

## REVIEW OF THE HOUSING ENFORCEMENT POLICY

### 1. INTRODUCTION

- 1.1 The purpose of this report is to recommend that the Authority review and change its policy for dealing with sub-standard housing conditions. This change is necessary following the introduction of the Housing, Health and Safety Rating System and the new enforcement powers contained in the Housing Act 2004.

### 2. BACKGROUND INFORMATION

- 2.1 The New Forest District Council has certain duties to deal with poor housing in its area. This duty covers all privately owned and rented housing, and rented social housing. Minimum housing standards are set by the Department for Communities and Local Government (DCLG) and are designed to ensure that housing is safe, in reasonable repair and with at least a minimum level of facilities.
- 2.2 The policy is a statement of how we fulfil these duties and how we help to stimulate good quality local housing in line with the aims of our main Housing Strategy.
- 2.3 The policy, along with our housing procedures ensures that we treat all landlords, owners and occupiers in a fair and consistent way.

### 3. THE HOUSING ENFORCEMENT POLICY

- # 3.1 The draft policy is contained in Appendix 1 to this report.

### 4. FINANCIAL IMPLICATIONS

- 4.1 Any works that are carried out by the New Forest District Council in default of a statutory notice is recharged to the owner and would normally be paid back by the owner in installments. Failure to pay would normally result in a charge being put on the property. In recent years works in default have been very rare but the new enforcement regime places a duty on the Council to deal with category 1 hazards and with the reduction in the Improvement Grant budget it is anticipated that this type of work will increase.
- 4.2 There has always been an obligation on the Authority to pay compensation to the owners (and to a lesser degree tenants) where a Demolition Order has been served. The new Act has not changed the provision to serve Demolition Orders so it is not anticipated that there will be any significant change to the current situation.

### 5. ENVIRONMENTAL IMPLICATIONS

- 5.1 Ensuring dwellings are safe and with adequate heating and insulation has an impact on the local community and wider environment.

## **6. CRIME AND DISORDER IMPLICATIONS**

6.1 Dealing with dwellings that lack adequate security is one of the new requirements.

## **7. HOUSING HEALTH AND SOCIAL INCLUSION PANEL COMMENTS**

7.1 The Panel at their meeting on 24 January supported the recommendations contained in this report. The Tenants' Representatives at that meeting also supported the proposals.

## **8. PORTFOLIO HOLDER COMMENTS**

8.1 The Housing Portfolio Holder for Housing comments that this policy ensures the Council will be able to respond to complaints about sub standard housing and comply with the statutory duties as a housing authority. However by attempting to deal with issues informally where appropriate and taking the least intrusive action possible in owner occupied dwellings, the Council recognise that most people do not want to have health and safety standards enforced on them in their own homes.

## **9. RECOMMENDATION**

9.1 To agree the revised Enforcement Policy attached at Appendix 1 to this report.

### **Further Information:**

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### **Background Information:**

Housing Act 2004 and related guidance from the ODPM see [www.odpm.gov.uk](http://www.odpm.gov.uk)

## **APPENDIX 1**

### **NEW FOREST DISTRICT COUNCIL**

### **HOUSING ENFORCEMENT POLICY 2006**

#### **1. INTRODUCTION**

- 1.1 The New Forest District Council has certain duties to deal with poor housing in its area. This duty covers all privately owned and rented housing, and rented social housing. Minimum housing standards are set by the Department for Communities and Local Government and are designed to ensure that housing is safe, in reasonable repair and with at least a minimum level of facilities.
- 1.2 This policy is a statement of how we fulfil these duties and how we help to stimulate good quality local housing in line with the aims of our main Housing Strategy.
- 1.3 The policy, along with our housing procedures ensures that we treat all landlords, owners and occupiers in a fair and consistent way.

