

NORTH LINCOLNSHIRE COUNCIL

**ASSETS, CULTURE AND HOUSING
AND
NEIGHBOURHOODS
CABINET MEMBERS**

WORKS IN DEFAULT GUIDANCE NOTE

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 A number of service areas undertake works in default, where formal Notices are not complied with.
- 1.2 As a consequence, a works in default guide has been developed to ensure that wherever possible the most appropriate legislation is used and costs incurred are recovered.

2. BACKGROUND INFORMATION

- 2.1 Environmental Health and Operational Housing serve a large number of formal Notices under a plethora of legislation each year. The approved Enforcement Policy covers all forms of enforcement action. Many of the Notices served require action of some form, e.g. from removal of piles of rubbish from a garden to extensive repairs to homes.
- 2.2 The relevant service area often carries out the work in default when the Notice remains outstanding. The cost of the “works in default” can and should ordinarily be recovered from the person on whom the Notice was served.
- 2.3 The Works in default guidance note sets out the procedures for recovering costs under the different legislation, including through the County Court debt recovery process. It also sets out the use of land charges and enforced sale where appropriate.

1.0 Introduction

- 1.1 The Council has a duty to take action in particular circumstances laid down by legislation. If possible, we try to do this through discussion and co-operation. However sometimes it becomes necessary to require action from a third party through formal enforcement and the use of statutory notices (see Technical and Environment Services Enforcement Policy).
- 1.2 When it becomes necessary for the council to undertake the works required by the legal notice because the owner or the person on whom the notice was served has failed to do so, this is called 'works in default'. The council chooses to undertake works in default for a number of reasons, including; safeguarding public health, public safety and enhancing the quality of life of residents and businesses. In most circumstances, the cost of the work is recovered from the person on whom the notice was served. In some cases, the administrative costs incurred in the service of the notice and completing the work in default are also recoverable.
- 1.3 Several avenues are available to complete work in default and there are various ways of recovering the costs. Where a debt to the Council results from completing work in default, the costs are recoverable through the county court and/or as a local land charge on the property. Until repayment, the Council can levy interest on the amount outstanding.
- 1.4 This policy sets out the different legislation under which works in default are available, the mechanism for undertaking the work and the procedure for recovering any monies spent. This is a good practice guide for officers working in Technical and Environmental Services.
- 1.5 Fees and expenses must be "reasonable". Where administrative costs are charged they must be supported by time recording (for those offices working in Operational Housing or Environmental Health the records should be kept in Civica APP). As with all other aspects of a legal notice, Works In Default are open to challenge through appeal and/or later at County Court when the Council seeks to recover its debt or using judicial review.

2.0 Background and strategy

- 2.1 In a typical year, Technical and Environment Services receive a significant number of complaints across Environmental Health and Operational Housing.
- 2.2 In the vast majority of cases, informal action will see the issues resolved. Dealing with complaints in such a way where there is a realistic chance of a successful outcome is a cost effective use of our resources. The Enforcement Policy for the Technical and Environment Services sets out how we will make decisions on the type of enforcement action taken although every case is considered on its own merits.
- 2.3 Some situations necessitate the use of formal statutory action. This policy covers the carrying out of work where the notice has not been complied with [known as works in default (WID)], with the steps to be taken and the action needed to ensure costs are recovered wherever possible. As a rule



– where the legal powers exist to recover our costs, we should always look to do so although every case will be considered individually taking into account the specific circumstances involved.

2.4 Generally, the powers around WID will allow us to recover the costs or expenses incurred in doing the work together with interest on that amount. In some cases we can also recover our administrative costs for having to take formal action (both for the service of the notice and the WID) together with interest. Different statutory powers provide different means by which the debt can be recovered. Generally, where a demand for payment is unmet, the debt can be set against the property as a local land charge and/or recovered through the county courts. This policy will outline those differences and explain how to pursue each type of action to ensure cost recovery.

