again. It can be referred to in any subsequent court proceedings, but this will not apply if the caution was issued more than 3 years before. Where the offer of a simple caution is refused, a prosecution will generally be pursued.

Prosecution

Consideration to prosecute for breach of any offence will be based on the Code for Crown Prosecution Guidance and in particular regard will be given to the following:

- There is sufficient and reliable evidence that an offence has been committed;
- Recklessness, obstruction or assault involved;
- There is a realistic prospect of conviction;
- There are public interest factors.
- Consideration of personal circumstances of the offender;
- The likelihood of a significant sentence;
- The need to deter;

5. Housing Legislation

This chapter lists the legislation commonly enforced by the Private Sector Housing Section and outlines the provisions of the Housing Act 2004.

It is not an exhaustive list but is the legislation that is most in use. It should also be noted that this is not a definitive interpretation of the legislation and does not provide a full statement of the law - it is simply a summary.

5.1 The Housing Act 2004

Licensing of Houses in Multiple Occupation (HMO's)

Part 2 and 3 of the Act introduces compulsory licensing for larger, higher-risk HMOs and discretionary powers to license smaller, multiple-occupied properties.

The aim of the licensing regime is to provide greater protection to the health, safety and welfare of the occupants of this type of property.

The Council will regulate the HMO Licensing scheme in accordance with the HMO Licensing policy and procedure document.

Management Orders

Part 4 of the Housing Act is concerned with a local authority's duties and powers to make management orders. There are two types of orders:

- i) Interim Management Orders (IMOs) - An IMO transfers the management of a residential property to the Council for a period of up to 12 months;
- ii) Final Management Orders (FMOs) – A FMO transfers the management of the house to the Council for the duration of the order.

The Council's policy for making Management Orders is contained within the HMO Licensing Policy Document.

The Housing Health and Safety Rating System (HHSRS)

Part 1 of the Housing Act 2004 contains the Housing Health and Safety Rating System (HHSRS). The HHSRS is a system for assessing the health and safety risks in dwellings, and is designed as a replacement for the current fitness standard. The system is a risk assessment process and is comprehensive in its coverage of key health and safety risks in dwellings.

Hazard Score and Rating

Following an inspection of a dwelling the surveyor is required to produce two pieces of information: i) Likelihood of an occurrence that could cause harm happening in the dwelling within a 12 month period; and ii) the likely harm outcome.

The combination of these two factors produces a score called a Hazard Score. The Hazard score is a numerical representation of the overall risk from a hazard which forms the basis of any enforcement action that may be taken.

The hazard rating is the band to which the hazard score falls. There are 10 hazard bands, A to J, with J being the safest and band A being the most dangerous.

Categories of Hazard

There is a relationship between the hazard bands and 2 broad categories of hazard prescribed in regulations, Category 1, and Category 2. Category 1 hazards are those rated by the HHSRS assessment in bands A-C. Category 2 hazards are those rated band D and lower.

Category 1 hazards trigger a local authority's duty to take enforcement action; Category 2 hazards can be dealt with by the authority's discretionary powers.

Post HHSRS Assessment

Statement of Reasons

Where the Council inspects a dwelling using the HHSRS and decides that the most appropriate course of action is to serve a statutory notice under the Housing Act 2004 (as detailed in 4.3) the Council will produce a statement of reasons as required by section 8 of the Act. Examples of the matters to consider when deciding the most appropriate course of action are:

- The action should be proportionate;
- Tenure;
- Multiple hazards may indicate a run down property;
- The vulnerability of the current occupants and regular visitors; and
- Whether or not the occupancy is likely to change;
- Social exclusion;
- The views of the occupants;
- The landlord's ability or willingness to undertake remedial action;
- Compliance history;
- The effect of the action on the local community;
- The potential alternative uses for the building.

Enforcement Options

Hazard Awareness Notices

Hazard awareness notices may be a reasonable response to a remote or minor hazard (category 2), although can be used (where appropriate) to address a category 1 hazard.

There is no provision for an appeal against a hazard awareness notice and there is no requirement to register these notices as a local land charge.

Improvement Notice

An improvement notice served under section 11 or 12 is a possible response to a Category 1 or Category 2 Hazard. Under section 11, action must as a minimum remove the Category 1 hazard.

An improvement notice will normally become operative 21 days after service of notice; however the Council cannot require remedial works to start within 28 days. As more than one hazard can be dealt with in the same notice, the notice can specify different deadlines for completion of various actions required, allowing less time to deal with serious hazards and a longer time for the less serious hazards.

An improvement notice will be revoked when it is complied with. For this reason it may be more appropriate in certain situations to deal with hazards by serving separate notices so that they do not remain the subject of any outstanding action.

Prohibition Order

A prohibition order under section 20 or 21 of the Act is a possible response to a category 1 or a category 2 hazard. A prohibition order may prohibit the use of part or all of the premises for some or all purposes or occupation by particular numbers or descriptions of people.

Examples of situations where the Council may consider serving a prohibition order include:

- Where conditions present a serious threat to the health and safety of the occupants and remedial action is considered unreasonable or impractical;
- To specify the maximum number of persons that should occupy the dwelling where it is too small for the actual household in occupation;
- To specify the maximum number of persons who should occupy the dwelling where there are insufficient facilities for the numbers in occupation;
- To prohibit the use of the dwelling by a specified group (until such time as improvements are carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others.

Suspended Improvement Notice or Prohibition Order

The Council may suspend the action specified in an improvement notice or prohibition order. The notice to suspend may specify an event that triggers action, such as a change of occupancy.

