

POLICY SCRUTINY GROUP – 6TH FEBRUARY 2018

Report of the Head of Strategic and Private Sector Housing

ITEM 7 PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

Purpose of the Report

To enable the Group to review the proposed Private Sector Housing Enforcement Policy.

Action Requested

To consider the proposed Private Sector Housing Enforcement Policy, which is appended to the report.

Reason

To scrutinise the policy in a timely manner in accordance with the Group's work programme.

Policy Justification and Previous Decisions

The Private Sector Housing Enforcement Policy is designed to help deliver the Council's priorities identified in the Corporate Plan. The Policy seeks to ensure that all properties let as residential dwellings and those in private ownership throughout the Borough are of good quality and are well managed. The policy also provides a clear framework to deliver the Council's value of 'Every Resident Matters'.

Background

The current Private Sector Housing Enforcement Policy has been implemented since 1st April 2004. The Policy has been subject to regular reviews with technical and legislative amendments and now requires further revisions.

The new Private Sector Housing Enforcement Policy aims to ensure:

-) Good quality, healthy housing for households renting in the private sector and to prioritise action to those homes which present the greatest risks to health and safety
-) Private housing is not left empty for an unreasonable amount of time or becomes an eyesore and nuisance to neighbouring homes
-) Houses in Multiple Occupation are safe and well managed and all relevant Management Regulations are adhered to
-) All Mobile Homes sites are safe and well managed.

Consultation

The Council will be carrying out the following consultation on the proposed Private Sector Enforcement Policy before it is taken to Cabinet in May 2018 for approval:

- J On online consultation running from 12th February 2018 to 2nd March 2018, to be emailed to Landlords on the Landlords E-Newsletter contact list and promoted on the Council's website and through social media
- J A consultation event will be held on 27th February 2018. Invitees to include Lead Members for Housing and Enforcement, Housing Needs, The Bridge, Leicestershire Fire and Rescue Service, Trading Standards, Police, Development Control, Enviro-Crime, Environmental Protection, Community Safety, Electoral Registration, Residents Groups and Associations and Residents
- J Direct consultation with Legal Services, Decent and Safe Homes, Citizens Advice Bureau and Loughborough University Student Advisory Service.

Consultees will be encouraged to consider the content and the actions that the Council can take to meet the aims of the Policy.

Delivering the Private Sector Enforcement Policy

The key resources required to deliver this Policy include:

- J Housing Specialist Environmental Health Officers and Housing Standards Officers
- J A close working relationship with The Bridge, Leicestershire Fire and Rescue Service, Trading Standards, the Police, Development Control, Enviro-Crime, Environmental Protection, Community Safety, Electoral Registration, local Councillors and Residents Groups and Associations
- J A close working relationship with Legal Services. It is imperative and essential that legal action is taken promptly and in accordance with the law in problematic cases
- J Funds to resource the team and implement enforcement action where required.

Performance Monitoring

The Policy will be monitored and reviewed on an annual basis or more frequently as changes in legislation occur.

Minor changes which make no significant difference to service provision will be made to the document under delegated authority by the Head of Strategic and Private Sector Housing in consultation with the Lead Member for Housing.

Should the Policy be impacted by significant changes or financial implications, it will be taken back to Cabinet for consideration.

Background Papers: None

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Private Sector Enforcement Policy

2018



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This Policy seeks to ensure that all properties let as residential dwellings and those in private ownership throughout the Borough are of good quality and are well managed.

This Policy relates to regulatory functions of the Council's Private Sector Housing Team and sets out the way in which the Council intends to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and business; which includes:

-) Housing conditions in the private rented sector and private ownership
-) Landlord's obligations in the private rented sector
-) Houses in Multiple Occupation
-) Empty Homes
-) Mobile Home Sites

The Policy aims to ensure:

-) Good quality, healthy housing for households renting in the private sector and to prioritise action to those homes which present the greatest risks to health and safety
-) Private housing is not left empty for an unreasonable amount of time or becomes an eyesore and nuisance to neighbouring homes
-) Houses in Multiple Occupation are safe and well managed and all relevant Management Regulations are adhered to
-) All Mobile Homes sites are safe and well managed

All enquiries relating to this Policy should be directed to the Private Sector Housing Team on (01509) 634651 or email to private.housing@charnwood.gov.uk



The Private Sector Housing Team will respond to residents' enquiries about substandard, unsafe and problematic private housing and adopt an escalating approach to enforcement.

