

HOUSING ENFORCEMENT POLICY

OCTOBER 2017

Housing Enforcement Policy

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Background

The Council is responsible for the statutory services related to the enforcement of standards of the Borough's housing stock and whilst this primarily relates to the rented sector it applies to all tenures including owner occupiers. This policy relates to a range of enforcement powers delegated to officers within the Council.

This document sets out in greater detail how the Housing functions work within the Corporate Enforcement Policy, Enforcement Concordat and Regulator's Code.

The document provides guidance for Housing Officers, landlords, tenants, partner organisations and their respective advocates on the principles and processes which will apply when enforcement action is to be taken regarding addressing housing standards.

1. INTRODUCTION

- 1.1 The Council carries out a wide range of housing duties and functions and is responsible for enforcing various Acts of Parliament within the Private Housing Sector.
- 1.2 The policy primarily supports the delivery of functions relating to private sector enforcement, empty properties, mobile homes, private water supplies and standards of the owner occupied sector.
- 1.3 The objectives are achieved by working both reactively and proactively but based on targeting resources on the areas of highest risk. The Council will look to provide housing advice where possible, but will need to prioritise work based on risks to those potentially affected.
- 1.4 This policy deals with the practical application of enforcement options that are used to achieve improvements to housing. It sets out what owners, landlords, managing agents and tenants of private sector properties can expect from officers but also sets out expectations of tenants, landlords and agents.
- 1.5 The Council will seek to use enforcement options available to secure improvements to owner occupied properties where referrals are made to the Council and action maybe required to reduce the risks to an acceptable level to occupants, their guests or any other party that might be affected.

- 1.6 The Council will continue to recognise that often vulnerable people live in the poorest housing conditions and that a multi-agency approach is frequently required. Officers will be mindful of Safeguarding and the Vulnerable at Risk Management processes in existence in Derbyshire.
- 1.7 The Council will make reference to the Derbyshire Hoarding Protocol and the latest version of the Derbyshire Fire Safety protocol.

2.0 PRINCIPLES OF GOOD ENFORCEMENT

- 2.1 This document provides more detail to support the [Council's Corporate Enforcement Policy](#) approved by Cabinet 2nd December 2015.
- 2.2 The Council recognises that a successful private rented sector provides a wide range of housing options for residents seeking safe and secure accommodation, and this has to balance this with concern about the conduct of a small proportion of landlords that put tenants at risk.
- 2.3 The Council recognises that there are many reasons why private tenants find it difficult to seek housing advice and in particular fear eviction if there is contact with their landlord. The Council will work with organisations that can better provide tenant support and will be looking at how the Homelessness Reduction Act 2017 can be used to support landlords and tenants alike.
- 2.4 Tenants will need to contact their landlord and/or agent about their concerns and will be advised to put their complaints in writing and the Council will seek to support tenants to have the confidence to do so. Appropriate notice will be given to the landlord when an inspection is required.
- 2.5 The Council will seek to use resources at its disposal in the most effective way and will seek to target the most hazardous premises through gathering of intelligence and partnership working. This includes seeking to inspect known portfolios of some of those landlords known to put tenants at risk. This also means that complaints and requests for service will be assessed to identify the risks involved and some service requests will not necessarily involve a visit to the property.
- 2.6 The Council recognises that using enforcement powers on owner-occupiers is a significant step and one not taken lightly. There will be instances where service of enforcement notices will be necessary to secure the protection required especially where a multi-disciplinary approach deems this action appropriate.
- 2.7 Powers now exist to protect tenancies that commenced after 1st October 2015, preventing retaliatory eviction. This is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, the landlord serves them with an eviction notice. The Council is conscious of the need to exercise its powers appropriately and proportionately and be mindful of the consequences for a tenant if informal action is taken where a category 1 hazard exists. Equally a tenant's need to prevent retaliatory eviction cannot interfere with judgements made about the appropriateness of the enforcement response.

3. ROLE OF THE COUNCIL

3.1 Responding to Complaints

Council officers will seek to respond to complaints from tenants and other residents regarding problem private properties and use its discretion to take appropriate enforcement action using the range of legislation. Officers are frequently asked to address concerns about rented properties by the Police and other organisations.

3.2 Completing inspections

Council officers have powers to inspect properties and will do so where the local authority considers that it is appropriate for an inspection to be conducted.

