

1.1 Housing Enforcement Strategy and Policy

Purpose

To advise on local enforcement policy, practice and procedures in relation to Part 1 of the Housing Act 2004 (Enforcement of Housing Standards) in the Borough of Southend on Sea. (As approved by Cabinet 6th November 2006).

Other parts of the Act (HMO licensing, EDMOs and so forth) are dealt with elsewhere.

References

- Housing Act 2004 & Housing Act 2005
- Housing HHSRS (England) Regulations 2006.
- HHSRS Enforcement Guidance, ODPM, April 2006.
- HHSRS Operating Guidance, ODPM, February 2006.

ODPM Enforcement Guidance

This government published guidance replaces Circulars 17/96 and 12/92 in respect of a Council exercising its duties under Part 1 of the 2004 Act. Officers must have regard to it in deciding the appropriate enforcement action to take, if any, under Part 1.

This enforcement policy document does not substitute for reading that statutory guidance. Rather it is intended to be read alongside the statutory guidance giving local interpretation and guidance on enforcement beyond the scope of that document.

HHSRS System

The 2004 Act introduced a completely new system of enforcement structured around an evidence based risk assessment procedure, the Housing Health and Safety Rating System (HHSRS). From 6th April 2006, the Council must base its decisions on action to deal with poor housing conditions on the new HHSRS system.

The new system, and the enforcement powers relating to it, **applies to all types of residential premises**, including HMOs, purpose built blocks of flats and buildings comprising converted flats. The relevant enforcement powers are contained within Part 1 of the 2004 Act, and came into force on 6th July 2006.

Need for Action

The guidance advises that where the Council considers it appropriate to inspect premises to determine whether a Category 1 or 2 hazards exists, for example following a complaint, then the authority must arrange for an inspection.

In the context of enforcement, most inspections of residential premises by the Council will continue to be in response to complaints from occupying tenants, or sometimes neighbours. Proactive inspections by the Council might less commonly take place in respect of HMOs, empty homes, or local area action where specific targeting of resources is necessary to address specific areas or categories of poor housing.

The Council's response to complaints will be within the established initial response period (5 working days) for first contact. Complaints will continue to be allocated to staff within the Private Sector Housing Team on the general basis of existing geographical districts, except

for HMOs and empty homes which will remain the responsibility of the relevant specialist officers in the Team.

Inspections of Premises

It will be necessary for the Council to carry out as full an inspection of the premises concerned as possible, as it is important for enforcement action to be supported by all the relevant evidence. The related Regulations require an accurate record to be prepared and kept of the inspection in written or electronic form. Initially, local inspections will be undertaken using a written inspection form; the main purpose of such inspections will be to record deficiencies and those potential hazards associated with them.

The assessment of any hazards noted during an inspection, will be carried out generally later back at the office as a second stage in the overall process. Such assessments must be carried out in accordance with the Regulations, and will include a detailed consideration of risk, potential harm and associated statistical weightings using computer software to assist in the calculation of hazard scores.

All surveying staff will have received basic appropriate training in the assessment of hazards and the application of hazard scores using the new system. Queries concerning the application of the system are bound to arise as it is complex and new in nature, and these naturally can be referred to relevant line managers as necessary.

Wider Context of Enforcement

The Council has agreed generally to apply and follow the government's Enforcement Concordat which established a series of principles of good enforcement practice. The principles cover standards, openness, helpfulness, and complaints against the service, proportionality and consistency.

The Concordat has been published separately as a local guidance document, and should be read in conjunction with this practice note.

The Enforcement Concordat recognises that dialogue and contact between businesses, the local community and the Council's enforcing staff is essential to ensure that applicable legislation is understood by all, cost-effective for all parties, and is fulfilling its purpose to protect the community.

Such businesses include those engaged in private renting for profit, and social landlords (e.g. RSLs). Increasingly, the government is encouraging greater engagement of the Council with landlords and managing agents, to allow more co-operative working in partnership, to improve local housing conditions. In the future, more emphasis is likely on proactive co-operative working with such stakeholders, rather than applying enforcement alone e.g. landlord accreditation schemes.

