

Nuneaton and Bedworth Borough Council

Housing, Communities and Economic Development

Private Sector Housing
Enforcement Policy

May 2018



Nuneaton and Bedworth: the place of choice to live, work & visit

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1. Summary

This policy details how the Council will regulate standards in private housing in Nuneaton and Bedworth. It also provides a background to the legislation and guidance on which it is based.

It is important for local authorities to have an enforcement policy to ensure a consistent service is delivered by Council Officers and members of the public also know what to expect from the service.

An enforcement policy also aids clarity if the Council takes legal proceedings or enforcement action is appealed against.

Our aim is to raise housing standards throughout Nuneaton and Bedworth, working closely with owners, landlords, letting agents and tenants to achieve this. However it is recognised that if the law is broken, then enforcement action may be necessary to protect the public, the environment and the reputation of good landlords and the sector generally.

We are committed to ensuring that our authorised officers act in accordance with the policy and will deliver excellent customer service.

2. Introduction

Local Housing Authorities are the primary enforcement agency for ensuring the protection of the health, safety and welfare rights for occupiers and visitors in private sector housing, within England and Wales. This also includes those living on mobile homes sites.

This role is undertaken by the Private Sector Housing Team as part of the Housing, Communities and Economic Growth Directorate.

Authorised Officers from within this team have a mixture of legal duties and discretionary powers which enable them to address problem private sector housing affecting the health and safety of residents. To achieve this both informal advice and a wide variety of formal enforcement options may be used dependant on circumstances.

This policy is intended to provide the general principles which will be followed by the Private Sector Housing Team although there will be some instances where discretion will be applied and therefore the Policy is intended to be applied flexibly and proportionately subject to justification and recording of decisions.

All officers will be able to produce identification and authorisation cards to evidence who they are and what legal powers they have been delegated.

3. Aims & Enforcement Objectives

This Policy aims to:

- Demonstrate the transparency of enforcement with respect to private sector housing and mobile home sites by setting out legal requirements, policies and principles that officers will follow when enforcing legislation;
- Improve housing conditions and raise the standard of property management within the private rented sector;
- Provide safer, healthier, affordable and warmer homes in the private sector to enable all people to benefit from healthy housing and environments; and
- Contribute to the reduction of empty homes within the borough (subject to the details contained within Empty Homes Policy)

Enforcement Objectives

The main objectives of this enforcement policy are to ensure that:

- Privately rented accommodation, including houses in multiple occupation (“HMO”), and accommodation provided by registered providers of social

housing, are free from actionable hazards¹ that affect the health and safety of the tenant, licensee or any visitor;

- Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements;
- Privately rented accommodation meets minimum energy efficiency ratings;
- All licensable properties are licensed, with licence conditions being met;
- Tenants are protected from unlawful eviction;
- Empty properties are tackled with the aim of addressing security, visual amenity and statutory nuisance issues and also returning them back into occupation.
- Owners or occupiers of privately owned accommodation or land do not cause statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood;
- Lettings and property management businesses are registered with a government-approved redress scheme and comply with relevant legislation and codes of practice;
- Mobile Home, Caravan and camp sites are managed in compliance with site licence conditions and relevant statutory requirements.

¹ ***1 An actionable hazard is one that has been assessed to be a Category 1 hazard using the Housing, Health and Safety Rating System (“HHSRS”) under the Housing Act 2004 and the Housing Health and Safety Rating System (England) Regulations 2005. The authority has a duty to act where Category 1 hazards are identified. The authority has a discretionary power in respect of Category 2 hazards and will take enforcement action in cases where there is a significant risk to the health and safety of the occupiers.***

4. What to expect from us

Landlords

1. We will advise you of the legislation and help you understand how you can comply with it.
2. We will advise you as to what action you need to take to comply with the legislation and ask you to respond with your proposal of how you intend to comply.
3. If we are satisfied with your proposal we will work with you to comply within agreed timescales.
4. If we are not satisfied with your proposal or how the work is progressing we will initiate a formal action in a proportionate manner as appropriate to the circumstances.
5. We will aim to respond to service requests within five working days.
6. A charge will be made for the service of a Housing Act Notice.

Tenants

1. We will expect you to advise your landlord of the issues within your property before contacting us.
2. We will respond to requests for service within five working days.
3. We will advise you as to what action we can take and advise you of the expected timescales.
4. We will expect you to cooperate with the landlord to get the works carried out and to advise us of any action taken by the landlord.
5. Provide access to Council officers and ensure appointments are kept.

