

NORTH LINCOLNSHIRE COUNCIL

**HIGHWAYS AND NEIGHBOURHOODS
CABINET MEMBER**

HOUSING ENFORCEMENT POLICY 2011

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To agree the adoption of a revised housing enforcement policy.
- 1.2 The key points in this report are as follows:
 - The revised Housing Enforcement Policy encompasses all changes to housing legislation.
 - The review has been completed and enhancements made.
- 1.3 To agree further consultation with external organisations, partners and interested individuals to further revise the policy prior to adoption.

2. BACKGROUND INFORMATION

- 2.1 The functions covered by this report are delegated to the Director of Neighbourhood and Environmental Services who in turn appoints officers and makes decisions on the most appropriate course of action in any given legal proceeding, having previously received advice from the Director for Legal & Democratic Services.
- 2.2 The current housing enforcement policy has not been reviewed since 2003 and is now in need of updating to include all current legislation, to ensure that it meets statutory guidance and reflects best practice.
- 2.3 The Housing Enforcement Policy 2011 appended to this report has been amended or enhanced in the following main areas:
 - 2.3.1 The introduction of the Housing Act 2004 has created major changes to the enforcement of housing standards and the formal procedures used. Part 1 of the 2004 Act has completely revised the way a property is assessed to ensure that it is healthy to live in.
 - 2.3.2 The revised policy now incorporates an element of self regulation for accredited landlords whose properties meet certain standards.

3. OPTIONS FOR CONSIDERATION

- 3.1 Option 1 – To approve consultation on the revised Enforcement Policy with a view to bring the finalised policy back to the Cabinet Member for approval in January.
- 3.2 Option 2 – To continue with the existing Enforcement Policy.

4. ANALYSIS OF OPTIONS

4.1 Option 1

4.1.1 The Housing Enforcement Policy needs to be updated to reflect new and amended legal requirements as well as statutory and non statutory guidance.

4.2 Option 2

4.2.1 The existing Enforcement Policy is old and no longer fit for purpose.

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

5.1 Consultation will take place through existing networks of internal and external partners, organisations and individuals, such as landlords and Registered Providers.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 An Integrated Impact Assessment has been carried out with regards to this proposal dated 27 September 2011. The assessment highlights impacts in the following areas:-

6.1.1 Health

The policy impacts positively on health. The impact of poor housing is well documented. This policy will ensure a consistent approach to housing enforcement and where conditions are poor, impacting on health, enforcement action will result.

6.1.2 Distributional

Local landlords, as well as national ones, will be subject to the contents of this policy and the approach used. For those landlords that are professional and competent, this policy will support them but for those who are renting out properties impacting on the health of their occupants, there could be monetary consequences as a result of formal action.

6.1.3 Economical and Social Inclusion

The policy relates to housing enforcement and the most deprived or vulnerable tend to leave in the poorest housing.

The Enforcement Policy aims to target these properties, with formal action if necessary and with the aim of improving health through the improved conditions.

6.1.4 Statutory Legal Processes

The policy is a guidance document for the officers currently working in housing standards and enforcing the legislation. There are no additional cost implications for the council related to the adoption of this policy.

6.1.5 Risk

The main risk for the council would be to either not have a housing enforcement policy or to have one that is out of date. .

6.2 A record of the integrated impact assessment is available.

7. **OUTCOMES OF CONSULTATION**

7.1 So far the policy has only been sent to relevant internal members of the NES Departmental Enforcement Liaison Group for consultation.

8. **RECOMMENDATION**

8.1 To agree the need for a revised Housing Enforcement Policy.

8.2 To agree further consultation on the draft Housing Enforcement Policy 2011 (appendix 1) to encompass the views of internal and external partners and interested parties.

8.3 To bring the revised Enforcement Policy back to the Cabinet Member for approval in January following the consultation exercise.

DIRECTOR OF NEIGHBOURHOOD & ENVIRONMENTAL SERVICES

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Background Papers used in the preparation of this report

- None.

Private Sector Housing Enforcement Policy

Definitions

The following definitions are to be used throughout this document;

Owner

The freeholder or leaseholder of a property. This could be a landlord or an owner occupier.

Occupier/resident

The person, or persons actually living in the property as their only or main residence. This could be a tenant or an owner occupier and includes residents such as students and migrant workers.

