



GEDLING

BOROUGH COUNCIL

Private Sector Housing

Enforcement Policy

April 2010

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1. Introduction

The Council is the “Local Housing Authority” for the Borough of Gedling and has a statutory duty to enforce the provisions of the Housing Act 2004, associated regulations, and other housing legislation within the district.

The Council’s Sustainable Community Strategy and vision for 2026 sets out the priority, “A well looked after environment that meets the present and future needs of Gedling Borough”. Research into the strategy confirmed that a well designed local environment and good housing can enhance people’s lives.

Although private housing is an asset to its owner and as such they are responsible for its repair and maintenance, the Council has identified the need for a documented enforcement policy which clearly sets out our approach to raising the standard of private sector accommodation by enforcement where required.

The policy will cover the following issues:

- Policy Statement
- Equalities Statement
- The approach we will adopt
- Implementing the policy
- Complaints about our service

The policy does not deal with the provision of housing grants as this does not relate primarily to enforcement.

2. Policy statement

The Council will endeavour to make effective arrangements to enforce the appropriate sections of the Housing Act 2004 and other relevant legislation, with the aim of protecting the health, safety and welfare of private sector residents, and anyone who may be affected by the condition of their accommodation.

Whilst this policy is aimed primarily at the private sector, the policy will also apply to social housing tenants where complaints are received about the conditions of accommodation provided by a registered social landlord.

3. Equalities statement

This policy will be administered in accordance with the Council’s adopted Equality Improvement Plan, “Towards an even fairer Gedling” which has the following objectives:

- To build and promote good relations between and within all communities in Gedling.

- To ensure the Council meets its legal obligations to achieve equality of opportunity in the areas of race, gender, disability, sexual orientation, religion or belief and age.
- To make it easier for customers to access Council services and to tailor services to meet local needs more effectively

4. The approach we will adopt

The Council will aim to ensure that a balanced and consistent approach is adopted by all enforcement officers in carrying out their duties.

Gedling Borough Council will, when dealing with private sector housing in its area (including Houses in Multiple Occupation (HMOs), owner-occupied and privately rented houses) aim to:

- Reduce the number of dwellings with category one hazards as defined in the Housing Health and Safety Rating System.
- Ensure satisfactory standards of repair, safety and the provision of adequate amenities.
- Ensure satisfactory means of escape from fire and other fire precautions in all premises.
- Reduce the number of empty properties that have been empty for more than 6 months.
- Ensure empty dwellings are secured against unauthorised access and do not present a risk to public health.
- Ensure satisfactory management of HMO's.
- Ensure private sector accommodation is not overcrowded.
- Deal appropriately with filthy and verminous premises.
- Ensure premises are not prejudicial to health or a nuisance.
- Liaise with other Local Housing Authorities in the county, the County Council, Fire and Rescue Service, and other relevant agencies, through meetings and working groups with the aim of achieving a consistent approach.
- Ensure all authorised officers carrying out enforcement duties are appropriately trained.
- Make consistent enforcement decisions in accordance with the procedure detailed in appendix A of this policy, and the Environmental Health enforcement policy adopted by the Council in appendix B.

5. Implementing the policy

i) HOW THE COUNCIL WILL CARRY OUT IT'S DUTIES

a) Pro-Active Inspections

Known HMOs will be inspected on a proactive basis. The Council will also actively seek to identify HMOs and empty homes. The Council will licence all relevant HMOs in accordance with the requirements of the Housing Act 2004.

b) Reactive Inspections

Reactive inspections will be carried out following the receipt of a request for service, or when information comes to light highlighting a potential requirement for intervention. It is the Council's aim to action requests for service within three working days and implement appropriate enforcement procedures.

An inspection of an HMO where an application for licensing has been received will take place prior to the application being approved or refused.

c) Education

The Council will offer advice to Landlords and housing agents of their duties, and changes in legislation where they interact with the Council. The Council contributes to the provision of the Greater Nottingham Landlords Electronic Newsletter which provides regular up-to-date information for landlords and agents, and the Council directs landlords to use this site.