Enforcement Policy

All local enforcement must follow the principals of the Enforcement Concordat adopted by Southend Borough Council and the applicable statutory guidance from government (ODPM – now the DCLG).

A full survey of a premise is good practice to determine all hazards. However, when urgent action is necessary and there is no cooperation from a landlord or owner, action can be taken on the evidence available providing it is sufficient for that purpose.

When the Council confirms the presence of a hazard(s), corresponding action will normally follow the procedure outlined below:

- Informal Action; written contact will be made with the person having control of the premises (the person receiving the rent), or for common parts the owner, using standard correspondence (H6), including a schedule of works outlining the

hazards/defects requiring attention. Such communication will include a requisition for information (s.16 notice) as standard practice where ownership and other personal property details have not been otherwise satisfactorily confirmed. A timescale of 14 days will normally be given both for landlords to return the requisition and outline their intended response to the need for remedial work.

- The Council will routinely pursue the formal enforcement of all Category 1 and moderate Category 2 hazards (Band D) with property owners/agents, but other minor Category 2 hazards (Bands E, F, G, H & J) may also be included on informal schedules of work at this initial stage.
- It is important to note that only hazards which are attributable to the design, construction and/or maintenance of the property can be included i.e. those work which are the responsibility of the landlord/owner. Correspondence should indicate which schedule items fall within the relevant Categories (1 or 2) so that the recipients are able to distinguish relative priority of works required. The Council can usefully include indicative timescales for completion of different hazards according to their nature, if necessary – but good general advice must be to keep schedules as simple as possible where appropriate.
- It is the current occupant(s) that is most relevant in considering the type of action to take in respect of any presented hazard. Whether or not the current occupant or anyone else likely to regularly visit the property is within the most vulnerable group is pertinent here. The Council can take account of the turnover of tenants as part of this aspect of decision. In HMOs, occupancy factors in particular may be a weightier influence in deciding an appropriate enforcement option.
- Where a landlord or his agent indicates their intention to take positive action, then due regard shall be had to this and the timescales involved. If the proposed action is considered reasonable in relation to the hazard(s) involved, then formal enforcement action can be deferred and the property will be monitored over an appropriate time-scale to ensure the completion of works (usual mentor system).
- In such instances, a further acknowledgement letter will be sent confirming the acceptance of the landlord's intention within a specified timescale, the arrangements for monitoring the work, and the potential consequences of not honouring that commitment.
- Where no positive response is received or the works fail to progress satisfactorily over time, then formal action will normally follow for all but minor Category 2 hazards, as outlined below.
- Occasionally, more **urgent works** may be needed when it may be inappropriate to follow the informal stage of the enforcement process taking account of the nature of any hazard, the vulnerability of the current occupant, and the compliance history of the relevant landlord/agent. This would include a situation presenting a very high risk to the health and safety of the occupants.
- All formal action will be taken in accordance with the schedule of **delegated authorities** agreed by Cabinet in June 2006. Specific consent of a relevant line manager will be needed before direct formal enforcement action is implemented (using standard report form) during the initial implementation period of the 2004 Act.
- Formal Action; statutory action will depend on 3 main factors:
 - The hazard score(s) determined under HHSRS.
 - Whether the Council has a duty or discretion to act in the light of that score.

- The Council’s judgement as to the most appropriate means of dealing with the hazard considering the vulnerability of the current occupants (if any) and potential occupants/visitors in relation to the specific hazard(s) identified.

Category 1 Hazards

- The 2004 Act places a duty on the Council to take action in relation to any **Category 1 hazard(s)**. Where such a duty exists the most appropriate of the following courses of action must be taken:
 - Serve an **Improvement Notice** (s.11)
 - Make a **Prohibition Order** (s.20)
 - Serve a **Hazard Awareness Notice** (s.28)

 - Take **Emergency Remedial Action** (s.40)
 - Make an **Emergency Prohibition Order** (s.43)

 - Make a **Demolition Order** (s.265)
 - Declare a **Clearance Area** (s.289)

- The Council is under a duty to give a statement of reasons for whichever enforcement option is chosen (see later for more detail).