Landlord

A person, company or partnership who usually is the freeholder or leaseholder and rents out all or part of a property.

Owner occupier

The freeholder or leaseholder who resides in all or part of the property

Tenant

A person, or persons, who have exclusive possession for a fixed or periodic term in return for paying rent.

House in Multiple Occupation (HMO)

A HMO is a building or part of a building that is occupied by 2 or more persons as their main or only residence, who do not form a single household and who share one or more basic amenity, such as a bathroom, toilet or cooking facilities.

Manager

As defined by the Management Regulations

1.0 The Councils Objectives

- 1.1 This policy will assist the council in delivering its vision for housing in North Lincolnshire, which is that 'everyone lives in warm, safe and affordable homes in sustainable communities'. This vision is set out in the North Lincolnshire Strategic Housing Implementation Plan (SHIP), which guides the council's delivery of the wider vision and priorities for housing in North Lincolnshire

The SHIP sets out the housing priorities for North Lincolnshire for 2010-13 and how they will be achieved. A number of supporting strategies and plans currently sit beneath this and help to support the delivery of the SHIP, including the Private Sector Housing Strategy. We are now working to prepare an integrated housing strategy which will replace the existing SHIP and all of the related sub-strategies with a single document which is more focused on delivering high quality outcomes for local communities, and provides the flexibility for us to adapt to changing circumstances and external pressures.

- 1.2 The council will use all available legislation to ensure that the private housing stock within North Lincolnshire is safe, warm, well maintained, in good repair, not overcrowded and is not a statutory nuisance.

2.0 Scope.

- 2.1 This policy covers the way in which the council will deal with homes that are failing to meet acceptable standards, which affect the health, safety, comfort and convenience of occupiers, visitors and the public and empty properties.
- 2.2 The following issues are of particular importance as they present a significant threat to the health and safety of residents:-
- a) Cold and damp homes.

- b) Falls
- c) Fire safety.
- d) Gas safety.
- e) Electrical safety.
- f) Flames and hot surfaces

This list is not in any particular order of priority nor is it exhaustive

- 2.3 The council supports responsible landlords who are prepared to commit themselves to managing and maintaining their properties in accordance with acceptable standards. It does this through supporting a range of schemes including North Lincolnshire Council's Landlord Accreditation Scheme.

3.0 Purpose

- 3.1 The purpose of this policy is to set out the way in which the council will respond to service requests in relation to enforcing housing standards and the actions that it will take to secure housing improvements. It also details the range of proactive and statutory actions to improve housing standards that are available and what factors affect when and how these will be used.
- 3.2 The extent of enforcement will be related to the risk posed by the condition or situation and the likely benefits achieved by compliance.
- 3.3 The council will take a consistent approach in similar circumstances. Enforcement action will be taken in a consistent manner across tenure and different house types throughout North Lincolnshire taking account of the factors detailed in 5.5.3.
- 3.4 Whilst dealing with statutory obligations across North Lincolnshire, the Council will target enforcement activity to houses in multiple occupation and areas at risk of decline or neglect by owners. We will also target landlords and agents who consistently fail to maintain or manage their properties to an acceptable and competent level.
- 3.5 The council will help all landlords, tenants, owners and agents to understand their rights and obligations.

3.6 The council will initially act informally in most cases. Exceptions to this are where previous involvement with the person responsible has not resulted in work being carried out as agreed or within an agreed timescale, where informal action previously has usually resulted in formal action or when there is an imminent risk to the health or safety of any person affected by the housing conditions.

3.7 We will actively work with landlords to promote good practice through the use of a range of different methods such as forums, workshops, seminars and the internet.

4.0 Accreditation for landlords in the private rented sector

4.1 Whilst this policy is fundamentally about enforcement, this is normally a last resort. The council is committed to working in partnership with responsible landlords who engage with the council. We will provide them with the information, advice and the training they need in order to provide safe and well managed accommodation.

4.2 One of the benefits for accredited landlords is that the Housing Standards team will not, on receipt of a service request, immediately carry out a full inspection of the dwelling but refer the request directly to the accredited landlord so that they can respond in the first instance. Only if the tenant is not satisfied with the landlord's response will the council then visit the dwelling. In the first instance the Housing Standards team will always respond informally to accredited landlords unless there is an imminent risk of serious harm to the health and safety of any person affected by the defect or the landlord can not be contacted.

