

## **HAMBLETON DISTRICT COUNCIL**

**Report To:** Cabinet  
15 July 2014

**Subject:** HOUSING STANDARDS ENFORCEMENT POLICY – VERSION 1.7

All Wards

Portfolio Holder for Environmental and Planning Services: Councillor Brian Phillips

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### **1.0 PURPOSE AND BACKGROUND:**

- 1.1 The Environmental Health Service has an overall Enforcement Policy in relation to all its activities. This sets out how we will meet the requirements of the Regulators' Code, Priority Regulatory Outcomes, Crown Prosecution Service requirements, Better Regulation Delivery Office requirements and others. This is phrased in general terms. Individual policies in relation to specific functions are required in order that interested parties can see more clearly how enforcement would work in relation to their organisation and activity.
- 1.2 The current Housing Standards Enforcement Policy has been recognised as insufficient to deal with situations where the property of owner occupiers poses either a risk to themselves or to neighbours. The opportunity has also been taken to simplify the Policy and clarify the policy to be adopted in relation to dealing with hazards. The following paragraphs identify in brief the changes proposed to the existing Policy and further simplification has been undertaken throughout.
- 1.3 The Overview now contains the commitment to providing advisory services to owner occupiers and includes reference to houses in multiple occupation.
- 1.4 The description of the Housing Health and Safety Rating System (HHSRS) has been simplified and clarified to illustrate that the Council will take action in relation to category A-D hazards and may take action in relation to Category E-J Hazards. This enables the Environmental Health Service to prioritise action in relation to the most serious issues.
- 1.5 Section 2 clarifies the enforcement objectives and confirms that, although enforcement activity is mainly aimed at supporting tenants, action may also be needed in relation to owner-occupiers in specific situations described in section 2.2 for example where their property poses a significant risk to others, where a hazard prevents the occupier receiving suitable care in the home or where they have requested assistance in specific cases.
- 1.6 Section 3 and 4.2 have been amended to clarify how the EH Service will provide assistance to landlords and tenants as well as owner-occupiers.
- 1.7 Section 4.3 has been amended to remove the prescriptive action and allow flexibility in the use of enforcement tools.
- 1.8 If the Policy is adopted the following actions will be taken:-
  - placing the Policy on the Council's website linked to pages relating to housing standards;
  - a press release to publicise the existence of the Policy;
  - the Policy is also produced in the form of a leaflet; and

- the Policy is promoted at the Landlords Forum and with mailshots to landlords, letting agents, estate agents and private landlords' representative organisations.

## **2.0 LINK TO COUNCIL PRIORITIES:**

- 2.1 This links to the Council's Housing priority in that it will drive up standards and improve the quality of the housing stock and make decent housing available for all sections of the local community.

## **3.0 RISK ASSESSMENT:**

- 3.1 There are no significant risks associated with this report.

## **4.0 FINANCIAL IMPLICATIONS:**

- 4.1 There are no financial implications associated with the adoption of this Policy.

## **5.0 LEGAL IMPLICATIONS:**

- 5.1 By adopting this Policy, the Council will comply with new codes to be introduced in 2014.

## **6.0 RECOMMENDATIONS:**

- 6.1 That Cabinet approves the amended Housing Standards Enforcement Policy v1.7.

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**Background papers:** Environmental Health Service Enforcement Strategy and Policy

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**HAMBLETON DISTRICT COUNCIL  
ENVIRONMENTAL HEALTH SERVICE**

**HOUSING STANDARDS  
ENFORCEMENT POLICY**

**Date of Issue:**

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## **FOREWORD**

The Residential Team (herein referred to as 'the service') sets out to maintain and improve the housing conditions within the district. Housing is a key social determinant of health and we recognise the impact of housing and its conditions on health and wellbeing outcomes. Through the provision of this service we aim to address inequality in housing conditions attributable to health.

The service takes a proactive approach to give informal advice, assistance and information to landlords, tenants and owner occupiers, to improve standards overall within the sector that does not rely on complaints. However for individual cases where this approach fails the service will take enforcement action if necessary in order to protect the health, safety and welfare of persons.

