



## **BABERGH & MID SUFFOLK DISTRICT COUNCILS**

### **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY**

#### **1. INTRODUCTION**

1.1 This policy sets out the Council's principles for exercising their duties and powers as a Housing Authority under the Housing Acts and all regulatory legislation enforced by it in the field of private sector housing.

1.2 When deciding on appropriate action, officers will have regard to the Council's Corporate Enforcement Policy which is the over-arching policy that sets out the general parameters of enforcement. This document is a more specific and detailed service policy for private sector housing enforcement. The Council supports 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. They also follow the principles laid down in the Code for Crown Prosecutors, Enforcement Concordat and the Regulators Code 2014. The Council has had regard to the Regulators' Code (BRDO, 2013) in the preparation of this policy.

#### **2. AIMS OF THE POLICY**

2.1 This Policy seeks to ensure that all properties let as residential properties throughout the districts are of a suitable standard and are well managed. It sets out the way in which the Council aims to protect public health and safeguard housing standards by ensuring compliance with the relevant legislation, whilst recognising the needs of local businesses.

2.2 The Council considers the need for transparency and consistency in the discharge of their functions to be of primary importance. The objective of this policy is to promote both principles in the exercise of the Council's functions and, to exercise consistency on the use of its enforcement powers.

2.3 The Policy aims to ensure:

- Good quality, healthy housing is provided for households renting in the private sector.
- that action is prioritised towards properties which present the greatest risks to the safety and health of the occupants or their visitors.
- Houses in Multiple Occupation (HMOs) are prioritised for action, are safe, licensed as appropriate and well managed in line with Management Regulations.
- Private sector housing is not left empty for an unreasonable amount of time or becomes an eyesore and nuisance to neighbouring homes.

We recognise that each case is unique and will be considered on its own merits. When deciding on the appropriate action, officers will consider the law, Government Guidance, council policies and the sufficiency and reliability of the evidence. Officers are expected to follow the policy using their professional judgment, but the action taken is not prescriptive and discretion can be exercised. Where the policy is not followed, reasons for any departure from it must be justified and recorded.

All enquiries relating to this Policy should be directed to the Housing Standards Team

Email: [housingstandards@baberghmidsuffolk.gov.uk](mailto:housingstandards@baberghmidsuffolk.gov.uk)

### **3. THE POLICY**

#### **3.1 The Council's duties**

Duties fall under the main headings as follows:

- Undertaking inspections/audits and providing guidance to ensure that residential accommodation meets minimum legal standards. Taking formal action as necessary to secure compliance with statutory requirements
- The administration and enforcement of the mandatory licensing of prescribed HMO accommodation.
- Maximising the use of the existing housing stock through a range of measures to bring vacant homes back into use.

In this policy, the term 'landlord' should be read as including letting agents, managing agents and any other person involved in the letting or management of privately rented accommodation.

#### **3.2 Policy Principles**

All enforcement action taken will be proportional to the risk any situation presents and will always be in accordance with statutory Codes of Practice, Council procedures and protocols, and official guidance from central and local government bodies.

Reasonable effort will be made to ensure compliance with the law by a process of advice and education. Formal action will be considered in the following circumstances:

- Where there is a serious risk to public health or serious hazards exist
- Where there is a blatant or deliberate contravention of the law
- Where there is history of non-compliance, or cooperation for an informal approach is not forthcoming.
- Where landlords fail to take action in the timescales agreed within an informal process.

### **3.3 Authorisation of Officers**

Environmental Health Officers/Practitioners are fully trained, competent and authorised to carry out their duties. All investigations will be carried out in accordance with the requirements of the:

- Regulation of Investigatory Powers Act
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996

### **3.4 Approach to enforcement**

The Housing Standards Team has investigation and enforcement powers relating to all private sector housing regardless of tenure. However, the approach taken will vary depending on the tenure of the property.