5.0 Inspection

5.1 Right of entry

5.1.1 Under the Housing Act 2004, authorised officers have the right to enter any housing accommodation if a complaint has been received and they are invited into the premises by the occupier. Authorised officers also have the right to enter and inspect properties where they wish to carry out an inspection or a revisit to determine housing conditions or

whether notices have been complied with. When an inspection is to be carried out which may result in enforcement action, 24 hours notice will be given to the owner (where known) and occupier (if any). This notification requirement is waived where there is imminent risk of serious harm. Information obtained through inspections carried out without giving the appropriate notice may not be used for enforcement action.

- 5.1.2 No notice is required where the authority wish to determine if there are any offences committed in relation to licensing, or compliance with HMO Management Regulations.
- 5.1.3 If, after appropriate notice, access is denied or cannot be gained, an officer will apply to a magistrate for a warrant. If granted this allows entry by force if necessary. Obstructing access is an offence.
- 5.1.4 Accredited landlords are expected to cooperate with officers and provide access arrangements to dwellings on request.
- 5.1.5 Under the Environmental Protection Act (EPA) powers of entry are contained in Schedule 3. Paragraph 2 of Schedule 3 gives an authorised officer power to enter any premises at any reasonable time to ascertain whether a statutory nuisance exists or to do default works. If it is a residential property, 24 hours notice must be given to the occupier unless it is an emergency.

If admission is refused, refusal is expected, the property is unoccupied or it is an emergency, a warrant may be obtained from the magistrates' court.

- 5.1.6 Under the Building Act 1984 and Public Health Acts 1936 and 1961 authorised officers have the right to enter residential premises at any reasonable time, provided 24 hours notice has been given to the occupier, for the purpose of performing any of the their functions under these Acts. Warrants may be obtained in the same circumstances as under the EPA 1990 (para 5.1.5)

5.2 Purpose of inspections

- 5.2.1 The underlying purpose of inspection is to ensure that occupants and others affected by the property or its use are not at risk from hazards to their health and safety and to determine whether the accommodation meets the decent homes standard (DHS). Information collected in relation to the DHS is for statistical and comparative purposes and not enforcement.
- 5.2.2 Inspections are to determine whether a statutory nuisance exists, whether any hazards exist as defined by the Housing Health and Safety Rating System (HHSRS), whether properties should be subject to licensing or if licensing conditions are being breached and in general to ensure properties comply with other housing legislation.
- 5.2.3 Inspections will normally involve the whole dwelling and in some cases will involve neighbouring dwellings where these are affected by conditions in the first dwelling or in the case of HMOs where, for example, fire in one dwelling could affect others in the same building.
- 5.2.4 Details of the DHS and the HHSRS are available from the Housing Standards Team, Church Square House, 30-40 High Street, Scunthorpe, DN15 6NL or the Council's website at www.northlincs.gov.uk.

5.3 Occurrence of inspections

- 5.3.1 Inspections will be carried out as a result of a complaint/service request or as part of a programme of inspections, which may be either as a result of specific types of premises being inspected such as HMOs or as part of area action. Area action may be either formal, such as a renewal area or clearance area, an area designated for additional or selective licensing or informal action which targets a specific area that the council wishes to improve. On relation to inspections, we will target specific landlords who have consistently failed to manage or maintain their properties to an acceptable level.
- 5.3.2 HMOs covered by licensing will be inspected at least once during the first period of licensing. The frequency of subsequent inspections following the first renewal of a licence is under consideration. Any decisions to change the frequency of inspections (increase or

decrease) will be based on recent data regarding compliance with licensing conditions and the current survey work being undertaken.

Other HMOs will be inspected at frequencies determined by a risk assessment which is based on the potential risk to occupiers, visitors or the public posed by the premises and the record of management. There will be an ongoing programme of HMO inspections which, in addition to identifying defects and hazards, will also obtain information about the management of HMOs. This will be used to help determine whether any further initiatives are needed to ensure HMOs are being effectively maintained and managed in accordance with management regulations and with respect to HHSRS.