3.0 Works in Default Procedure

3.1 Appendix 1 lists the principal Acts used by Environmental Health and Operational Housing through which, WID are possible. This list will be periodically updated.

3.2 WID are generally completed where the person or persons on whom the legal notice has been served, fail to comply. This may not always be the case since we may choose to do WID “with the agreement” of the owner/person responsible where, for example they are vulnerable and/ or elderly.

3.3 **WID are always discretionary and the council will therefore determine the extent to which the required works are completed, if at all.** In many cases, doing only part of the work should not normally be considered, but it may be appropriate in some limited circumstances to do so¹. In such situations, the council will need to consider the impact of doing only some of the work and the views of the occupants of the property or neighbouring properties (where appropriate). The council should be aware that where there is discretion, any decision is open to judicial review and therefore it is essential that the reasons for doing only part of the work is clearly recorded on the WID decision sheet/approval document and on Civica APP.

3.4 In some cases, prosecution will be a more appropriate option than carrying out costly works in default or it may be appropriate to do both. In either case, such decisions are discretionary and should be recorded. They are open to judicial review and disclosable under the Openness of Local Government Bodies Regulations 2014 (subject to data protection requirements).

3.5 Any decision to carryout WID must be authorised by a manager using the enforcement front sheet (WID section) (see appendix 2). The enforcement front sheet is available in Civica APP within the notice database using the appropriate action cod. The approximate cost of the WID determines who is authorised to approve the work. The financial limits are as follows;-

Senior EHO Commercial up to £2000

Senior EHO Communities up to £2000

Head of Environmental Health up to £10000

Head of Operational Housing up to £10000

¹ Salford CC V McNally where the future life expectancy of the dwelling was taken into account when deciding on what works to complete



Assistant Director, Technical and Environment Services up to £20000

- 3.6 The following key procedural elements must be recorded on the enforcement front sheet, namely:
- The reason for wanting to carry out WID and a brief summary of the work required,
 - The approximate cost of carrying out the work – including the quotations for the work where already obtained, confirmation that the Council’s procurement policy has been followed in obtaining a suitable contractor and quote (see below),
 - Confirmation that the procedure has been properly recorded in Civica APP using, where possible the WID template and using time recording for each action,
 - How the costs incurred and administrative expenses, where appropriate, have been calculated and where they are to be recovered and from whom.
 - Whether prosecution is also an option and if not, why not.
- 3.7 When obtaining a quote for WID, the Council’s procurement policy must be followed. Where a framework contractor exists, such as electrical or building work, and the estimated cost is less than £10,000, the framework contractor for that area should be asked to quote. In such circumstances, there should be no need to obtain any further quotes. For work of this nature above £10,000, quotes should be requested from all the appropriate framework contractors through yortender. The Property and Estates team can offer further advice and assistance.
- 3.8 For work with a value of more than £5000 where no framework exists, the work must be procured through the yortender framework wherever possible.
- 3.9 In the case of WID, including urgent or emergency work, the Council procurement policy and procedural rules must be followed. Where officers can demonstrate that this is going to cause an unacceptable delay in getting the works completed, then guidance on possible options must be obtained directly from the Council’s procurement service. Where the Procurement team suggest more than one option, the course of action decided on must be with full agreement of the Procurement team and the appropriate Head of Environmental Health or Operational Housing.
- 3.10 Where the council are carrying out WID, all elements of the process must be recorded on Civica APP. To help do this, a WID template has been set up in the notice database. The template can be loaded using the appropriate code. It will take you systematically through each step of the process. The template is a useful prompt to make sure each decision/step taken is recorded. Time recording is an element of the template and must be used. Time recording is particularly important where



administrative charges are being made and an appeal may subsequently be received against the final costs or court action is necessary to recover an unpaid debt.