Before considering taking any action in respect of a tenanted property, the tenant(s) will normally be required to contact their landlord about the problems first to give them the opportunity to respond.

In some cases, tenants will not be required to write to or contact their landlord first, for example where there is a history of harassment, threatened eviction or poor management.

Tenants of Registered Providers (RPs) have standard procedures to follow where repairs are not carried out in a satisfactory manner and a final right of appeal to the Housing Ombudsman Service. However if the RP has not taken appropriate action then the Council can investigate and take appropriate action.

Responding to an Enquiry

Upon receipt of an enquiry, a response will be decided upon, having regard to the particular circumstances, including:

-)] The vulnerability of the occupant (e.g. elderly occupants, young children)
-)] The effect that the problem has on the occupants, neighbours or the surrounding area, as appropriate
-)] The relevant legislation, particularly whether there is a duty to investigate certain matters
-)] Any relevant history of the owners, neighbours, tenancy or landlord, particularly the owners or landlords history of carrying out repairs at a pre-formal stage or following service of notice

Pre-formal action can include:

-)] Advice based on information supplied. This may include advice as to how the complainant can secure repairs or improvements without the intervention of the Council.
-)] A pre-formal letter to the property owner, advising them of the information that we have received, allowing them a reasonable period of time (usually 28 days) to address the issues.
-)] A visit to the property to further investigate the information supplied.



- J) Further to a visit, depending on the urgency of the situation, we will wherever possible write a pre-formal letter detailing repairs and improvements that are necessary in respect of the defects present. When taking pre-formal action of any nature, officers will clearly differentiate what is legally required and what is recommended as good practice

In some circumstances, it may be appropriate to take no action, for example when the health and safety risk is sufficiently low, or when action would be disproportionate, or inappropriate in the circumstances of the case, for example when the tenant does not want action to be taken and the Council is not under a duty to do so. In such cases, service users may be directed to other sources of advice and support.

In some cases, consideration will be given to ceasing to provide a service, for example, where the tenant unreasonably refuses access to the landlord, managing agent or a contractor, to arrange or to carry out works; or where tenants have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card.

Where it is deemed appropriate to deal with issues through pre-formal action, in the first instance, we will work with the person responsible to help them comply with their regulatory requirements. We will provide clear and concise information about what they need to do to comply and provide our contact details.

Typical Legislation used in conjunction with this Enforcement Policy:

Building Act 1984
Caravan Sites and Control of Development Act 1960
Caravan Sites Act 1968
Energy Act 2013
Enterprise and Regulatory Reform Act 2013
Environmental Protection Act 1990
Housing Act 1985, 1996 and 2004
Housing and Planning Act 2016
Local Government (Miscellaneous Provisions) Act 1982
Leicestershire Act 1985
Mobile Homes Act 1983 and 2013
Prevention of Damage by Pests Act 1949
Public Health Acts 1875 – 1932, 1936, 1961, 1984



The Council has a duty to keep housing conditions under review in order to identify any action that may need to be taken under the Housing Act 2004. As such, reactive work will be balanced with proactive property inspections, which will be undertaken to ensure resources are targeted at the worst homes first, based on risk.

Part 1 of the Act contains a system for assessing housing conditions, known as the Housing Health and Safety Rating System (HHSRS), which is used in the enforcement of housing standards in all types of residential accommodation.

Where officers have reason to enter a home, they will inspect the whole dwelling (including associated paths, yards, gardens and outbuildings etc.) using HHSRS. The aim is to identify all deficiencies within the dwelling that may lead to a hazard.

The HHSRS contains two categories of possible hazards:

-) Category 1 Hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these
-) Category 2 Hazards represent a lesser danger and the Council will exercise its discretionary power to reduce these where appropriate

The HHSRS applies to all dwellings (including Houses in Multiple Occupation) and all enforcement options are available to the Council regardless of whether the premises in question are owner occupied, privately rented or belong to a Registered Provider (RP) (formerly known as Housing Associations). There are circumstances where other pieces of legislation may be more appropriate in dealing with a problem; however the principal piece of legislation is the Housing Act 2004.



The Council recognises that each case is unique and will be considered on its own merits. When deciding on the appropriate action, Officers will take into account the law, Government Guidance, Council Policies and the sufficiency and reliability of the evidence.

