



Hastings Borough Council

Housing Services

Housing Renewal Enforcement Policy

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1. Introduction

- 1.1 The principles of good enforcement were drawn up by Government and published in the Enforcement Concordat in March 1998, which was adopted by the Council in June 1998.
- 1.2 The Concordat sets out the critical elements of good enforcement practice that a local authority should have in place. These include:
 - Enforcement policies
 - Enforcement procedures
 - Complaints procedure
- 1.3 A corporate enforcement policy was adopted by Cabinet in April 2001. This forms the umbrella document, setting out the Council's position and approach to enforcement. It is supported by service specific enforcement policies, enforcement procedures, specified standards and levels of service, monitoring procedures and a well-publicised complaints procedure.
- 1.4 This document sets out the enforcement policy for the Council's Housing Renewal Service.

2. Policy Aims and Objectives

- 2.1 The aims and objectives of the enforcement policy are consistent with the [Housing Strategy 2009 – 2013](#). They are intended to support the development of sustainable, secure and affordable communities where homes are in good repair. The policy aims to achieve this by:
 - Developing proactive and reactive measures to achieve a quality housing sector using encouragement and enforcement across the whole range, where necessary.
 - Maintaining an [Empty Homes Strategy](#) to tackle the Borough's empty homes.
- 2.2 The key aim is to achieve good quality, affordable and sustainable homes within the housing sector that meet the required statutory standards and where possible the Decent Homes standard.
- 2.3 The primary responsibility for ensuring adequate standards lies with the owners and managing agents of all types of housing.

- 2.4 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the personal, social, physical and economic environment, or to secure compliance with a regulatory system.

3. Human Rights

- 3.1 In implementing this policy, the Council recognises the fundamental principles of the Human Rights Act, and in particular Article 6 and Article 8, and how these will be applied to housing enforcement.

- 3.2 Article 6

Article 6 provides the right to a fair and public trial within a reasonable time. The Council will ensure that all legislation and powers that it enforces are compatible with the Human Rights Act, and afford the right to access to a court or tribunal, and the right to a fair hearing. Where enforcement action is taken, the Council will ensure that any hearing is held within a reasonable time and will attempt to avoid any unnecessary delays, within the constraints of the Court/Tribunal systems.

- 3.3. Article 8

Article 8 provides the right to respect for private and family life, home and correspondence. The Council will ensure that in its enforcement activity, a person's private life will only be interfered with where there is lawful authority to do so and when action is necessary in accordance with the law. Officers will also satisfy themselves that enforcement action taken is proportional to the nature of the offence.

- 3.4 Officers will ensure that enforcement action is taken consistently and fairly regardless of ethnicity, colour, religion, gender, sexuality, age or disability. Appropriate arrangements will be put in place to monitor the consistent application of enforcement in these respects.

4. Principles of Enforcement

- 4.1 The effectiveness of legislation in protecting the occupiers of housing depends crucially on the compliance of those being regulated. Many owners wish to comply with the law. The Council will help owners of housing to meet their legal obligations without unnecessary expense. The Council will take formal action, including prosecution, against those who flout the law or act irresponsibly. Although the Council expects full voluntary compliance with the relevant legislative requirements, it will not hesitate to use its enforcement powers, where necessary.

4.2 The term 'enforcement' includes advisory visits and assisting with compliance, as well as formal enforcement action and prosecution.

4.3 The Council believes in firm but fair regulation. Underlying this are principles of:

- Proportionality in the application of the law and in securing compliance with it.
- Consistency of approach.
- Transparency about how the Council operates and what those regulated can expect from the Council.
- Targeting of enforcement action.

4.4 Standards

4.4.1 Clear standards will be drawn up in consultation with business and other relevant interested parties, setting out the level of service and performance those owners and tenants can expect. These standards will be published.

4.4.2 The Council will provide a courteous and efficient service. Staff will identify themselves by name. A contact point, telephone number and email address will be provided. People will be encouraged to seek advice and information.

4.4.3 The Council will ensure that, wherever practicable, enforcement is co-ordinated between relevant services (such as Housing Options, Environmental Health, Planning Enforcement). This will minimise unnecessary overlaps and time delays. On occasions, visits will be made outside of normal working hours where access to a property cannot be obtained during the working day.

4.5 Proportionality

4.5.1 The Council will aim to minimise the costs of compliance for businesses. This will be achieved by ensuring that any action it requires is proportionate to the risks to health and safety. Enforcement will be in accordance with the relevant legislation.