Owners

1. We will expect owners to maintain the properties they live in.
2. Enforcement action will be considered if there is an imminent risk of harm to visitors, tenants or the public.

Empty Property Owners

1. We will work proactively with owners of long term empty homes to encourage and assist you in bringing your empty property back into use in line with the Empty Property Strategy.

5. Regulators' Code

The Legislative and Regulatory Reform Act 2006 ("the 2006 Act") requires the authority to have regard to the Regulators' Code produced by the Better Regulation

Delivery Office in April 2014 when developing its policies and procedures to guide regulatory activity.

This Enforcement Policy has regard to the Regulators' Code in that it:

- Follows the principles of good regulation set out in the 2006 Act, in that regulatory activities are carried out in a way that are transparent, accountable, consistent, proportionate to risk and targeted at cases where action is required;
- Supports businesses to comply and grow;
- Provides simple ways to communicate and share information amongst regulators to reduce duplication; and
- Provides clear information and guidance.

Equality Statement

The Council is committed to treating all customers fairly and all enforcement decisions will be fair, independent and objective.

A priority for the Private Sector Housing Service is to improve standards in private rented accommodation that is occupied by the most disadvantaged persons living in this sector.

6. Tenure

The Private Sector Housing Service has investigative and enforcement powers relating to all private housing regardless of tenure. However the approach may vary depending on the tenure of the household.

6.1 Private Landlords and Tenants

Tenants within rented accommodation do not have the same level of control of their homes, in the same way that owner occupiers benefit from. They are usually reliant on landlords or their agent to adequately maintain their homes in accordance with legal requirements. The Council will take enforcement action where required, against landlords or agents who are putting the health and safety of their tenants at risk, or in circumstances where conditions are causing serious issues to neighbouring property.

6.2 Owner Occupiers

Owner occupiers are usually in a position to make informed decisions about maintenance or safety issues in their homes. Formal enforcement action therefore against this tenure group would be limited. Officers would always aim to provide owner occupiers with appropriate advice and recommendations as to how they can mitigate any hazards identified. In cases, however, where there is a severe risk to the health and safety of occupiers, or where there are conditions that have the potential to cause serious issues to neighbouring property, the Council may take formal action against owner occupiers.

6.3 Registered Providers

These are usually housing associations, being a private, non-profit making organisation that provides low cost “social housing” for people in need. Their performance is scrutinised by Homes England and the Housing Ombudsman Service. Registered Providers have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure.

This service will not normally take action against a Registered Provider, unless the problem in question has been properly reported to the Registered Provider, who has then failed to take the appropriate action.

The Council will consider enforcement action against the Provider where there are significant risks to the health and safety of tenants and/or the wider public however will report the issue to the organisation in the first instance and followed up with enforcement action if still deemed appropriate.

6.4 Local Authority Owned Property

The Council will refer all complaints received about its own housing stock to the relevant repairs team without visiting unless requested to do so by the repairs department. Customers will be informed of this arrangement as soon as possible.

6.5 Accredited Properties

Nuneaton and Bedworth Borough Council operate a property accreditation scheme which aims to address issues and raise standards in the private rented sector, whilst supporting and providing tangible benefits to landlords. Private rented sector tenants reporting repairs issues may be referred back their landlord where no prior contact has been made with their landlord where this is appropriate.

This helps maintain positive relationships between landlords and tenants and assists tenants in maintaining longer term tenancies. Where properties are accredited formal enforcement action will if necessary still be taken but advice and assistance will be offered to the landlord and tenant firstly unless there is a serious risk to any person.

7. Shared Enforcement and Primary Authority

- 7.1 Officers may work with other services within the authority, such as the Planning Department and Northern Warwickshire Building Control Partnership; Welfare Rights; Revenue and Benefits; Housing Solutions; Anti-Social Behaviour Teams, as well as other enforcing authorities who have the power to take enforcement action.

These authorities may include:

- Warwickshire Fire and Rescue Service
- Warwickshire Police
- UK Visas and Immigration
- Health and Safety Executive
- Trading Standards
- Other Local Authorities

- 7.2 In circumstances where shared enforcement or joint working is required, officers will ensure that:

- Investigations are undertaken by the most appropriate enforcing authority;
- Enforcement action is undertaken in accordance with agreed protocols and will involve the relevant authority or service in the investigations, information gathering and sharing to ensure it is carried out effectively.