#### **2. SUMMARY OF THE AIMS OF NEW FOREST HOUSING STRATEGIES**

- 2.1 It is intended that this policy is read in conjunction with the Private Sector Housing Strategy and the Housing Assistance Policy. These policies are all part of the larger New Forest District Council Housing Strategy and are intended to ensure that dwellings are safe and to help support vulnerable people to stay in their own homes. We also recognise and to recognise the role that the private rented sector plays in providing decent accommodation and in tackling homelessness.
- 2.2 The Housing Act 2004 (the act) places a duty on each housing authority to keep the housing conditions in their area under review. We do this by carrying out a House Condition Survey every four to five years. We carried out a survey along with other Hampshire authorities in 2004. The purpose of the survey was to gather information about the housing stock and the ability of the occupiers to maintain their dwellings. The main finding of the survey was that we have a number of properties spread fairly evenly around the district that have significant health and safety risks and are in need of repairs and improvements.
- 2.3 The survey supports the view that there are not significant areas of housing deprivation within the forest but there are significant individual dwellings that need attention and significant numbers of occupiers (particularly the young and elderly) that need help to maintain the dwellings. This policy, along with our Housing Financial Assistance Policy is aimed at dealing with these issues.
- 2.4 The Government is committed to increasing the proportion of vulnerable households who live in decent homes in the private sector. Although the Decent Homes standard is not an enforceable standard we must have regard to it in our housing policies. One of the requirements of the decent home standard is that dwellings are not to have any category 1 hazards as defined by the Housing Act (see 3.1).

- 2.5 This policy clarifies how and when we will take action in rented and owner occupied dwellings to deal with category 1 and 2 hazards and other matters relating to housing standards such as overcrowding, Houses in multiple Occupation and empty dwellings.

### **3. BACKGROUND**

- 3.1 Most of the duties relating to housing standards are within the provisions of the Housing Act 2004 which came into force on the 6 April 2006. The Act introduced the new Housing Health and Safety Rating Standard (HHSRS) which replaces the Standard of Fitness for Human Habitation. The HHSRS is a risk assessment of the home and actions are targeted at eliminating the worst hazards. There are other Parliamentary Acts that impose responsibilities on Local Authorities. The most important is the Environmental Protection Act 1990 which places a responsibility on Local Authorities to deal with statutory nuisance in the home.
- 3.2 There is an expectation from Central Government that Local Authorities carry out their duties and enforce standards in an acceptable manner which recognises the rights of home owners and landlords. In 1998 the Cabinet Office published an Enforcement Concordat which detailed the principles of a good enforcement policy. The Concordat sets out what people being regulated can expect from enforcement officers and it commits the use to good enforcement policies and procedures. In 2000 the New Forest District Council formally adopted the Concordat to be applied to all its enforcement activities. Consequently the principles of the Concordat are encapsulated within the New Forest District Council Housing Enforcement Procedures.
- 3.3 We recognise that most landlords and homeowners want to comply with the law so we will take care to help people who own property to meet their legal obligations without unnecessary expense. We consider that it is part of our remit to educate landlords and to help them comply with all the relevant standards that apply to private rentals. Proof of this is our partnership with Southampton, Eastleigh and Test Valley Councils along with the Southern Residential Landlords Association to develop a new Landlord Accreditation Scheme which will encourage good quality private lettings and landlords who are professional in their approach.
- 3.4 This policy and the Private Sector Housing Strategy recognise the need for a partnership approach when dealing with property owners and landlords. In the vast majority of situations we will endeavour to deal with substandard housing conditions informally by liaising with landlords, pointing out responsibilities and encouraging action to resolve problems. Where the informal approach is not appropriate or has failed we will take firm and consistent formal action following our written procedures and consider prosecution against those who flout the law or act irresponsibly.