- Typically, the severest risks arising from identified hazards are likely to trigger enforcement action. Generally, only one course of enforcement action can be taken. Emergency measures are the exception – emergency action followed by an Improvement Notice, for example, is a single course of action.

- Careful consideration must therefore be given as to the course of action to be followed on the balance of factors presented in any particular case. Further advice on each enforcement option available is given later below.

- Part of those considerations is taking due account of the views of the landlord, agent and any occupying tenant.

- For Category 1 hazards (Bands A, B and C) an **Improvement Notice** will normally be an appropriate means of mitigating a hazard where works of mitigation are practicable and the occupants are vulnerable. Occupancy factors may influence an alternative form of action.

Category 2 Hazards

- The Council has a general power to take enforcement action in relation to **Category 2 hazards**. Generally, this power will be routinely exercised for moderate hazards (where presented singly (Band D) or in combination (Bands E, F & G) in Category 2 and the service of an Improvement Notice will be the normal response to such hazards where informal action has not proved fruitful and the works are practicable and the occupants are vulnerable.

- Emergency action is not available for Category 2 hazards. Whilst Prohibition Orders can be served in respect of such hazards the need for such action is likely to be less common, and such action can only be taken with the approval of a relevant line manager.

Enforcement Options

There are 6 potential options for enforcement of identified hazards as outlined above. Not all apply to every category of hazard; the following table summarises their main application.

| Option | Cat. 1 | Cat. 2 | Notes |
|--------|-----------|-----------|-------|
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|---|-----|-----|---|
| ○ Improvement Notice | Yes | Yes | Notice requiring remedial action to mitigate one or more hazards (Category 1 must be reduced to at least Category 2) within specified time scales. Served on person having control (house/HMO), owner (flat, FMO or common part) or manager/licence holder (HMO). 28 day commencement period minimum. Applies where no imminent risk of serious harm, works practicable and vulnerable occupier present. Available locally to hazards in Bands A, B, C, and D (or E, F and G in combination). |
| ○ Hazard Awareness Notice | Yes | Yes | Not a notice actually requiring works, but formally recording one or more hazards exists. No time period applies. Notification of hazard(s) only. |
| ○ Emergency Remedial Action Notice | Yes | No | Must be an imminent risk of serious harm involving a Category 1 hazard. Limited to works immediately necessary to minimise the imminent risk. Notices to be first served on the occupier(s) or fixed to the building and within 7 days the person having control (house/HMO), owner (flat, FMO or common part) or manager/licence holder (HMO). |
| ○ Emergency Prohibition Order | Yes | No | Must be an imminent risk of serious harm involving a Category 1 hazard. Prohibits the use of all or part of the premises. With immediate effect. Copies of the order must be served within 7 days on all owners, occupiers, agents etc. Likely to be used where emergency remedial action is not practicable. |
| ○ Prohibition Order | Yes | Yes | Prohibits the use of all or part of the premises, may allow agreed use, and may specify occupancy numbers. Operative 28 days after making. |
| ○ Demolition Order | Yes | No | Likely to be extremely rare as it is a draconian power to be applied as a last resort only to detached properties where works impracticable and/or excessive cost involved. |
| ○ Clearance Area | Yes | No | Unlikely to be applied to single dwellings locally. |

Statement of Reasons

The Council has a duty to provide a statement of reasons for their decision to take a particular course of enforcement action. This statement will accompany every statutory notice or order served under Part 1 of the Act and relevant provisions of the 1985 Act.

The statement of reasons should aim to cover the following points in summarising why a particular course of statutory action has been decided upon:

- Views of the current tenant, landlord and/or managing agent.

- Estimated costs of the work required.
- Practicability
- Hazard score(s) for each relevant hazard
- Timeliness of the works in relation to the hazards identified.
- Occupancy factors and risk; affect of the current occupier(s) in relation to the most vulnerable group for each hazard.
- Anything else relevant to the decision.