5.4 The inspection

- a) Officers will show identification.
- b) Officers will treat all customers courteously.
- c) Officers will notify the landlord of the complaint
- d) The landlord will be invited to attend with the officer, unless there is an imminent risk of serious harm to the occupants
- e) Officers will discuss the inspection findings with customers and provide advice and guidance.
- f) Officers will produce a written report of the inspection including details of any action necessary to comply with the law and any recommendations. Owners will be provided with a copy of this.
- g) Informal timescales can be agreed where the landlord is willing to co-operate
- h) Officers will agree a reasonable timescale for any necessary works to be carried out. Where conditions are prejudicial to the health of the occupiers or where there is an imminent risk of serious harm to any person affected by the housing conditions immediate action may be required.
- i) Officers will keep owners and occupiers informed of any follow –up action.
- j) Where the timescales are not adhered to, formal action will be taken and any reasonable costs incurred will be charged to the owner at an hourly rate
- k) Owners will be given the opportunity to discuss any relevant circumstances before any formal action is taken, unless immediate action is required and they cannot be contacted.

- l) Owners will be notified in writing of any rights of appeal against formal action at the time it is taken.

5.5 Powers and Action

5.5.1 Authorised officers can inspect and survey the entire premises, take samples and use equipment to take measurements and photographs where appropriate.

5.5.2 There are a number of actions officers may take and these will depend on the circumstances of the case.

- a) **Take no action** – Where premises are found to be satisfactory. Where appropriate this will be confirmed in writing.
- b) **Take informal action** - Informal action will normally be the first course of action following the inspection unless one or more of the factors referred to in Paragraph (c) apply.
- c) **Take formal enforcement action** – This action will normally be taken where there is an imminent risk of serious harm, the conditions are injurious to health (where statutory nuisance is involved), when the informal approach has failed or when the property is required to be licensed but is not and the landlord has not responded to a request to licence the property or has other licensed properties. It may also be taken when an informal approach to an owner has previously regularly failed to result in a successful response. Where an officer identifies an imminent risk of serious harm the officer will make every effort to contact the owner in order to give them the opportunity to remedy the situation.

5.5.3 There are however a number of options. Factors which may affect the choice of enforcement action include

- a) The statutory obligations of the council
- b) The seriousness of the offence or the degree of risk to health and safety
- c) The record of the responsible person in relation to managing property or in the case of licensing whether the person is regarded as fit and proper.
- d) Public interest and concern

- e) The views of occupiers and owners
- f) Whether the landlord or property is accredited
- g) The likely effectiveness of various enforcement options
- h) The views of other agencies such as the Fire Authority, the Police and Social services.
- i) The frequency of any breach
- j) Whether the property is subject to licensing
- k) The consequences of non compliance

6. **Informal Action**

6.1 This may include

- a) Offering advice
- b) Making recommendations verbally or by letter
- c) Making written requests for action. These will include a letter, schedule and pro-forma requesting timescales for the start and completion of any works
- d) Discussing options with owners
- e) Removing accreditation status.

6.2 The situations where informal action may be appropriate include:-

- a) Where previous informal action has resulted in compliance
- b) Where landlords are accredited
- c) Where the hazard is not serious and non compliance will not pose a significant risk to occupiers, visitors or the public or the offence is of a minor technical nature
- d) Where informal action is likely to be more effective than formal action.

6.3 In any written communication, it will be made explicit which actions or works may be required by law and which are recommendations of good practice.

The legislation contravened or applicable to the issue will be referred to in the communication and will make it clear what action is required and why it is necessary. Details of hazard assessments will be sent on request.

Where informal action is not successful formal action will be taken

7. **Formal Actions**

7.1 The factors influencing the decision to take formal action include the following:

- a) Any history of non compliance by the owner
- b) Where conditions are prejudicial to health
- c) Where there is an imminent risk of serious harm
- d) Where a licence condition has been breached
- e) Where informal action has not been successful
- f) The views of other agencies such as the Fire Authority
- g) The occupier's opinion
- h) The existence of multiple hazards.

This list is not exclusive and the council will take into account any other issues that it considers are relevant in determining whether to take formal action

7.2 **In the case of hazards determined under the Housing Health and Safety Rating System (HHSRS)**

The council have a statutory duty to act in the case of Category 1 hazards and a power to act in the case of Category 2 hazards. The following options are available under the Housing Act 2004:-

7.2.1 Serve a Hazard Awareness Notice (HAN) under section 28.

This type of notice may be used for minor low scoring hazards. It may also be used to notify owner occupiers about more serious hazards.