#### **4. PRINCIPLES OF THE ENFORCEMENT CONCORDAT**

- 4.1 In 1998 the Cabinet Office published an Enforcement Concordat which detailed the principles of a good enforcement policy. In 2000 the New Forest District Council formally adopted the Concordat to be applied to all its enforcement activities. The Concordat sets out what business and others being regulated can expect from enforcement officers and it commits the use to good enforcement policies and procedures.
- 4.2 We recognise the need to act fairly, consistently and where possible through consultation with the property owner. By adopting the concordat we have committed ourselves to being open, helpful consistent and proportionate as well as setting clear standards. See the summary in Appendix A for more information about the Enforcement Concordat.

#### **5. HOW WE INVESTIGATE HOUSING STANDARDS**

- 5.1 The Housing Act 2004 places a duty on the New Forest District Council to keep housing conditions in the district under review with the view to taking formal action under the provisions of the Housing Act where appropriate.
- 5.2 There are normally two reasons why we may visit a dwelling to look at its condition. The first is where we have a complaint about conditions from or on behalf of a tenant or occupier. We may also visit a dwelling to assess its suitability for financial assistance from the council to help carry out repairs, improvements or adaptations. In both situations we will carry out an assessment of the condition of the property.
- 5.3 We have a duty to carry out a full inspection of a dwelling where we consider it appropriate with the view to determining whether a category 1 or 2 hazard exists.
- 5.4 In the case of owner occupied dwellings we consider it appropriate to carry out a full inspection where we believe there is a category 1 hazard. In rented dwellings a full inspection will be carried out where we believe there is a category 1 or significant category 2 hazards. In most situations where we become aware of significant hazard we will attempt to remedy the matter informally through negotiations with the owner before considering the use of formal powers.
- 5.5 The reason that we differentiate between owner occupied and rented dwellings is that a tenant has very little control over conditions in the dwelling (unless caused by lifestyle) whilst owners have more control over the conditions in which they live and in most cases are able to decide whether to take action to resolve a problem. This creates two separate approaches to dealing with hazards. Generally how we deal with conditions in rented accommodation is contained in the following sections and how we deal with hazards in owner occupied dwellings is covered more detail in section 8.

## **General Housing Condition Investigation**

- 5.6 Where possible complaints will be resolved without using formal enforcement powers. In most cases where there is a category 1 or significant category 2 hazard in a rented dwelling we will contact the landlord or property owner to make them aware of the problems and encourage the required works informally before taking formal action.
- 5.7 All information will be put clearly and simply and will be confirmed in writing. Where appropriate we will explain why any remedial work is necessary and over what timescale and making sure those legal requirements are clearly distinguished from best practice advice.
- 5.8 We will use our discretion but will generally follow the guidance contained in our written procedures for dealing with complaints informally and attempt to resolve the matter without the service of a formal notice.
- 5.9 Where there is a risk of serious harm to the occupiers it may not be appropriate to deal with the matter informally so formal action will be considered. In such cases we still recognise that a telephone call to the landlord may still resolve the matter before we start any emergency procedure.

## **Formal Action**

- 5.10 Formal Action will be taken where the owner of the dwelling has not taken the opportunity to resolve hazards informally, where there are category 1 hazards (bands A, B and C) and significant category 2 hazards (bands D and E) in rented accommodation. The type of action is dependant on the severity of the risk, the vulnerability of the current occupiers and to some extent the wishes of the occupiers.
- 5.11 All inspections will be carried out by a qualified member of staff who will make a professional judgement about the most appropriate course of action based on the advice in the ODPM Enforcement Guidance. Action taken will follow set written procedures to ensure consistency. Where formal action is taken there will be written records of the inspection and reasons for the decisions taken.
- 5.12 The views of the occupants, the owner and other stakeholders where appropriate will be included in the decision making process but the Surveyor and Housing Technical Manager will decide if the risks associated with the hazards outweigh the wishes of interested parties.
- 5.13 Discretionary formal action may also be taken where rented properties have significant category 2 hazards. Such action may be taken where the hazard is judged to have a significant impact on the safety or personal comfort of the tenant or where the hazard could cause further deterioration of the condition of the dwelling.
- 5.14 The standard that formal action will look to achieve will generally be to the standard necessary to alleviate the risk. This may be current Building regulations, British Standards or approved codes of practice. In certain circumstances where practicalities dictate the Surveyor may use discretion and apply a lesser standard.

