



DERBY CITY COUNCIL

## HOUSING AND SOCIAL INCLUSION CABINET MEMBER MEETING 6 OCTOBER 2006

Report of the Corporate Director – Resources and Housing

### Enforcement and Prosecution Policy

#### RECOMMENDATION

1. To approve the attached Enforcement and Prosecution Policy, dealing with issues under the Housing Act 2004, and existing legislation under the Housing Act 1985, the Environmental Protection Act 1990 and the Building Act 1984.

#### SUPPORTING INFORMATION

##### Housing Health and Safety Rating System

- 2.1 New legislation under the Housing Act 2004 came into force on 6 April 2006, introducing the Housing Health and Safety Rating System.
- 2.2 This rating system is designed to assess hazards and risks to safety in all accommodation, whether HMO or single household. It replaced the previous fitness standard under s604 Housing Act 1985 as the main tool for determining what works are required in a dwelling to achieve and maintain a safe and satisfactory standard. This was a reactive standard.
- 2.3 The scope of items covered under HHSRS has been designed to be much wider than under the previous 'fitness standard' and therefore more cases will be actionable and more service requests are anticipated. Because the system is now health and safety focused, it enables officers to expand and change the ways in which they have previously been able to target area renewal activities in the city. This much more proactive approach can be adopted in all housing types.

##### Enforcement legislation controlling private sector housing standards

- 2.4 The Housing Act 2004 introduced new provisions to enforce works found necessary to improve safety and conditions following an HHSRS assessment, replacing the enforcement tools of the Housing Act 1985.
- 2.5 It also placed a duty on the local authority to keep the housing conditions in their area under review, with a view to identifying action to be taken by them to address category 1 and 2 hazards under HHSRS. If, as a result of carrying out that duty, the authority considers that it would be appropriate for any residential premises in their district to be inspected with a view to determining whether any category 1 or 2 hazard exists, the authority must arrange for such an inspection to be carried out.

- 2.6 Where Category 1 hazards are found, a further duty is placed on the Council to take appropriate enforcement action. We also have powers to deal with Category 2 hazards, and are generally dealing with all Category 2 hazards in Derby. Category 1 and 2 hazards are terms within the HHSRS and relate to a rating of health and safety risks and outcomes, Category 1 being the most severe.
- 2.7 Enforcement legislation also surrounds the Licensing of Houses in Multiple Occupation, introduced by the Housing Act 2004.
- 2.8 Other legislation which may lead to enforcement action under this policy includes Demolition Orders, Slum Clearance Areas and Management Orders.
- 2.9 The attached policy shows the framework to be used in carrying out these enforcement powers.

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<b>Background papers:</b>	None
<b>List of appendices:</b>	Appendix 1 – Implications Appendix 2 – Enforcement Policy

## IMPLICATIONS

### Financial

- 1.1 All costs associated with enforcing this legislation will be met from existing budgets.
- 1.2 Where remedial works are undertaken in default, costs are recharged to the landlord, as stated in relevant legislation, with an additional amount charged to cover administrative costs. Until recovered, the recoverable expenses, together with any accrued interest on them, are noted as a charge on the premises to which they relate.

### Legal

- 2.1 The provisions relating to housing enforcement are contained within the Housing Act 2004, the Housing Act 1985, the Environmental Protection Act 1990 and the Building Act 1984.
- 2.2 The legislation states that relevant persons may appeal enforcement decisions to the Residential Property Tribunal Service – RPTS, the public body set up to deal with these matters. Details of how to appeal are shown on the notice served. The RPTS has the power to confirm, reverse, vary or revoke the Council's decision.
- 2.3 Relevant persons may also appeal to the RPTS against a demand for recovery of expenses incurred by carrying out Emergency Remedial Works.
- 2.4 Notices served under the Housing Act 1985, Building Act 1984 and Environmental Protection Act 1990 can be appealed through the Magistrates Court.

### Personnel

3. None.

### Equalities impact

4. The standard of private rented housing in the city impacts upon the quality of life both for tenants and for those living in the neighbourhood, impacting most heavily on the more vulnerable sectors of Derby's community.