Enforcement Principles

The Council supports and has regard to the 5 Principles of Good Regulations as specified under Part 2 of the Legislative and Regulatory Reform Act 2006 and will exercise enforcement activities in a way which reflects these, as outlined below:

Proportionate

Any enforcement action will be proportionate to the risks posed and to the seriousness of the breach. Resolution will be sought at the lowest level of intervention as appropriate to the case, taking into account the circumstances and the response of those subject to regulation when considering what action to take.

Accountable

Enforcement activities will be open to public scrutiny, with clear and accessible policies and a fair and efficient complaints procedure. The Council will use enforcement activity to assist businesses and others in meeting their legal obligations without unnecessary expense and to support economic growth.

Consistent

Enforcement duties will be carried out in a fair, equitable and consistent manner, although absolute uniformity is not expected as individual circumstances may aggravate or mitigate actions to be taken. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case. The Council will have regard to statutory Codes of Practice and advice provided by Regulatory Delivery, central Government Departments and Agencies (such as Leicestershire Fire and Rescue, the Police, Trading Standards and the Health and Safety Executive) and relevant professional bodies.



Transparent

Advice will be clear and reliable, and help those that are being regulated to understand their legal obligations, what is expected of them, and what they can expect from the Council. Advice from officers will be stated clearly and simply and be confirmed in writing, where appropriate. Explanations of what is a legal requirement and what is good practice will be given.

Targeted

Enforcement will be primarily directed towards those activities that are likely to give rise to the greatest risks and most serious breaches of legislation, reflecting local need, and national and corporate priorities.

Power to Enter Premises

Authorised officers have the power to enter premises in order to perform the Council's statutory functions in certain circumstances. Anyone who obstructs an authorised officer from entering a premise in accordance with their powers will be committing an offence and could face prosecution for obstruction. Officers exercising their power of entry will carry identification and details of their authorisation.



Each case is unique and will be considered on its own merits. Officers will take into account the law, Government Guidance, Council Policies and the sufficiency and reliability of evidence.

Formal action will be taken in cases where:

-) a person refuses or fails to carry out works through pre-formal action
-) where there is a lack of confidence, due to a history of failure to respond to pre-formal action, or failure to manage a property in line with legal requirements
-) the risk/s to health, safety and wellbeing mean that formal action is necessary without prior pre-formal action
-) it is necessary to bring an empty home back into use when pre-formal requests to do so have been unsuccessful

Charges will be made for enforcement action in some cases, for more information see 'Charges for Enforcement Action and Expenses' (Appendix 1)

There are a number of options for formal action. The most appropriate will depend on the circumstances of the case, the relevant legislation, the risk to health and safety and tests relevant to each option. The options include:

Serving of a Statutory Notice or Order

A Statutory Notice is a Notice or Order requiring repairs or improvements within a specified timescale or requiring a specific action, for example, where a property has been prohibited from use. Failure to comply with the Notice or Order could result in works being carried out in default, a civil penalty or prosecution. This is with the exception of a Hazard Awareness Notice, which will not require remedial work, but will advise the person on whom it is served of a hazard or hazards in existence at a property.

When the Notice becomes operative it will be recorded as a Local Land Charge on the premises to which it relates, in the register of Local Land Charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. Potential purchasers of a property will normally search this register.



Emergency Action

Where there is an imminent risk of serious harm to the health or safety of occupiers or others and where it is not possible to contact the relevant person or gain their cooperation, action may be taken immediately, without Notice, to mitigate or remove the risk. Further action will then be taken to recover the full costs incurred.

Works in Default

Where the Council has legally required someone to do works but they have failed to do so within the permitted time and where legislation allows, the Council may carry out the Works in Default.

Once the Council has started works, it is an offence to obstruct Council officers or any of the contractors that have been employed to carry out the works.

The complete cost of the works and all other associated relevant costs will be recovered in accordance with the relevant statutory provisions. Until cleared, all outstanding debts will be registered as a Local Land Charge against the property and where interest can be charged, this will be added to the debt.

The Council may consider Enforced Sale Procedures with a view to recovering charges owed, where appropriate.

Carrying out Works in Default is a discretionary power and the Council reserves the right not to do so where the costs of the works is likely to be high, or there may be difficulties recovering the costs. Works may be considered to remove serious hazards only.

See Appendix 1: 'Charges for Enforcement Action and Expenses' for further information

A Formal (Simple) Caution

Considered as an alternative to prosecution for less serious offences where the person who has committed the offence has admitted doing so, is over the age of 18 and agrees to being given a Simple Caution.



Prosecution

When the Council considers that an offence has been committed, it must decide whether to prosecute. Each case will be decided upon its own merits taking into account all the evidence available.