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## **1. OVERVIEW OF THE POLICY AND SERVICE**

This policy is in accordance with the Environmental Health Service Enforcement Strategy and Policy. The Aims of the policy are to:

- set out the legal responsibilities, policies, principles and priorities that the service will follow when enforcing legislation
- help provide safer and healthier housing and improve the health and wellbeing of occupants.
- improve property and management standards to increase public confidence in the quality of accommodation leading to a vibrant private rented sector.
- raise the profile and increase transparency and consistency of enforcement in the private rented sector.
- support a range of corporate objectives including improving neighbourhoods and increasing energy efficiency.

This policy sets out the ways in which the service will:

- Use its enforcement powers to raise the profile of and publicise the service and increase public confidence;
- Undertake enforcement with a transparent approach so that people understand how they will be dealt with by the Council in these circumstances;
- Provide enforcement officers with the necessary training, guidance and procedures to be followed;
- Prioritise our responsibilities to meet Council priorities and service plan objectives through targeted resources;
- Encourage joint working across services;
- Provide a range of advisory services to owner occupiers, landlords and tenants.
- Provide training on a range of topics chosen by landlords
- Record data on housing statistics and outcomes.

The service is responsible for enforcing a range of statutory provisions relating to housing standards. The principle legislation used is the Housing Act 2004. Other legislation such as the management of Housing in Multiple Occupation Regulations 2006, Environmental Protection Act 1990 or drainage legislation will also be utilised depending on the circumstances. Officers will use professional judgement to determine the most appropriate piece of legislation to use; in some cases a range of enforcement tools may be appropriate.

### **The Housing Act 2004 and the Housing Health and Safety Rating System**

The Housing Act 2004 introduced the Housing Health and Safety Rating System (HHSRS) as a prescribed method of assessment. The HHSRS is a risk-based

evaluation tool used to identify potential risks and hazards to health and safety from deficiencies identified in dwellings and is applicable to all housing tenures.

There are 29 hazard profiles that deficiencies can come under. When a potential hazard is identified all the deficiencies under that hazard are recorded and used to determine a hazard score. This is a numerical representation of the overall risk from a hazard and is based on the evaluation of the likelihood of an occurrence and the probable spread of harms that could result.

The hazard score is put into a range of bands to categorise the seriousness, the bands going from J – the least serious up to A the most serious. A hazard score rating band A - C, is called a category 1 hazard and the authority has a duty to take action to reduce the hazard. A hazard score rating of D – J is called a category 2 hazard and the authority has a power to take action. The council will take enforcement action in regards to hazards listed A – D. The Council will use its discretion in taking enforcement action in regards to hazards E – J depending on circumstances of the case to reduce the hazard to an acceptable level.

Guidance on the HHSRS aimed at non-specialists, in particular private landlords, is available to view and download from the Council's website. This guidance will help property owners understand what local authority officers are inspecting for and how they assess the dwellings. This should help landlords to identify those areas where they need to do necessary work before the local authority carries out an inspection and requires remedial works.

## **2. ENFORCEMENT**

### **2.1 WHAT IS ENFORCEMENT?**

Enforcement means 'an action carried out in exercise of, or against the background of statutory enforcement powers'. This is not limited to formal enforcement action such as prosecution or service of legal notices. It includes inspections or investigations related to property, land or any relevant person for the purpose of checking compliance with legislation and giving advice or education to people to help them comply with the law.

Our policy recognises that most people want to comply with the law. Our aim is to deliver regulatory and enforcement functions in a proactive, enabling and supportive style; helping landlords, tenants and other groups meet their legal duty without unnecessary expense.

However, we will take firm and decisive action including prosecution and works in default where appropriate and, will prioritise enforcement action to remedy the worst situations that have the greatest impact.

We also aim to support individuals to enable them raise issues of concern and to assist them through the investigation process. The views of the occupying tenant will be taken into account in deciding on appropriate action.

## **2.2 ENFORCEMENT OBJECTIVES**

The enforcement objective of the service primarily covers privately rented property. Tenants are not in control of improving their housing conditions and enforcement powers are needed to bring about improvements through action against the landlord. However enforcement action may be taken against owner occupiers if there is a significant risk to others or where the hazard prevents the occupier receiving suitable care in the home or where they have requested assistance in specific cases.