### Corporate priorities

5. This proposal will contribute to the Council's priority of working to improve the quality of life in Derby's neighbourhoods.



## **DERBY CITY COUNCIL**

### **HOUSING AND ADVICE SERVICES**

#### **ENFORCEMENT AND PROSECUTION POLICY**

6 April 2006

##### **Introduction**

Our aim is to improve:

- the condition and management of private sector housing in Derby
- living conditions in private rented houses
- landlord-tenant relations in private rented housing
- neighbourhoods and increase housing choice by bringing long-term empty properties back into use
- the home environment of people living with a disability.

Enforcing regulatory control is essential in achieving these aims.

We are committed to doing enforcement work in a fair, practical and consistent way and have adopted the Enforcement Concordat published by the Cabinet Office.

This policy includes the Principles of Good Enforcement from the Concordat with additional policy statements relating to our enforcement duties. It explains how we will follow these principles and how officers of the Division will put them into practice.

The effectiveness of legislation depends crucially on compliance by those it seeks to regulate. We recognise that most people want to comply with the law and will help them to meet their legal obligations without causing unnecessary expense or hindrance. We will take firm action against those who deliberately, irresponsibly or recklessly fail to comply with the law, including prosecution if appropriate.

By acting in accordance with this policy we will:

- protect the public and the environment
- benefit citizens through better information, choice and safety
- contribute to Best Value in the delivery of our services.

## **THE POLICY**

Our policy includes these principles of good enforcement.

### **Openness**

We will provide clearly stated information and advice on the rules that we apply and will make this widely available. We will be open about how we do our work, including any charges that we set in consultation with people receiving our services. We will discuss general issues, specific compliance failures or problems with anyone having difficulties.

### **Helpfulness**

We believe that prevention is better than cure and that our role is to work with service users to advise them and help them comply. We will provide a courteous and efficient service and our staff will identify themselves by name. We will give a contact point and telephone number for further dealings with us and will encourage people to ask us for advice or information. We will deal with requests for service efficiently and promptly. We will make sure that, whenever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

### **Complaints about service**

We will provide well-publicised, effective and easily accessible complaints procedures. If we cannot resolve a dispute, we will clearly explain the right of complaint or appeal, with details of the process and the time-scales involved.

### **Proportionality**

We will minimise the costs of compliance by making sure that any action we require is in proportion to the risks. As far as the law allows, and as far as is practicable, we will consider the circumstances of each case when deciding action.

We will take particular care to work with people in such a way that they can meet their legal obligations without unnecessary expense, when practicable.

### **Consistency**

We will do our duties in a fair, equitable and consistent way. While our officers are expected to use their judgement in individual cases, we will have arrangements to promote consistency. These include effective arrangements for liaison with other Council departments and with other councils and enforcement bodies.

## **PROCEDURES**

Our enforcement procedures will include these principles.

Our officers will give advice clearly and simply. They will confirm it in writing, if requested, explaining why any remedial action is necessary and over what time-scale. The advice will clearly distinguish legal requirements from best practice recommendations.

Before we take formal enforcement action, we will offer an opportunity to discuss the circumstances and, if possible, resolve points of difference. This is unless immediate action is required, for example, in the interests of health, safety, environmental protection or to prevent evidence being destroyed.

When we consider immediate action is necessary, we will explain why this action is required at the time and we will confirm it in writing - in most cases within five working days and in all cases within ten working days.

When there are rights of appeal against legal action, we will set out clearly, in writing, advice on the appeal mechanism at the time the action is taken. Whenever possible we will issue this advice together with the enforcement notice.

### **Human rights**

Our enforcement duties will recognise the spirit of the European Convention on Human Rights and we recognise the obligations placed on this Council by the Human Rights Act 1998. Of particular relevance to our activities are:

- Convention Rights and Freedoms:
  - Article 6 – Right to a Fair Trial
  - Article 8 – Right to Respect for Private and Family Life
- First Protocol:
  - Article 1 – Protection of Property

### **Liaison**

We will, when practicable, coordinate our enforcement activity to maximise the effect of enforcement and reduce the impact of it on individuals or businesses.