- 5.15 In all cases where formal action has been taken the recipient will be advised of the right to appeal (within 21 days to the Residential Property Tribunal).

## **6. FORMAL OPTIONS FOR ACTION**

- 6.1 In all situations where formal action is being considered reference will be made to the Housing Act 2004 Enforcement Guidance and options will be considered with the Senior Building Surveyor or Housing Improvements Manager.

### **Improvement Notice**

- 6.2 An Improvement Notice may be served where it is necessary to remove or minimise a category 1 or 2 hazard. In certain circumstances an Improvement Notice will be served to reduce a category 1 hazard to category 2. The council may suspend the Improvement Notice where it considers it appropriate based on the Housing Act guidance. Suspension may be considered for example where there is a change of occupancy and the new occupants are not in the vulnerable group for the hazard.

### **Prohibition Order**

- 6.3 A Prohibition Order may be served where there is a category 1 or 2 hazard and it is appropriate to prohibit use of all or part of a dwelling, or by occupation by particular numbers or descriptions of people. The council may suspend the Prohibition Order where it considers it appropriate based on the Housing Act guidance. Persons seriously affected by a Prohibition Order may obtain help with temporary re-housing from the Council.

### **Hazard Awareness Notice**

- 6.4 A Hazard Awareness Notice may be served by the Council where we have found a category 1 or 2 hazard that we believe is less serious and where we wish to draw attention to the desirability of remedial action to the owner. An example could be disrepair to windows or roof that if left untreated could cause further deterioration of the dwelling and an increase in health and safety risk to the occupiers.

### **Emergency Remedial Action**

- 6.5 Emergency Remedial action or may be taken where the council have identified a category 1 hazard that presents an imminent risk of serious harm to the occupiers. Such action could be for the council to carry out the works necessary to remove the hazard and recover the costs for the owner. Section 40 of the act gives the council authority to enter a dwelling to carry out such work. Where appropriate the council may serve an Emergency Prohibition Order to prevent use of all or part of the premises.

### **Demolition Order**

- 6.6 A Demolition Order may be served where there is a category 1 hazard and demolition is the most appropriate course of action. We may help occupiers of dwellings subject to a Demolition Order with re-housing, offer financial compensation (in line with the statutory requirement at the time) to cover any loss of value of the dwelling (if any) and in certain cases help with removal expenses.

### **Works in Default and Prosecution**

- 6.7 Works in default may be carried out where an improvement notice has been served and the owner is not able to carry out the works or where the owner has not complied with the notice. Works carried out in default will be at the expense of the owner and costs incurred by the council with interest will be charged where appropriate and pursued through the Courts. Normally the procedure followed will be as prescribed in the Housing Act 2006 for carrying out the works without the agreement of the owner even if it is the wish of the occupier that the works are carried out by the Council. The reason for this is that it gives the Council the right to put the debt as a charge on the property.
- 6.8 The Council will consider prosecution in all cases of non compliance of notices or orders.

## **7. CHARGES FOR ENFORCEMENT ACTION**

- 7.1 The council may make a charge for costs involved in serving notices or orders. The charge will cover the reasonable expenses incurred in the preparation and service of the notice or order. The expenses will be in connection with the time taken to inspect the premises, preparation of the notice or order and associated paperwork and service. The Housing Technical Manager may waive all or some of the expenses in cases of financial hardship.

## **8. VISITS CARRIED OUT FOR REQUESTS FOR FINACIAL ASSISTANCE**

### **Our views on owner occupied dwellings**

- 8.1 In our experience, most owner occupiers do not want the local authority to force them to carry out repairs and improvements in their own homes. However there is a duty to take appropriate enforcement action when we are aware of a Category 1 hazard in owner occupied as well as tenanted dwellings.
- 8.2 Where a Surveyor visits a dwelling for the purpose of giving financial assistance and becomes aware of an issue that could constitute a category 1 then a full inspection must be carried out.