- 3.11 Wherever possible, the recipient of the notice must be informed that the council intend to undertake WID and the likely cost of those WID. If there is any doubt about the procedure, advice from Legal Services should be sort.
- 3.12 For each particular type of legal notice, please review the specific procedure and legislation, including the power of entry, use of warrants and obstruction to ensure the particular procedural steps have been accurately followed. **Failure to do so will put at risk our ability to recover the costs and could result in a formal complaint, appeal or judicial review and failure to recover part or all of the costs outstanding.**
- 3.13 Where the council has served the original legal notice on more than one person, all recipients of the notice must receive correspondence and any further formal notices, such as the demand notice for expenses incurred related to the WID. The demand for payment must be split equally between all parties. On appeal, the court may have the power to reapportion costs based on evidence that one or more individuals have differential responsibility for paying for the work. For example, an agent who is collecting the rent on behalf of the landlord.
- 3.14 Once WID are complete, the full cost of the work will be recovered (along with all of the reasonable administrative costs in some cases) by means of a sundry debt against all those on whom the original notice was served. Please note, that depending on the legislation used, a demand notice may need to be served before expenses can be recovered. If one recipient pays the demand in full, that extinguishes the debt for all other persons.
- 3.15 The application of VAT is generally not applicable on WID. It is the view that as a public authority implementing public law, council activities are VAT exempt. VAT is therefore not applied to any of the debt owed. However, in the interest of fairness, there is an argument to say that whilst the cost of organising the WID are exempt, the actual work should be subject to VAT given that it is supplied as part of a business or commercial operation. Since VAT is chargeable where the works are carried out with agreement, it would seem unfair if, by failing to comply with a notice, there was a financial advantage in that VAT is not passed on. Therefore, it is proposed that VAT on the actual WID should be charged when the money is recovered.



- 3.16 There may be exceptional cases where it is inappropriate to pursue a sundry debt and only the land charge should be registered against the premises. Such circumstances may include the financial situation of the person against whom the enforcement action is being taken. The Heads of Environmental Health and Operational Housing together with the Assistant Director, Technical and Environment Services have the discretion to waiver or reduce the charge in appropriate circumstances. Any decision to do so must be recorded along with the reasons why.
- 3.16 In the case of notices served under the Housing Act 2004, Environmental Protection Act 1990 or the Caravan Sites and Control of Development Act 1960 (as amended by the Mobile Homes Act 2013), a recovery or demand notice **must be served** on the owner, in some cases a copy of the notice is also served on every other person who, to the knowledge of the authority, has an interest in the premises before any expenses or costs can be recovered. In the case of the Environmental Protection Act 1990, the original notice and the demand for payment must be served on the owner of the land/property. Once the recovery notice has been served, a local land charge can be registered against the land. NB Please check the matrix below and the appropriate legislation to determine when and if a local land charge can be registered in other circumstances. Where WID is carried out in respect of an occupier, a sundry debt invoice must be raised and any non-payment pursued through the county court as a civil debt. In the latter case it is essential that the matter is raised with the sundry debts team to ensure that any outstanding debt is not written off and the outstanding monies are vigorously pursued.
- 3.17 In most cases, interest is chargeable on the outstanding debt from the point at which the debt becomes effective until payment. Interest will be waived if the debt is paid in full within 28 days of receiving the invoice. Otherwise, interest will be charged from the date of service of the recovery or charging notice or invoice date, whichever is the earliest.
- 3.18 The interest will be assessed as 8% compound annually and calculated as of the date of payment. In the case of interim payments, these will be paid against accrued interest before capital. Any request to waiver the right to apply interest must be authorised by the Heads of Environmental Health, Operational Housing or the Assistant Director, Technical and Environment Services.
- 3.19 In all cases, where statute allows an unpaid debt should be registered as a local land charge as soon as possible after the charging notice or invoice is served.



3.20 Where a debt remains unpaid, the Council reserves the right to recover the debt through enforced sale or other appropriate means.

