

Derby City Council

The activities of the Housing Standards Team 2020-21

Introduction

This document explains the activities and enforcement approaches of the Housing Standards Team in Derby. It has been written primarily as an information note for landlords who let properties within the City.

The first part of the document provides information on the likely condition of the private rented sector in Derby. The links between poor housing and poor health are then outlined and the legal provisions available to deal with unsatisfactory conditions briefly described.

A summary of the team's activities including general enforcement, licensing of houses in multiple occupation and support work for landlords is described. Relatively detailed information is provided on the approach to enforcement and there is a brief reference at the end to possible future activities.

The condition of the private rented sector (PRS) in Derby

Whilst the biggest proportion of the private rented sector is well run by responsible landlords there is nevertheless a serious concern about the state of the bottom end of the housing market.

The last census information (2011) suggested there were approximately 16,000 PRS households in Derby. However, this sector has continued to grow and now stands at 24,698. The latest stock condition survey in Derby in 2019 indicated that there are 110,261 properties spread across the 17 wards. Overall, 57.1% of homes in Derby are owner occupied, 22.4% are privately rented and 20.5% of homes are social rented.

1 in 5 households in the private sector are living in a non-decent home. In Derby the number of private sector homes not meeting the Decent Homes Standard is estimated to be approximately 18,700 (21.4% of all private sector homes). Compared to national and regional figures Derby has a greater proportion of private sector homes failing the Decent Homes Criteria modern facilities, disrepair and HHSRS category 1 hazards than both the East Midlands and England as a whole.

The links between poor housing and poor health

Where we live, impacts on our health our educational achievements and our life chances in general. Housing is a key determinant of health; poor quality housing being intrinsically linked with poor health.

House condition may cause ill health or make it worse. Addressing causes within homes can improve occupants' health and lower costs to the health service through fewer GP visits, fewer emergency admissions to hospital and fewer accidents that then require expensive and intensive rehabilitation.

Circulatory conditions in particular are heavily impacted upon by a cold home increasing the risk of strokes and making existing conditions worse.

Cold housing increases excess winter deaths amongst the elderly. Cold housing negatively affects children's educational attainment, emotional well being and resilience.

Damp and mould is particularly associated with cold houses. Chronic and acute illnesses such as asthma, bronchitis, arthritis, and depression are made worse by poor housing conditions.

The costs associated with hospital admissions and the recovery and after care are extensive and frustrating given that many accidents in the home and housing related ill health can be prevented.

Thankfully there is now recognition that housing is a key determinant of health. It is also accepted that improved housing is of benefit to society at large. Healthy homes are linked to improved communities, reduced crime, improved employment opportunities and educational achievement.

The legal provisions available to deal with unhealthy and dangerous living conditions in the private rented sector

The principal body of law used by the Housing Standards Team to deal with unhealthy or unsafe living conditions is contained in the Housing Act 2004.

Part 1 of this Act defines a methodology for assessing hazards in dwellings known as the Housing Health and Safety Rating System (HHSRS). It also places duties on Councils to formally deal with the most serious hazards, referred to as category 1 hazards and provides a power to deal with the less serious hazards, referred to as category 2 hazards.

Part 2 of the Act contains the licensing requirements for houses in multiple occupation (HMO). This part of the Act also gives the power to Government to make regulations in connection with the management of HMOs. Two sets of regulations have been made in this context, one with regard to houses with shared facilities and one in connection with houses converted entirely to self-contained flats.

There are also a number of other legal provisions available - in the Environmental Protection Act 1990, The Public Health Acts 1936 and 1961, the Building Act 1984 and The Prevention of Damage by Pests Act 1949 - to deal with matters affecting the health of occupants, specific drainage defects and the infestation of dwellings by pests.

In most cases, except for the management regulations - which apply to HMOs - there is a notice procedure which requires owners/landlords of properties to carry out remedial action. Recipients of notices only commit offences when the time allowed to carry out remedial action has expired, and they have failed to carry out that remedial action.

There are however circumstances where the Council would make what is known as a Prohibition Order. This is where occupation of the dwelling or part of the dwelling is prohibited until such time as the owner undertakes the necessary remedial work to remove or reduce the hazards. In these cases, offences are committed if anyone allows occupation to continue after the Order is made.

Where HMO management regulations apply to a building, there is no 'notice' procedure and offences are committed automatically if inspectors find serious deficiencies.