4.5.2 Some breaches of regulatory requirements cause, or have the potential to cause serious damage to the health, welfare and/or safety of the public. Others may cause social, physical or economic damage. Others interfere with people's enjoyment of life or their human rights, or the ability of the Council to carry out its activities. The enforcement action taken by the Council will be proportionate to the risks posed and to the seriousness of any breach of the law.

4.6 Consistency

- 4.6.1 Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council will carry out its enforcement activities in a fair, equitable and consistent manner. Procedures are in place to ensure that this is achieved.
- 4.6.2 Consistency does not mean simple uniformity, and officers will need to take into account many variables, such as the extent of the breach of the law, the attitude and actions of those responsible for it, and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement, and the Council will exercise discretion in determining the most appropriate course of action.
- 4.6.3 Arrangements to promote consistency will continue to be developed. This includes effective arrangements for liaison with other enforcing authorities to identify best practice. This will take place at the Sussex Housing Group and any other relevant opportunities, e.g. benchmarking.
- 4.6.4 Guidance issued by government and other relevant agencies, e.g. [LG Regulation](#) will always be considered. This will assist in achieving and maintaining consistency, where appropriate.

4.7 Transparency

- 4.7.1 Transparency means helping those regulated, and others, to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to or has taken enforcement action. The Council will ensure that:
- Where action is required it is clearly explained in writing and in a language understood by the recipient.
 - A written explanation of why the action is necessary and when it must be carried out, within the requirements of the legislation.
 - A clear distinction will be made between recommendations and legal requirements.
 - A written explanation is given of any rights of appeal against formal enforcement action at the time that action is taken. This is the ability to challenge the Council's proposed or taken action, via the appropriate Court or Tribunal, e.g. the [Residential Property Tribunal](#). Appeals can be made on many different grounds, depending on the action taken and the appropriate legislation. The notes that accompany any enforcement action taken by the Council will fully explain these grounds.

- Where required, this information will be provided in the language required by the occupant, either in writing, or by the use of an interpreter.

4.8 Targeting

- 4.8.1 Targeting means making sure that regulatory effort is primarily directed at those whose activities give rise to, or risk of, serious damage to the health, welfare and/or safety of the public. It will also be targeted where there is serious social, physical or economic damage.

5. Enforcement Options

- 5.1 The enforcement options available in any particular circumstances will depend upon the applicable legislation, the degree of the offence, or breach of the requirements. The Council will seek to ensure that in all cases the enforcement option selected is that which is proportionate to the nature and degree of the offence. The enforcement will be consistent with other enforcement action in similar circumstances. The action will aim to achieve the desired remedial action or sanction in the minimum period permissible under the relevant legislation. Where necessary, the requirements of the Police and Criminal Evidence Act 1984 will be followed.

- 5.2 The options that will be implemented by the Council are:

- No action, but to record the circumstances
- Informal action
- Service of statutory notices/orders. This includes the power to charge for enforcement action
- Prosecution
- Work in default
- Formal caution
- Refusal or revocation of licences in connection with the licensing of Houses in Multiple Occupation

5.3. No Action

- 5.3.1 This is only appropriate in relation to trivial matters and in most circumstances would not be relevant.

5.4 Informal Action

- 5.4.1 Informal action is appropriate where one or more of the following circumstances apply:

- There is no legislative requirement to serve a formal notice/order and the circumstances are not serious enough to warrant formal action
- Past history suggests informal action will achieve compliance
- There is confidence in the management or the individual
- The consequences of non-compliance will not pose a significant risk to occupiers or others

5.4.2 Informal action may consist of written correspondence (letters, emails) or verbal advice. Officers will always clearly differentiate between legal requirements and recommendations.

5.5 Service of Statutory Notices/Orders

5.5.1 The Council has mandatory and discretionary powers. For example in the Housing Act 2004 the Council has a legislative duty to take the best course of action available to it in relation to category 1 hazards. This is where the risk to health and/or safety is high. The courses of action that are available to the Council under the Housing Act 2004 are:

- Service of an Improvement Notice
- Making a prohibition Order
- Service of a hazard awareness notice
- Taking emergency remedial action
- Making an emergency prohibition order
- Making a demolition order
- Declaring a clearance area

Other statutory instruments are available to the Council, for example the Environmental Protection Act. Regardless of the legislation used the principles of this policy will be adhered to. Action will be carried out in accordance with relevant Legislation, Guidance, Codes of Practice and in line with current best practice.