4.0 Debt Recovery

- 4.1 When a sundry debt is raised, a charge is made to the service area raising the debt so wherever possible, this charge needs to be incorporated into the invoiced cost.
- 4.2 Where an invoice is raised as a sundry debt, the first stage of recovery (by the Council's sundry debt team) is to contact the debtor by letter. Stage 2 is for a visit to be made to their last known address. This process can continue without any input from the service area.
- 4.3 When a sundry debt is raised, the service area automatically receives the value of the invoice transferred into its budget. That means that if the invoice is not subsequently paid and the action is written off and the value of the invoice will automatically be taken back out of the budget.
- 4.4 Where a service area knows that the debtor is unlikely to pay because of past experience or otherwise believes that the sundry debt process will be unsuccessful, they can ask for the debt to proceed to legal services straight away for recovery through the County Court procedure.
- 4.5 In addition, when the sundry debt process has proved unsuccessful and no further action is possible, again, the matter should be referred straight away to legal services for county court recovery proceedings to be instigated and the money recovered.
- 4.6 No outstanding debt should be written off without approval to do so from the Director of Places or the Assistant Director for Environment and Technical Services. NB The sundry debt process requires that a debt write off must be agreed with the Director of Policy and Resources.
- 4.7 A legal charge on the premises should always be sought during civil debt proceedings.
- 4.8 NB The effect of the Limitations Act 1980, Section 20 on an unpaid local land charge is to require it's discharge if it remains unpaid after 12 years of being registered. This requirement is waived when a debtor has paid something towards the debt owed, even if that something is very small.





APPENDIX 1 – Environmental Health and Housing Legislation

Issue	Law	Civil	Land Charge	Powers of Entry	Comments
		Debt Recovery			
<u>Dangerous Building/Structure</u> Order to require remedial work or demolition to make property safe	Building Act 1984 Section 77	✓	✓ Debt is priority charge under LPA 1925	✓ Warrant	If the owner does not comply with the order the Council may carry out the work itself and recover the cost from the owner.
<u>Dangerous Building/Structure</u> Emergency powers to deal with structures/buildings which are immediately dangerous to the public	Building Act 1984 Section 78	✓ Recovery of cost through the magistrates court	✓ Debt is priority charge under LPA 1925	✓ Warrant	The Council must show that it has taken reasonable steps to notify the owner of its intentions prior to carrying out the work. The action is limited to removing the danger, not full repair e.g. a dangerous yard wall may be taken down but not rebuilt.
<u>Ruinous & Dilapidated Buildings & Neglected Sites</u> Requirement to repair, restore or demolish building	Building Act 1984 Section 79	✓ Debt can be used to enforce sale	✓ Debt is priority charge under LPA 1925	✓ Warrant	Must give owner notice before carrying out the work. The owner may serve a counter notice and may demolish rather than restore the structure Has more power than S215
<u>Boarding Up</u> 'fencing off' dangerous buildings	Building Act 1984 Section 78	✓	✓	✓ Warrant	The Council must give the owner notice if possible before securing the building.



<u>Boarding Up</u> Applies to buildings that are unoccupied or where the owner is temporarily absent and the premises is not effectively secured against unauthorised entry or is likely to become a danger to public health	Local Government (Miscellaneous Provisions) Act 1982 Section 29	<u>✓</u> Normal debt recovery procedure must be followed	<u>✗</u>	<u>✓</u>	Boarding up within 48 hours of the notice being served. Unnecessary to serve a notice on the owner prior to boarding up where it is not reasonably practicable to ascertain the name & address of the owner.
<u>Boundary Walls</u> In an immediately dangerous condition	Building Act 1984 Section 78	<u>✓</u>	<u>✓</u> Priority charge under LPA 1925	<u>✓</u> Warrant	See previous notes under dangerous structures
<u>Drainage</u> Uneven/badly draining court, yard surfaces or passage used in common by occupiers of 2 or more houses	Building Act 1984 Section 84	<u>✓</u>	<u>✓</u> Priority charge under LPA 1925	<u>✓</u> Warrant	S95 Power of entry S97 work in agreement Demand for expenses must be served
<u>Drainage</u> Inadequate provision for or blocked or otherwise defective drainage (above or below ground)	Building Act 1984 Section 59	<u>✓</u>	<u>✓</u>	<u>✓</u> Warrant	
<u>Drainage</u> Defective WC, drains, private sewers, waste pipes & soil pipes which can be repaired at a cost of not more than £250	Public Health Act 1961 section 17	<u>✓</u>	<u>✗</u>	<u>✓</u>	