Officers will have regard to the General Data Protection Regulation (“GDPR”) when handling all manual and computerised personal data. Any requests for

access to information to the Council can be done in accordance with the Freedom of Information Act 2000, Environmental Information Regulations and GDPR.

Where a business has registered with a Primary Authority under the Regulatory Enforcement and Sanctions Act 2008 for legislation which this service is enforcing, the Council will comply with these Primary Authority requirements.

8. Informal Advice and Guidance

- 8.1 The Private Sector Housing team will seek to follow the principles of the Enforcement Concordat and other guidance to offer an opportunity to work informally with landlords, agents, owners and service users, by providing a range of information and guidance. This will be the preferred course of action in the majority of cases. The purpose of this is to enable responsible landlords, agents and owners to comply with regulatory requirements and agree to undertake the works required by the authority within a **reasonable** time period.
- 8.2 In cases where there has been a complaint about a private rented property or empty home, and where it is the first contact about property standards, the service will normally notify responsible parties and/or will provide an inspection report outlining breaches in legal requirements. Only works deemed necessary by the Council will be included in any correspondence to the landlord, owner or agent which will be based on risks to health and safety and/or breaches of legislation. Works which are deemed to be purely wishes of the tenant will be not be included. Any Schedule of Work may however also contain recommended works which will be clearly differentiated from works requiring action to comply with legal requirements.

The underlying aim of these communications is to establish good management practices from the outset that ensure compliance with regulatory requirements for property standards.

- 8.3 The Council may proceed straight to formal action should the individual case demand formal action, for the reasons set out below:
- To pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or
 - The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.

9. Formal Enforcement Options

Only Officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The authority will ensure all staff are competent and undertake continuing professional development.

The Council's Constitution and Scheme of Delegation sets out the delegated powers given to Officers.

Officers who undertake criminal investigations will be conversant with the provisions of all relevant legislation and best practice including:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984 Codes of Practice
- The Criminal Procedures and Investigations Act 1996
- The Legislative and Regulatory Reform Act 2006
- Code for Crown Prosecution

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

Statutory Notices

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

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

9.2.3 In the event that a landlord fails to deal informally with any opportunity to remedy a Category 1 and/or significant Category 2 hazard, the Council will instigate appropriate enforcement action. Such action will vary depending upon the circumstances of the case. It is most likely to involve the service of an Improvement Notice requiring remedial works but could also involve a Prohibition Order prohibiting the use of all or part of the property, a Demolition Order or a Hazard Awareness Notice. Expedited or suspended enforcement actions are also available, which are dealt with under Emergency or suspended enforcement actions.

9.2.4 In cases where an address contains one or more Category 1 hazards, it is unlikely that the service of a Hazard Awareness Notice would be the preferred enforcement action, unless the circumstances of the occupiers were such that other options were not practical [e.g. major improvement works required in a home occupied by a frail resident]. In cases where a formal notice other than a Hazard Awareness Notice was served, a charge would normally be made for this.

9.2.5 Other formal notices served by the Council will not relate to the landlord undertaking remedial works but will cover a range of other matters including exercising a right of entry under s.239 of the Housing Act 2004 and a request to provide information or the need to abate or avoid overcrowding.

9.2.6 Legal Notices served by the Council will detail any rights of appeal and an extension of time to comply with any notices requiring works can be requested if there are legitimate reasons. However, failure to comply with the requirements of any issued Notice is an offence and would normally result in prosecution or, where appropriate, the issuing of a civil penalty. Work in default can also be completed in addition to these.

9.3 Work in default

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

9.4 Emergency or suspended enforcement actions

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

The Council also has the power to suspend action taken under part 1 Housing Act 2004 in situations where it has the power or duty to take enforcement action through the service of an Improvement Notice or a Prohibition Order. Such action would not normally be the preferred enforcement action unless the circumstances of the current occupiers were such that other options were not practical.

9.5 Management Orders

The Council will consider serving a Management Order in respect of residential premises where there is no reasonable prospect of an owner or landlord being identified as being responsible for controlling or managing the property. This action is available for both licensable and non-licensable residential premises.

A Management Order can be used in very serious circumstances, where it is necessary to protect the health, safety or welfare of occupiers, visitors or persons

living in the vicinity, or where there is anti-social behaviour that is affecting the neighbourhood.