The Council also encourages landlords to seek accreditation via EMLAS (East Midlands Landlord Accreditation Service) or other similar accreditation schemes.

d) Enforcement

The procedure outlined in appendix A will be used as the basis for enforcement. To ensure an effective, transparent and consistent approach, authorised officers will follow the Environmental Health enforcement policy adopted by the Council in appendix B. In relation to regulatory action to which the provisions of the Legislative and Regulatory Reform Act 2006 apply, the provisions of the Regulators' Compliance Code will be applied (Appendix C).

ii) WHO WILL IMPLEMENT THE POLICY

Responsibility for implementation of the policy rests with the Head of Planning and Environment. Day to day activities are carried out by authorised officers in the Public Protection Section. The Environment and Housing Manager is responsible for the planning, organisation and monitoring of all aspects of the policy. Inspections, complaints investigation and education will be carried out by officers authorised in writing.

6. Complaints about our service

Any person feeling dissatisfied with the way they have been treated by the Council, or the way this policy has been implemented, can access the Council's official complaints system and should initially complain in writing to:

Head of Planning and Environment,
Gedling Borough Council,
Civic Centre,
Arnot Hill Park,
Arnold,
NOTTINGHAM,
NG5 6LU

Or log on to www.gedling.gov.uk

It is our aim to respond to complaints within ten working days. If having received a response, a person remains dissatisfied and the matter has not been resolved they have a right to report their case to the Local Government Ombudsman who can be contacted by telephoning 0300 061 0614 or 0845 602 1983, or via the website www.lgo.org.uk

7. Review

It is intended that this document will be subject to a periodic review to accommodate changes in legislation, local needs and the views of service users.

8. Website

Further information on services provided by Gedling Borough Council can be found on the website at www.gedling.gov.uk

APPENDIX A

Enforcement Procedure

Local authorities have a variety of options available to them when ensuring required housing standards are met in private sector housing. The decision on what action should be taken will depend largely upon the effect of the problem. Action can take a number of forms.

The options available to the Council are:

- a) Informal action
- b) Service of statutory notice
- c) Works in default
- d) Issue of simple cautions
- e) Instigation of prosecution proceedings
- f) Making of management orders, demolition orders, declaration of clearance areas
- g) Compulsory purchase
- h) Varying or revoking HMO licences

When conducting enforcement officers will bear in mind the requirements of this procedure and the guidance outlined in the Housing Health and Safety Rating System Operating Guidance and Enforcement Guidance together with other relevant statutory guidance.

A) Informal Action

Authorised officers may use informal procedures where they believe that such action will secure compliance with requirements of housing and associated legislation within a reasonable timescale. Informal action will normally involve discussion with landlords and/or the person in control of the dwelling. Written details will be sent by the authorised officer to the landlord and/or person in control outlining what action is required to comply with their legal obligations or recommended good practice.

Informal action is predominantly used where the defects are relatively minor and do not pose a serious risk to the health, safety and welfare of the occupants, or other persons. Informal action will normally be used as a first step when attempting to resolve matters, except when more serious circumstances occur and then action will be taken proportionate to the risk arising. Each case will be treated on its merits and according to the facts of the case.

B) Service of Statutory Notices

The service of statutory notices will be considered in any of the following circumstances:

- Attempts to resolve the situation informally have failed.
- There are serious contraventions of legislation, which pose a significant risk to public health/ safety or the environment
- There is a lack of confidence in the owner/person having control to respond to informal action.
- There is a history of non-compliance.
- The owner/person having control is unknown or unable to be contacted.
- A situation exists which places a mandatory duty on the Council to serve a statutory notice e.g. statutory nuisance.
- Where a category 1 hazard exists under the Housing Health and Safety Rating System (HHSRS) and informal attempts to reduce the hazard have been unsuccessful.
- Where a category 2 hazard exists under HHSRS and informal attempts to reduce the hazards have been unsuccessful the Council may also serve an improvement notice where it is considered appropriate.
- A notice is required to formalise an agreed course of action

(The serving of statutory notices includes making control orders, management orders, etc.)

The Council will make a charge in accordance with the provisions of the Housing Act 2004 in the following circumstances:

- A hazard awareness notice is served
- An improvement notice is served
- A prohibition order is made
- Emergency remedial action is taken
- An emergency prohibition order is made
- A demolition order is made

If a statutory notice is served, the recipient will be informed, in writing, of any right of appeal.