7.2.2 Serve an Improvement Notice under section 11 or 12.

This action will be the normal action taken in most cases where repair or improvement is the most appropriate course of action and there are category 1 hazards and significant category 2 hazards. Careful consideration will be taken of the occupier's views and an owner's previous history in maintaining properties. Where action in relation to the fire hazard involves a HMO or the common parts of flats, the council will consult with the Fire Authority. In general a band D or E hazard would be a significant category 2 hazard.

7.2.3 Serve a Suspended Improvement Notice under section 14

Before suspending an improvement notice, careful consideration will be given to all the circumstances including the occupier's views. Improvement notices will not normally be suspended unless the occupiers do not want the upheaval of certain works, there are other special circumstances or the property is empty.

7.2.4 Make a Prohibition Order under sections 20 and 21.

This action will be taken to prohibit the occupation of all or part of a building by a certain class of person by reason of age or to prohibit the use of a part of the building by all persons or a class of persons by reason of age. This action will be taken when the cost of remedying the defect is excessive or it is not reasonably practicable without compromising the use of other parts of the building to carry out works. This course of action may be taken where there is serious overcrowding

7.2.5 Make a Suspended Prohibition Order under section 23

Where a person who is not particularly vulnerable to a hazard is in occupation, the order may be suspended until such time as a vulnerable person occupies the property. However in most cases notices will not be suspended as the turn over of rented properties means that in many cases there could be a change in tenancy within 12 months. Where the order is in relation to overcrowding the notice may be suspended until the current occupation changes. (See notes on overcrowding).

7.2.6 Take Emergency Remedial Action under section 40

This action will only be taken where there is an imminent risk of serious harm and a Category 1 hazard. The Council will arrange for the hazard to be mitigated at the earliest opportunity. The officer will attempt to contact the owner first before taking such action but if they are unable to act immediately or cannot be contacted, action will be taken.

7.2.7 Make an Emergency Prohibition Order under section 43

Where there is an imminent risk of serious harm and it is not practicable or too costly to carry out urgent work, this action may be taken which will have the effect of preventing the use of part or all of the premises in relation to all or a certain class of persons. This is a serious step and careful consideration will be given to it because it requires immediate vacation of the property by the occupiers.

7.2.8 Making a Demolition Order under section 265(Housing Act 1985 as amended by section 46 Housing Act 2004)

This action will be taken when it is considered to be the most appropriate course of action. This is usually when there are one or more serious category 1 hazards and the property is usually detached or there is a building line separating it from other properties and adjacent properties will be stable and weatherproof or can readily be made so. Consideration would be given to the location of the property, as to whether it is in a potentially unsustainable area or it is causing severe problems to the amenity of the neighbourhood and repair would be very costly. The property will not be listed or of other historical interest.

7.2.9 Declaring a Clearance Area under section 289 (Housing Act 1985 as amended by section 47 Housing Act 2004)

This action will be considered where similar circumstances to those for determining if a demolition order exist but where it is necessary for the council to acquire the land either for its own purposes or to sell on for either new build or other purposes favoured by the majority of persons affected. Area community views will be relevant to any decision to declare a clearance area. This action will be followed by seeking a compulsory purchase order or voluntary acquisition. The action also requires cabinet approval.

7.3 In determining which of the above courses of action to take the council may consider:-

- a) the current occupiers, if any, and their views as to what should happen
- b) likely regular visitors
- c) the turnover of tenancies
- d) the risk of excluding vulnerable groups of people from the private rented sector
- e) the size, type and location of the property
- f) the sustainability of an area – if it has been identified for potential demolition within an area as part of local regeneration (see para 7.7)

- g) The views of the owner(s)
- h) In the case of demolition or clearance the views of local residents, businesses and councillors will also be considered.

7.4 Suspended notices will be reviewed at least annually.

7.5 The council will consider requests to vary or revoke an improvement notice or a prohibition order and in doing so will take into account the following factors but not exclusively

- a) the views of the recipients of the notice or order
- b) the views of the Fire Authority, where appropriate
- c) the risk presented by the hazard and the potential effect of any variation
- d) the level of confidence in the recipient to respond and their past history of compliance or otherwise.
- e) the progress made with any other work specified in the notice or order
- f) the costs of any works in relation to the benefit to be derived from them
- g) any additional unforeseen works which become apparent during the course of remedial works

7.6 If the council consider that there are special circumstances in relation to a Prohibition Order or an Improvement Notice it may revoke the order or notice.