3.3 The Health and Safety Rating System (HHSRS)

The HHSRS is set out in the Housing Act 2004. It is a method of assessing how likely the condition of a property is to cause a hazard to health. There are two categories of possible hazards. Category 1 hazards represent a serious danger to health and the Council has a duty to take action to deal with these and will seek to do so in appropriate cases. Category 2 hazards represent a less serious danger and the Council has the power, but not a duty to take action. A range of enforcement powers is available under the Act to remove or reduce any hazards identified to an acceptable level.

3.4 Houses in Multiple Occupation (HMO's)

These are houses in which more than one family share facilities. Although many smaller HMO's are not required to be licensed they can sometimes be in poor condition and pose a danger to the welfare of their residents who are often vulnerable. The Council will prioritise these for inspection and will act on shared intelligence received from partners.

3.5 Mandatory HMO licensing

A licence is currently required in HMOs of 3 or more storeys with 5 or more persons in 2 or more households sharing the facilities. With pending licensing change that will widen the scope of HMO licensing an additional HMO and Licensing Policy will be developed, which will sit under this overarching Policy and support Landlords, agents and tenants to understand how the Council will approach HMO licensing enforcement. Licence fees are set by the Council and reviewed annually.

3.6 Selective Licensing Areas

The Council has not declared any Selective Licensing Areas. These would normally be areas of the Borough which have been identified as suffering from low demand for housing or where there are other reasons for applying selective licensing. The aim of the Selective Licensing areas is to promote good management of privately rented properties within the areas. A licence would be required for each privately rented dwelling in the areas.

3.7 Overcrowding

Overcrowding is a difficult issue for the Council to address, because, unlike other hazards, it is not feasible to ask the landlord to add another room to the property, in the same way as he might be asked to repair the roof or heating. We will work with the Council's Homelessness service where cases of overcrowding are identified. Before taking any action that might result in a household losing its home, we will carefully consider the availability of suitable alternative accommodation, the amount of disruption (to children's schooling etc) and the views of the household.

3.8 Empty Properties

The Council takes a proactive approach to reducing the number of empty properties and uses a variety of methods to encourage owners to bring them back into use. Empty properties as well as being a lost home can look unsightly, cause considerable blight to neighbourhoods, damage to adjoining properties and attract Antisocial Behaviour. The Council will seek to identify long term empty nuisance properties and will strive to take steps to bring them back into use through formal or informal action.

3.9 Giving evidence in private court cases

Officers are sometimes asked to give evidence on behalf of one of the parties in a private action. In order to prevent any implication that the officer has taken sides, officers will usually only attend in response to a witness summons.

4 **RESPONDING TO DIFFERENT TENURES**

Different tenures need to be dealt with in different ways. For example an owner occupier has control over the condition of the home. A tenant is dependent on the landlord being willing to carry out repairs. Leaseholders have their own alternative remedies under their lease.

4.1 **Owner Occupiers**

Generally the Council will only take enforcement action against owner occupiers without their consent, in the following situations;

- The problem is adversely affecting someone else, also affecting an adjoining property or where there are also tenants living at the property or where there is a danger to the health and safety of the public or visitors to the property
- In certain circumstances the Council may take enforcement action to protect the health and safety of a vulnerable or elderly owner occupier. However, this would only be done where all alternative means to resolve the problem had first been explored.
- There is a need to compulsorily purchase their property. Compulsory Purchase Orders under housing legislation are only made after all other possible alternatives have been explored. The Order must be in the public interest. It must also be proportionate, taking into account alternatives and the impact on the person(s) dispossessed. There is a right of appeal to an independent public inquiry. There is a right to compensation.
- Any other reason the Council considers appropriate.

4.2 **Private Tenants and Landlords**

The Council will generally seek to consult with tenants before taking enforcement action, and take into account any representations. This may not always be possible, especially in an emergency. Consultations with landlords will depend on the severity of the issue.

4.3 **Leaseholders**

The Council occasionally receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. Council assistance will be limited to:

- Category 1 and high Category 2 hazards where the leasehold flat is tenanted.
- Contraventions of the HMO Management Regulations (this may necessitate action being taken against the leaseholder themselves)
- Statutory nuisances/serious or emergency situations affecting either the common parts of or multiple flats in a leasehold block.
- Any other reason the Council considers appropriate.

