

DERBY CITY COUNCIL

HOUSING STRATEGY AND INITIATIVES TEAM - COMMUNITIES AND PLACE DIRECTORATE

ENFORCEMENT AND PROSECUTION POLICY

Introduction

Our aim is to improve neighbourhoods and increase housing choice by returning empty properties to the useful housing stock.

Persuasion and encouragement is always the preferred way forward, but this can often prove unachievable, and enforcing regulatory control can be unavoidable if this aim is to be achieved.

We are committed to carrying out enforcement work in a fair, practical and consistent way and this policy accords with the Regulators' Code, with additional policy statements relating to our enforcement role. It explains how we will follow these principles and how officers of the Team will put them into practice.

The effectiveness of legislation is reflected in compliance by those it seeks to regulate. We recognise that most people want to comply with the law and will help them to meet their legal obligations without causing unnecessary expense or hindrance. We will take firm action against those who deliberately, irresponsibly or recklessly fail to comply with the law, including prosecution where appropriate.

By acting in accordance with this policy we will:

- protect the public and the environment
- benefit citizens through better information, choice and safety
- contribute to Best Value in the delivery of our services.

Approved 28 March 2018.

THE POLICY

Our policy includes these principles of good enforcement.

Openness

We will provide clearly stated information and advice on the rules that we apply and will make this widely available. We will be open about how we do our work, including any charges that we set in consultation with people receiving our services. We will discuss general issues, specific compliance failures or problems with anyone having difficulties.

Helpfulness

We believe that prevention is better than cure and that our role is to work with service users to advise them and help them comply. We will provide a courteous and efficient service and our staff will identify themselves by name. We will give a contact point and telephone number for further dealings with us and will encourage people to ask us for advice or information. We will deal with requests for service efficiently and promptly. We will make sure that, whenever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints about service

We will provide well-publicised, effective and easily accessible complaints procedures. If we cannot resolve a dispute, we will clearly explain the right of complaint or appeal, with details of the process and the time-scales involved.

Proportionality

We will minimise the costs of compliance by making sure that any action we require is in proportion to the risks/impact. As far as the law allows, and as far as is practicable, we will consider the circumstances of each case when deciding action.

We will take particular care to work with people in such a way that they can meet their legal obligations without unnecessary expense, when practicable.

Consistency

We will do our duties in a fair, equitable and consistent way. While our officers are expected to use their judgement in individual cases, we will have arrangements to promote consistency. These include effective arrangements for liaison with other Council departments and with other councils and enforcement bodies. Each case will be considered on its own merits and circumstances having regard to this policy. Any decision to depart from the policy will be properly reasoned and based upon material evidence.

PROCEDURES

Our enforcement procedures will include these principles.

Our officers will give advice clearly and simply. They will confirm it in writing, if requested, explaining why any action is necessary and over what time-scale. The advice will clearly distinguish legal requirements from best practice recommendations.

Before we take formal enforcement action, we will offer an opportunity to discuss the circumstances and, if possible, resolve points of difference. This is unless immediate action is required, for example, in the interests of health, safety, environmental protection or to prevent evidence being destroyed.

When we consider immediate action is necessary, we will explain why such action is required at the time and we will confirm it in writing - in most cases within five working days and in all cases within ten working days.

When there are rights of appeal, objection or representation against legal action, we will set out clearly and in writing, advice on the relevant mechanism at the time the action is taken and on what matters an appeal, objection or representation may be made. Whenever possible we will issue this advice together with the enforcement paperwork.

Human rights

Our enforcement role will recognise the spirit of the European Convention on Human Rights and we recognise the obligations placed on this Council by the Human Rights Act 1998. Of particular relevance to our activities are:

- Convention Rights and Freedoms:
 - Article 6 – Right to a Fair Trial
 - Article 8 – Right to Respect for Private and Family Life
- First Protocol:
 - Article 1 – Protection of Property

Liaison

When an enforcement issue involves external organisations, we will inform them in an appropriate way as soon as is practicable. We will co-ordinate any enforcement activity in these circumstances with those organisations.

Interests of service users

We will organise our enforcement activity, wherever possible, to:

- take account of particular local circumstances
- minimise any adverse effects, both on those to whom the activity is directed and those it may otherwise affect.

Approved 28 March 2018.

We will monitor levels of legal compliance and examples of good practice when practicable and appropriate. We may use this information to direct enforcement activity and to scale the level of it.

Sharing information derived from enforcement activity

In some circumstances we have an obligation to share information obtained as a result of enforcement activity. We will make sure that any information we share is accurate and appropriate to the purpose for which it is being sought. We will not share information when the purpose for doing so is not clear, is likely to be misused or used for commercial advantage.

APPLYING THE POLICY

Our policy for taking enforcement action is based on this framework.

Enforcement options

There are a range of options available for use when dealing with empty properties. The level of response increases linked to the extent, seriousness and impact, non-compliance with the law and/or requests to engage in a voluntary dialogue to facilitate reoccupation/resolution.