Landlords should note that where offences are committed under housing standards legislation, the Council will seriously consider whether prosecution in the criminal courts is appropriate, where fines are unlimited, or whether to impose a civil penalty charge of up to £30,000.

What is Housing Standards work and who does it?

Housing standards work is principally law enforcement using the legal provisions mentioned above to secure remedial works in dwellings and some supporting activities for landlords to help them provide safe and healthy dwellings for their tenants.

What do the team do?

Service requests, proactive inspections, and cyclical inspections.

In most years an average of around 500 requests for service are received by the team. Most of these relate to unsafe and dangerous living conditions in privately rented dwellings.

The volume and complexity of the service requests received by the team has led to a situation where requests are prioritised, not on a chronological basis but according to the significance of the hazards in the dwelling and the age and illness or disability related vulnerabilities of the occupiers.

On occasions this general system of prioritisation will be overridden. Examples of circumstances where this might happen include cases of defective or inadequate heating systems on the run up to and during winter. We may also prioritise requests from tenants living in properties owned by rogue landlords known to us because of their poor track records.

In recent years it has been found that nearly half of all the requests / complaints emanate from the Normanton and Arboretum Wards or the immediate surrounding areas. Consequently, the resources available to the Housing Standards team are proportionately focussed on that part of the City.

A certain amount of proactive inspection is undertaken by staff in the Team. Proactive work runs side by side with reactive work. Certain streets have been identified in the Normanton and Arboretum Wards for proactive enforcement. Privately rented dwellings in these streets are being systematically inspected whether or not we have received complaints from occupiers.

One of the reasons for a proactive approach is that tenants will often not complain for fear of retaliatory eviction even though they are living in dangerous conditions.

Proactive inspections are also carried out in dwellings owned or managed by known criminal and rogue landlords and agents in the city.

Cyclical inspections at least every one or two years take place in a few guest houses which are used as houses in multiple occupation for placing homeless families.



Licensing of Houses in Multiple Occupation

The owners of licensed houses in multiple occupation are subject to licence conditions. They, along with any manager and others associated with them must be considered 'fit and proper' before a licence is granted. In cases where no 'fit and proper' person is available to manage a licensable HMO the Council has a duty to take over the management of that property.

All HMOs are inspected at the licence application or renewal stage. These inspections have more than one purpose:

- Suitability for multiple occupation - in terms of space and amenity provision
- Compliance with the relevant HMO Management Regulations
- Each dwelling in the HMO will be inspected under Part 1 of the Housing Act 2004 to ensure there are no serious hazards to health and safety.

Checking for compliance with licence conditions during the licence period takes place in those HMOs which are known to be less well managed.

Licensees are required - on an annual basis - to submit documentary evidence that they have checked gas installations. Other certification such as that in connection with fire alarm systems and electrical installations can be required to be submitted on demand.

Each licence normally lasts for five years. Housing Standards team members actively look to identify unlicensed properties.

The Council charge a fee for an HMO licence. Where a landlord is applying to renew a licence and the building details are exactly the same as they were at the time of the first application, the licence fee is reduced.

Work to support landlords

The team's activities are not simply restricted to policing standards in privately rented accommodation. An e-mail address list of landlords has been established and whenever information considered useful is received, this is sent on to them. A seminar/conference for landlords' is also organised on occasions and officers from Housing Standards regularly attend meetings of the Normanton and Peartree Landlords' Association and the National Landlords' Association. Training sessions are sometimes held specifically for members of Landlord Associations. Information specifically for landlords is posted on the Housing Standards website.

Partnership working

The Housing Standards Team has had for many years, a close working relationship with organisations such as Derbyshire Fire and Rescue Service. There is to some extent a dual enforcement role in respect of fire safety in houses in multiple occupation and blocks of flats with common parts.

The two services have developed a protocol which gives guidance on when and how they need to consult and in which circumstances. The protocol also gives guidance on when it is most appropriate for either service to take the lead in enforcement.



Housing standards enforcement work often impacts on housing needs and landlord / tenant relationships. Close working arrangements have therefore been established between housing standards officers and housing advisors in the Housing Options Team. Unfortunately, housing standards interventions will sometimes lead to harassment and illegal eviction. Particularly close contact is therefore maintained in this respect and if legal proceedings become necessary under the Protection from Eviction Act 1977, these will be instigated by an officer in the Housing Standards Team.

There are also overlaps between housing standards work and other housing functions such as those carried out by the Healthy Housing Hub, the Empty Homes Service, and the Housing Renewal Team (which amongst other things delivers disabled facilities grants).