5.5.2 Under the Housing Act 2004, the Council has a power to deal with category 2 hazards. This is where the risk to health and/or safety is not so significant. The Council will exercise this power in the following circumstances:

- Where the hazard relates to a failure of the [Decent Homes Standard](#).
- Where there are Category 1 hazard(s) also present at the residential unit of accommodation.
- Where the Category 2 hazard is progressive and will likely become a Category 1 hazard unless preventive action is taken.
- In other exceptional circumstances outside the scope of supplement and procedures at the discretion of the Housing Renewal Manager.

- 5.5.3 Service of a notice/order will only be considered where it is appropriate and where there is sufficient evidence to justify its issue.
- 5.5.4 Notices will include reasonable time limits having regard to the seriousness of the defects and/or contraventions. All appropriate persons will be notified of the formal action, for example tenants, mortgagees.
- 5.5.6 Recipients of a statutory notice/order will be told about their rights of appeal.
- 5.5.7 Where the legislation allows, the Council will make a charge for enforcement action.
- 5.5.8 Emergency action, for example, emergency remedial action or emergency prohibition orders will only be used in where the legislation allows it. For example, emergency remedial action will only be carried out where a category 1 hazard is present at the residential property and where that hazard involves an imminent risk of serious harm to the health and/safety of any of the occupiers or visitors.

5.6 Prosecution

- 5.6.1 The decision to prosecute is a significant one and will only be taken by the Housing Renewal Manager, through authority delegated by the Council, in consultation with the Council's Legal Advisers.

A prosecution will not be commenced or continued by the Council unless it is satisfied that there is sufficient, admissible and reliable evidence, and that there is a realistic prospect of conviction. If the case does not pass the evidential test it will not go ahead. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so.

- 5.6.2 The Council will consider the individual circumstances of each case when making its decision whether or not to prosecute and the Council will have regard to the Code for Crown Prosecutors for informing this decision. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and then go on to make an overall assessment. The Council will always advise the suspected offender to seek independent legal advice.
- 5.6.3 Where there is sufficient evidence, the Council will normally prosecute in any of the following circumstances:

- Incidents or breaches, which have significant consequences for the social, physical or economic environment, or which have the potential for such consequences
- Incidents or breaches that have significant consequences on the health, safety and/or welfare of members of the public
- Operations carried out without a relevant licence
- Excessive or persistent breaches of regulatory requirements
- Failure to comply, or to comply adequately, with formal remedial and/or improvement requirements
- Failure to comply with the requirements of an enforcement notice/order
- Reckless disregard for management or quality standards
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information
- Obstruction of Council staff in carrying out their powers

5.6.4 In normal circumstances prosecution will not be undertaken without the offender being given every opportunity to comply with the law. However, there are circumstances where an offence is particularly serious or there has been a blatant or reckless disregard for the law. In these circumstances the Council will prosecute without prior warning. Intentional failure to comply with a statutory notice/order could lead to prosecution without prejudice to the powers of the Council to carry out works in default.

5.6.5 Once a decision to instigate legal proceedings has been made, the Housing Renewal Manager shall promptly refer the matter to the Borough Solicitor.

5.7 Works in Default

5.7.1 Work in default may be carried out as an alternative to, or in addition to, prosecution. The decision to carry out work in default will be taken by the Housing Renewal Manager and each case will be considered on its own merits.

5.7.2 The Financial Rules and Financial Operating Procedures of the Council will be fully adhered to when seeking to carry out works in default. Where the costs of carrying out the works in default will or are likely to exceed £10,000 separate authorisation will be sought.

5.7.3 The Council will always seek to recover costs associated with carrying out work in default, where necessary through the Courts, including, where applicable, administrative costs and Officer time. Where appropriate, the costs will be placed against the property as a Charge. Where appropriate, the Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

5.8 Formal Cautions

- 5.8.1 A formal caution may be issued as an alternative to prosecution, to:
- Deal quickly and simply with less serious offences
 - Divert less serious offences away from the courts
 - Reduce the chances of repeat offences
- 5.8.2 Before a formal caution is administered, the Housing Renewal Manager must be satisfied that:
- There is evidence of the suspected offender's guilt to give a realistic prospect of conviction
 - The suspected offender must formally admit to the offence
 - The suspected offender must understand the significance of a formal caution and give consent to being cautioned
 - The Council will always advise the suspected offender to seek independent legal advice
- 5.8.3 Formal cautions will be issued in accordance with [Home Office Circular 016/2008](#). The Housing Renewal Manager shall be authorised as a 'cautioning officer', and the cautioning procedure in the Circular will be followed, in consultation with the Council's Legal Services. Where a formal caution is declined, the Council will consider taking alternative action, including prosecution.
- 5.8.4 Where there is insufficient evidence to prosecute, other types of action, such as a formal caution, shall not be an alternative.