9.6 Overcrowding in Single and Multiple Occupancy Dwellings

The Private Sector Housing Service will investigate complaints about overcrowded conditions from:

- Private rented sector tenants complaining about their own property;
- Other parties where they are concerned about children or vulnerable adults;
- Other parties where there are significant conditions that are legitimately impacting on a neighbour's health, safety or welfare.

In certain circumstances, advice may be given to the occupiers that their health and safety is at risk from the overcrowded conditions, but no enforcement action will be taken against the landlord unless deliberately caused by them or there is a breach of a notice.

Where enforcement action is taken that requires tenants to move out of a property, this service will liaise with the Housing Solutions Team, who will be able to give advice and, in some circumstances, assistance on alternative accommodation available.

9.7 Illegal and Retaliatory Eviction

Where this service becomes aware of allegations or offences regarding illegal eviction the landlord or agent will be investigated by the Private Sector Housing Team and where appropriate, enforcement action taken.

Examples of circumstances that would merit investigation include:

- Disconnection of utility supplies;
- Changing locks to the premises;
- Attempting to terminate a tenancy as a result of a retaliatory eviction. These are where a complaint of poor property conditions made to a landlord is substantiated by the authority and an Improvement Notice served or Emergency Remedial Action taken;
- Illegal eviction from the property not involving court bailiffs and a possession order from the courts.

9.8 Caravan Sites

Caravan and camping sites provide accommodation both for residential, holiday and touring purposes. It is a requirement that all sites are registered with the Council and that owners apply for a caravan site licence.

Licences are issued with conditions attached in accordance with their planning permissions and Model Caravan Standards.

The requirement to apply for a caravan site licence refers to all sites, including park home sites. However, it does not apply to Council managed Gypsy and Traveller sites, nor to unauthorised sites without the appropriate planning permissions as these cases would require investigation from other enforcement bodies.

Caravan sites will be inspected on a cyclic basis or as a result of a complaint made to the service. This is to ensure that there is compliance with conditions listed on the site licence and also, where appropriate, with other legislative requirements.

Where there is non-compliance with licence conditions or legal requirements, these deficiencies will be notified to the licence holder, owner or manager. Formal action will be taken where there is insufficient progress, limited co-operation or, in the first instance, where serious issues are identified.

The Council has the power to charge annual fees for residential caravan sites and mobile home parks under the Mobiles Homes Act 2013. All charges are set out in the Mobile Homes Licensing Policy Fee Structure.

9.9 Houses in Multiple Occupation

The Council will inspect its licensable HMO stock in accordance with the HMO Licensing Policy. The inspection regime of non-licensable HMO's will be undertaken on a risk assessment basis or inspections will follow service requests from public/partners/tenants or landlords. Both HHSRS and the Management Regulation compliance will be verified during the course of the inspection. Proactive inspections will be subject to available resources and targeted at the highest risk.

9.10 Property Redress Scheme

All letting agents or property management businesses are legally required to be a member of one of the three registered property redress schemes. Where a letting agent or property manager is identified as not being registered with one of the schemes, then a monetary penalty will be imposed by the Council.

Notices will be served on an organisation prior to a monetary penalty being issued.

There are rights of appeal to the First Tier Tribunal. There is no limit to the number of fines that can be levied on a single letting agent or property manager if they continue not to be a member of a scheme.

10. Dealing with non-compliance

The Council will decide on the most appropriate course of action depending on the circumstances, this may mean taking no further action at all. Further options are outlined below:

10.1 Simple Caution

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

10.2 Prosecution

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

The following factors will be taken into account:

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

10.3 Civil penalties

The Council may serve notices imposing Civil Penalties, as an alternative to prosecution, of up to a maximum of £30,000.

The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty. Examples of situations in which a decision to prosecute would normally be taken include:

- For what are judged to be particularly serious offences

- Where the offender has committed similar offences in the past

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty would be calculated having regard to the matrix adopted by cabinet.

10.4 **Banning Orders**

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

Banning Orders are reserved for what are recognised as being the most serious housing-related offences and will be sought in appropriate circumstances from a First Tier Tribunal. A banning order must be for a minimum period of 12 months. There is no statutory maximum period for a banning order and this will be decided on a case by case basis. In the event that the Council was satisfied that the offence of breaching a Banning Order obtained has occurred, this would normally be the subject of prosecution proceedings.