When an enforcement issue involves external organisations, we will inform them in an appropriate way as soon as is practicable. We will co-ordinate any enforcement activity in these circumstances with those organisations.

### **Interests of service users**

We will organise our enforcement activity, wherever possible, to:

- take account of particular local circumstances
- minimise any adverse effects, both on those to whom the activity is directed and those it may otherwise affect.

We will monitor levels of legal compliance and examples of good practice when practicable and appropriate. We may use this information to direct enforcement activity and to scale the level of it.

### **Sharing information derived from enforcement activity**

In some circumstances we have an obligation to share information obtained as a result of enforcement activity. We will make sure that any information we share is accurate and appropriate to the purpose for which it is being sought. We will not share information when the purpose for doing so is not clear, is likely to be misused or used for commercial advantage.

## **APPLYING THE POLICY IN RELATION TO OFFENCES**

Our policy for taking enforcement action following the discovery of offences is based on this framework.

### **Enforcement options**

These general courses of action exist to deal with infringements. The level of response increases linked to the extent, seriousness and impact of non-compliance with the law in any particular case.

- No enforcement action. Verbal advice.
- Indirect action – referral to other enforcement body for action as appropriate.
- Inspection report, letter or hazard awareness notice identifying offence/advice. Advisory in nature and may contain information to help compliance.
- Written warning, notice of intent or consultation prior to taking formal statutory action, identifying offence and the consequences of continuing or repeating non-compliance.
- Statutory notice/order detailing offence, action/s required and consequences of failing to act
- Emergency remedial action – action taken by the Council to remove imminent risk of harm to health and safety.
- Works in default for failure to comply with a statutory notice/order.
- Formal Caution. May be cited in a court of law following conviction for a subsequent offence.
- Prosecution in the criminal courts.
- Injunctive proceedings in the civil courts.

Depending on the specific provisions within the legislation there may be additional legal actions.

The Council may make a charge for recovery of their expenses incurred in taking enforcement action.

## **Criteria for courses of enforcement action**

We may not take enforcement action and only give verbal advice when there is not enough evidence to establish responsibility for an offence, or there are particular reasons why further action would not be appropriate.

We will normally take indirect action when it is appropriate to refer the issue to another agency with a shared enforcement role.

We will use an inspection report, letter or hazard awareness notice to indicate and resolve minor or technical offences which could be promptly rectified and are unlikely to be repeated, or to raise awareness.

We will use written warnings, notice of intent or consultation prior to taking formal statutory action, where appropriate to the offence.

Statutory notices/orders will normally be served when lower levels of action are not appropriate or have been applied but have not resolved matters.

Emergency remedial action can be taken by the Council to remove imminent risk of harm to health and safety. We will take legal action to recover the Council's costs and expenses of carrying out such action. We may take such action together with prosecution proceedings.

Works in default may be carried out where there has been a failure to comply with a formal statutory notice/order. We will take legal action to recover the Council's costs and expenses of carrying out the works in default. We may take such action together with prosecution proceedings.

A Formal Caution may be offered as an alternative to prosecution only when all the criteria for prosecution are fulfilled and:

- there is sufficient evidence of an offender's guilt to give a realistic prospect of conviction
- the offender admits the offence
- the offender understands the significance of a caution and gives informed consent to being cautioned.

We will take prosecution or injunctive proceedings in accordance with the prosecution policy in the next section.

## **PROSECUTION POLICY**

The Council recognises that fair and effective prosecution is essential to maintaining law and order. However, the decision to prosecute is a serious step and may have severe implications for those involved – defendants, victims and witnesses.

Any decision we make on enforcement action will be impartial, objective, proportionate and fair. It will not be influenced by the race, gender, sexual orientation or religious beliefs of any offender, victim or witness. We will disregard improper or undue pressure from any source.