- 8.3 As appropriate action is determined by taking into account the views of the occupier it is anticipated that in the majority of cases, where we have to take formal action, we will aim to take the least intrusive action such as a Hazard Awareness Notice. There will be occasions where the hazard is so severe and the risk to the occupier, visitors or neighbours may be so great that we will have to consider the service of a notice requiring works or action by the owner. Such a situation could be where there is a risk of collapse, electrocution or carbon monoxide poisoning.

## **9. Overcrowding**

- 9.1 There are provisions in the Housing Act 1985 for determining statutory overcrowding and lack of space is one of the defined hazards in the Housing Act 2004. We will investigate complaints of overcrowding and where statutory overcrowding exists may take the necessary action to alleviate the overcrowding as prescribed by the act.
- 9.2 The most appropriate action as described in section 6 above will be taken where there is a category 1 hazard due to lack of sufficient space in a dwelling which results in there being a significant health and safety risk. Such a situation may arise where there is insufficient space to allow for normal levels of furniture and occupation without creating a risk or significant lack of privacy. Excessive storage of furniture or possessions will be considered the responsibility of the occupier and not normally contribute towards an assessment of overcrowding.

## **10. Houses in Multiple Occupation (HMOs)**

- 10.1 As required by the DCLG all relevant HMOs will be subject to the licensing regime as imposed by the Housing Act 2004. These will be HMOs of three or more storeys with five or more persons sharing and forming at least two households.
- 10.2 Other HMOs as defined by the act but not covered by licensing will be subject to the standards contained in the New Forest District Council Standards for Multiple Occupation (see appendix B). These standards reflect nationally recognised standards for space, amenities and management and have been developed in partnership with neighbouring local authorities. We will also make owners of HMOs aware of other standards such as gas safety and the furnishing regulations which are not the remit of the NFDC but are still a requirement for HMOs.
- 10.3 An assessment visit will be carried out where we become aware of an HMO and the owner will be required to carry out all works to ensure there are no category 1 or significant category 2 hazards, and to install appropriate amenities and fire precautions. We will follow the principle of working informally to achieve the required standard but the duty to deal with severe hazards may mean that formal action may be considered. We will carry out a consultation with the Fire Brigade where additional fire precautions are required in an HMO.

- 10.4 HMOs that are known to comply with the relevant standards will be revisited on a regular basis (normally at least annually) to ensure compliance with the Management Regulations. Such revisits will be carried out as considered appropriate and will be dependant on the quality of management. Generally we aim to visit all HMOs at least once a year. Because we feel the same standards should apply to Council and RSL hostels we will aim to revisit annually despite this type of accommodation technically being excluded from the legal HMO definition by the Housing Act 2004.

## **11. Landlord Accreditation**

- 11.1 The New Forest District Council are working in partnership with neighbouring authorities to introduce a discretionary landlord accreditation scheme. The aim of the scheme is to help improve confidence in private rented accommodation and improve the information available to landlords. Accreditation will involve the fit and proper person test and spot checks by the authority of certificated dwellings. We will encourage landlords to become accredited and subsequently private tenants to look for properties that are owned by accredited landlords.