Multiple Hazards

There will be properties presenting a number of different hazards. The Council can use its powers to deal with single or multiple hazards. Where these hazards fall within Category 1 then the Council has a duty to take action. For Category 2 hazards the Council may take action, and it may choose to deal with a number of Category 2 hazards together on a single notice if it decides that it is appropriate in all the circumstances to do so. For example, where a property presents a number of moderate hazards that indicate a picture of a run-down property which hasn't been managed well.

Empty Property

Whilst the HHSRS system can be used to assess hazard scores in empty dwellings, care will need to be taken in deciding on appropriate action in view of their vacancy. Policy will be set out in the Council's Empty Homes Manual on appropriate options for action for such premises, as action must take account of wider strategic objectives and available renewal tools.

Owner-Occupied Property

Part 1 of the Act also applies to hazards identified in owner-occupied property. In such cases the responsibility for mitigating or removing the hazard will rest with the owner of the property. Most property owners are likely to tackle such hazards and arrange works without the involvement or intervention of the Council. For households who are unable to arrange works themselves e.g. vulnerable households, the Council will have a role in giving advice and assistance to enable such works through other means. These other routes of help include the award of housing assistance/loans by the Council where eligible, and referral to other agencies such as the local Home Improvement Agency.

Because of this, the circumstances in which the Council might need to consider formal enforcement action to deal with an identified hazard in an owner-occupied property are likely to be infrequent. Such action would be most appropriate where there is an imminent risk of serious harm, and where emergency action needs to be considered. The Council will only consider taking formal action for Category 1 hazards where other means of dealing with the hazard are unavailable and the Council has a duty to take action. All such cases shall be referred to a delegated senior officer for approval. The most appropriate action in such cases will depend on the particular circumstances of each case, but notices requiring works will only be considered where such direct intervention is wholly justified taking account the nature of the hazard, the degree of risk to any occupier, and of course, the owner's views. The Act allows works required by notices to be carried out by mutual agreement with the owner. Consideration of that option will be expected to be routine in such cases, as the consideration for prosecution will be reserved as a last resort and only where absolutely necessary.

Improvement Notices

As the service of improvement notices are likely to be the most frequent course of action adopted to deal with hazards found in private residential properties, some of the statutory guidance is summarised here for information and assistance (see also Enforcement Guidance: Part 5 (ODPM)).

Improvement notices can be served to deal with category 1 and/or 2 hazards within the policy limits outlined above. All enforceable hazards can be put on the same notice; the notice schedule will show category 1 and 2 hazards separately to distinguish their relative importance.

It is possible to deal with different hazards by means of different statutory action if such action was appropriate.

Appeals against statutory notices/orders are dealt with in Schedules 1 & 2 of the 2004 Act.

Enforcement of notices/orders served is dealt with in Schedule 3 of the Act.

Where an improvement notice is served under section 11 of the Act (category 1) then action required must as a minimum remove the category 1 hazard i.e. total removal or mitigation to at least category 2. The Council will look 12 months ahead when considering the likely impact of any hazard; it is possible to allow mitigation of the hazard so that it is unlikely to occur again within those 12 months (rather than a permanent solution).

Works that are required must be reasonable in relation to the hazard and its mitigation or removal. Works should be to a standard that prevents building elements deteriorating i.e. not simply a poor standard to achieve a 'quick fix'. False economy is a valid consideration here. 'Patch and mend' is to be avoided according to the guidance.

An improvement notice must contain the information set out in section 13 of the Act:

- Whether served under s.11 or s.12 or both.
- The nature of the hazard
- The premises on which it exists
- The deficiency giving rise to the hazard
- The premises in relation to which remedial action is to be taken.
- The remedial action required.
- The date when the action is to start
- The period in which the action is to be completed.

An improvement notice cannot require remedial works to start within 28 days of the notice.

The notice can specify different deadlines for completion of the various actions required, as more than one hazard can be included on the same notice.

An improvement notice must be revoked when the notice has been complied with; in practice this means serving a notice of revocation, not simple abatement. It may also be revoked or varied in other circumstances – again formal notification is necessary. Where a notice deals with more than one hazard, the notice could be revoked in relation to one hazard and varied in relation to the rest, although it is suggested for practical considerations that the use of this provision concerning revocation is kept to an absolute minimum.