7.7 If a property has been identified for potential demolition as part of local regeneration, the following considerations will be made:

That works required to reduce a hazard may be of a less extensive or temporary nature. The quality of work should not in itself present additional hazards or be likely to cause a failure which could cause harm to health. The visual quality of the work will be less important than the functional nature of the works

Occupiers should not be left with significant hazards, which are likely to result in harm if they stay in the property for the likely remainder of the property's life or to be left in conditions which would amount to a statutory nuisance.

The length of time before the anticipated date of acquisition for demolition will be considered.

The cost of works should not be excessive in relation to the length of time before the likely date of acquisition. Officers will discuss the alternative options such as leaving the property empty or carrying out temporary repairs before requiring work to be undertaken. An alternative when the cost will be excessive is to make a prohibition order.

It is expected that significant hazards will continue to be addressed throughout a properties life but consideration will be had to the likelihood of harm occurring during the remainder of the properties life and the vulnerability of the occupiers.

Consideration will be given to pursuing voluntary acquisition or if the property is empty this will be pursued where the anticipated date of acquisition is within 12 months.

The council can also make a Compulsory Purchase Order if the property has been empty for some time and is having a detrimental affect on the area. The making of a CPO has to be agreed by Cabinet, before being approved by the Secretary of State in the Office of the Deputy Prime Minister before it can be made.

8.0 Licensing

- 8.1 We are responsible for issuing, refusing, revoking or varying a licence for an HMO or for any dwelling subject to selective licensing.

- 8.2 Decisions in relation to licensing applications will be based on the information supplied with the application, the known past record of the proposed licence holder and manager and any further information gathered from enquiries made to check the validity of the information submitted with the application.
- 8.3 In most cases licences will be granted with standard conditions together with any works required to ensure the property meets the amenity standards adopted by the council. Where the council have concerns about the ability of a licence holder or manager to discharge their duties under licensing, further enquiries may be made such as Criminal Record Bureau checks. Licences will normally be issued for a 5 year period. Where the council have concerns about the ability of a manager or licence holder to effectively manage the property they may issue a licence for a shorter period and then renew if the property remains well managed. Licences may be revoked if the licence scheme is terminated or the licence holder informs the council that the property is no longer licensable. In some cases licences will be refused if the council consider that the applicant is not able to effectively manage the property or if there is little prospect of the property being brought up to a reasonable standard. In such cases an Interim Management Order will be made.
- 8.4 Applicants have the right of appeal to the residential property tribunal against any refusal to grant a licence
- 8.5 Any decision to revoke a licence will be based on all relevant matters which were taken into account in granting the licence in the first place and any change that have occurred since the licence was granted.
- 8.6 The Housing Standards Team enforce the statutory requirements relating to mandatory HMO licensing.

9.0 Other actions under the Housing Act 2004

9.1 Making Management Orders

- 9.1.1 There are a number of types of management orders which fall under the Housing Act 2004. Their use is prescribed in the Act. The result of a Management Order (MO) is that the council will take over the management of the property either directly itself or through an agent such as a registered social landlord or an accredited landlord or agent. Where there is discretion to use a management order, their use will be as a last resort when other options are unlikely to be effective.
- 9.1.2 Where a property is subject to licensing but there are no reasonable prospects of it being licensed in the near future or a management order is necessary to protect the health, safety and welfare of persons affected by the condition of the property, the council must make a Management Order. A threat to evict persons occupying a house to avoid licensing may be regarded as a threat to the welfare of those persons. There are other prescribed circumstances which require the council to make a MO.
- 9.1.3 The council may apply to a residential property tribunal for a MO for an HMO not subject to licensing where it is considered necessary to protect the health, safety and welfare of persons affected by the conditions.
- 9.1.4 The council may apply to a residential property tribunal for a Special Management Order where an area is affected by anti social behaviour that is partly or wholly the result of actions by the occupiers or visitors to the property. In addition to this, the landlord has also failed to take action that it would be appropriate for him to take to reduce the problem.
- 9.1.5 In a similar way the council may apply to a residential property tribunal for an Empty Dwelling Management Order in respect of a vacant property that has been empty for at least 2 years and the council have tried all other means to ensure compliance. This would only be taken as a means of last resort.