It may be appropriate in other situations to redirect the leaseholder to:

- The Leasehold Advisory Service - 31 Worship Street, London E2CA 2DX, Telephone 020 7374 5380 <https://www.lease-advice.org/>
- a solicitor who specialises in leasehold law

5. **ENFORCEMENT OPTIONS**

- 5.1 Enforcement officers have a range of options available and will consider the most appropriate action based on the circumstances they are faced with showing regard to the Council's Enforcement Policy.
- 5.2 Where non-compliance is identified the Council will have regard to the principles of the Regulators Code of Practice and relevant guidance from First Tier Tribunal (FTT) decisions and will initially seek to proceed informally and only escalate its actions following a graduated enforcement approach unless a particular case warrants an alternative approach, each case will be considered on its own merits.

Action	General Circumstances
No Action	Sometimes formal action may not be appropriate and where appropriate the person will be directed to other sources of advice.
Informal Action and Advice	Sometimes it may be appropriate to deal with problems by informal action of advice. One example would be to notify a responsible person that action is required prior to taking formal action.
Service of Notice	<p>Sometimes service of enforcement notice(s) might be appropriate where;</p> <ul style="list-style-type: none"> • There is a risk to the health, safety and wellbeing of a household • There is a lack of confidence in the landlord/managing agent/other relevant person to respond to an informal approach; • There is a history of non-compliance with informal action; • Where a landlord has previously been made aware of a defect, but relets the property without making the necessary improvements • Standards are generally poor, with little awareness of statutory requirements; • The consequences of non-compliance with relevant legal requirements could be potentially serious to the health and safety of occupiers/members of the public; • Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions which are serious or deteriorating. <p>This is not an exhaustive list and is a list of typical situations. Every case will be treated on its own merits</p>
Powers of Entry	<ul style="list-style-type: none"> • Protect the health safety of any person or to protect the environment • without avoidable delay • Investigate an offence • Prevent the obstruction of officers • Carry out a statutory duty or power
Powers to Require Documents	<p>Currently authorised officers have the power to require:</p> <ul style="list-style-type: none"> • Documents to be provided to enable them to carry out their powers and duties under the Housing Act 2004. • Electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation. • Any person with an interest in a property to provide details about its ownership or occupation

Action	Emergency Circumstances
Emergency Remedial Action/Emergency Prohibition Order	There is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises
Works in Default for non-compliance	<ul style="list-style-type: none"> • We may choose to carry out works required by a notice if they have not been completed within the permitted time • This may be taken in conjunction with, or followed by prosecution
Formal Caution	Used for Less serious offence- warning people about their behaviour and the legal consequences should they commit further offences.
Injunctive Action	Dangerous circumstances or significant public detriment Where offenders are repeatedly found guilty of similar offences.

Action	Contravention Circumstances
Revocation of licences and approvals	<ul style="list-style-type: none"> • Manager is not a 'fit and proper person' • Breach of licensing conditions, poor standards of management
Prosecution	<ul style="list-style-type: none"> • Where an individual or company has endangered, the health, safety or wellbeing of occupiers, visitors or the public • Where an individual or company has deliberately, negligently or • Persistently breached legal obligations, especially where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it; • Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders or no reasonable progress has been made in carrying out the requirements; • Alternative means to achieve compliance (for example carrying out work in default) are considered inappropriate • A simple caution is not appropriate or the person accused has refused to accept the offer of a simple caution; • Where an individual has assaulted or obstructed an Officer in the course of their duties or provided false information. <p>This is not an exhaustive list and each case will be considered on its own merits.</p>

5.3 Powers of Entry

5.3.1 In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with the legislation under which we operate.

In general the powers will allow an officer at any reasonable time to;

- Enter a property to carry out an inspection and gather evidence
- Take someone with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Leave recording equipment for later collection
- Take samples of articles or substances; and
- In some cases to carry out works.

5.3.2 In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days. Notice that powers of entry need to be carried out will normally be in writing or by email, but can in some circumstances be given verbally, depending on the relevant statutory provision. The powers of entry can be enforced with a warrant. The Police will accompany officers where it is appropriate. It is an offence to obstruct an officer in the course of their duty. Officers exercising their Power of entry will carry identification and details of their authorisation to carry out their action.

5.4 **Carrying out Work in Default**

The Council is given powers under legislation to carry out works in default where a person has been required to do works but has failed to do so. In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once the Council has started works it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works.

