Private Sector Housing Enforcement
and Prosecution Policy
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1. INTRODUCTION

This Policy is consistent with the Council’s Policy on the use of enforcement powers. This approach ensures that firm but fair enforcement action will be taken on a case by case basis guided by the law.

This policy details how the Council will use its enforcement powers relating to legislation covering Housing and Environmental Protection issues affecting poor housing conditions only, and does not apply to unauthorised encampments or mobile/park homes. These are addressed in a separate policy.

Ashford Borough Council will seek to resolve problems and achieve the right outcomes at the earliest possible stage with regard to our housing and environmental duties. When appropriate we will look to engage with other agencies such as Kent Fire and Rescue Service (KFRS), in order to rectify problems in a constructive manner. At times enforcement action may be required to resolve issues and such action will be in accordance with this Enforcement Policy.

The Council’s approach will be in accordance with the principles of the national Concordat on Good Enforcement as promoted by the government and formally adopted by the Council. This means the Council will carry out their functions in an equitable, practical and consistent manner to secure a safe and healthy environment for all residents.

Our objectives are to ensure that the conditions in the private rented sector, including houses in multiple occupation (HMO’s) comply with statutory standards, making the most effective use of capital and manpower resources and reduce the number of long term empty dwellings.

2. METHODS OF ENFORCEMENT

We recognise that prevention is better than cure, but where necessary enforcement action will be taken. The term “enforcement” has a wide meaning and applies to all dealings between the Council and those on whom the law places a duty. The range of actions available to the authority include:-

- No action
- Informal action and advice
- Housing Act Notices
- Local Government Act Notices
- Public Health Act Notices
- Building Act Notices
- Smoke and Carbon Monoxide Alarms—Remedial Notices
- Works in default
- Charges for enforcement
- Standards of Houses in Multiple Occupation
- Management of Houses in Multiple Occupation
- Licensing of Houses in Multiple Occupation
- Simple Caution
- Prosecution
- Rent Repayment Orders
- Compulsory Purchase Orders
- Penalty Charge Notices

2.1 Legislative Powers

The principal piece of legislation used by the Private Sector Housing team is the **Housing Act 2004** (referred to as “the Act”). However, there are circumstances where other pieces of legislation may be more appropriate in dealing with the identified problem. Officers are expected to use professional judgement to determine the most appropriate piece of legislation to use. In some cases it may be appropriate to use a range of enforcement tools.

A list of legislation is attached at Appendix 1. (This list is not exhaustive.)

**General Principles**

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way that is:

- Transparent
- Accountable
- Proportionate
- Consistent

2.2 Decision Making

The decision to take action, whatever that action may be, will be based on the available evidence and professional judgement.

All prosecutions must be endorsed by the Head of Housing. Prior to submitting a prosecution file to the Head of Housing, the Case Officer must first consult with the Senior EHO within Private Sector Housing to ensure that the prosecution is in accordance with this enforcement policy. The Case Officer must then consult with the appropriate Officer from Legal Services to ensure that the case has been properly considered and is sound.
2.3 Formal Enforcement

Enforcement action may only be initiated by Officers who are authorised to do so.

The Private Sector Housing Team recognises and affirms the importance of achieving and maintaining consistency in its approach to making all decisions which concern enforcement action, including prosecution. The Council follows the principles of the Enforcement Concordat. It will also ensure that all actions will be consistent with the Human Rights Act 1998.

The Council will, other than in exceptional cases, always ensure that landlords, tenants and owners have the opportunity to discuss the Council’s proposed action before a notice is served.

Exceptional circumstances will normally only be such situations where this might cause an unacceptable delay in alleviating the hazard.

It is our policy to ensure that enforcement decisions are always consistent, balanced, and fair and ensure the public is adequately protected. In coming to any decision many criteria will be taken into account including the seriousness of the offence, the individual’s past history, the confidence we have in the management, the consequences of non-compliance, and the likely effectiveness of the various enforcement options.