The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider prosecution, the:

-)] Seriousness of the offence; for example, breach of a Prohibition Order would be an offence only suitable for prosecution
-)] Management history of an individual; for example where an individual has persistently breached their legal obligations

When considering prosecution, the Council must be satisfied that:

-)] There is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or individuals or company
-)] That it would be in the public interest
-)] That there is a realistic prospect of conviction, applied objectively, given the evidence available

Any decision to prosecute will initially be considered at a case conference attended by the Investigating Officers and the Private Sector Housing Manager.

In assessing the evidence, regard must be given to the Code for Crown Prosecutors and, when deciding whether there is sufficient evidence to prosecute, consideration as to whether the evidence that can be used, is reliable.

Due regard must be given to any potential defences available and the Council may decide to conduct an interview under caution, in accordance with Police and Criminal Evidence (PACE) codes of practice.



In certain circumstances, The Council may apply for a Banning Order. Housing related offences regarded as Banning Order offences include:

-) Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977
-) Any of the following offences under the Housing Act 2004;
 -) Failure to comply with an Improvement Notice (Section 30)
 -) Offences in relation to licensing of HMOs (Section 72)
 -) Allowing a HMO that is not subject to licensing to become overcrowded (Section 139)
 -) Failure to comply with management regulations in respect of HMOs (Section 234)
 -) Failure to comply with a Prohibition or Emergency Prohibition Order (Section 20 and 21)
-) An offence under the Health and Safety at Work Act etc. Act 1974 where a person contravenes Section 36 of the Gas Safety (Installation and Use) Regulations 1998
-) An offence under Section 32 of the Regulatory Reform (Fire Safety) Order 2005

When someone is convicted of such an offence, The Council may apply for a Banning Order.



Civil Penalties were introduced under the Housing and Planning Act 2016 from 6th April 2017 as an alternative to prosecution for the following offences under the Housing Act 2004:

-)] Section 30 (failure to comply with an Improvement Notice)
-)] Section 72 (offences in relation to licensing of HMOs)
-)] Section 95 (offences in relation to licensing of houses under Part 3 of the Act)
-)] Section 139 (7) (failure to comply with an overcrowding notice)
-)] Section 234 (breach of Management Regulations in respect of a HMO)

A Civil Penalty may be imposed for a breach of a Banning Order.

Where the Council considers that an offence detailed above has been committed, it must decide whether to prosecute or to issue a Civil Penalty as an alternative to prosecution.

The same criminal standard of proof is required for a civil penalty as for prosecution, to demonstrate beyond reasonable doubt that the offence has been committed. If the Council believes that it has a reasonable prospect of conviction in a particular case, it will always consider a civil penalty in the first instance.

Each case will be decided upon its own merits, taking into account all the evidence available. The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty rather than prosecuting;

-)] No evidence of previous non-compliance with appropriate legislation
-)] No previous convictions recorded
-)] Not in the Public Interest to prosecute
-)] The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
-)] Prosecution is likely to have a serious adverse effect upon an individual's well-being e.g. a landlord's physical or mental health (these factors must be balanced against the seriousness of the offence)

Determining the Level of a Civil Penalty

In accordance with Government recommendations, in order to ensure that the Civil Penalty is set at an appropriate level the, the Council will consider the following factors;

-)] **Seriousness of the offence:**



The more serious the offence, the higher the penalty should be.

) **Culpability and track record of the offender:**

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they know, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

) **Harm caused to the tenant**

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

) **Punishment of the offender for the offence**

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

) **Deterrent value to prevent the offender from repeating the offence and to prevent others from committing the offence**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the Council is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

) **Removing of any financial benefit obtained from committing the offence**



The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The Harm Caused

In determining the level of harm the Council will have regard to;

-) The person i.e. physical injury, damage to health, psychological distress
-) The community i.e. economic loss, harm to public
-) Other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm may depend on the personal characteristics and circumstances of the victim e.g. tenant.