The cost of the works will be recovered in accordance with the relevant statutory provisions. The Council is not obliged to carry out works and will consider all the circumstances of a case before using this power. .

5.5 **Injunctive Actions**

In certain circumstances injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant public detriment.

5.6 **Civil Penalties and Rent Repayment Orders**

Amber Valley Borough Council has agreed to implement Civil Penalties and Rent Repayment Orders as approved by Cabinet 28th June 2017. Civil penalties and rent repayment orders offer an alternative to prosecution for certain offences. The Policy will be reviewed annually and will be implemented in accordance with the policy. The policy can be viewed at [Rent Repayment and Civil Penalties Policy](#).

5.7 **Simple Cautions**

5.7.1 Officers may use Simple Cautions where someone has committed a less serious crime. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

5.7.2 Simple cautions can only be issued in appropriate cases where:

- there is evidence an offender is guilty
- the offender is eighteen years of age or over
- the offender admits they committed the crime
- the offender agrees to be given a caution – if the offender does not agree to receive a caution then they are likely to be prosecuted instead.

- 5.7.3 Simple cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution may be more appropriate.

For more information see:

<http://www.homeoffice.gov.uk/police/powers/cautioning/>

Or Home Office Circular 30/2005 Cautioning of Adult Offenders.

5.8 **Prosecution**

- 5.8.1 In making a decision to prosecute there must be sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, and that there is a realistic prospect of conviction.
- 5.8.2 Secondly, a decision must be made as to whether a prosecution would be in the public interest. Where there is evidence, officers will consider prosecution consideration will be given to mitigating factors of a case, including:
- Any reasonable explanation provided by the individual or company.
 - Evidence that the individual or company intends to prevent a recurrence of the problem
 - An individual's age and state of health
 - The offender's attitude to the offence
- 5.8.3 Any decision to prosecute will initially be considered in consultation with the manager, the Executive Director (Operations) and Legal Services. If prosecution is deemed appropriate then the case will be fully prepared and referred to the Legal Team for consideration. All prosecutions will be brought without unavoidable delay. To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute must take into account the Code for Crown Prosecutors.

6 **FEES AND CHARGES**

6.1 **Charging for Notices**

- 6.1.1 The Council will charge landlords/agents a fee per enforcement notice to recover costs from landlords when serving notices to cover the cost of enforcement action. The fee imposed shall be in accordance with the schedule of fees and charges that is available on the Council's website. Landlords will be made aware of the charge in informal or formal letters.
- 6.1.2 In most cases an officer will serve notices as a result of a failure to respond promptly to a request, or where the standards are so poor that a notice is served without prior notification. The charge is designed to be a deterrent to landlords who fail to recognise the need for sufficiently high standards. The Executive Director (Operations) has discretion to waive the application of the fee in appropriate circumstances.

6.2 **Recovery of Costs Incurred**

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

6.2.1 **Sundry debtor method**

The Council will send the appropriate person an invoice requesting payment. If this is not paid within one month, a reminder invoice is sent requesting payment immediately. If the invoice is not paid within two

weeks of the reminder being sent, the matter, depending on the size of the debt, will be referred to the Council's Legal Section for possible County Court action.

6.2.2 Charge on the property

The Council can put a charge on a property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a Local Authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale.

6.2.3 Forcing sale of the property

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

6.3 Land Charges

Copies of relevant notices will be sent to the Council's land charges department and added to the local land charges register. The Council's Uniform CAPS system will be used to record notices served as this is directly linked to Land Charges information.

6.4 Appeals

Appeals against notices served under the Housing Act 2004 are made to the Residential Property Tribunal (RPT). This is made clear on the notes attached to relevant notices which also detail the time period for appeal.

There is a charge associated with an appeal to the RPT and all relevant information must be submitted. Landlords can represent themselves or arrange a legal representative at their expense.

7 SHARED ENFORCEMENT RESPONSIBILITY

7.1 In circumstances where enforcement responsibility is shared between enforcement agencies, regard will be had to other enforcement agencies.

7.2 In some cases, enforcement powers will rest with another agency (for example the Health and Safety Executive or Derbyshire Fire and Rescue Service). In these situations, the officers will transfer the case to the appropriate enforcing agency.