- **Formal Notices**

Formal notices can be an effective way of securing the undertaking of necessary remedial works where an informal approach is unsuccessful or inappropriate. For most types of notice, the recipient has the right to appeal to the Courts. A range of enforcement options are available to the Council and how these discretionary powers are used in Ashford will depend on the circumstances of each case. In making decisions the following will be taken into account except that where a category 1 hazard exists within a property the Council must take some action

- The nature of the hazard
- The nature and circumstances of the current occupier (Age, vulnerability etc.)
- Views of the occupiers
- Local priorities for improving housing conditions
- Availability of other forms of Housing Assistance
- Action must be proportionate to the risk

The Government has issued guidance both on the operation of the Housing Health and Safety Rating System (HHSRS) and on the enforcement framework. Ashford will at all times have regard to available government guidance before taking enforcement decisions.

- **Formal Enforcement – Prosecution**

The Council will generally initiate prosecution where:-
The person served with a notice fails to comply with the requirements of the notice and

There has been no appeal against the terms of the notice or any appeal made has not been upheld

In deciding whether to prosecute the Council will follow the general principles set out in the Code for Crown Prosecutors and will consider both the evidence and whether it's in the public interest to prosecute, in light of this.

2.4 Informal Action

There may be circumstances in which informal action is appropriate. Many persons, having had a problem for which they are responsible drawn to their attention, will be anxious to comply with their statutory obligations. In such cases the Officer's role will be to guide and support.

Officers will supply appropriate guidance on legislation, Council procedures and criteria used to assess the extent of the problem whenever a complaint is received or a problem is otherwise drawn to the Officer's attention.

- Any requirements will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a timescale for compliance will be specified
- Due regard will be had to any special circumstances when a timescale for compliance is specified

It is appropriate to use informal action in the following circumstances:

- When the act or omission is not serious enough to warrant formal action
- When, from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance
- When confidence in the individual's/enterprise's management is high
- When the consequences of non-compliance will not pose a significant risk to public health.

2.5 Charges for Enforcement Action

The Council reserves the right to charge and recover its costs where we have the right to do so.

Landlords have a duty of care to their tenants and should provide accommodation that is both free from significant hazards and properly maintained, thus avoiding the
need for invention from the Council. The Housing Act 2004 enables the Council to recover its reasonable expenses associated with serving notices and other enforcement activity. The recovery of expenses will be considered on a case by case basis.

2.6 Emergency Action

In certain emergency situations where it is not possible to contact the relevant person and gain their co-operation enforcement action will be taken that will involve carrying out work without the prior need to serve legal notice, for example:

- Where there is an imminent risk of serious harm to the health or safety of occupiers or others
- Where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health.

2.7 Simple Cautions

The decision to issue a simple caution will be made by the Head of Housing Services in consultation with the appropriate Officer in Legal Services.

A simple caution may be an appropriate course of action where there is a criminal offence but the public interest does not require a prosecution.

In considering whether a Caution is appropriate, the Council will consider the following questions:-

- Has the suspect made a full and frank admission of the offence (either verbally or in writing)?
- Is there a realistic prospect of conviction if the offender were to be prosecuted?
- Is it in the public interest to use a Caution as the appropriate means of disposal?

2.8 Other Powers – works in default

Where the requirements of a notice are not carried out, in many instances the Council is empowered to do whatever is necessary in execution of that notice and recover the costs of doing so from the person responsible. The Council will if deemed necessary and appropriate carry out works in default when:

- The person served with a notice has failed to comply with the requirements of the notice and
• There has been no appeal against the terms of the notice or any appeal made has not been upheld

• The Council may recover the costs of the work from the person responsible as a civil debt or by placing a legal charge on the property, which is a local land charge.

2.9 Powers of Entry

In carrying out their duties, duly authorised Officers have a range of far reaching powers, including the right to enter any premises at any reasonable time in order to:-

• Ascertain whether or not a breach of legislation exists

• Carry out any action or works authorised in accordance with this enforcement policy

Entry to any residential property shall not, except in an emergency, be demanded as of right unless 24 hours’ notice has been given. If entry is refused, an Officer may apply to a Justice of the Peace for a Warrant to enter the premises, if needs be, by force.