Unless the situation warrants the use of emergency statutory enforcement powers, a voluntary solution to the situation will be sought and a reasonable timeframe offered for a progress to be agreed. Where such efforts are unsuccessful, the use of enforcement powers will be considered.

Legislation available to the local authority in such situations when dealing with issues arising from empty properties, is varied and can be subject to change, but includes:

Local Government Miscellaneous Provisions Act 1982 s29

Allows a local authority to secure a building where it is open to access

Building Act 1984 s59

Legislation to allow the local authority to tackle defective drainage of the building

Building Act 1984 s76-79

Legislation to allow the local authority to tackle defective/dangerous/ruinous/dilapidated structures

Environmental Protection Act 1990 Part III

Legislation to deal with statutory nuisances. Schedule III of the Act decrees the power of entry to investigate and deal with a statutory nuisance.

Town and Country Planning Act 1990 s215

Places a duty on the owner to maintain appearance of land where it adversely affects an amenity. Local authority can carry out works in default where the land is detrimental to the amenity of the area, and add the cost as a charge on the property

Housing and Planning Act 2016 s172-179

Allows duly authorised Officer/s to enter onto land for the purposes of acquiring information relating to a proposal by the local authority to compulsorily acquire an interest in the land. A warrant is required to force entry where access has been denied

Local Government (Miscellaneous Provisions) Act 1976 s16

Allows a local authority to request details of a person's legal interest in a property

Housing Act 2004

Includes powers of entry and provides the legal framework of the Housing Health and Safety Rating System (HHSRS). Through risk assessment carried out by a competent person, the most appropriate course of action can then be determined from a range of options, including the service of notices requiring works to be undertaken, prohibition of a dwelling or part of a dwelling or emergency remedial action where there is an imminent danger to health and safety.

Includes legislative basis of the service of an Empty Dwelling Management Order, whereby the local authority or its partner forcibly leases the property from the owner for a set period of time.

Housing Act 1985 s265

Allows the local authority to order the demolition of a property, subject to the criteria of the Act.

Law of Property Act 1925 s101

The legislative basis on which a local authority may pursue the enforced sale of a property to recover debts owed to the authority, which are attached as a charge against the property.

Housing Act 1985 s17, Local Government and the Acquisition of Land Act 1981

This legislation forms the basis for compulsory acquisition of a property by the local authority. A resolution by the Council Cabinet is required before a compulsory purchase order can be made; the authority of the Secretary of State to confirm the order is necessary. Model compensation claim forms and guidance for completion will be issued to eligible parties when the order is confirmed

The Local Government and Housing Act 1989 s93

The means for dealing with the compulsory purchase of houses located within the boundaries of a Renewal Area. Section 97 of the Act decrees the power of entry to enter buildings in a Renewal Area.

Operating within this policy and the available statutory legislation, the following options may be available to the local authority:

- No enforcement action. Verbal advice.
- Indirect action – referral to other enforcement body for action as appropriate.
- Emergency remedial action – action taken by the Council to remove imminent risk of harm to health and safety.
- Inspection report, letter or notice identifying offence/advice. Advisory in nature and may contain information to help compliance.
- Written warning, notice of intent or consultation prior to taking formal statutory action, identifying any offence and the consequences of continuing or repeating non-compliance.
- Statutory notice/order detailing any offence, action/s required and consequences of failing to act
- Enforcement of Order and/or the carrying out of works in default for failure to comply with a statutory notice/order.
- Simple Caution. May be cited in a court of law following conviction for a subsequent offence.
- Prosecution in the criminal courts.
- Injunctive proceedings in the civil courts.

Depending on the specific provisions within the legislation there may be additional legal actions.

Where statute allows, the Council will make a charge for recovery of their expenses incurred in taking enforcement action.

Criteria for courses of enforcement action

We may not take enforcement action and only give verbal advice where the offence/issue is low risk, low impact and/or minor; when there is not enough evidence to establish responsibility for an offence/issue; or where there are particular reasons why further action would not be appropriate.

We will normally take indirect action when it is appropriate to refer the issue to another agency with a shared enforcement role.

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Emergency remedial action may be taken by the Council to remove imminent risk of harm to health and safety. We will take legal action to recover the Council's costs and expenses of carrying out such action. We may take such action together with prosecution proceedings.

We will use an inspection report, letter or notice to indicate and resolve minor or technical offences/issues which could be promptly rectified and are unlikely to be repeated, or to raise awareness.

We will use written warnings, notice of intent or consultation prior to taking formal statutory action, where appropriate.

Statutory notices/orders will normally be served/made when lower levels of action are not appropriate or have been applied but have not resolved matters. These may, for example, include Compulsory Purchase Orders, Orders for the Enforced Sale of a property, the making of an Empty Dwelling Management Order, or such other notices/orders as may be necessary/appropriate.

Enforcement of an Order or works in default may be carried out where there has been a failure to resolve the issue of concern and/or comply with notice/order requirements. Where appropriate we will take legal action to recover the Council's costs and expenses of carrying out the enforcement of an Order or works in default. We may take such action together with prosecution proceedings. We reserve the right to take such legal/prosecution action in some cases after compliance has been achieved if it is in the public interest to do so.

