

## Annex 1

### **PRIVATE SECTOR HOUSING**

#### **Revised Private Sector Housing Enforcement Policy**

##### **1.1 Introduction**

This document is an addendum to the Private Sector Housing Enforcement Policy that was approved by Test Valley Borough Council in February 2005. It forms part of the Policy and should be read in conjunction with that document.

The Housing Act 2004 introduces significant changes to the ways in which local authorities deal with unsatisfactory living conditions within their districts. Local authorities had previously used the “fitness” standard to judge the condition of its local housing stock. The Housing Act 2004 replaces that standard with a new rating system that is based on risk analysis. It also introduces a range of new enforcement powers that could be used to remedy poor housing conditions.

The Policy aims to provide an enforcement service that is consistent, transparent and proportionately targeted at homes that fail the Decent Homes Standard or are otherwise prejudicial to the health or are in such a state to cause a nuisance.

##### **1.2 Legislative powers that can be used by local authorities**

Section 3 of the Housing Act 2004 requires local authorities to consider the housing conditions within their district with a view to determining the most appropriate course(s) of action that are required to deal with the hazards identified.

The following is a brief summary of the principal legislation that determines what course of action the Council should take having regard to the housing conditions found within its area.

**Housing Act 2004:**

The Act:

- i) Introduces the Housing (Health and Safety) Rating System (HHSRS) as the method for assessing, rating and categorising hazards found in dwellings. The rating system determines whether a local authority has a duty to intervene to remedy a hazard and whether or not it is appropriate to serve statutory Notices (Improvement Notices, Prohibition Orders, Hazard Awareness Notices, Emergency Prohibition Orders) or undertake Emergency Remedial action.
- ii) Makes provision for a Council to take control of residential accommodation that is poorly managed.
- iii) Makes provision for ensuring that houses in multiple occupation are not overcrowded.

**Housing Act 1985 (as amended):**

Enables the service of Demolition Orders and the declaring of Clearance Areas where category 1 hazards exist.

**Office of the Deputy Prime Minister Decent Homes Standard 2003:**

Sets minimum house condition standards. Whilst not an enforcement standard the Government is committed to ensuring that every social sector tenant will be living in a decent home by 2010 and that in the private sector at least 70% of vulnerable households should, by that time, be living in decent homes.

### **Environmental Protection Act 1990:**

Section 80 requires a local authority to take action to deal with premises that are prejudicial to health. Power is also provided to carry out works in default for failure to comply with an Abatement Notice.

### **Local Government (Miscellaneous Provisions) Act 1976:**

Enables the service of a Request for Information Notice that requires the recipient to provide information about their interest in a particular property and that of any other person who they believe may have an interest.

### **Building Act 1984:**

Section 59 provides powers to deal with defective drainage including gutters and downpipes.

Section 64 provides a duty to serve a Notice requiring the provision of water closets in a dwelling where insufficient facilities exist and section 63 covers water closets, drains and soil pipes improperly constructed or repaired and in such a state as to be prejudicial to health or a nuisance.

Section 70 provides powers to require suitable and sufficient food storage accommodation.

Section 76 affords a quicker response to dealing with premises that are prejudicial to health or a nuisance than is afforded through the use of Section 80 of the Environmental Protection Act 1990.

## **Local Government (Miscellaneous Provisions) Act 1982**

Enables the service of a notice to require the securing of unoccupied premises so as to prevent unauthorised entry or the property becoming a danger to public health.

## **Public Health Act 1961:**

Sections 16 -18 provide emergency powers to deal with blocked drains.

## **Public Health Act 1936:**

Section 45 provides for the service of a Notice to repair and/ or cleanse a defective water closet that is in such condition as to be prejudicial to health or a nuisance.

Section 50 provides authorities with a power to deal with overflowing/leaking cesspools.

## **1.3 The Housing, Health and Safety Rating System (Rating System)**

The Rating System is a tool that enables the likely impact of an identified hazard within a dwelling to be evaluated.

The system assesses

- i) The likelihood of any harm being caused to a vulnerable occupant and
- ii) The likely severity of the harm that may be caused.

The system allocates a score to the identified hazard. The score increases as the degree of risk of harm becomes greater.