Suspended Improvement Notices

Improvement notices can be served with their required actions suspended. This means in effect that the notice does not begin to run, but is suspended in time until either a specified time or a specified event occurs. Normally an improvement notice becomes operative 21 days after service but with a suspended notice it becomes operative 21 days after a specified time or event. In relation to an event, that may be either an act, or an omission, by the landlord or managing agent. The notice can specify the event intended e.g. non-compliance with an undertaking not (for example) to re-let a property after vacation by a current tenant, until the works are carried out. A typical example application of the use of this power might be where the current tenant was not a member of the vulnerable group relative to the hazard(s).

In considering whether suspension of an improvement notice should be applied, the Council should consider the likely turnover of tenants. With a quick turnover, suspension may well be inappropriate.

The guidance states that in the case of category 1 hazards, an authority will need to consider very carefully whether a suspended notice was an appropriate response i.e. its use will likely be rare for category 1 hazards.

A suspended notice can require a landlord to notify the Council of a change of occupancy to ensure that the notice can be reviewed. Procedures need to be clear locally, for notification by landlords of such changes where required, and the consequences of failure by owners to do so (not an offence – but immediate enforcement possible on future hazards based upon a poor past record of such compliance).

Suspended notices must be reviewed by the Council not later than 12 months after the notice was served, and they may do so earlier. Such reviews shall include either a re-inspection of the property, or an assessment of reliable information from a current occupier. If the compliance with the notice is in any doubt then an inspection should take place to confirm the exact true position.

Emergency Measures

Emergency measures are available at the Council's discretion for category 1 hazards which present an imminent risk of serious harm to occupiers. Emergency measures do not apply to category 2 hazards and should not be attempted.

The aim of emergency action is for the Council itself to take remedial action to remove a hazard and recover reasonable expenses, or to prohibit the use of all or part of premises.

Emergency measures are of 2 types; **emergency remedial action** or **emergency prohibition order**.

Emergency Remedial Action

Emergency remedial action involves direct and positive intervention by the Council to remove or mitigate a category 1 hazard(s) at a premise. The hazard must present an imminent risk of serious harm to an occupier(s). By definition this action involves the Council itself quickly arranging for a private contractor to carry out whatever work is relevant and appropriate to deal with such a hazard(s).

As with work in default procedures, outlined elsewhere, the Council's own Financial Regulations apply in respect of the letting of a contract to a builder to undertake any necessary emergency remedial work.

But the first step in commencing the Emergency Remedial Action process following the identification of a category 1 hazard(s) to which this power might apply, is to seek specific written approval from a delegated senior officer. This step is necessary to ensure that the Council and the officer concerned are covered by confirming the particular decision to be made in respect of the circumstances found at the property involved.

The report seeking such approval must include an estimate of the relevant costs of the remedial works intended, together with a schedule of works agreed with the contractor involved. That necessitates a site meeting with the contractor to agree the type, extent, practicality and likely costs of the works. Obviously, such meetings will need to be arranged quickly as the works are by nature, urgent. A written estimate should be sought in each case; faxed estimates will be acceptable in this context to save time. Whilst Financial Regulations allow a verbal estimate to be used where costs do not exceed £500 and the works are urgent in nature, verbal estimates will only be considered when the costs are below this sum, and the works are relatively simple in nature. The relevant delegated senior officer will have discretion on this aspect of approval.

As with other formal enforcement, the intended action must be reasonable, proportionate and practical, in all the circumstances prevailing in the case. The published government Enforcement Guidance must naturally be followed. The Guidance rightly emphasises that it is a matter of judgement as to whether emergency action should be taken i.e. it is not automatic – it depends on the particular circumstances of the case demonstrating an essential need for such action. It follows that emergency action should not be taken lightly, and is likely to be infrequent.