9.2 Enforcement of overcrowding provisions

- 9.2.1 In dealing with overcrowding, the council may use the provisions of Part 1 of the Act in relation to the hazard of crowding and space. In the case of HMOs there is an option to use either the HHSRS provisions or licence conditions when appropriate. In the case of HMOs which are not required to be licensed, overcrowding notices as described in sections 139

and 140 of the Housing Act 2004 can be used. Actions will try to avoid the need for residents to be accommodated in bed and breakfast accommodation but where there is serious overcrowding; action will be taken to protect the health and safety of residents.

9.3 Management Regulations

9.3.1 These regulations impose duties on managers in relation to all HMOs. There is no notice procedure to enforce these regulations and it is an offence to contravene these regulations. In most circumstances the council will, following an inspection, send an informal schedule to the manager detailing any contraventions with a timescale for completion. If the contraventions are not dealt with effectively the council will consider prosecution. Action under the management regulations will normally only be considered if the deficiencies are not capable of being rectified using HHSRS.

10. Environmental Protection Act 1990

10.1 Where conditions are prejudicial to health or causing a nuisance, a notice under section 80 will be served. This action will be taken where defects or conditions affect the occupant or where one property is affecting another property or the general public. Where conditions are prejudicial to health of either the occupiers or others affected by the conditions of residential premises, this power may be used in preference to the Housing Act 2004. This is a statutory duty. Typical situations where this legislation is likely to be used are where there is not an imminent risk of serious harm but the defects are causing a nuisance to neighbouring properties, for example leaking guttering.

11. Other statutory provisions

11.1 There are a number of other statutes which give powers to local housing authorities for a range of different issues and these will be used where appropriate, for example the Building Act 1984 section 59 and 76.

12. Prosecution and formal caution

12.1 Prosecution is an enforcement power that will only be used in respect of serious breaches of law, where the consequences are very serious or where the person or organisation obstructs or frustrates the council in its lawful duties.

12.2 The circumstances where a prosecution is likely to be taken include

- a) Failure to licence a property when the person required to apply for a licence is aware or should have been aware of the requirements to licence.
- b) Where there is wilful failure to comply with statutory notices or orders,
- c) Where financial benefit is gained by those breaking the law
- d) Where there is a serious disregard for the health and safety of persons affected
- e) Where there are repeated breaches of legal requirements in a particular premises or in a number of premises owned or managed by the same person or organisation.
- f) There has been a serious incident resulting from a legal contravention
- g) Where there is a risk of serious harm to the public resulting from a legal contravention
- h) Where it is in the public interest to test the interpretation of a particular piece of legislation
- i) Where officers have been intentionally obstructed in the lawful course of their duties.
- j) Where officers are assaulted the council will seek prosecution of offenders.
- k) Where false information has been supplied, or where there has been an intention to deceive
- l) Exceptionally where, having considered all the circumstances it is considered reasonable to do so because there are other particular circumstances not covered by any of the above.

12.3 Any decision taken to prosecute will have regard to the guidance contained in the Code for Crown Prosecutors.

12.4 The factors affecting when a prosecution will be carried out are:-

- a) The seriousness of the alleged offence
- b) The history of the business or individual

- c) The willingness of the business or individual to prevent a recurrence of the problem and co-operate with officers
- d) Whether it is in the public interest to prosecute
- e) The likelihood of the prosecution succeeding
- f) Whether any other action (including a formal caution) would be more appropriate or effective

These factors are not listed in any order of priority or significance and their rating will vary with each situation. However, in all cases the council will consider whether it is in the public interest to prosecute and the likelihood of securing a conviction if a prosecution was to take place.

- 12.5 The final decision to prosecute rests with the council's senior legal officer following a recommendation by a senior manager within the Housing Standards Team who will consider the policies and procedures before giving his/her authorisation to proceed with formal action.
- 12.6 Formal cautions will be used when the conditions for prosecution are fulfilled but a prosecution is not in the public interest, and the person admits the offence and is prepared to accept a formal caution. A typical example may be where there was an inadvertent breach, perhaps with serious consequences, but where adverse publicity would spoil an otherwise good track record by the person or company.