## **12. New Forest District Council and Registered Social Landlord (RSL) Dwellings**

- 12.1 Dwellings owned by and leased to RSLs are treated in the same way as privately owned dwellings and are subject to the enforcement policies contained within this document. The DCLG state in the enforcement guide that it is desirable to work with informally with RSLs to resolve problems, particularly where the RSL are working to make homes decent. However the guide is also clear that occupiers should not be left for long periods in unsafe housing.
- 12.2 The New Forest District Council cannot serve a formal notice on itself where a Category 1 or 2 hazard exists in one of its own dwellings. The council has a target of ensuring all its dwellings meet the decent homes standard by 2010 which should mean that all dwellings are safe and do not have any category 1 hazards. However it is clear that tenants should not be left in housing which has a category 1 hazard for a long period of time. If there is a situation where the Housing Improvements Team receives a complaint from a council tenant and finds that there is a category 1 hazard the proper officer for receiving complaints (this is a statutory role that is independent from the housing function) will make representations to the Housing Maintenance Team with the view to having the necessary repairs and improvements carried out. In the case of disagreement the matter will be put to the Assistant Director (Housing Services) who will decide on the action to be taken. If not satisfied the complainant may take a complaint to the Council's Corporate Complaints Department.

## **13. Energy Efficiency**

- 13.1 The HHSRS will be used to protect occupiers from excess cold, damp or mould. In certain situations however vulnerable people on low incomes may occupy a dwelling that achieves the minimum standard for heating and insulation and the cold and dampness is cause by lifestyle factors (not providing sufficient heating or ventilation

which is difficult on a low income). In such situations the council will encourage the occupier to consider a Warm Front grant to improve heating and insulation. We will also try to encourage landlords to take steps themselves to improve rented property. Visiting council officers will have sufficient information to advise occupiers or landlords of what grants or benefits may be available to them.

#### **14. Empty Homes**

- 14.1 The council has a separate strategy for dealing with empty homes. Under the Housing Act 2004 there are provisions for the council to take over the management of empty dwellings by using Interim and Final Empty Dwelling Management Order. Making use of such orders will be considered where a dwelling comes within the criteria set by the act and where the service of such an order helps to support the policies contained in the Empty Homes Strategy.

#### **15. Mobile Homes**

- 15.1 Mobile homes are not covered by the provisions of the Housing Act 2004 or the HHSRS. However complaints about the conditions in individual mobile homes may come under the remit of the Environmental Protection Act 1990. Under the provisions of this act the Council has an obligation to deal with problems which may be prejudicial to the health of the occupiers or a statutory nuisance. In practice we will attempt to resolve all matters on an informal basis with the owner before considering the service of a formal notice.

#### **16 Prosecutions and Works in Default**

- 16.1 Enforcement action will follow set procedures to ensure fairness and consistency and prosecutions for failure to comply with notices or orders will take into account the guidance set out in the Code for Crown Prosecutors which states that prosecutions are fair and effective. All prosecutions will be carried out through our Legal Section.
- 16.2 Where there has been a failure to comply with the notice and works are of an urgent nature they will be carried out by the authority and the cost of works and relevant expenses will be reclaimed from the relevant person.
- 16.3 This course of action may also be taken with the support of an owner occupier where the person is deemed to be vulnerable and incapable of organising or paying for the works.

## **Appendix A**

### **SUMMARY OR THE ENFORCEMENT CONCORDAT**

In 1998 the Cabinet Office published an Enforcement Concordat which detailed the principles of a good enforcement policy. In 2000 the New Forest District Council formally adopted the Concordat to be applied to all its enforcement activities. The Concordat sets out what business and others being regulated can expect from enforcement officers and it commits the use to good enforcement policies and procedures.

We recognise the need to act fairly, consistently and where possible through consultation with the property owner. By adopting the concordat we have committed ourselves to the following principles. These principles are a summary of the Concordat wording and apply to all businesses being regulated.

#### **Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

#### **Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting landlords, tenants, business, voluntary organisations, and charities. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

#### **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with landlords and homeowners to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage people to seek advice/information from us. Requests for advice and help will be dealt with efficiently and promptly and we will ensure that, wherever 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 timely complaints procedures easily accessible to landlords and the public. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

#### **Proportionality**

We will minimise the costs of compliance for landlords and homeowners by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the people involved.

We will take particular care to work with small landlords and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

**Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While our Surveyors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective working procedures which take into account guidance issued by the government, the Institute of Housing and the Institute of Environmental Health Officers.