We aim to react to problems raised in line with the seriousness of the issue rather than having a one size fits all approach. Officers are trained to make good judgements and offer advice over the phone rather than automatically inspecting every time. In normal circumstances enforcement action will be carried out with the objective of ensuring that:

- Tenants live in homes free of significant risks to their health and safety;
- Shared houses (known as houses in multiple-occupation (HMOs)) are identified and comply with HMO regulations where necessary, including licensing and compliance with licence conditions;
- Privately owned land or property does not present a statutory nuisance to other land owners or occupiers; does not directly or indirectly present an unacceptable risk to public health, safety or the environment; or does not directly present an unacceptable risk to the health & safety of the occupants.

## **3. PROVIDING ASSISTANCE, INFORMATION AND EDUCATION**

We will work with landlords and tenants to promote our service as one where advice and assistance can be freely obtained. This promotes a proactive approach to encourage engagement to address problems rather than having to take enforcement action. This ranges from advice and information by officers on site, over the telephone, in writing or through the range of advisory leaflets we provide.

We also aim to provide assistance to help landlords & tenants by:-

- ⤴ Communicating with landlords via mail shots through email or post to relay important safety information, changes to regulations or notifying them of opportunities e.g. free thermal insulation offers.
- ⤴ Provide guidance and sign-posting to other organisations on specific tenancy related issues such as illegal eviction, gas safety, energy efficiency etc.
- ⤴ Empower the tenants to make informed decisions when thinking about renting property i.e. what to ask and look out for, copies of gas and energy performance certificates.
- ⤴ Maintain pages on the Council's website giving a range of housing advice.



## **4. IMPLEMENTATION**

The purpose of the enforcement policy is to ensure that decisions are consistent, balanced, fair, transparent, proportional and relate to the common aims of the service. We will:

- Comply with the Environmental Health Service Enforcement Strategy and Policy document.
- Ensure staff apply a consistent approach to enforcing legislation through documented procedures and guidance.
- Provide officers with guidance and appropriate training to enable them to make consistent decisions, ensure they are fully acquainted with the requirements of this policy and monitor their compliance.
- Learn from activity and best practice to continually improve the effectiveness of our enforcement and service.
- Provide support to those requesting our services as necessary.

The policy must be followed in most cases. However we recognise that some requests are unique and must be considered on their own merits. Departures from the policy will only be made in exceptional circumstances with the agreement of the Team Leader.

Before proceeding with any action, officers shall consider if there is a shared or complementary enforcement role with other Services or agencies, e.g. North Yorkshire Fire and Rescue Authority (NYFRA) and liaise with them to achieve a quicker or sustainable resolution.

At each stage of the enforcement process, it is hoped that through the various forms of intervention, the complaint or enquiry can be resolved. While formal enforcement action is a necessary and important part of the enforcement process, it is generally viewed as a last resort; though in certain cases such as where deficiencies pose an unacceptably high level of risk, it may be necessary to use formal action as a first resort, including the use of emergency powers. Officers will seek compliance with legislation using a staged approach using one or more of the following:

- a) Verbal advice and recommendations
- b) Informal enforcement
- c) Formal enforcement
- d) Carry out work in default
- e) Simple caution.
- f) Prosecute

### **4.1 VERBAL ADVICE AND RECOMMENDATIONS**

In order to assist individuals, existing & prospective landlords and other organisations to comply with their legal obligations we will provide both information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems. Advice given will be communicated in a way which is open, clear, unbiased, and presented in plain English to help them understand their rights, obligations, options and to support them through any investigation process where necessary.

For individuals classed within a vulnerable group, direct officer intervention will be offered. A vulnerable person will be someone who the officer believes is unable to correctly interpret or understand the written or verbal advice, its implications or that it is likely to cause an unreasonable amount of stress or anxiety upon that individual.

In the case of complaints about the condition of a rented property, in the first instance complainants are advised to inform their Landlord, where possible, in writing of any defects and ask for these to be rectified within a reasonable period.

Should the landlord fail to respond in an appropriate way further intervention by the enforcement officer may be required depending on the nature of the repairs.

Where the Officer considers that there is an imminent risk of harm to the health and safety of the occupiers, then more immediate action will be taken.