Where no actual harm has resulted from the offence, the Council will consider the relative danger that persons have been exposed to as result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include;

-) multiple victims
-) especially serious or psychological effect on the victim
-) victim is particularly vulnerable

Culpability

In determining culpability the Council will have regard to 4 levels of culpability where the offender:

-) has the **intention** to cause harm, the highest culpability where an offence is planned
-) is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people
-) has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results
-) is **negligent in their actions**



Civil Penalty Amount

The table below sets out the interrelation between harm and culpability as a determinant of the Civil Penalty banding, which officers will use as a starting point for determining, on a case by case basis, the level of civil penalty that should be imposed:

| | Low Harm | Medium Harm | High Harm | Very High Harm |
|-----------------------|----------|-------------|-----------|----------------|
| Low Culpability | £2,000 | £3,000 | £4,000 | £5,000 |
| Medium Culpability | £3,000 | £6,000 | £8,000 | £10,000 |
| High Culpability | £4,000 | £8,000 | £12,000 | £18,000 |
| Very High Culpability | £5,000 | £10,000 | £18,000 | £27,000 |

Aggravating and Mitigating Factors

The Penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level, or decreased by £1,000 for each mitigating factor to a minimum of the bottom of the band level determined above.

Reference will be made to Magistrates Court Sentencing Council guidelines when considering relevant aggravating and mitigating factors.



Financial Means to Pay a Civil Penalty

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise. It is for the offender to disclose to the Council such data relevant to his financial position as will enable the Council to assess what s/he can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty. This will include the amount of equity that could be released from the properties owned by the offender if refinanced. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold.

Income received from civil penalties will be retained by the Council and used to further its work in relation to enforcement activities covering the private rented sector.

Right of Appeal in respect of a Civil Penalty

A person who has been issued with a Civil Penalty has a right of appeal to the First-Tier Tribunal. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty issued.

The First-Tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success



A property is classed as a House in Multiple Occupation (HMO) where:

- J An entire house or flat which is let to 3 or more tenants who form 2 or more households and who share a kitchen, bathroom or toilet.
- J A house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to 3 or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities.
- J A converted house which contains one or more flats which are not wholly self-contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by 3 or more tenants who form two or more households.
- J A building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

In order to be an HMO the property must be used as the tenants' only or main residence and it should be used solely or mainly to house tenants. Properties let to students and migrant workers will be treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

Due to the higher risks associated with HMOs, compared with single family homes, conditions, facilities and management are regulated and some HMOs are subject to licensing:

Mandatory HMO Licensing:

Under current legislation, a landlord or agent must apply to the Council for a licence for each HMO having;

- J Three or more storeys, and
- J Five or more occupiers living in two or more households, and
- J Two or more households sharing amenities (either a kitchen, living room or bathroom/toilet facilities)

Additional Licensing:

Can be used for a HMO that is not subject to mandatory licensing.

Selective Licensing:

Can be used for areas with privately rented properties, where there are issues such as poor housing conditions, low demand or high levels of anti-social behaviour

Currently other than the mandatory HMO licensing scheme, the Council has no additional or selective licence schemes operating within Charnwood.



The purpose of an HMO Licence is to keep the tenants and residents safe and make sure that the necessary requirements when renting out a property to multiple people are followed.

A person managing or controlling an HMO that should be licensed commits an offence if they fail to apply for a licence.

If a person managing or controlling an HMO approaches the Council for a licence, a pre-formal approach will be adopted so long as a valid application with the appropriate fee is subsequently duly made within 28 days.

In other circumstances, for example if the Council identifies an unlicensed property, the Council will carry out an investigation and, if appropriate, consider taking formal action for the offence of operating a licensable HMO without a licence.

Those who fail to reapply for a HMO licence with a valid application where a renewal is required, or who fail to pay the appropriate fee within 28 days, may be investigated for failing to licence a licensable property. Failure to comply with the Conditions of a HMO licence without reasonable excuse, will lead to the Council considering formal action.

The Council may refuse to issue a licence to the applicant or proposed manager. Examples of when this may occur include where the applicant or manager is deemed to not be a fit and proper person, or in circumstance where the accommodation is not capable of being operated as a licensable HMO.

Conditions listed on a licence cover the provision of amenities and property management standards and may include specific timescales for compliance. They also include the number of persons or households that are permitted to occupy a property. Formal action will be taken where there are serious contraventions of licence requirements

The HMO Management Regulations apply to all HMOs whether licensable or non-licensable. The Regulations require, amongst other things, that HMOs must be kept in a reasonable state of repair, all installations (including those for Fire Safety) are to be in good working order and the common parts (including gardens) are to be kept in a safe and tidy condition and in a reasonable state of decoration. Failure to comply with the HMO Management Regulations without reasonable excuse, can lead to formal action being taken.



A Rent Repayment Order is an Order made by the First –tier Tribunal requiring a landlord to repay a specified amount rent.