A reasonable prelude before taking formal emergency action is attempted contact with the managing agent or landlord to report the hazard(s) and to see if any commitment can be obtained to urgent action within an appropriate time-scale that might negate the need for the Council to itself act in that way. With emergency action that will normally mean remedial works being undertaken the same day as the property inspection, or as immediately thereafter as practicable. In practice, this may well involve the inspecting officer of the Council staying at the property to see the work done and the hazard(s) dealt with. Where that doesn't happen it may well mean staying at the property and arranging for the Council's contractor to visit to assess/estimate for the work so that the time between the identification of a serious hazard presenting an imminent risk of serious harm and the work being done is minimised.

The Council does not have to serve a formal notice before it takes emergency action but it must serve an Emergency Remedial Action notice within 7 days of taking that action. So the formal notice can follow the emergency work undertaken, and should do so as closely as possible to that action being completed.

Note that a person served with an Emergency Remedial Action notice may appeal within 28 days of a formal notice, but that the appeal does not prevent or stop the action being taken if not already completed – the Council will though have to defend its action on appeal later at a Residential Property Tribunal, including defending any costs charged.

A separate part of the Council's Enforcement Manual (Section 2A.5) deals with Emergency Remedial action in more detail, and also give advice when other action might be more appropriate where dangerous structures are involved.

Emergency Prohibition Order

An Emergency Prohibition Order is an alternative form of emergency action that can be taken where a category 1 hazard(s) has been identified and where there is an imminent risk of serious harm to the occupier(s) of a premise.

The criteria and process of making such an Order broadly follows that of emergency remedial action, other than no contractor is involved so no estimate is required. Approval will be needed of a delegated senior officer.

A Prohibition Order of this kind prohibits the use of all or any part of the premises with immediate effect. Such an Emergency Order must be served on the same day it is made.

The Order must specify:

- The nature of the hazard(s) and the residential property on which it exists;
- The premises in relation to which prohibitions are imposed;
- Any remedial action which would result in the order being revoked.

Prohibition Orders are more likely to be relevant and appropriate where remedial emergency action (work) is impractical or otherwise unreasonable in all the circumstances.

Hazard Awareness Notices

The government Guidance indicates that a Hazard Awareness notice 'may be a reasonable response to a less serious hazard, where an authority wishes to draw attention to the desirability of remedial action'. It follows that where the Council is considering such action, other types of formal enforcement have been considered and found inapplicable, or inappropriate, and therefore discounted.

Relevant field staff have been given delegated authority to approve and serve such notices without senior officer agreement.

Hazard Awareness notices do not actually require any work; they are merely informative on the managing agent, manager, landlord or property owner. Such notices cannot be registered as a local land charge, nor will they be actively monitored for compliance as by nature the works to which they relate will normally be less serious. If an officer considers that works should definitely be carried out then an Improvement Notice or a suspended Improvement Notice is more appropriate. For the purposes of this Council policy a hazard falling into Band D or above (or, E, F and G presenting as a combination) will normally be dealt with by Improvement Notices, whereas separate hazards falling into Band E or below will normally be dealt with by means of a Hazard Awareness Notice.

Prohibition and Demolition Orders

The published government Guidance outlines sufficiently the application of these last 2 types of available enforcement powers that may see occasional use locally.

Both types of Order will need a full written report to the relevant delegated senior officer of the Council on the standard pro forma provided for that purpose and careful consideration of all of the relevant options and prevailing circumstances..

The Council will carry out a Neighbourhood Renewal Assessment (NRA) of the potential options for action and associated outcomes including an economic assessment to be included in the report. This will include appropriate valuations of the property concerned as necessary so that a full assessment of costs and the implications on property value to be taken into account together with the relevant statutory guidance.

Exceptions to Policy

Occasionally, circumstances might present themselves at a property where there is indicated a prima face case for following a different course of action than as directed by this enforcement policy.

In such cases, a report will be made in writing to the relevant delegated officer of the Council for an exception to policy to be considered outlining the reasons for such special consideration. Such cases are expected to be rare, and will be treated on an ad hoc basis in all the prevailing circumstances so that the most appropriate course of action can be followed, taking account of this policy and the statutory guidance relevant to enforcement.

Queries

Queries concerning the operation of the new enforcement procedures should be referred in the first instance to the Team Manager.