6. Houses in Multiple Occupation

- 6.1 Houses in multiple occupation (HMOs), including buildings where the Council have served a HMO declaration, will be proactively inspected based on risk, utilising a hazard rating score. The HMO proactive inspection programme is monitored and reviewed.
- 6.2 HMOs requiring licensing will remain part of the proactive inspection programme. Licenses will be issued, refused, varied or revoked in line with legislation and guidance. Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and other Local Housing Authorities.

- 6.3 With specific regard to the Management of HMOs (England) Regulations 2006, enforcement action will be proportionate to the risk posed by breaches of these Regulations. In normal circumstances the person responsible will be informally written to with details of the breaches of these Regulations, giving a reasonable time period in which to remedy the breaches. Formal legal proceedings will be considered if there is a continual failure to address the breaches, or there is a history of continual breaches of the Regulations.
- 6.4 A Public Register of licensed HMOs, dwellings with interim/final/empty dwelling management orders and HMOs with temporary exemption Notices in force and will be available, upon request, for public inspection at the appropriate Council office, in line with the requirements of the legislation and guidance. If a copy of the register, in full or part is requested by a member of the public, this may be subject to a reasonable fee to cover administration costs.

7. Shared Enforcement Role

- 7.1 Certain situations require a shared or complementary enforcement role with other agencies. Examples of this are as follows:
- Consultation with the local Fire & Rescue Service before enforcement action is taken, in regard to making improvements to fire precautions, or to improve the means of escape in a house in multiple occupation.
 - Consultation with the Council's Planning Officers over the change in use of certain premises i.e. hotels now used as hostels for homeless people and asylum seekers.
 - Liaison with the Council's Housing Advice Service over tenants complaining of disrepair to their accommodation, who are subsequently threatened with homelessness, or who are subject to harassment or illegal eviction.
 - Liaison with East Sussex County Council Social Services department over premises occupied by asylum seekers.

This is not an exhaustive or definitive list.

8. Authorisations

- 8.1. The Head of Housing has delegated authority to take certain action under a range of legislation, e.g. the service of enforcement notices. The Head of Housing appropriately delegates these powers to other Officers.

9. Departure from Policy

- 9.1 All Officers will follow this policy when making enforcement decisions. Any departure from the policy must be exceptional and capable of justification and can only proceed with the agreement of the Head of Housing.
- 9.2 Notwithstanding the existence of this policy, when reaching a decision requiring the exercise of discretion, the Head of Housing, or officer concerned will consider all the circumstances and treat each case on its merits.

10. Training

- 10.1 Officers undertaking enforcement duties will be suitably trained and qualified to ensure that they are fully competent to undertake their enforcement activity.

11. Complaints

- 11.1 If a complaint is received about the action taken, or information or advice given by the Housing Renewal Staff, the customer should contact the officer concerned, in the first instance, or his/her Team Leader who will try to resolve the problem on an informal basis.
- 11.2 Where the complainant is unhappy with this response, or the department takes no action, the customer can ask the Head of Housing to look at the complaint. As someone not previously involved, they will review the way the complaint has been dealt with and will try to reply within 10 working days. If the issue is particularly complicated, it might take longer.
- 11.3 If the complaint has not been resolved after the Head of Housing's reply, the customer can write to the Chief Executive of Hastings Borough Council:

Chief Executive, Hastings Borough Council, Town Hall, Queens Road,
Hastings. TN34 1QR

The complaint will be investigated and the complainant will be given a full written reply. Although complaints are given high priority and the Council will

try to reply as quickly as possible, the Council might have to examine all the relevant files and perhaps interview the staff involved, and it could therefore take up to 6 weeks to complete a full investigation. In some cases (where there are very complicated issues) it may take longer. Either way, the Council will keep the customer advised of progress.

- 11.4 If the complaint has not been resolved by this final review, the customer will be informed of their right to contact the [Local Government Ombudsman](#).
- 11.5 The Complaints process outlined above details the process involved, where a customer believes that they have not received the expected level of service. Further information is available on the [complaints and comments](#) section for the website.
- 11.6 A complaint against the service received from the Council is not the correct process to follow when a recipient of the enforcement action believes the enforcement action was incorrect or unnecessary. A complaint against service does not replace an appeal. In these circumstances the recipient of the enforcement action is strongly advised to follow the appropriate appeals process. See section 4.7 (Transparency) for further information on appeals.

12. Review of Policy

- 12.1 The policy will be regularly reviewed as necessary to ensure that all developments and changes in legislation and guidance are taken into account. Any significant changes will be reported to members.