Another significant partner organisation is DASH (Decent and Safe Homes - East Midlands) an organisation established in 2005 to assist landlords and council officers in the East Midlands improve standards in the private rented sector.

A number of external organisations and services within the Council also work in partnership with the Housing Standards Team, including amongst others, the Home Office Immigration Service, Derbyshire Constabulary, Social Care, Neighbourhood Officers, the Environmental Protection Team and Trading Standards.

There are a number of rogue landlords and agents operating in the city and various enforcement agencies meet with Housing Standards every 4 months at the Council to exchange intelligence and co-ordinate multi agency inspections of their properties.

Approach to enforcement

Hazards of a serious nature

On completion of a dwelling inspection, appropriate enforcement action is taken having regard to the hazards found. Hazards of a serious nature (category 1 hazards and high scoring category 2 hazards) are dealt with formally using one of the statutory enforcement actions available in the Housing Act 2004. These include, an improvement notice where the landlord is required to carry out remedial action within a specified time and a prohibition order which prevents part of, or the whole of a dwelling from being occupied for living or sleeping purposes.

Landlords' should bear in mind that the Council have a duty in the case of category 1 hazards to take formal enforcement action.

The opportunity to discuss matters in these circumstances will normally be possible at the inspection stage, as at least 24 hours' notice of our inspections must be given to landlords and tenants' alike, but time will be very limited afterwards as officers' need to move quickly towards the formal enforcement stage in order to comply with the law.

It is to be hoped that landlords understand that when there are serious hazards present in a person's home the Council can't unnecessarily delay the process of removing or minimising those hazards.

Where works are relatively straight forward and very quick to remedy, formal notice may not be needed but only if a landlord makes an immediate start to remedial action and then progresses at a fast rate to completion (within a few days).



Otherwise statutory action will be taken by the Housing Standards Team without undue delay. Statutory action - by way of an improvement notice, detailing the necessary works - will in any event be taken if the remedial action by its nature is likely to be complex and lengthy, particularly when poor or unsafe living conditions are found in high density Houses in Multiple Occupation (HMOs).

Where a landlord fails to comply with an improvement notice the Council will almost certainly arrange to carry out the work in the landlords' default and recharge the costs of the work plus any associated administrative costs back to them.

Failure to comply with an improvement notice will also - subject to evidence being available - lead to proceedings in the magistrates' court where fines are unlimited or the imposition of a civil penalty of up to £30K.

Where conditions in a dwelling are such that there is an immediate risk of serious harm to tenants or others, emergency remedial action will be taken by the Council under Part 1 of the Housing Act 2004. The Council will in these cases charge any reasonable costs incurred in taking the action to the landlord and recharge the costs of the works carried out plus any associated administrative charges.

Other provisions under the Environmental Protection Act, Public Health Acts, Building Act, and the Prevention of Damage by Pests Act are sometimes used to deal with more serious hazards depending on the circumstances.

Prohibition Orders

One of the formal enforcement options available to the Council is the making of a Prohibition Order. This requires a landlord to stop renting a dwelling for living and sleeping purposes.

It is a measure that is usually used when the dwelling is uninhabitable because of the hazards present, or where necessary remedial action cannot be carried out around the occupants, because it is unreasonably expensive or because it is physically very difficult or impossible to undertake.

There is no power available to the Council which allows them to carry out any works of default in these circumstances. The only possible remedy should the landlord keep letting the dwelling is to prosecute. The Council will instigate proceedings when this happens unless it is not possible for some reason to collect the necessary evidence.

Another potential use of a Prohibition Order is to control crowding in dwellings - particularly when it has been caused by the landlord. In this context they are sometimes used to restrict the number of occupants in a dwelling. Where they are considered for use in this respect, officers will always liaise with staff in Housing Options before making a decision, as this action could well lead to persons becoming homeless.

Rent Repayment Orders

The Housing and Planning Act 2016 introduced powers to use 'rent repayment orders' when landlords fail to comply with improvement notices and prohibition orders, undertake illegal evictions, control or manage unlicensed HMOs and breach banning orders (see below).



A rent repayment order is an order made by a first tier tribunal requiring the landlord to repay an amount of rent paid by a tenant, or pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy when any of the above offences have been committed.