#### **3.4.1 Private Tenants**

Tenants within rented accommodation are reliant on their landlord to maintain their homes in accordance with legal requirements. Where landlords are putting the safety or health of their tenants or those occupying a neighbouring property at risk, or are failing to meet their statutory obligations, the Council will take formal action as required.

#### **3.4.2 Owner-occupiers**

Owner-occupiers are responsible for the maintenance and safety issues of their own homes. Therefore, the Council will not intervene and take formal enforcement action against them unless neighbouring properties are being affected in some way or there is a public health hazard. For example, a defect leading to water penetration into a neighbouring property or a blocked drain affecting other residents. Interventions may also be required where an owner occupier is vulnerable or unable to make a sound judgement over their health and safety.

#### **3.4.3 Registered Providers (RPs)**

RPs are regulated by the Regulator of Social Housing, but their properties are subject to similar requirements to those in the private rented sector. RPs have their own procedures in place for reporting problems and making complaints and usually have clear response times for addressing any issues. The Council will take formal action against an RP if the problem in question has been reported to the RP who has then failed to take appropriate action. The Council will consider enforcement action against an RP where there are significant risks to the health and safety of tenants and or the wider public. There is an initial presumption towards resolving situations informally unless there are serious hazards or the RP's general performance dealing with housing complaints has been unsatisfactory.

The Council may write to the Regulator of Social Housing (or relevant regulator at the time) to inform them of any formal action taken against a registered Provider.

#### 3.4.4 Private Rented Sector

The Council's Housing Standards Team will respond to enquiries about substandard, unsafe and problematic housing and adopt an appropriate and proportionate response. In safeguarding housing conditions and wider environmental issues arising from rented homes in our district, the Council wants to work with responsible landlords to raise housing standards. We support the majority of landlords who provide safe and healthy accommodation for tenants. However, where appropriate and necessary, appropriate enforcement action will be instigated against landlords who fail to comply with their legal requirements. Action will be targeted towards landlords that deliberately fail to comply with the law.

The Council will expect landlords to have a reasonable awareness and understanding of housing standards and management issues that should be met in privately rented accommodation; we expect landlords to refer to the Council's guide to minimum property standards and to be responsive to concerns expressed by tenants.

Generally, it is the Council's preference that landlords are first given the opportunity, wherever possible, to investigate any reported problems at their properties. The Council expects responsible owners to undertake necessary repairs and improvements without the need to instigate formal action.

#### 3.4.5 Partnership working

The Council works with other enforcement agencies such as the Police, Fire Authority and Suffolk Trading Standards to share intelligence. We may prioritise action to address specific housing problems in its district. We work jointly on "Impact Days" to use our joint intelligence to investigate high priority hazards in private housing such as exploitation of vulnerable persons, modern slavery and fire/safety issues and hazards.

### **3.5 Deciding on the Course of Action**

The course of action will be decided having regard to the circumstances of each case, including the:

- Hazards present, whether serious and dependent on whether the Council has a duty or power to act
- Vulnerability of the Occupant, if any (e.g., elderly occupants, young children). This includes being of the most vulnerable age group in relation to a hazard.
- Effect the problem has on the Occupants, neighbours or the surrounding area.
- Relevant history of the landlord/owner, neighbours or tenants, particularly the landlord's/owner's history of carrying out repairs at a pre-formal stage or following service of notice.

## **3.6 Options and Types of Action**

### **3.6.1 No Action**

In the case of occupied homes, 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.
- When a tenant does not want action to be taken and the Council is not under a statutory duty to do so.
- Where allegations or complaints cannot be substantiated or witnessed, or the complaint is vexatious.

In such cases, occupiers may be directed to other sources of advice and support, for example Citizens Advice Bureau, Shelter etc.

In some cases, the Council will cease to provide a service, for example, where the tenant unreasonably refuses access to the property owner or a contractor to carry out works; or where a tenant continually fails to engage with council officers.

The Council does not provide a property survey service for tenants or private reports for private/civil action as these fall outside our remit for statutory duties. We may offer advice and support where possible.