## **4.2 INFORMAL ENFORCEMENT**

There is a presumption that in the first instance officers will seek the desired improvements by working informally with those involved. In deciding on any course of action there will be discussion with the owners, tenants and other interested parties so that the most appropriate course of action can be taken. The officer will also have regard to the landlord's apparent willingness to resolve a situation and any previous records of compliance. In most cases informal enforcement will follow the following steps:

- a) An inspection of the property will be arranged with the tenant. The owner / landlord will be given 24 hours notice of the Council's intention to inspect the property.
- b) With the exception of issues requiring urgent attention, inspection findings will be presented to the owner / landlord and tenant in writing within 10 working days. The letter will clearly identify those issues which are legally required to be addressed and those which are recommendations for improvement.
- c) An offer will be made to meet the owner / landlord onsite to go through the findings and/or discuss them verbally with the investigating officer.
- d) The landlord will be provided with an opportunity to make a representation on the findings and how they intend to address them.
- e) An agreed way forward and time scale will be agreed between all parties.
- f) As the complaint progresses the officer will keep both parties updated on developments as necessary

## **4.3 FORMAL ENFORCEMENT**

A formal approach describes circumstances where an officer considers it necessary to use their legislative powers such as serving a legal notice to ensure that

necessary improvements are undertaken. This could be due to a variety of factors as listed:

- There is a serious risk to health and safety. For example no heating in cold weather or exposed live electrical wiring with which people are likely to make contact
- An agreement cannot be obtained, from the landlord to carry out the necessary works requested
- The landlord fails to make satisfactory progress to complete works in a timely manner;
- There is a recent history of failure to meet requests or a record of criminal convictions; to carry out works or requested or to manage a property in line with legal requirements;
- It is necessary to safeguard and protect health and safety of future tenants for example when the existing tenant does not wish for works to proceed or when the existing tenant is being evicted

Depending on the enforcement action the landlord has between 21 and 28 days to appeal either to the Residential Property Tribunal or Magistrates' court. If no appeal is received it becomes a criminal offence not to comply with the terms within the time frame specified.

#### **4.4 WORK IN DEFAULT**

Where the requirements of the legal notice are not met, the Council is empowered to carry out the required works and recover the costs. The Council will generally carry out works in default when:

- a) The Council regards work in default as being a more appropriate or effective remedy than prosecution;
- b) The person served with a statutory notice starts work but then does not make satisfactory progress in accordance with stipulated timescales;
- c) The Council may agree to carry out work in default on behalf of the person responsible where a written request and an undertaking to pay has been received;
- d) Inspection by the Council has deemed that the works carried out are not suitable to ensure compliance with the notice.

In deciding whether to carry out work in default, the Council will consider:

- a) The ongoing risk to health posed by the hazard in respect of which work is required to remove;
- a) Where known - the wishes of the person responsible;

- b) Where the evidence available indicates a realistic prospect of recovering its reasonable costs;
- c) Where statute allows the Council to recover the cost of the works by placing a charge on the property

The Council has a policy which sets out how works, goods, and services will be procured. These will be followed when arranging for works in default to be carried out.

Costs recharged may cover activities in carrying out the works in default such as officer time, travel costs, invoices and administration. Recovery of outstanding money will be undertaken through the Council's debt recovery procedures.

#### **4.5 SIMPLE CAUTION**

Non-compliance with enforcement legislation can make people liable to be convicted of criminal offences. Officers may use Simple Cautions as part of the enforcement process.

Before deciding whether formal legal proceedings should be instituted for non compliance, the officer will consider whether other action, such as issuing a simple caution in accordance with Home Office Circular 016/2008, would be more appropriate or effective. The purpose of the simple caution is:-

- a) To deal quickly and simply with less serious offences where the offender has admitted the offence;
- b) To divert offenders, where appropriate, from appearing in the criminal courts;
- c) To record an individual's criminal conduct for possible reference in future criminal proceedings or relevant security checks; and
- d) To reduce the chances of them re-offending.

The significance of a simple caution is that a formal record will be kept and may be cited in court if the offender is subsequently found guilty of an offence. A previous simple caution may influence the decision to prosecute in a future case and this will be explained to the suspected offender. The rules covering simple cautions are provided on the Home Office web site in Home Office Circular 016-2008.

#### **4.6 PROSECUTION**

Prosecution will only be instigated following review of the matter by the Team Leader and in agreement with Legal Services. The Council will generally initiate legal proceedings where:

- i. a person served with a legal notice fails to comply with the requirements of a notice and has not appealed against the terms of the notice or their appeal has not been upheld and the Council regards prosecution as likely to be a more appropriate and effective remedy than works in default alone

- ii. a simple caution is not appropriate or a person accused has refused to accept the simple caution
- iii. where a person has obstructed an officer in the course of their duty.