<u>Sanitary Provision</u> Blocked or leaking sanitary appliances	Building Act 1984 Section 59	✓	✓	✓	
<u>Sanitary Appliances</u> Defective closets capable of repair	Public Health Act 1936 sections 45	✓	<u>x</u>	✓	
<u>Noxious Accumulations</u> 'harmful' or 'unwholesome' matter likely to cause disease	Public Health Act 1936 section 79	✓	<u>x</u>	✓	Does not apply to inert material which might cause accident or injury but which will not cause disease e.g. builder's rubble
<u>Accumulations of Rubbish</u> On any land in open air which is seriously detrimental to the amenities of the neighbourhood Rubbish = rubble, waste paper, crockery, metal and any other kind of refuse (including organic matter) but not material accumulated for or used in the course of any business.	Public Health Act 1961 section 34	<u>x</u>	<u>x</u>	✓	Work is completed at the expense of the Council and is not recoverable from the land owner.
<u>Rats and Mice (and other pests)</u> Accumulations likely to attract or harbour rodents	Prevention of Damage by Pests Act 1949 section 4	✓	<u>x</u>	<u>✓</u> Warrant	



<p><u>Filthy & Verminous Premises</u> Applies to premises which are in a filthy and unwholesome condition such as to be prejudicial to health and to verminous premises</p>	<p>Public Health Act 1936 section 83</p>	<p><u>✓</u></p>	<p><u>x</u></p>	<p><u>✓</u> Warrant</p>	<p>Verminous = flea eggs/larvae NOT rats or mice</p>
<p><u>Statutory Nuisance</u> Statutory nuisance includes 'any premise in such a state as to be prejudicial to health or a nuisance' - the underlying principle = conditions that create a threat of disease, vermin or the like.</p>	<p>Environmental Protection Act 1990 Section 79</p>	<p><u>✓</u></p>	<p><u>✓</u> Debt is a priority charge LPA 1925</p>	<p><u>✓</u></p>	<p>Prejudicial to health = <i>“threat of disease, vermin or the like”</i>. NB Does not include the visual impact of the building, the threat of physical injury e.g. caused by accident, or the associated anti-social behaviour that an empty or neglected building may attract.</p> <p>Recovery/demand notice (Sec 81(A)) has to be served on the owner on whom the original EPA notice is served. The council must also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.</p> <p>If structural works are required – notice must be served on the owner</p> <p>WID costs incurred from an occupier will need to be recovered as a civil debt by raising a sundry debt invoice and pursuing non-payment via the county court.</p>



<p><u>Community Protection Notices</u></p> <p>Allows the service of a CPN where conduct/behaviour is considered to be unreasonable, persistent and/or continuing and which is having a detrimental effect on the quality of life of others in the locality.</p>	<p>Anti-social behaviour, Crime and Policing Act 2014 Section 43</p>	<p><u>✓</u></p>	<p><u>x</u></p>	<p><u>✓</u></p> <p>Only available where the “land is open to the air” and in such circumstances, work can be done without consent. No warrant available.</p>	<p>A CPN can be used to deal with conduct, behaviour or an activity considered unreasonable, persistent and/or continuing which is detrimental to the life of others in the locality.</p> <p>The CPN can specify activities that must stop or must happen and steps required, eg stop accumulating rubbish, obtain a skip, remove all accumulated rubbish etc.</p> <p>The notice is NOT premises based, i.e the behaviour, conduct or activity does not have to take place at a specific address or premises, but a formal written warning must be served before the CPN.</p> <p>Breach of a CPN can be dealt with by one of 3 options –</p> <ul style="list-style-type: none"> • Fixed penalty notice, • Works in default – reasonable charge can be made, • Prosecution – a court can order a remedial notice, forfeiture order or a seizure order. <p>Land charge is not available.</p>
<p><u>Detrimental to the amenity</u></p> <p>Land adversely affecting the amenity of the neighbourhood (eyesore</p>	<p>Town and Country Planning Act 1990 Section 215</p>	<p><u>✓</u></p>	<p><u>✓</u></p> <p>Debt is a priority charge LPA 1925</p>	<p><u>✓</u></p>	<p>Notice to improve unsightly land or the external appearance of a property.</p>