Where appropriate the Council will consider the views of the occupant(s) when deciding to suspend action.

The Council will review suspended notices and orders not later than 12 months after the notice/ order was served.

Discretionary Powers

Where the Council deems appropriate, action may be taken to deal with a category 2 hazard. A statement of reasons will accompany all discretionary statutory notices to ensure a transparent approach to enforcement.

At the current time there is no local statistical evidence to base our discretionary enforcement policy on, so each case will be judged on its own merits. This will be reviewed periodically.

Emergency Measures

The Council has the discretion to take emergency enforcement action against hazards which present an imminent risk of serious harm to occupiers. (Category 1 hazards only).

Emergency action can be taken on premises that are not the subject of an interim or final management order.

Emergency Remedial Action

The remedial action taken will include whatever remedial action the Council considers necessary to remove an imminent risk of harm.

The Council will serve notice within 7 days of taking emergency remedial action.

Emergency Prohibition Order

The Council has the power to enter a property at any time to make a prohibition order, to prohibit the use of all or any part of the premises. The order has the effect of preventing occupation of the premises with immediate effect. An order will be served on the day that it is made.

It is for the Council to consider whether subsequent action by the owner gives grounds to revoke or vary the order.

Power of Access

Section 239 of the 2004 Act gives the Council power of entry to properties in pursuance of the duties under parts 1 to 4 and part 7 of the Act when certain conditions are met. Officers of the Council will have written authorisation when exercising power of access which sets out the purpose for which entry is authorised and will give at least 24 hours to the owner or occupier of the premises that they intend to enter.

Section 240 enables a Justice of Peace to issue a warrant for admission to premises. This includes power of entry by force if necessary. This power will only be exercised when entry under section 239 has been refused; or the property is empty and immediate access is necessary; or prior warning is likely to negate the purpose of access.

5.2 Other Legislation:

The following is a précis of other relevant private sector housing enforcement provisions:

Housing Act 1985

Many of the enforcement provisions contained within the Housing Act 1985 have been repealed and replaced by the provisions of the Housing Act 2004. The following remain:

- **Power to make Demolition Order – Section 265**
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.
- **Declaration of clearance area - Section 289**
A clearance area is an area that is to be cleared of all buildings. The Council may declare an area to be a clearance area if the majority of 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.

Management of Houses in Multiple Occupation (England) Regulations 2006.

Management regulations under section 234 of the Act impose duties on landlords and managers of HMOs (whether or not subject to licensing). Although there are no notice serving powers under section 234, the Council can prosecute landlords for breach of the regulations. In considering such action, the Council will in addition consider taking action in relation to such facilities by exercising their powers under Part 1 of the Act.

Environmental Protection Act 1990, Section 80 – Statutory nuisances

Section 79 of this Act lists what are statutory nuisances. As far as the legislation enforced by the Private Sector Housing Section 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 to 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. Where a statutory nuisance exists or is likely to occur, a notice will be served by the Private Sector Housing Team.

A power of entry exists for authorised officers to enter any premises, with 24 notices given to the occupier. Where a property is empty and immediate access is necessary; or prior warning is likely to negate the purpose of access, the Justice of Peace may by warrant authorise the Council, by way of an authorised person, to enter the premises.

Local Government (Miscellaneous Provisions) Act 1976, Section 16

Requisition for Information

When we need to obtain information about a property in respect of which we are proposing to take enforcement action we will serve a requisition for information on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

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(s), but where the Council feel that urgent enforcement action is necessary it may be served at the same time as a formal Notice.

Building Act 1984, Section 59 - dealing with defective private drainage.

This legislation gives the local authorities the duty of serving a notice in a wide variety of situations concerning existing defective private drainage. This legislation applies to virtually all pipes including cess pools, other than public sewers. The period allowed for appeal against notices under this section is 21 days. As a consequence a longer period, often 28 days will be allowed for compliance.

Compulsory Purchase Orders (CPO)

Compulsory purchase orders are often used for regeneration and urban renewal, and may be utilised by the section as a last resort to facilitate bringing an empty dwelling into use, or as an enforcement tool for dealing with seriously deficient premises. CPO will only be considered by the Council when all other appropriate modes to resolve the problem have been exhausted.

6 Policy Review

This enforcement policy will be reviewed annually.

Appendix A

Enforcement Concordat

Openness

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set out our work and, including any charges that we set. We will discuss general issues, specific compliance failures or any other problems with those experiencing problems.

Helpfulness

We believe that prevention is better than cure, and we are therefore committed to working with landlords and business, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage landlords and business to seek information on compliance matters from us.

Applications for approval or licences for dwellings will be dealt with efficiently and promptly.

Wherever possible we will ensure that our enforcement services are effectively coordinated to minimise unnecessary overlaps or time delays.

Standards

We will publish details of our standards giving:

- Levels of performance;
- Levels of service;
- Targets that they can be measured against;
- We will review our performance and publish the results.

Complaints Procedure

The Council has a well publicised complaints procedure that can be followed.

You are invited to initially write complaints to:

Private Sector Housing Manager (Enforcement)
Runnymede Borough Council
Station Road
Addlestone
Surrey
KT15 2AH

If the Private Sector Housing Manager is unable to deal with your complaint, the Councils' corporate complaints procedure will be explained to you.

Proportionality

We will only require action that is proportionate to the risks involved. We will take account of all the circumstances of the case to minimise the costs of compliance. However we must comply with the law where necessary.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgment in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities.

Procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstance of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interest of health and safety).

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the actions is taken (whenever possible this advice will be issued with the enforcement notice).

Regulators Compliance Code

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.