In deciding whether to prosecute, the Council will consider:

- a) The seriousness of the alleged offence;
- b) Where the approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; provision of false information; or obstruction of an officer in the course of their duty;
- c) The likelihood of a reasonable defence
- d) The presence and availability of important witnesses;
- e) The probable public benefit of a prosecution and the importance of the case;
- f) Whether other action, such as issuing a simple caution would be more appropriate or effective;

## **5. CHARGING FOR NOTICES**

There will be a charge for Notices according to fees and charges policy.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken i.e. where a landlord is not at fault e.g. we believe that the tenant has caused damage or that the reason for serving the notice was outside of the control of the landlord.

## **6. RECOVERY OF DEBTS AND COUNCIL INCURRED COSTS.**

Charges for enforcement action will be recovered by serving a demand for payment on the person(s) on whom the notice or order is served. Where charges for enforcement action are levied they will also be registered as a Local Land Charge on the property until the debt is recovered. Notice fees will not be charged against owner occupiers.

The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges).

## **7. POWERS OF ENTRY**

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

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.

Powers of Entry can be enforced in the first instance where it is necessary to:

- protect the health and safety of any person
- investigate an offence
- prevent the obstruction of officers
- carry out a statutory duty or power

The powers of entry can be enforced with a warrant. The Police will accompany officers where it is appropriate to do so. 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.

## **8. POWERS TO REQUIRE DOCUMENTS**

Currently authorised officers have the power to require:

- 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.
- To obtain information from persons and authorities.

It is an offence not to produce the required information. Where information is not provided as requested formal action will be considered .

## **9. MANDATORY HOUSE IN MULTIPLE OCCUPATION (HMO) LICENSING**

A licence is required for HMOs of 3 or more storeys with 5 or more persons in 2 or more households sharing the facilities.

It is an offence not to licence this type of HMO and the Council will undertake systematic surveys using all relevant information held by the Council to find unlicensed HMOs.

If a landlord has approached the Council for a licence an informal approach will be adopted so long as the application is subsequently duly made within 14 days.

There may also be exceptional circumstances that have resulted in an application not being made which will be considered.

Where landlords have been prosecuted for operating an unlicensed HMO the Council will consider using the Rent Repayment Orders to claim back any Housing Benefit paid whilst the HMO was unlicensed.

Where a license is issued, the council at the same time will also inspect the property to ensure it complies with the HHSRS.

#### **10. SERVICE DELIVERY TIMES.**

- Where a serious risk to health is considered to exist we will aim to initiate an investigation into the complaint within 48 hours.
- Prior to undertaking any inspection of a residential property under HHSRS it is a requirement of the Housing Act 2004 for a minimum of 24 hours notice to be given to the landlord. This will be through a notification of intention to inspect notice and/or telephone call.
- An initial response from an officer to a service request will be made within 3 working days
- Advisory letters will be sent within 10 working days
- Any written correspondence the council receives will be responded to within 5 working days or, if further time is needed to deal with the enquiry, a holding response will be sent.
- For cases which have not obtained a conclusion within 6 months, a case conference will be convened with the Lead Officer to determine an outcome.

#### **11. OFFICER TRAINING, COMPETENCY AND AUTHORISATION**

Only officers who are competent by virtue of their training, qualifications and/or experience will be authorised to take enforcement action. The Environmental Health Manager will maintain a list of current authorisations.

Authorised officers will also have sufficient training and understanding of the departmental policies and procedures to ensure a consistent approach to service delivery.

Officers who undertake criminal investigations will be conversant with the provisions of the following legislation:

- Police and Criminal Evidence Act 1984;
- The Criminal Procedure and Investigations Act 1996;
- The Regulation of Investigatory Powers Act 2000;
- The Data Protection Act 1998;
- Freedom of Information Act 2000.

#### **12. POLICY REVIEW**

The implications and effectiveness of this Policy will be regularly monitored.

This Policy will be reviewed annually by the Residential Team Leader and Environmental Health Manager to reflect changes shown to be necessary from internal monitoring, by legislation or by guidance from the Central Government Agencies. Views on the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

This Policy was recommended for adoption at the Cabinet meeting on xx 2014 (minute x ) and adopted by Hambleton District Council on xx 2014 (minute x).

### **13. COMPLAINTS**

Where a person is not satisfied with the service that has been delivered, the Council's formal complaints procedure should be followed.