A Simple Caution may be offered as an alternative to prosecution only when all the criteria for prosecution are fulfilled and:

- there is sufficient evidence of an offender's guilt to give a realistic prospect of conviction
- the offender admits the offence
- the offender understands the significance of a caution and gives informed consent to being cautioned.

We will take prosecution or injunctive proceedings in accordance with the prosecution policy in the next section.

PROSECUTION POLICY

The Council recognises that fair and effective prosecution is essential to maintaining law and order. However, the decision to prosecute is a serious step and may have severe implications for those involved – defendants, victims and witnesses.

Any decision we make on enforcement action will be impartial, objective, proportionate and fair. It will not be influenced by the race, gender, sexual orientation or religious beliefs of any offender, victim or witness. We will disregard improper or undue pressure from any source.

To make sure we are consistent and fair when deciding whether to prosecute, we will consider government guidance, in particular the Code of Practice for Crown Prosecutors issued by the Director of Public Prosecutions. We will consider other relevant sources, such as case law and the recommendations of national co-ordinating bodies.

Deciding whether or not to take proceedings

Here are some of the factors which we consider, both for and against prosecution. These lists are not exhaustive.

Prosecution will normally only be considered when one or more of the following public interest criteria are present:

- conviction is likely to result in a significant sentence
- there is a significant danger to health, safety or well-being of people or the environment
- there is fraudulent, reckless or negligent practice likely to cause significant economic disadvantage to people or businesses
- the offence involves, or is directed at, victims from vulnerable groups such as children, elderly or infirm people
- when violence or threat of violence against anyone is involved
- the offence relates to wilful obstruction of our officer acting in the course of their duties
- there is a previous history relevant to the offence, including previous convictions, cautions, warnings or advice
- there are grounds for believing that the offence is likely to be continued or repeated
- there is evidence that the offence was deliberate or premeditated
- the offence, although not serious itself, is widespread in the area where it was committed.
- where compliance is necessary to progress other statutory action(s)

Approved 28 March 2018.

A prosecution is less likely to be needed if:

- a court is likely to impose a nominal penalty
- the offence was committed as a result of a genuine mistake or misunderstanding, balanced against how serious the offence is
- any loss or harm is minor and resulted from a single incident, particularly if caused by misjudgement
- there has been undue delay between the date of the offence and the trial, unless:
 - the offence is serious
 - the delay is caused in part by the defendant
 - the discovery of the offence is recent
 - investigation of the offence has, out of necessity, been lengthy and complex
- a prosecution is likely to have a serious adverse effect on the physical or mental health of a victim, bearing in mind the seriousness of the offence
- the defendant is, or was at the time of the offence, suffering from significant mental or physical ill health, bearing in mind the seriousness of the offence or a real possibility that it may be repeated
- the defendant has put right the loss or harm caused. But defendants must not avoid prosecution solely because they have paid compensation.

Considering evidence

When prosecution is being considered, we will not institute proceedings without assessing the evidence relating to each offence, including these factors...

- Whether there is sufficient evidence to prove each offence.
- Whether the evidence available is reliable and acceptable.
- Whether a defendant can prove a relevant statutory defence.
- Suitability, availability, credibility and willingness of witnesses.

POLICY REVIEW AND MONITORING

We will monitor how this policy is applied by audits of enforcement activity in accordance with internal auditing procedures.

We will review the policy annually.

We will review the policy intermediately to accommodate changes in legislation, legal procedures and guidance, local circumstances and the views of service users.

Please contact us if you would like to comment on this policy statement by:

writing to Ian Fullagar, Head of Strategic Housing, at:
ian.fullagar@derby.gov.uk

or phoning 01332 640333

Please tell us if you need this document in large print, on audio-tape, computer disc or in Braille. Contact us on 01332 640319

Please contact us if you need help reading this document or any part of it translating.

Textphone 01332 640666



Hindi

यदि आपको इस दस्तावेज़ को पढ़ने या इसके किसी भाग का अनुवाद कराने के लिए सहायता चाहिए तो हम से सम्पर्क करें ।

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Punjabi

ਜੇ ਤੁਹਾਨੂੰ ਇਸ ਦਸਤਾਵੇਜ਼ ਪੜ੍ਹਨ ਲਈ ਜਾਂ ਇਸਦੇ ਕਿਸੇ ਭਾਗ ਦੇ ਅਨੁਵਾਦ ਕਰਾਨ ਲਈ ਸਹਾਇਤਾ ਦੀ ਲੋੜ ਹੈ ਤਾਂ ਸਾਡੇ ਨਾਲ ਸੰਪਰਕ ਕਰੋ ।

01332 640319

اگر آپ کو اس دستاویز پڑھنے میں مدد یا کسی حصہ کا ترجمہ کرانے کی ضرورت ہو،
تو ہم سے رابطہ کریں،
01332 640319

Approved: Strategic Director Communities and Place/Acting Chief Executive 28/3/2018.

Approved 28 March 2018.