### **3.6.2 Advice and Guidance**

Officers will offer the following:

- Advice as to how a tenant or customer can request repairs or improvements without the need for intervention from the Council.
- A letter or telephone call to the landlord/Owner (without a visit), advising them of the information that the Council has received and allowing them a reasonable period of time to address the issues.
- General advice to landlords on complying with their duties.
- Advice on tenants' legal rights, which may come from different services teams within the organisation, safeguarding them and helping them manage the conditions in their home.

### **3.6.3 Informal Action**

Where it is appropriate to deal with issues through informal action, in the first instance, the Council may work with the landlord/owner to help them comply with their regulatory requirements. In some cases, in receipt of a complaint regarding housing conditions at a property, the Council may first write to the landlord to highlight the issues and deficiencies and advise on the repairs or improvements that are required.

The Council expects tenants to have reported the issue to their landlord first and to have given them an opportunity to remedy the situation. We may ask to see proof but, in some cases, such as where a tenant is considered vulnerable or where the situation requires immediate investigation, this will not be required.

In the case of an Empty Homes complaint, the Council will write to the property owner requesting information about their intentions for the property and offering advice and assistance on returning the home to use. Our Empty Homes Policy and Procedure will be followed.

When taking informal action, officers will clearly differentiate what is legally required and what is recommended as Good Practice.

In cases where officers visit a property, whether this is a result of a landlord's failure to adequately resolve an issue or as part of an audit or other investigation, written or verbal advice may be deemed sufficient should the inspection highlight only minor deficiencies.

Regarding assessments made under the Housing Health and Safety Rating System (Part 1 of the Housing Act 2004), the Council would not normally take formal action if the identified defects equated only to minor or moderate Category 2 hazards, unless the hazard was likely to worsen over the following 12 months and progress to a high Category 2 or a Category 1 hazard.

Where written advice is deemed necessary and is provided, suggested timescales will normally be included to undertake any specified works or actions. For defects that relate to moderate or minor Category 2 hazards, a Hazard Awareness Notice may be issued.

#### 3.6.4 Notices of Entry

Where a complaint of housing disrepair has been received and an inspection is required, a Notice of Entry will be served under Section 239 of the Housing Act 2004. This informs all relevant parties of the Council's intended inspection and gives 24 hours' notice. There are some prescribed circumstances where the Council will not give notice of entry and an unannounced inspection will be carried out.

Where the Council is unable to gain access using a Notice of Entry or where such Notice will defeat the object of entry, an application may be made to the Court for a Warrant to enter.

#### 3.6.5 Formal Action

A visit may be made at the outset in cases where the initial complaint indicates that an immediate investigation by an officer is warranted.

Examples of circumstances in which formal action would be taken include where:

- Pre-formal action has had no effect
- There is a lack of confidence, due to a history of non-compliance from the landlord
- The risk to Health, Safety and Wellbeing is such that formal action is necessary Immediately.

If formal action is considered appropriate the following options are available:

### 3.6.6 Statutory Notices

These are notices used when a landlord is failing to comply with housing or other health and environmental legislation. They normally require that necessary remedial action be taken at a specified property by the owner within a specified period, which will vary depending on the nature and scale of the works.

For defects that give rise to Category 1 HHSRS hazards under Part 1 Housing Act 2004, the Council has a duty to take appropriate enforcement action to deal with that hazard. The Council will also normally seek to deal with any significant Category 2 hazards whether or not Category 1 hazards are also present.

If a landlord fails to deal informally to remedy a Category 1 and/or significant Category 2 hazard, the Council will take appropriate enforcement action. Such action will vary depending upon the circumstances of the case. It is most likely to involve the service of an Improvement Notice requiring remedial works. Where there are serious hazards, a Prohibition Order prohibiting the use of all, or part of the property may be issued. Suspended enforcement actions are also available. Action will be based the best course of action to deal with the hazards.