7.3 Fire Safety Protocol

The Council has a good working relationship with DFRS. Enforcement of fire safety in a variety of buildings requires a protocol to set out the lead agency for enforcement purposes. The Council has signed a joint protocol with Derbyshire Fire and Rescue Service and officers will have regard to this document when considering enforcement action. The policy is being reviewed by DFRS and the specialist Built Environment Group. Once a revised protocol is update and agreed a link will be inserted.

8. SPECIFIC LINKS TO LEGISLATION

8.1 Deregulation Act 2015

8.1.1 The Government has deemed that retaliatory eviction is an unacceptable practice and tenants should not fear becoming homeless because they have asked for a necessary repair. Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served either an

improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months using the 'no-fault' eviction procedure (a section 21 eviction).

- 8.1.2 A 'no fault' eviction is one where the tenant does not have to have done anything wrong, for example not paying the rent, to be asked to leave. The landlord is also required to ensure that the repairs are completed. This provision potentially puts more emphasis on the enforcement decision especially whether to allow a landlord to take informal action.

8.2 **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

- 8.2.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015. Private sector landlords are required from 1 October 2015 to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

- 8.2.2 The requirements will be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice. The Council has an approved policy on how it will enforce these regulations.

<http://www.ambervalley.gov.uk/housing/private-rented-housing/smoke-and-carbon-monoxide-alarms.aspx>

- 8.2.3 The regulations do not contain all the fire safety requirements which their premises may be subject to. There are fire safety requirements under other legislation which may be applicable, such as under Part 1 of the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005.

8.3 **Mobile Homes Act 2013**

- 8.3.1 Amber Valley has 3 permanent mobile home parks and approximately 100 mobile homes. Where poor conditions are identified in mobile homes, the route to improvement (or any other course of action) is not necessarily the same as if the mobile homes were permanent structures. The definition of residential premises in the Housing Act 2004 is unclear whether mobile homes could be considered within this definition. As such there is a degree of interpretation to be made when it comes to determining whether the powers in the new Housing Act extend to mobile homes of various types.

- 8.3.2 Where poor conditions are encountered officers will have to consult this guidance and determine which is the most appropriate legislation to deal with poor living conditions and any other problems with mobile home sites. The sites themselves are governed by the provisions of The Caravan Sites and Control of Development Act 1960, however the provisions of The Housing Act 2004 may be applicable in certain situations as may the provisions of statutory nuisance under The Environmental Protection Act 1990.

8.4 **Private Water Supplies Regulations 2009/16**

This policy covers statutory duties to enforce the private water supply regulations. Amber Valley has a mix of commercial and domestic users of private water supplies. The Council will use guidance provided by the Drinking Water Inspectorate to inform enforcement decisions and will use enforcement when appropriate and necessary to do so to protect those consuming or likely to consume water that is likely to harm their health.

9. **MONITORING**

To ensure that officers within the Council comply with this enforcement protocol, cases will be monitored by the Housing Manager who will check to ensure that the necessary considerations have been given to a case and that procedures are being followed and the appropriate documentation is in place on the file and

documented within the Uniform database. Appropriate systems will be in place to ensure that decisions made are in accordance with the Council's Enforcement Policy.

10. HOUSING STRATEGY CONTEXT

Supporting the Council's [Housing Strategy](#) the Council has a number of supporting strategies and plans.

The [Private Rented Plan](#) sets out the actions that the Council will complete to improve standards in the sector.

The [Older Persons Housing Plan](#) sets out the actions to address housing issues for older people.

The [Affordable Warmth Plan](#) sets out actions to improve access to warmer homes

The [Empty Property Strategy](#) sets out the Council's approach to reducing the number of empty properties

The [Homelessness Strategy](#) is an important document in the context of the policy.

11. COMPLAINTS AND CONTACT DETAILS

In the first instance you should contact the Council:

Telephone: 01773 841339

e-mail: ehhousing@ambervalley.gov.uk.

Or write to us at:-

Amber Valley Borough Council
Council
Town Hall
Ripley
DE5 3BT

Office opening hours are: 09:00 to 16:30 Monday to Friday
10:00 to 16:30 Wednesday

The Council's website address is www.ambervalley.gov.uk

If you wish to make a complaint about the service provided by the Council;

<http://www.ambervalley.gov.uk/council-and-democracy/tell-us-what-you-think/customer-complaints.aspx>

or write to us at the above address and address your enquiry to Housing Manager or Assistant Director (Wellbeing).