C) Works in default

The Council may carry out works in default where works required by statutory notice have not been started or carried out within the specified timescales. A recipient of a notice will normally be advised of the Council's intention to carry out default works.

There are situations however, where the Council may take immediate action without service of a notice (e.g. preventing risks to public health or unauthorised access to empty properties) where such action is considered necessary and the law allows. Such action will only be taken where there is considered to be an imminent risk to public health.

The Council can reclaim the costs of works in default, including administration costs. In most cases, such costs can be entered as a legal charge on the property or can be recovered through the courts. In certain circumstances the Council may also utilise enforced sale for the recovery of costs.

D) Issue of simple cautions

Simple cautions were previously known as a formal caution and were introduced through Home Office circular 30/2005, which was subsequently revised with Home Office circular 16/2008. The aims of a simple caution are:

- Deal quickly and simply with less serious offences where the offender has admitted the offence
- Divert offenders where appropriate from appearing in the criminal courts
- Record an individual's criminal conduct for possible reference in future criminal proceedings or relevant security checks; and
- Reduce the likelihood of re-offending.

A simple caution may only be issued if the following criteria are satisfied:

- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.
- The offender has made a clear and reliable admission that they are guilty.
- The offender will accept the simple caution and understands its significance.
- The offender is 18 years of age at the time the caution would be issued.
- It is in the public interest to issue a simple caution rather than instigate prosecution proceedings.
- A simple caution is appropriate to the offender and the offence.

Simple cautions may be cited in prosecution proceedings in relation to a similar offence committed within three years of the caution's issue.

A central register of simple cautions issued will be maintained. A copy of the caution will be sent to the Office of Fair Trading.

E) Instigation of prosecution proceedings

The instigation of legal proceedings will be considered in accordance with the provisions of the Enforcement Concordant and in the following cases:

- a) Where the offence involves a flagrant breach of the law such that public health/safety or the environment has been placed at serious risk.
- b) Where the offence involves a failure to comply with a statutory notice.
- c) Where there is a history of similar offences involving serious risk to public health/safety of the environment.
- d) Where an individual/business is unwilling to prevent a recurrence of, or resolve the offence.

- e) Where an authorised officer has been intentionally obstructed in the course of his/her duties.

F) Making of management orders, demolition orders, declaration of clearance areas

As well as informal action and the service of statutory notices to deal with hazards in dwellings and/or empty homes, the Council may make management orders, demolition orders, or declare clearance areas where it is considered one of these is the most satisfactory course of action for dealing with the dwelling. Such action will be ratified by the appropriate Portfolio Holder.

G) Compulsory purchase

Where a landlord cannot be found or refuses to take action to deal with an empty property which has been empty for more than six months and/or which is giving rise to problems in the neighbourhood, or compulsory purchase is considered the most satisfactory way of dealing with a particular problem, the Council may consider compulsory purchase action to buy the property which would then be sold on to a company/individual or a Registered Social Landlord. Obviously there can be significant costs associated with compulsory purchase and such action will only be pursued where the Council can access the necessary resources.

H) Varying or revoking HMO licences

The Council will consider taking this course of action in circumstances where sections 69 or 79 of the Housing Act 2004 apply.

APPENDIX B

Environmental Health Enforcement Policy Statement

Introduction

This document sets out what businesses, individuals and the community as a whole can expect from the Food/Licensing/Health and Safety, Public Protection Section's enforcement policies and procedures.

The primary function of the enforcement work is to protect the public and the environment. At the same time equitable and consistent enforcement helps to maintain a level playing field for local business, as well as our service users.

We recognise that the effectiveness of legislation depends upon the compliance of those regulated and that most businesses and individuals want to comply with the law. We will therefore assist and advise wherever possible, whilst taking firm action against those who flout the law or act irresponsibly.

The Food/Licensing/Health and Safety, Public Protection Section at Gedling Borough Council have formally adopted the Government's Concordat on Good Enforcement and we commit ourselves to the following policies and procedures:

POLICIES

Standards

In consultation with business and other interested parties, we will draw up clear standards setting out the level of service and performance that the public and business can expect to receive. We will publish these standards and our annual performance against them.