In cases where one or more Category 1 hazards are present, it is unlikely that the service of a Hazard Awareness Notice would be the preferred enforcement action, unless the circumstances of the occupiers were such that other options were not practical (e.g. major improvement works required in a home occupied by a frail resident) or where the age and traditional construction is such that they are of special architectural or historic interest e.g. Listed buildings.

Legal Notices served by the Council will detail any rights of appeal and an extension of time to comply with any notices requiring works can be requested if there are legitimate reasons. However, failure to comply with the requirements of any issued Notice is an offence and may result in prosecution or the issuing of a civil penalty.

Other formal notices that may be served relate to specific legislation such as electrical safety, compliance notices under the Minimum Energy Efficiency Scheme and smoke and carbon monoxide regulations etc.

### 3.6.7 Emergency enforcement actions

Where there is a Category 1 HHSRS hazard present that is considered to represent an imminent risk of serious harm to the health and safety of the occupiers of a dwelling, the Council may serve an Emergency Prohibition Order or take Emergency remedial action. Such emergency actions would involve either the removal of certain defects giving rise to the immediate risk or the closure of all or part of a dwelling.

### 3.6.8 Work in default

In situations where a landlord fails to comply with a formal notice requiring remedial works, the Council may undertake these works in default of the owner and take steps to recover any costs incurred and place a charge on the property. This power may be exercised in addition to any prosecution proceedings taken for non-compliance with this notice.

### 3.6.9 Debt recovery

Where the Council has placed a charge on a property, steps will be taken to recover the debt. This includes action to tackle long term empty properties which have outstanding debt, to facilitate debt recovery and to bring empty homes back into use.

Enforced sale action will only be used as a last resort once all other methods have been exhausted and will be considered if they are causing issues in the local community and the owner is not taking action. Properties will be placed on the open market or may be brought into Council stock.

### 3.6.10 Licensing

The Council operates the national mandatory HMO (Houses in Multiple Occupation) licensing regime where a landlord is required to have an appropriate property licence, which will be subject to conditions. In determining an application for any property licence, the Council must decide whether to grant or refuse a licence. An appropriate fee must be paid in line with Council's fee policy.

Before issuing a property licence, the licence holder/manager will be assessed against 'Fit and Proper Person' criteria. In granting a licence, the Council must be satisfied that the licence holder and any separate manager of the address are fit and proper persons. In applying the Fit and Proper Person test, the Council will consider a range of relevant factors. The Council's general approach will be:

- To consider the nature of any relevant convictions – convictions relating to fraud, running an unlicensed HMO or violence are likely to be relevant in determining 'fit and proper'. A landlord that has criminal convictions for harassment and/or illegal eviction is unlikely to be deemed fit and proper. An administrative or technical breach of a provision is unlikely to carry any significant weight in determining 'fit and proper' status.
- Each case will be considered on its own merits and any mitigating factors considered. The Council will adopt a common-sense approach, exercising its discretion reasonably and proportionately, taking into account relevant considerations and ignoring irrelevant ones.
- Where there is a failure of a licence holder or manager to meet the Fit and Proper test, a licence application will be refused (unless an appropriate alternative licence holder or manager is identified) and any existing licence revoked [(unless the failure relates to the property manager and an appropriate alternative manager is identified)].
- The Council will normally grant a licence that has a 'full-term' duration of up to 5 years. However, where the Council identifies concerns relating to either the property to be licensed (for example a breach of planning regulations) or to the licence holder/manager then a shorter licence term may be granted.

The operation of the licensing regime places obligations on landlords, including the need to:

- Ensure that relevant properties are licensed
- Carry out necessary safety checks and provide relevant documentation when necessary
- Comply with a set of licence conditions, including the need to deal with any anti-social behaviour at their rented property and to keep the property in a reasonable state or repair

A failure to meet one or more of the licensing requirements will be individually assessed but may result in enforcement outcomes including:

- A written warning or simple caution
- Prosecution
- The imposition of a civil penalty
- The service of formal notices
- Refusal or revocation of a licence and/or the granting of a shorter licence period through a consequent failure to meet fit and proper person criteria

#### 3.6.11 Simple Caution

The purpose of a Simple Caution is to deal quickly and simply with less serious offenders by diverting them away from the courts, and to reduce the chances of repeat offences. Simple Cautions will be kept on file for three years. A Caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence and consents to the Caution. If the offender refuses to accept a Simple Caution, a prosecution will normally be pursued.