3. HOUSES IN MULTIPLE OCCUPATION

3.1 Licensing of Houses in Multiple Occupation

Mandatory Licensing

Mandatory Licensing of Houses in Multiple Occupation under part 2 of the Housing Act 2004. The Council is required to have a licensing scheme in place, seek properties that require licenses and license properties that are licensable.

A Mandatory licence is required for HMOs with three or more storeys with five or more occupiers living in two or more households sharing some facilities.

A landlord’s failure to license a property is an offence with the maximum fine on summary conviction being £20,000. The other actions that could be taken is rent repayment orders to recover up to one year’s worth of rent.
Duration of Licences

Licences will normally be granted for the full five year period.

Fit and Proper Person Policy

In granting a licence the Council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are fit and proper persons. A person’s fit and proper status may be reviewed at any time if circumstances change. Removal of this status could lead to refusal and or revocation of licence.

The proposed licence holder will need to be exempt from the following before granting a licence:

- Any unspent convictions for offences involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003
- Any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business
- Any contravention of any provision of the law relating to housing or of landlord and tenant law (including any civil proceedings that resulted in a judgement against you)

Discretionary licensing

The Council may, at its discretion bring into force licensing of other residential accommodation, as defined by parts 2 and 3 of the Housing Act 2004, which allows local authorities to require landlords of some privately rented properties to apply for a licence. There are two types of discretionary licensing.

Additional licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and causing particular problems for the people who live in these HMOs or members of the public.

Selective licensing may be appropriate where there is a problem with anti-social behaviour in an area or an area of low housing demand, and that some or all of the landlords in the area are failing to take action to combat the problem.

Ashford does not consider that there is a need to introduce discretionary licensing at this time.
3.2 Standards of Houses in Multiple Occupation

HMOs will be inspected having regard to the Housing Health and Safety Rating System and the Management Regulations.

If after an inspection it is found the HMO does not meet the Council’s standards or has serious hazards under the rating system, enforcement action may be considered.

3.3 Management of Houses in Multiple Occupation

The Management Regulations apply to Houses in Multiple Occupation (HMOs) in England, but do not apply to converted blocks of flats to which section 257 of the Act applies. These are building that have been converted into and consist of self-contained flats where the building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them, and less than two thirds of the self contained flats are owner occupied.

3.4 Article 4 Directions

Ashford Borough Council has Article 4 areas within its Borough. This limits the works that can be carried out without needing planning permission from the Council.

In respect of this policy Article 4 Direction relates to restrictions on both licensed and non-licensed HMOs in certain areas of the Borough.

3.5 Management Orders (Housing Act 2004)

These powers will be used as a last resort in relation to HMO’s where other attempt to deal with breaches of the Management Regulations have failed in the most serious cases, where there is no reasonable prospect of a licence being granted or it is necessary to protect the health, safety or welfare of occupiers, visitors or persons living in the vicinity or where serious anti-social behaviour can be evidenced and is found to be significantly affecting other occupiers, visitors or persons in the vicinity of the premises.

4. EMPTY PROPERTIES

The Private Sector Housing Service identifies long term empty properties and will work with the owner to bring back into use.

Action will be tailored to match housing need, nuisance issues and length of time the property has been empty.

Where necessary, we will take enforcement action to deal with the symptoms that arise when a property is left empty.
5. OWNER OCCUPIERS

Priority will be given to addressing poor housing conditions that threaten the safety and wellbeing of occupiers.

Enforcement will be targeted particularly at situations where occupiers have little influence over the conditions of the accommodation they occupy. For this reason the service of notices or enforcement action on owner/occupiers will only be used in exceptional circumstances (see informal action).

6. WHAT WE WILL EXPECT OF TENANTS

Before considering taking any action in tenanted properties, we will require the tenant to have contacted their landlord. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that the tenant notify their landlord (preferably in writing) of any problems with the property. Landlords can only carry out their repairing obligations once they are made aware of any problems. Any copies of correspondence between the tenant and the landlord should be provided to Officers.

Tenants will be expected to keep Officers informed of any contact they have with their landlord (or landlord’s agent, builder etc.) that may have an effect on what action the Council takes.