Scores are banded alphabetically and rated from A (the most severe), through to band J (the least severe).

Bands “A” – “C” are classified as Category 1 hazards and bands “D” – “J” as Category 2 hazards.

### **1.3.1 Link between the new Rating system & the licensing of Houses in Multiple Occupation (HMO)**

An HMO is a house that is occupied by persons who do not form a single household. This will include shared houses, student-lets, bed-sit houses or other properties that are not self-contained (e.g. facilities such as kitchens/cooking facilities, baths or showers, and WCs are shared by the tenants). Hostel accommodation provided by the employer, such as that for restaurant and hotel staff, gang master properties etc. would also be included.

The Housing Act 2004 requires that each local authority sets up a system for licensing “high-risk” HMOs. The aim of HMO licensing is to identify HMOs in the district and to ensure that they reach the required standards for fire precautions, provision of amenities, repair, management etc.

HMO Licensing will require Test Valley Borough Council to prioritise its resources to implement a proactive programme for HMO inspections. The new Rating system will be an integral part of inspecting and assessing the condition of identified HMOs. It would be a condition of HMO Licensing that any identified Category 1 hazards are eliminated by the landlord/manager.

For further information about HMO Licensing please refer to the HMO Licensing Policy.

### **1.4 Determining the Most Appropriate Course of Action**

Objective: To ensure that action taken by the Council is reasonable, proportionate and appropriate.

The property shall be visited and all Category 1 and 2 hazards identified. The Housing (Health and Safety) Rating System to be used to assess the severity

of the identified hazards. Any premises that are in such a state as to be prejudicial to health or a nuisance shall also be identified. Before making a decision about the most appropriate course of action to be taken, it will be necessary to have regard to the legislation (see paragraph 1.2), any available guidance, the Council's wider housing strategy and the outcome of consultations with all relevant parties who have an interest in the property.

If there are no grounds for action the client shall be advised accordingly and the case closed.

If further action is appropriate a more detailed inspection of the property may be necessary in order to assess and quantify fully all category 1 and 2 hazards. A decision will then be made as to the most appropriate course of action required to resolve the problem(s), having regard to the current occupant(s). Should demand for the service exceed capacity priority will be given to those cases where either a category 1 hazard exists or where there is otherwise an imminent threat to health or the property is causing nuisance.

### **1.5 Formal Action**

Objective: To address hazards found in properties and those that are otherwise prejudicial to health or cause a nuisance.

Prior to taking action it is important to identify those persons who have an interest in the property in order that all parties can be consulted. Therefore in all cases where further action is necessary a Request for Information questionnaire will be completed by the client, or a copy of a current tenancy agreement obtained to identify those persons who are known, by them, to have an interest in the property.

The Council has a statutory duty to take action to remedy Category 1 hazards (banded A – C) and a discretionary duty to deal with Category 2 hazards (banded D –J).

## **1.6 Enforcement options**

1.6.1 The Housing Act 2004 provides a range of options for taking action as follows:

- i) Serve an improvement notice
- ii) Make a prohibition order
- iii) Serve a hazard awareness notice
- iv) Take emergency remedial action or serve an emergency prohibition order
- v) Make a demolition order
- vi) Declare a clearance area.

1.6.2 Whilst each case will be judged upon its individual merits, this includes taking into account the vulnerability of the current occupant, the Council shall:

- i) Take appropriate and timely enforcement action to remedy all category 1 hazards (bands A – C), and

as a general guide, will exercise its discretion to:

- ii) Take enforcement action, if it is appropriate and necessary, to remedy category 2 hazards (bands D – F)
- iii) Encourage the remedying of category 2 hazards (bands G – J).

1.6.3 Notwithstanding paragraph 1.6.2 above, where both Category 1 and Category 2 hazards are identified in a property it may be necessary due to capacity and resource limitations to prioritise enforcement action to deal with Category 1 hazard(s) and postpone action to deal with Category 2 hazard(s).

1.6.4 As is appropriate the client and any person with an interest in the property shall be consulted throughout the progression of the Council's action.