#### 3.6.12 Prosecution

A prosecution may be necessary if the alleged offence is serious enough. Any decision to prosecute will be taken in accordance with the Regulators Compliance Code, the Council's Enforcement Policy and the Code for Crown Prosecutors.

The following factors will be taken into account:

- The seriousness of the offence
- The previous history of the party concerned
- The willingness of the party to prevent a recurrence of the problem
- Whether the issuing of a civil penalty (see below) or simple caution would be more appropriate or effective
- Whether the offence was committed deliberately, any evidence of obstruction of the officers in their lawful duty or of the investigation
- Financial considerations - the benefit obtained from the alleged offending

Any decision to Prosecute will be considered with a representative from Legal Services.

### 3.6.13 Civil and Monetary Penalties

The Council may serve notices imposing Civil Penalties, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- I. Failure to comply with an Improvement Notice
- II. Failure to license or other licensing offences relating to HMOs
- III. Failure to comply with an Overcrowding Notice
- IV. Failure to comply with a regulation in respect of an HMO
- V. Breaching a Banning Order

#### Approach

The Council will determine, on a case-by-case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above.

Examples of situations in which a decision to prosecute would normally be taken include:

- Where the offence committed is judged to be particularly serious
- Where the offender has committed similar offences in the past

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty will be calculated in accordance with our civil penalties policy.

The Council will also use duties and powers to serve notices and impose monetary penalties in relation to offences under the following

- Agency and Property Management Work Redress Scheme,
- Electrical Safety Regulations
- Smoke and Carbon Monoxide Regulations
- Energy Efficiency (Private Rented Property) Regulations

We have specific policies relating to each of these requirements.

### 3.6.14 Rent Repayment Orders

The Council may apply to the First Tier Tribunal for a Rent Repayment Order (RRO) where a landlord has committed a relevant offence (to recover an amount in respect of a relevant award of universal credit paid in respect of rent under the tenancy for up to 12 months. An application for an RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a Civil Penalty.

### 3.6.15 Banning Orders

For serious offenders, where a landlord has committed one or more specified offences, the Council may apply to the First Tier Tribunal for a Banning Order that bans a landlord from letting or managing housing for a minimum period of 12 months. The Council will only pursue a banning order for the most serious offenders. Further information is available in our civil penalties policy.

#### **4. COMPLAINTS AND APPEALS PROCEDURES**

Some legal notices have a statutory appeals procedure, and landlords are entitled to appeal against such notices through the specified appeal provisions.

We are always willing to discuss with you the reasons why we have acted in a particular way or asked you to act in a particular way. You can contact the Senior Environmental Health Officer dealing with your case at [housingstandards@baberghmidsuffolk.gov.uk](mailto:housingstandards@baberghmidsuffolk.gov.uk) to discuss our approach to enforcement against you for a specific case/address.

We manage complaints about our service through the Council's Corporate Complaints Policy. This can be found at [Compliments, comments and complaints » Babergh Mid Suffolk](#)

#### **5. CHARGING FOR ENFORCEMENT ACTION**

Under Section 49 of the Housing Act 2004, the Council will make a reasonable charge for taking enforcement action based on actual officer and administration time taken in each case.

In cases where a formal notice other than a Hazard Awareness Notice was served, a charge would normally be made. The cost of the Works and all other associated relevant costs will be recovered in accordance with the relevant Statutory Provisions. 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 using the Enforced Sale Procedures to recover the charges owed, where appropriate.

In cases involving vulnerable clients that are owner occupiers, no charge will be made.

Any charge may be waived at the Council's discretion.

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