When these offences are discovered and the investigating officer is satisfied that rent was fully or partly paid through Housing Benefit or through the housing element of Universal Credit, they will consult with their senior officers with a view to serving a 'Notice of Intended Proceedings' on the landlord. This does allow the landlord to make a representation to the Council but if no representation is made or if after a representation a decision is made to go ahead with an application to a tribunal, the case file is submitted to the legal team for their approval to go ahead. If the Legal team are happy a written application is made to the First Tier Tribunal for a Rent Repayment Order.

The Council has a duty to assist a tenant to make an application to a Tribunal where they paid their rent direct.

Banning Orders

The merits or otherwise of an application to the First Tier Tribunal (FTT) for a banning order is always considered by the case officer and their senior managers if a landlord/property manager/managing or letting agent is convicted of a banning order offence.

Banning order offences are as follows:

- Protection from Eviction Act 1977 - Unlawful eviction and harassment of occupier
- Criminal Law Act 1977 - Violence for securing entry
- Housing Act 2004 –
 - Failing to comply with an improvement notice
 - Failing to comply with a prohibition order
 - Offences in relation to licensing of Houses in Multiple Occupation
 - Contravention of an overcrowding notice
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation
 - False or misleading information
- Regulatory Reform (Fire Safety) Order 2005 - Fire safety offences
- Health and Safety at Work etc. Act 1974 - Gas safety offences - duties on landlords
- Immigration Act 2014 - Residential tenancies - landlord offences and residential tenancies – agent offences



- Fraud Act 2006 – Fraud, Possession etc. of articles for use in frauds, making or supplying articles for use in frauds, participating in fraudulent business carried on by sole trader etc. obtaining services dishonestly, liability of company officers for offences by company.
- Criminal Justice Act 2003 - Specified violent and sexual offences
- Misuse of Drugs Act 1971 - Occupiers etc. of premises to be punishable for permitting certain activities to take place there, prohibition of certain activities relating to opium, prohibition of supply etc. of articles for administering or preparing controlled drugs, miscellaneous offences, attempts etc. to commit offences, assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law, offences by corporations.
- Proceeds of Crime Act 2002 - Concealing etc. criminal property, arrangements, acquisition, use and possession.
- Protection from Harassment Act 1997 - Offence of harassment, Offence of stalking.
- Anti-social Behaviour, Crime and Policing Act 2014 - Breach of criminal behaviour order, Failure to comply with a community protection notice.
- Criminal Damage Act 1971 - Destroying or damaging property, threats to destroy or damage property, possessing anything with intent to destroy or damage property
- Theft Act 1968 – Theft, burglary, blackmail, handling stolen goods.

The group of officers considering whether the Council ought to apply for a banning order should consider the following matters which are taken from the MHCLG guidance document:

- ***The seriousness of the offence.***

All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should consider the sentence imposed by the Court in respect of the banning order offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a banning order.



- **Previous convictions/rogue landlord database.**

A local housing authority should check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be aware of their legal obligations. For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of non-compliance could also be taken into account. A local housing authority should also consider the likely effect of the banning order on the person and anyone else that may be affected by the order. These factors should include:

- **The harm caused to the tenant.**

This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants and could therefore be considered more harmful than other offences (such as fraud).

- **Punishment of the offender.**

A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.

It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

- **Deter the offender from repeating the offence.**

The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.

- **Deter others from committing similar offences.**

An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that



the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

Hazards of a more minor nature

If there is no duty on the Council to take formal action and the hazards found in a dwelling are not considered to be very serious (lower scoring category 2 hazards for example – band E or below) but attention to the deficiencies in the dwelling is still considered necessary (perhaps because multiple deficiencies have been found), then informal action in the first instance is more likely to be the chosen approach of an officer. Only when this has been seen to fail will formal action be considered.

Enforcement action if dwellings are vacated

It is important for owners and managers of rented accommodation to appreciate that officers' in the Housing Standards Team will **not** automatically close cases because an occupant leaves a dwelling. Retaliatory evictions or voluntary vacation of dwellings will not prevent enforcement action continuing if serious hazards or other unacceptable conditions are found. Action will continue until satisfactory remedial works have taken place for the benefit of future occupants. In the event that the dwelling becomes long term empty a referral will be made to the Empty Homes Team at the Council.

Retaliatory eviction

Landlords should note that on October 1st, 2015 laws on retaliatory eviction were introduced. The Deregulation Act 2015 contains provisions that mean no landlord can legally serve a Section 21 notice seeking possession on a tenant within 6 months of an Improvement notice being served for a category 1 or 2 hazard or within 6 months of emergency remedial action being taken.