7. TRAINING AND QUALIFICATIONS OF ENFORCEMENT OFFICERS

No Officer will carry out enforcement duties unless suitably trained and experienced and authorised by Ashford Borough Council.

Prosecution will only be instigated following a review of the matter by the Case Officer and an appropriate Officer from Legal Services, and authorisation by the Head of Housing.

Training will be provided for all enforcement Officers as required to meet changes in legislation and enforcement procedures.

8. HOW WE WILL DEAL WITH ANY REPORTS OF POOR HOUSING CONDITIONS

We will acknowledge your report within 3 working days and will contact you to discuss the issue you have reported in more detail within 5 working days. We will agree the appropriate course of action with you and can offer telephone advice or may wish to visit the property concerned to find out more and investigate the condition of the property. We will wherever possible keep you informed of the progress of the investigation, but we cannot reveal any information that may be
restricted under data protection. Following our investigation we will notify you in writing of the action we plan to take and the timescales involved.

9. HOW TO REPORT A PROBLEM TO US

Please contact:

Private Sector Housing Department
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford
Kent
TN23 1PL

Tel: 01233 330688
E-mail privatesectorhousing@ashford.gov.uk

10. HOW TO COMPLAIN ABOUT OUR SERVICE

If you are dissatisfied with the service you receive please let us know.

- On line at www.ashford.gov.uk/feedback
- Email customer.care@ashford.gov.uk
- Call us on 01233 331111
- In person at the Civic Centre, Ashford

If you are still unhappy you can discuss your complaint with your local ward Councilor, MP or can complain to the Local Government Ombudsman.

Information in other languages

If you require this policy in an alternative format please contact – 01233 330 688 or Email: privatesectorhousing@ashford.gov.uk
Appendix 1

Housing Act 2004

The Housing Health and Safety Rating System (HHSRS)

Under the Housing Act 2004, local housing authorities are able to assess housing conditions for specific hazards. It looks at the effect that deficiencies in the home can have on the health and safety of occupants and visitors by using a risk assessment approach called the Housing Health and Safety Rating System (HHSRS). The aim of individual risk assessment is to reduce or eliminate hazards to health and safety in domestic accommodation. Potentially there are 29 hazards and each hazard is assessed separately and rated according to how serious the likelihood of harm.

The 29 Hazards:

<table>
<thead>
<tr>
<th>Damp and mould growth</th>
<th>Crowding and space</th>
<th>Falling on stairs etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excess cold</td>
<td>Entry by intruders</td>
<td>Falling between levels</td>
</tr>
<tr>
<td>Excess heat</td>
<td>Lighting</td>
<td>Electrical hazards</td>
</tr>
<tr>
<td>Asbestos</td>
<td>Noise</td>
<td>Fire</td>
</tr>
<tr>
<td>Biocides</td>
<td>Domestic hygiene</td>
<td>Hot surfaces</td>
</tr>
<tr>
<td>Carbon monoxide</td>
<td>Food safety</td>
<td>Collision/Entrapment</td>
</tr>
<tr>
<td>Lead</td>
<td>Personal hygiene</td>
<td>Explosions</td>
</tr>
<tr>
<td>Radiation</td>
<td>Water supply</td>
<td>Ergonomics</td>
</tr>
<tr>
<td>Uncombusted fuel gas</td>
<td>Falls/baths</td>
<td>Structural collapse</td>
</tr>
<tr>
<td>Volatile compounds</td>
<td>Falls on level</td>
<td></td>
</tr>
</tbody>
</table>

The assessment process is not just a question of examining defects to a property, but it comprises risk assessment, probable outcomes and the resulting effects on the occupiers’ health, safety and welfare.

Two key tests are applied:
- The likelihood of an occurrence (such as an accident or ill health) as a direct result of this deficiency in the house;
- The likely outcomes in terms of injury or ill health (physical and mental) arising from the deficiency.
The final score is divided into bands ranging from A – J. Councils have a duty to take action to remedy hazards which fall into bands A – C. These are termed Category 1 hazards.

Category 2 hazards are also subject to enforcement powers by Councils. Each case is individual and the appropriate enforcement action will be chosen which reflects the circumstances concerned.