1.6.5 The action proposed will be undertaken in accordance with the Council's Private Sector Housing Renewal Policy.

1.6.6 In all properties where a Category 1 or 2 hazard is found a statement of the reasons for the decision made concerning the proposed action will be prepared and be subject to review. The statement will accompany all Notices and Orders and any copies that the local authority determine to serve under Part 1 of the Housing Act 2004 and relevant provisions of the Housing Act 1985 (as amended).

1.6.7 Each case will be considered on an individual basis according to each specific set of circumstances. Nothing within this policy shall prevent the full range of enforcement options being considered for Category 2 hazards regardless of their rating. Registered Social Landlords have a commitment to make all social housing decent by 2010. The Council will consider any planned programme of improvement works before taking formal action.

1.6.8 Formal action will also be considered to deal with any issues that more appropriately may fall within the provisions of the Environmental Protection Act 1990, Building Act 1984 and Public Health Acts 1936 & 1961 as detailed in paragraph 1.3 (Legislative Powers).

## **1.7 Decision to serve an Improvement Notice**

The Council will decide to serve an improvement notice having regard to the matters set out in paragraph 1.4. The work required will be reasonable and proportionate to the hazard and as a minimum ensure as far as is reasonably practicable that the hazard will not recur within the following 12 months. Improvement Notices may relate to more than one category of hazard and will set out:



- i) The detail of the hazard(s)
- ii) What action is to be taken and
- iii) The time allowed for compliance.

### **1.8 Decision to make a Prohibition Order**

The Council will decide to serve a Prohibition Order having regard to the matters set out in paragraph 1.4. The Order may prohibit the use of part or all of a premises for some or all purposes or may specify the degree of occupation by particular numbers or descriptions of people, as described below.

An order may be considered in the following circumstances:

- i) Where the service of an improvement notice is considered unreasonable or impractical.
- ii) To specify the number of persons who may occupy a dwelling having regard to its size and/or the facilities provided.
- iii) To prevent people who are vulnerable to a particular hazard from occupying a property until improvements have been carried out.

### **1.9 Decision to suspend an Improvement Notice or Prohibition Order**

The Council will decide to suspend an Improvement Notice or a Prohibition Order having regard to the matters set out in paragraph 1.4. A suspended notice or order will be reviewed within 12 months of service when the most appropriate course of action will again be considered.

In determining whether to suspend a notice or order the Council will also consider:

- i) Any representation received from any person who has an interest in the property and
- ii) The health and safety implications

### **1.10 Decision to serve a Hazard Awareness Notice**

The Council will decide to serve a Hazard Awareness Notice having regard to the matters set out in paragraph 1.4. A hazard awareness notice may be a reasonable response to a remote or minor hazard, where the Council wishes to draw attention to the desirability of remedial action.

The likelihood of a hazard becoming more serious may determine that the Council will undertake monitoring that may in due course result in an alternative course of action being taken.

### **1.11 Decision to serve a Demolition Order**

The Council will decide to serve a Demolition Order where a category 1 hazard exists and having regard to the matters set out in paragraph 1.4. In deciding whether to make a demolition order the Council will also:

- i) Take into account the social impact of the proposed action on the occupants residing at the property
- ii) Take into account the availability of alternative accommodation for re-housing any occupants
- iii) Take into account the demand for and sustainability of the accommodation if the hazard was remedied
- iv) Consider the prospective use of the cleared site and
- v) Consider the local environment, the suitability of the area for continued residential occupation and the impact of a cleared site on the appearance and character of the neighbourhood.

### **1.12 Decision to include a property in a Clearance Area**

The Council will decide to declare a Clearance Area having regard to the matters set out in paragraph 1.4. The Council will consider the desirability of clearance in the context of the wider neighbourhood of which the property forms part and have regard to:

- i) The social impact of the proposed action on the occupants residing at the properties
- ii) The likely long-term demand for residential accommodation
- iii) The degree of concentration of properties containing serious and intractable hazards within the area
- iv) The density of the buildings and the street pattern around which they are arranged
- v) The availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands
- vi) The proportion of dwellings free of hazards and other buildings that would also need to be cleared
- vii) Whether additional land would need to be acquired and how achievable this would be
- viii) The existence of any listed buildings
- ix) The results of statutory consultations
- x) Re-housing arrangements
- xi) The impact on and scope for relocating businesses
- xii) The suitability of the cleared site for redevelopment.