notice)					
<u>Housing Conditions</u> Enforcement of housing standards using HHSRS, including Improvement Notices, Prohibition Orders, Emergency Remedial Action and Hazard Awareness notices	Housing Act 2004 Chapter 1 – 5	[✓] Schedule 1, part 3, relates to service and recovery of costs and expenses	[✓] Schedule 3, Part 3, paragraph 12 + 13 relates to land charge Debt is a priority charge LPA 1925	[✓] Section 239 Power of Entry	Action against owner and/or managing agent to remedy housing disrepair. Section 40 - Emergency Remedial Action - notice served within 7 days of completing urgent work at the property. Section 42 – recovery of expenses of taking ERA Demand notice must be served Section 237 Power to require CT and HB info when requested
<u>Compulsory Purchase</u> Acquire land or buildings	Town & Country Planning Act 1990 Section 226 Housing Act 1985 Section 17	N/A N/A	N/A N/A		Potentially very expensive as Council will have to pay market value and can be time consuming (6 –18 mths). Council will be left in ownership of property to manage, maintain or dispose of as necessary. Acquire underused or ineffectively used property and land. Must show that there is a general housing need in the area and need to show a qualitative housing gain.



<p><u>Empty Dwelling Management Order (EDMO)</u> EDMO creates the right of possession not ownership.</p>	<p>Housing Act 2004 Chapter 2 Section 132 – 138</p>	<p><u>✓</u></p>	<p><u>✓</u></p>	<p><u>✓</u></p>	<p>Apply to the property tribunal. Council funds any work required and recovers costs through rental income. Must ensure property not exempt and all other aspects of assistance have been explored. Usually an option of last resort.</p>
<p><u>Park Homes</u> Power to serve a compliance notice and take emergency remedial action</p>	<p>Caravan Sites and Control of Development Act 1960 (as amended by the Mobile Homes Act 2013)</p>	<p><u>✓</u></p>	<p><u>✓</u></p>	<p><u>✓</u> Warrant</p>	<p>A council can serve a compliance notice where a site owner is not complying with the site license conditions. The First Tier Tribunal can direct that WID are carried out. Emergency action can be carried out where there is an imminent risk to the health and safety of residents. The costs are recoverable as a land charge. Reasonable administrative costs are also recoverable both in relation to the service of the notice and the WID</p>



3. OPTIONS FOR CONSIDERATION

- 3.1 Option one – approve the works in default guidance note for use by Technical and Environment Services to ensure consistency of approach and recovery of monies wherever possible.
- 3.2 Option two – continue without a policy or guidance note to assist in the recovery of debts resulting from enforcement action.

4. ANALYSIS OF OPTIONS

- 4.1 Option one is the preferred option. Having a guide on works in default and debt recovery will help ensure officers take the appropriate action and ensure any debts owed are fully recovered wherever possible.
- 4.2 Without a guidance note to follow (option two) officers may fail to fully recover or secure any outstanding debts.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 There are no additional resource implications related to staffing but introducing this guidance note for officers should increase the likelihood of recovering more costs for the Council.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

- 6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

- 7.1 The draft guide was circulated to the relevant service areas, finance and legal services. All comments are incorporated into the final policy.

8. RECOMMENDATIONS

- 8.1 That the Cabinet Members approve the attached Works in Default guidance note.

DIRECTOR OF PLACES

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Background Papers used in the preparation of this report - None