Standard of remedial works

In the event that a works notice of some kind is served on a landlord there is a general presumption against a 'patch and mend' approach. Remedial specifications are likely to ensure that the dwelling will be free of unacceptable hazards for several years. It may however be appropriate to specify minimal works where the dwelling has a 'short life' for some reason, perhaps because it is scheduled for demolition for example. Where works to comply with an improvement notice are substandard, the Council will carry out works in default of the owner to ensure an acceptable level of quality.

Enforcement charges

When officers in the team use formal enforcement measures to remedy hazards under the Housing Act 2004, landlords are charged for these actions. This charge is designed as a means of recovering certain administrative and other expenses incurred in taking that formal action. The Council has the power under section 49 of this Act to make such reasonable charge as they consider appropriate. This charge is the same in all cases and is calculated based on the minimum estimated times taken to carry out certain functions in relation to enforcement. To that extent it is considered a reasonable charge. There is no power to charge for enforcement under other legislation.



Houses in Multiple Occupation – Management Regulations

Landlords' should be aware that if they manage a house in multiple occupation - whether licensable or not - they are also subject to specific management regulations [The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007].

Whatever the principal reason for visiting an HMO, officers in the team will enforce these regulations robustly if serious contraventions are found.

There is no formal notice procedure as a precedent to prosecution or a penalty charge in these situations, but officers will usually write to landlords informing them of the matters to be addressed.

If the landlord ignores this letter it is almost certain subject to sufficient evidence being obtained, that prosecution or the imposition of a civil penalty will follow. The same principle will be applied here as with hazards dealt with under Part 1 of the Housing Act 2004, in that an immediate response to the letter will be expected if a landlord is to avoid prosecution or the imposition of a penalty charge.

Where conditions in the HMO are such that there is an immediate risk of serious harm, emergency remedial action will be taken by the Council under Part 1 of the Housing Act 2004 but in addition immediate prosecution or imposition of a penalty charge will almost certainly follow.

A point to note with respect to HMO management regulations is that contraventions of separate regulations are separate offences and multiple contraventions of different regulations could lead to multiple fines in a criminal court or multiple civil penalties.

Service requests and inspection of other dwelling units in the same building

Where a service request relates to a bedsit or a flat in a relatively small building containing other similar units and the remainder of the bedsits and / or flats are under the same ownership, the other units and the common parts will usually be inspected as well and the appropriate enforcement action taken including any fire protection measures required to the building as a whole. This may, in some cases, be contrary to the general prioritisation system but it is seen as an efficient use of resource and in many cases the state of one bedsit/flat is symptomatic of the condition of others in the same building.

This approach will not apply in much larger converted houses or larger purpose-built blocks of flats, but the Fire Service will be consulted in these cases so that they can enforce the Regulatory Reform (Fire Safety) Order 2005.



Advice and support

Even though a very robust approach is taken by officers when dealing with serious hazards in dwellings, the team's philosophy remains one of support. Advice will be offered to landlords throughout the enforcement process.

The Council has no desire to see landlords commit offences by failing to comply with the requirements of a notice and rather than leaving them to their own devices, officers are always willing to discuss matters throughout the enforcement process. Nevertheless, the Council will not hesitate to prosecute or impose penalty charges where appropriate, nor will they be slow to use their powers to carry out works 'in default' at dwellings when landlords fail to respond.

Possible future projects

Discretionary Licensing

Provisions contained in Part 3 of the Housing Act 2004 allow councils to introduce selective licensing in an area that is suffering from, or at risk of, low housing demand or is experiencing persistent or significant anti-social behaviour or is experiencing poor property conditions, high levels of migration, high levels of deprivation or high levels of crime. A local housing authority can also introduce an additional licensing scheme under Part 2 of the Housing Act 2004 if it believes that the houses in multiple occupation (HMOs) not subject to mandatory licensing in its area are being poorly managed and causing problems for tenants and other local residents. Discretionary licensing is the collective term used for additional and selective licensing.

It is possible that consideration will be given to these forms of licensing at some point in the future.

Content of document

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Dawn Deakin
Housing Standards,
The Council House
Corporation Street
Derby
DE1 2FS
Telephone: 01332 64 2373
Email dawn.deakin@derby.gov.uk

The document will in any event be amended annually and at any other time should there be changes to legislation, official government guidance or material changes to the activities of the Housing Standards Team **END**