The Act also provides a range of enforcement tools:

**Improvement Notices** – section 11 is used for category 1 hazards, section 12 is used for category 2 hazards. An improvement notice should be used where reasonable remedial works can be carried out to reduce the hazard sufficiently.

**Prohibition Orders** – section 20 for category 1 hazards and section 21 for category 2 hazards. This order may prohibit the use of part or all of premises for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is not possible because of cost or other reason. It may also be used to limit the number of persons occupying the dwelling, or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

**Hazard Awareness Notices** – section 28 for category 1 hazards and section 29 for category 2. This is used where a hazard has been identified but it is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

**Emergency Remedial Action** - section 40 – this is only acceptable for use where there is an imminent risk of serious harm and the hazard must rate as a category 1. The authority must undertake any necessary remedial works that are required to reduce the immediate risk. A warrant to enter the premises in order to carry out the work may be granted by a Justice of the Peace where he/she is satisfied that the authority would not be granted admission by the owner.

**Emergency Prohibition Order** – section 43 – this is only acceptable for use where there is an imminent risk of serious harm, the hazard rates as a category 1 and where it is not practical to carry out the remedial works as in section 40.

**Demolition Order** – this can only be used in response to category 1 hazards, but not if the building is listed. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

**Clearance Area** – All residential buildings in the proposed area must have at least one category 1 hazard. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

**Suspend Improvement Notices or Prohibition Orders** – these notices may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current
occupation and wishes must be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at the very least every 12 months. The advantage of suspending a notice is that there is a record of the LHA’s involvement and the situation must then be reviewed. It is also recorded as a local land charge.

The Act requires enforcing authorities to produce a statement of reasons justifying the type of action they are taking. This must accompany all notices and orders served.

**Other Legislation**

- **Local Government (Miscellaneous Provisions) Act 1976**

This act enables the Council to re-connect or prevent the disconnection of gas, electricity or water supply in tenanted properties. These powers will be used in exceptional circumstances when all other negotiation has failed. These powers will only be used where the tenant is not responsible for the payment of the bill.

- **Local Government (Miscellaneous Provisions) Act 1976**

This act enables the Council to obtain information about the interest in land. The notice is used to determine who owns, manages, and occupies a dwelling. The information must be provided within 14 days of service of the document. Failure to provide the information may result in the Council bringing a prosecution. On summary conviction the Magistrates Court can fine the relevant person.

- **Local Government (Miscellaneous Provisions) Act 1982**

This act enables the Council to board up unsecure empty properties. The Council will attempt to contact the owner to carry out the work. If the property remains unsecure the Council may serve a notice giving the owner 48 hours to make the property secure. If the property remains unsecure after this the Council may carry out the work and re-charge its costs. A local authority need not to give any such notice if it is necessary to undertake works immediately or owner/occupier cannot be reasonably traced.

- **Public Health Act 1961**

This act enables the Council to require owners / occupiers to unblock or repair toilets. If negotiation fails the Council may serve a notice requiring the toilet to be unblocked within 7 days. After which the Council may carry out the work and re-charge its costs.

If the toilet requires repair the Council may serve a notice requiring the toilet to be repaired within 14 days. After which the Council may carry out the work and re-charge its costs.
• **Environmental Protection Act 1990**

This act enables the Council to deal with premises that are deemed to be a nuisance/prejudicial to health. Prejudicial to health is defined as injurious or likely to cause injury to health.

• **Building Act 1984**

Section 59 of the Building Act 1984 allows by notice the Council to require owners to provide new, repair, or upgrade existing: drains, gutters, cesspools, sewers, drains, soil pipes, and rainwater pipes etc.

The Council must give the owner of the property reasonable time to carry out the work. If the owner fails to carry out the work the Council may carry out the work itself and prosecute.

• **Smoke and Carbon Monoxide Alarm Regulations 2015**

The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord’s duty has occurred) on a private landlord if there is no smoke alarm fitted on each storey of the premises on which there is a room used wholly or partly as living accommodation.

The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord’s duty has occurred) on a private landlord if there is not a carbon monoxide alarm fitted in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

The notice will require the landlord to take action within 28 days