The Housing Act 2004 introduced Rent Repayment Orders to cover situations where the landlord of a licensable HMO failed to obtain a licence. Rent Repayment Orders have been extended through the Housing and Planning Act 2016 to cover a wider range of offences, as detailed below;

- J Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- J Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- J Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016
- J Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- J Illegal Eviction or Harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

Rent Repayment Orders can be granted to either the tenant or the Council. If the tenant paid their rent themselves (or a proportion) then the rent (or equivalent proportion) must be repaid to the tenant. If the rent (or a proportion) was paid through Housing Benefit or through the housing element of Universal Credit, then the rent (or equivalent proportion) must be repaid to the Council. The maximum amount of rent that can be recovered is capped at **12 months**.

A Rent Repayment Order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted. Where an application for Rent Repayment Order is made and the landlord has not been convicted of the offence for which the Rent Repayment Order application is being made, the First-Tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

The Council will consider a Rent Repayment Order after a person is the subject of a successful Civil penalty for the following offences;

- J Failure to comply with an Improvement Notice (Section 30)
- J Offences in relation to licensing of HMOs (Section 72(1))
- J Offences in relation to licensing of HMOs under part 3 of the Act (Section 95(1))
- J

In most cases the Council will subsequently make an application for a Rent Repayment Order to recover monies paid through Housing Benefit or through the housing element of Universal Credit. The Council will offer advice and guidance to assist tenants to apply for a Rent Repayment Order in cases where the tenant paid the rent themselves



A number of homes within the Borough are empty for legitimate reasons, but long term empty homes are a waste of valuable housing resource and can sometimes be a source of nuisance to those who live nearby. Although Charnwood is not unusual in terms of the number of empty homes within the Borough (compared with national and regional figures), we aim to return long terms empty homes into use to contribute to meeting the growing housing demand.

The Council will always provide help and advice to the owners of empty homes in the first instance, where this is possible i.e. where the owner of the property can be traced and engages with the Council. Advice and support will be provided on a one-to-one basis, where each case is assessed on its merits. Pre-formal advice and assistance may be given with refurbishment, sales, lettings, health and safety matters and finding tenants, although this is reliant upon the cooperation of the home owner.

The Council will identify, risk assess and prioritise long term, problematic and nuisance empty homes using the full range of pre-formal and formal action (including enforced sales and compulsory purchase) to bring them back into use.

In cases where pre-formal action is ineffective or the home owner fails to engage and work with the Council to bring the home back into use, appropriate formal action will be considered from a range of enforcement tools available, this may include the following:

Empty Dwelling Management Order

The Housing Act 2004 introduced two types of Empty Dwelling Management Order (EDMO), an interim EDMO and a final EDMO. An interim EDMO will allow the Council to take steps to secure occupation of an empty home. A final EDMO is made in succession to an interim EDMO for the purpose of securing that a home becomes and remains occupied. A final EDMO can only be made following an interim EDMO or a previous final EDMO.

The Council may consider an EDMO where an owner leaves a home empty for at least 2 years and has no intention of securing its voluntary reoccupation.

The Council will contact the owner of the home to ascertain what steps (if any) the owner is taking to bring the home back into use.



In order to consider the use of an EDMO, the Council will establish that the home is not exempt. Exempt homes include;

- Second homes
- Holiday lets
- Flats and houses normally occupied by students
- Where the owner is in prison
- Where the owner is receiving or giving care
- Where the owner is in the armed forces
- Where the relevant proprietor is temporarily residing elsewhere
- Where the property is on the market for sale or to let

If an empty home is not exempt and the Council is satisfied that there is no reasonable prospect of the home being occupied in the near future, the Council will consider making an application to the First-tier Tribunal (Property Chamber) as a potential course of action.

Compulsory Purchase Orders (CPO)

CPOs will be considered to facilitate the renovation and reoccupation of an empty home where the Council is able to make a compelling case in the interest of the public for a home to be compulsorily purchased and where other methods of returning the home to use have been tried and failed.

The Council will consider the use of Section 17 of the Housing Act 1985, which allows for homes to be acquired for residential purposes if there is a general housing need in the area and Section 226 of the Town and Country Planning Act 1990 which allows local authorities to acquire land or buildings, if such acquisition will allow improvements or redevelopment to take place that contributes to the promotion and/or improvement of economic, social or environmental wellbeing.