To make sure we are consistent and fair when deciding whether to prosecute, we will consider government guidance, in particular the Code of Practice for Crown Prosecutors issued by the Director of Public Prosecutions. We will consider other relevant sources, such as case law and the recommendations of national co-ordinating bodies.

### **Deciding whether or not to take proceedings**

Here are some of the factors which we consider, both for and against prosecution.

**Prosecution will normally only be considered when one or more of the following public interest criteria are present:**

- conviction is likely to result in a significant sentence
- there is a significant danger to health, safety or well-being of people or the environment
- there is fraudulent, reckless or negligent practice likely to cause significant economic disadvantage to people or businesses
- the offence involves, or is directed at, victims from vulnerable groups such as children, elderly or infirm people
- when violence or threat of violence against anyone is involved
- the offence relates to wilful obstruction of our officer acting in the course of their duties
- there is a previous history relevant to the offence, including previous convictions, cautions, warnings or advice
- there are grounds for believing that the offence is likely to be continued or repeated
- there is evidence that the offence was deliberate or premeditated
- the offence, although not serious itself, is widespread in the area where it was committed.

### **A prosecution is less likely to be needed if:**

- a court is likely to impose a nominal penalty
- the offence was committed as a result of a genuine mistake or misunderstanding, balanced against how serious the offence is
- any loss or harm is minor and resulted from a single incident, particularly if caused by misjudgement
- there has been undue delay between the date of the offence and the trial, unless:
  - the offence is serious
  - the delay is caused in part by the defendant
  - the discovery of the offence is recent
  - investigation of the offence has, out of necessity, been lengthy and complex
- a prosecution is likely to have a serious adverse effect on the physical or mental health of a victim, bearing in mind the seriousness of the offence
- the defendant is, or was at the time of the offence, suffering from significant mental or physical ill health, bearing in mind the seriousness of the offence or a real possibility that it may be repeated
- the defendant has put right the loss or harm caused. But defendants must not avoid prosecution solely because they have paid compensation.

### **Considering evidence**

When prosecution is being considered, we will not institute proceedings without assessing the evidence relating to each offence, including these factors...

- Whether there is sufficient evidence to prove each offence.
- Whether the evidence available is reliable and acceptable.
- Whether a defendant can prove a relevant statutory defence.
- Suitability, availability, credibility and willingness of witnesses.

## POLICY REVIEW AND MONITORING

We will monitor how this policy is applied by audits of enforcement activity in accordance with the Housing and Advice Service's quality assurance system.

We will review the policy annually together with our Business Plan.

We will review the policy intermediately to accommodate changes in legislation, legal procedures and guidance, local circumstances and the views of service users.

Please contact us if you would like to comment on this policy statement by:

- writing to Mark Menzies  
Assistant Director  
Housing and Advice Services  
Bio House  
Derwent Street  
Derby  
DE1 2ED.
- or phoning 01332 255 160

Please tell us if you need this document in large print, on audio-tape, computer disc or in Braille. Contact us on 01332 255 160

Please contact us if you need help reading this document or any part of it translating.

Textphone 01332 256 666



### Hindi

यदि आपको इस दस्तावेज़ को पढ़ने या इसके किसी भाग का अनुवाद कराने के लिए सहायता चाहिए तो हम से सम्पर्क करें ।

01332 718 808

### Punjabi

ਜੇ ਤੁਹਾਨੂੰ ਇਸ ਦਸਤਾਵੇਜ਼ ਪੜ੍ਹਨ ਲਈ ਜਾਂ ਇਸਦੇ ਕਿਸੇ ਭਾਗ ਦੇ ਅਨੁਵਾਦ ਕਰਾਨ ਲਈ ਸਹਾਇਤਾ ਦੀ ਲੋੜ ਹੈ ਤਾਂ ਸਾਡੇ ਨਾਲ ਸੰਪਰਕ ਕਰੋ ।

01332 718 808

Urdu اگر آپ کو اس دستاویز پڑھنے میں مدد یا کسی حصہ کا ترجمہ کرانے کی ضرورت ہو، تو ہم سے رابطہ کریں،  
01332 718 808