Openness

We will provide accessible information and advice on the legislation that we enforce. We will be open about how we set about our work, consulting local business and other interested parties.

Helpfulness

We believe that prevention is better than cure; we will actively work with local business to advise on, and assist with, compliance. We will provide a courteous and efficient service, and our staff will identify themselves by name. We will offer a contact point and telephone number to encourage further liaison. Applications for licenses, registrations and permits etc will be dealt with efficiently and promptly. We will strive to ensure that wherever practicable, our activities are effectively co-ordinated to avoid unnecessary overlaps and/or delays.

Complaints about our service

We will maintain the Council's formal complaints procedure, which is accessible to all service users, and which explains all rights of complaint and appeal, including the likely time scales involved.

Proportionality

We will take into account the costs of compliance for business by ensuring that any enforcement action we take or remedial action we require is proportional to the risks. We will, as far as the law allows, work with business and individuals so that they can meet their legal obligations, without unnecessary expense.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

Human Rights Act 1998

All enforcement activity will be undertaken with due regard to the provisions of the above legislation, which derives from the European Convention on Human Rights especially:

Article 6 - the right of a fair trial.

Article 8 - the right to respect for private and family life.

Article 1 of the First Protocol, which relates to the protection of property.

PROCEDURES

Advice from an officer will be put clearly and simply, in writing on request and including any appropriate time scale. Legal requirements will be clearly distinguished from best practice advice.

Before formal enforcement action is taken officers will provide an opportunity for discussion of relevant circumstances, unless immediate action is required (e.g. to prevent destruction of evidence).

Where immediate action is taken, the reasons for such action will be given at the time, and confirmed in writing.

Where there are rights of appeal against formal action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.

APPLICATION OF THIS POLICY

All Officers will refer to this policy when making enforcement decisions. It must be read in conjunction with approved guidance on enforcement action.

Enforcement options include

- Written and verbal advice
- Reference to another enforcement agency
- Written warning
- Improvement/prohibition/statutory notices
- Simple caution
- Prosecution
- Fixed Penalty

In some circumstances matters may be referred from or to another agency for enforcement action.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the Team Manager before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

In cases of emergency or where exceptional conditions prevail, the Head of Service may suspend all or part of this policy where necessary to achieve effective running of the service and/or where there is a risk or injury or to health of employees or members of the public.

Deciding whether to prosecute

Before deciding what action will be taken against a business or an individual consideration will be given to a number of factors including Central Government guidance and the Code for Crown Prosecutors. These factors, which are not listed in order of significance, will include the following:

- The seriousness of the alleged offence;
- The history of the party concerned;
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers;
- Whether any other action (including simple caution) would be more appropriate or effective.

REVIEW

It is intended that this document will be subject to an annual review with additional reviews as and when required to accommodate changes in legislation, local needs and the views of our customers.

APPENDIX C

Regulators' Compliance Code

Certain regulatory functions undertaken by the Public Protection Section are subject to the provisions of the Legislative and Regulatory Reform Act 2006. These include Parts 2 to 5 of the Housing Act 2004 and the Environmental Protection Act 1990.

In accordance with the above, in terms of its private sector housing work, the Council aims to meet its specific obligations under the Code as follows:

Economic progress

The Council recognises that a key element of its activity is to allow, or even encourage, economic progress and will only intervene when there is a clear case for protection.

Risk assessment

The Council will aim to use comprehensive risk assessment to concentrate resources in areas of regulatory activity that need them most.

Advice and guidance

The Council will aim to provide authoritative, accessible advice easily and cheaply.

Inspections and other visits

The Council will ensure that no inspection will take place without a reason.

Information requirements

The Council will aim to ensure that businesses should not have to give unnecessary information or give the same piece of information twice.

Compliance and enforcement actions

The Council will aim to ensure that the few businesses that persistently break the law should be identified quickly and face proportionate and meaningful sanctions.

Accountability

The Council will be accountable for the efficiency and effectiveness of its activities, while remaining independent in decisions it takes.