Along with other regulatory bodies, including the Police, Leicestershire Fire and Rescue and Trading Standards, the Private Sector Housing Team are responsible for safeguarding the interests of residents of mobile homes living on residential mobile home sites through the licensing regime under the Caravan Sites and Control of Development Act 1960 and the Mobile Homes Act 2013.

The licensing regime introduced by amendments to the Caravan Sites and Control of Development Act 1960 by the Mobile Homes Act 2013 relates to 'relevant protected sites'.

Any licensable mobile home site will be a relevant protected site unless it is exempted from being so, for example because it has planning permission or a site licence for exclusive holiday use or there are restrictions preventing it from being used on a permanent residential basis. If a holiday site has permission for residential use too, but that use is only by the owner of site (including family members) or employees working on the site (unless the employee occupies the home under an agreement to which the Mobile Homes Act 1983 applies), this does not make the site a relevant protected site.

Sites where the planning permission and or the site licence permits both use for holiday and permanent residential purposes are relevant protected sites.

Licence Conditions

The Council has powers to attach Licence Conditions to a Site Licence that are necessary or desirable to impose in the interests of people living on the site or the public at large.

Although few Licences are issued for new relevant protected sites, existing sites do from time to time change ownership resulting in applications for the transfer of a licence.

It is expected that the new owner, prior to making an application, would engage with the Council for a pre-application discussion to agree the kind of application required, as if the Licence Conditions are no longer adequate or enforceable and the Council wish to alter the Licence Conditions then a new licence application (rather than a transfer application) may be required. A transfer application can be refused and a request for a new Licence application from the applicant made if the Council feels this is necessary.

The Council does not have to wait until a new Licence is granted to change the Site Licence Conditions on an existing site, they may be reviewed at any time, for example when they are no longer appropriate or where new appropriate national Model Standards are introduced.



In formulating site licence conditions, the Council will have regard to the most recent Model Standards as specified under section 5(6) of the Caravan Sites and Control of Development Act 1960.

Enforcement

The Council will, wherever possible, achieve regulatory improvements without imposing unnecessary burdens, for example timescales, costs or resources on the site operator.

The Council will always look to work with the site operators in fair, consistent and transparent ways, taking a pre-formal approach in the first instance where appropriate. Exceptions to this will include where there is a significant risk to health or damage to property or where there is evidence of previous non-compliance.

In cases where a pre-formal approach is not effective or appropriate, the Council will intervene where it considers there has been a breach of site licence condition on a relevant protected site on the basis of a 'risk of harm'.

Compliance Notice

Section 9A of the Caravan Sites and Control of Development 1960 allows the Council to serve Compliance Notices on the site operator, where a breach of site licence condition has occurred.

The Council's decision to take action, together with the remedial works set out in the notice will be reasonable and proportionate to ensure compliance with the licence condition and will not aim to achieve a standard higher than that required by the condition.

Where possible, the Council will consult with the relevant Residents Association, where one exists, on its proposed approach and then keep them informed of progress towards compliance.

A Compliance Notice can only be used in relation to breaches of Site Licence Conditions and will;

-) Set out the condition which, in the opinion of the Council, has been breached and the details of the failure
-) Detail the steps the site operator must take to remedy the breach of the site licence condition(s)
-) Specify a timescale for completion
-) Explain the right of appeal against the notice to the First-tier Tribunal



See Appendix 1: 'Charges for Enforcement Action and Expenses' for further information on charges in respect of compliance notices.

Failure to comply with a Compliance Notice within the timescale period specified in the notice is an offence which on summary conviction carries a fine. Where the site operator is convicted of an offence the Council may carry out work in default. As a last resort, where the licence holder has been convicted on two or more previous occasions of failing to comply with a compliance, the Council may apply to the Court for revocation of the site licence.

Emergency Action

The Council may take emergency action where the site operator has failed or is failing to comply with a site licence condition and, as a result of such failure, there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land. The emergency works carried out by the Council will be those necessary to remove the imminent risk. If the works fall short of the standard required to comply with the site licence conditions, the emergency action would be followed up by compliance notice. The Council is entitled to recover its expenses incurred, see Appendix 1: 'Charges for Enforcement Action and Expenses' for further information.