10.5 **Rent Repayment Orders**

This allows recovery of up to 12 months' rent paid via Universal Credit to a landlord for where a relevant offence has been committed. The Council has a duty to consider these where a landlord is convicted of an offence and will decide on a case by case basis to pursue this option or not. They will principally be sought where persistent offenders are found. The Council may seek these from a First Tier Tribunal even if a landlord is not convicted but are satisfied an offence has been committed and can be pursued in addition to any other option included in section 10.

The Council will also give advice to tenants on how they may recover rents through applying to the Tribunal Service in these circumstances.

10.6 **Rogue Landlord Database**

The database is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. The Council will be able to view all entries on the database, including those made by other local housing authorities. The Council will make an entry on the database for a person or organisation who has received a banning order.

The Council may also make an entry on the database where a landlord has;

- been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

The authority will issue the person with a decision notice before making an entry, specifying the period for which the entry will be maintained.

11 Publicising Outcomes

Verdicts and sentences in criminal cases are given out in open court and are a matter of public record. Evidence suggests that the public wants to know about the outcomes of local court cases.

The authority will publicise the outcomes of criminal cases and basic personal information about the convicted offender, in accordance with guidance issued by the Criminal Justice System (Publicising Sentencing Outcome, CJS, 2011). The reasons are to:

- Reassure the public;
- Increase trust and confidence in the criminal justice system;
- Improve the effectiveness of the criminal justice system, and
- Discourage offending and/or re-offending.

12 Fines, Recovery of Costs and Proceeds of Crime

In prosecution cases where the defendant is found guilty by either the Magistrates or Crown Courts, unlimited fines can now be imposed. In addition, the Council will seek to recover the costs incurred in taking a prosecution case, which include administrative costs incurred for preparing the prosecution file; attendance at court and Legal Services costs for preparing and presenting the case.

Where there is substantial financial gain for a landlord or owner through non-compliance with legislative requirements in the private rented sector, the Council will consider taking action to confiscate or recover monies gained through illegal activities under the Proceeds of Crime Act 2002.

13 Enforcement Fees and Charges

The authority will make a charge for the service of legal notices served under Part 1 of the Housing Act 2004. A flat rate charge of £250 will be made for the following notices served under the Act:

- Improvement notices under section 11 or 12;
- Prohibition and Emergency Prohibition Orders under section 20, 21 or 43;

- Hazard awareness notice under section 28 or 29;
- Emergency Remedial Action under section 40;

A charge will be made on a per property basis rather than on each person served with a notice (as in the case of joint owners). The Council will recover this charge from the person served with a notice and who they believe to be the most appropriate in the circumstances.

13.1 Charges for Work in Default

The Council has powers to undertake work in default where a person has failed to complete works required by a legal notice. The Council will seek to recover this cost in full. Also we will seek to recover costs incurred in arranging and supervising the work. An additional cost of £150 will be made to cover this function.

Where charges for enforcement action are incurred they will be registered as local land charges against the property and subject to the debt recovery process. This may include the Enforced Sales Procedure and requiring the tenant to pay rents to the Council instead of the landlord until the debt is repaid.

The above fees may be waived at the discretion of the Private Sector Housing Manager only under exceptional circumstances.

14 Complaints and Appeals Procedures

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. If you are unhappy we suggest you first discuss the matter with the officer directly. If this does not resolve the matter or you would prefer not to, you can contact the Senior Private Sector Housing Officer or the Private Sector Housing Manager to discuss our approach.

We manage complaints about our service through Nuneaton and Bedworth's Corporate Complaints Policy. You can make a complaint online at https://www.nuneatonandbedworth.gov.uk/info/19999/feedback/201/customer_feedback or by contacting 024 7637 6376.

Some legal notices also have a statutory appeals procedure, and landlords are entitled to appeal against such notices through the specified appeal provisions. For appeals relating to enforcement notices where resolution with the officer is not achieved you may appeal to the Court or First Tier Tribunal (Property Chamber). Contact details can be found here <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

You can expect all of our enforcement notices to carry details of how to appeal.

15 Policy Review

This policy will be reviewed annually to ensure that it is still up to date and follows recognised best practice and any changes will be presented to local landlords and members for their views via the Councils Private Sector Housing web pages.

16 Other Strategies and Policies:

- Empty Homes Strategy
- HMO Licensing Policy
- Nuneaton and Bedworth Standards for HMO's
- Civil Penalty and Minimum Energy Efficiency Standard Charging Structures
- Mobile Homes Licensing Policy
- Smoke and Carbon Monoxide Alarm Cabinet Report 2015