Prosecution

The Council may prosecute a site operator under the Caravan Sites and Control of Development Act 1960 for:

- J Causing or permitting any land to be used as a mobile home site without a site licence (Section 12)
- J For willful obstruction of an officer carrying out their duties or from entering land by authorisation of a warrant (Section 26(5))
- J For failure to take the steps specified in a compliance notice within the period specified (Section 9B(1))
- J On the third (or more) conviction of the site operator for failure to comply with site licence conditions, to hear an application from the Council for an order to revoke the site licence in question
- J In cases against an individual instead of or as well as a body corporate when considering any offence (Section 26A)



In order to deliver the Private Sector Housing Enforcement Policy, the Council will utilise all available resources across its own services and its external partners. The Policy will be monitored and reviewed on an annual basis or more frequently as changes in legislation occur.

Resources

The key resources required to deliver this Policy include:

- J Housing Specialist Environmental Health Officers and Housing Standards Officers
- J A close working relationship with the Bridge, Leicestershire Fire and Rescue, Trading Standards, the Police, Development Control, Enviro-Crime, Environmental Protection, Community Safety, Electoral Registration, local Councillors and Residents Groups and Associations
- J A close working relationship with Legal Services. It is imperative and essential that legal action is taken promptly and in accordance with the law in problematic cases
- J Funds to resource the team and implement enforcement action where required. All civil penalties will be used to finance further enforcement of standards in the private rented sector in line with the Rent Repayment Orders and Financial Penalties (Amounts Recovered)(England) Regulations 2017.

Resources

The Policy will be monitored and reviewed on an annual basis or more frequently as changes in legislation occur.

Minor changes which make no significant difference to service provision will be made to the document under delegated authority by the Head of Strategic and Private Sector Housing in consultation with the Lead Member for Housing.

Should the Policy be impacted by significant changes or financial implications, it will be taken to Cabinet for consideration.



Charges and fees for Enforcement Action

Housing Act 2004

Under section 49 of the Housing Act 2004, the Council will make a reasonable charge for taking enforcement action in the following circumstances:

- J Serving a Hazard Awareness Notice under Section 28 or 29
- J Serving an Improvement Notice under Section 11 or 12
- J Making a Prohibition Order under Section 20 or 21
- J Taking emergency remedial action under Section 40
- J Making an Emergency Prohibition Order under Section 43 or
- J Making a Demolition Order under Section 265 of the Housing Act 1985
- J Carrying out a review under section 17 (review of Suspended Improvement Notices) or Section 26 (review of Suspended Prohibition Orders) or
- J Serving copies of the Council's decision on such a review

Where expenses are to be charged they will be made relating to all stages of enforcement as detailed in section 49 of the Housing Act 2004 and will be charged at the current hourly officer rate (with on-costs).

In exceptional circumstances, the Council may exercise its discretion and decide not to charge for the cost of enforcement. An example may be in the case of a landlord wishing to complete the necessary works at the pre-formal stage, but the tenant requesting that the works be completed after they have moved out, leading to the service of a Suspended Improvement Notice. Such decisions will be made by the Private Sector Housing Manager.

Caravan Sites and Control of Development Act 1960

Charges will be made for the serving of a Compliance Notice under section 9A of the Caravan Sites and Control of Development 1960 relating to all stages of enforcement at the current officer hourly rate (with on costs). A demand for expenses which is served in conjunction with a compliance notice will be registered as a local land charge, which will be removed once the full amount has been recovered.



Works in Default

Where the Council undertakes work in default, or exercises its power to take emergency remedial action, it will seek to recover expenses reasonably incurred in doing so, in line with relevant statutory provisions, from the relevant person i.e. the full cost of the works carried out and the full cost of the officer time taken (current officer hourly rate including on-costs).

Expenses will be recovered via a demand for payment of the charge. As from the time that the demand becomes operative, the sum recoverable will be registered as a Local Land Charge on the premises concerned until recovered and the debt will be pursued. If interest can be charged while the debt remains unpaid, this will be added to the debt.

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| <p>“Person having control”</p> | <p>The person who receives the rack rent of the premises (whether on their own account or as an agent or trustee of another person). Rack rent means rent which is not less than two thirds of the full market value of the premises. If the premises are unlet or let at less than a rack rent (e.g. at a ground rent) it is the person who would receive it if the premises were let at a rack rent.</p> <p>Therefore, a managing agent who collects rent will be the person having control as well as the landlord (more than one person can be the person having control at the same time).</p> |
| <p>Pre-formal approach</p> | <p>Any action or contact made by the Council prior to formal action</p> |
| <p>Valid application and appropriate fee</p> | <p>A fully completed application form. If an incomplete application is received, the whole application will be returned to the applicant instructing him/her to amend and return forthwith.</p> <p>Subsequent payment of the associated monetary licence fee as invoiced.</p> |

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