13.0 Works in Default

- 13.1 When there is a failure to fully comply with the requirements of a statutory notice that requires works to be carried out, then the council may arrange for those works to be completed in the owner's default. The costs in carrying out the works will be recovered from the owner.

14.0 What to do if you do not agree with the action taken

- 14.1 If you do not agree with the action being taken you may contact the officer stating why you do not agree and what alternative action you propose. If you still cannot agree with the officer and formal action is taken, you may appeal. In most cases this is to the Residential Property Tribunal; however details of where to appeal and in what time scale are enclosed with all statutory notices.
- 14.2 If you are unhappy with the way officers have dealt with you or that officers have acted improperly in their use of the legislation, you may complain to the service manager who will investigate your complaint and respond to you within 10 days.
- 14.3 If you are still unhappy with how we have dealt with your complaint, tell us and we may look at your complaint again or suggest that you contact the 'Local Government Ombudsman'.
- 14.6 The Local Government Ombudsman

If you have been all the way through the council's complaint procedure and are still unhappy with our actions, you can have your complaint considered by the Local Government Ombudsman.

This independent service will look into any complaint about us on your behalf. You will find the name and address below.

The Ombudsman is:

Local Government Ombudsman

**Beverley House
17 Shipton Road
York
North Yorkshire
YO30 5FZ**

Telephone 01904 380 200

15.0 Charging for notices

- 15.1 A financial charge will be made for the service of all Housing Act notices and the making of prohibition orders other than hazard awareness notices and the renewal of suspended notices. Charges are based on the full cost to the council of taking the action including inspection, preparation and service of the notices. Any action to recover costs and expenses will be in accordance with the requirements of the relevant Acts.
- 15.2 Charges for licensing will also be made and the fee scales are available from the Housing Standards Team, Church Square House, 30-40 High Street, Scunthorpe, DN15 6NL. These charges will reflect the time to process the application, make enquiries and enter details on computer systems. Where the ownership, licence holder or management details change, a new application must be made for which there will be a charge. Charges will be reviewed before 1st April 2012

16.0 Empty Properties

- 16.1 The Housing Standards Team will deal with statutory nuisances, health and safety and reoccupation of empty properties. The following actions can be used to deal with empty properties.
- Informal action and advice
 - Formal action through the service of statutory notices. Action to address statutory nuisance can be taken using the powers in the Environment Protection Act 1990 as well as using the powers in the Housing Act 2004 to address Category 1 and 2 Housing hazards. This includes taking remedial action to address an imminent risk of serious harm. The Town and Country Planning Act 1990 also enables enforcement action where the property is seriously detrimental to the amenity of the area.
 - Voluntary acquisition for subsequent resale or demolition
 - Demolition orders
 - The final tools available are Compulsory Purchase, Enforced sale (there has to be an outstanding monetary charge on the property owed to the council) and Empty Dwelling

Management Orders (EDMO). With an EDMO the owner of the property retains ownership. They can only be used when the property has been empty for more than two years and the council has tried all appropriate informal routes to bring it back into use – there are a wide range of circumstances when an EDMO would neither be appropriate or legally permissible.

17.0 Implementation

- 17.1 This policy will be supported by written operational procedures that will be reviewed and updated regularly having regard to local circumstances and any national guidance. These will normally be publicly available.
- 17.2 Enforcement will only be carried out by suitably qualified, competent and experienced officers and all non standard correspondence, notices and orders will be checked by a senior officer before being issued.
- 17.3 Officers of the Housing Standards team will observe the highest standards of professional integrity and probity at all times. We will discharge our duties with honesty and respect for all sections of the community

18.0 Standards and Customer Promises

- 18.1 The Housing Standards team have service standards as follows
- a) To respond to service requests within 2 working days.
 - b) To undertake an annual programme of property inspections in accordance with our service plan and statutory duties.
 - c) To undertake our enforcement responsibilities in an open, fair and consistent manner in accordance with our enforcement policy.
 - d) Provide a professional and efficient response to all requests for Private Housing Services.

- e) Ensure that our services are accessible to everyone. We will treat you fairly on the basis of need and equality of access to services. We will not discriminate against you on the basis of age, gender, race, religion, culture, disability or sexual orientation.
- f) Keep customers informed of the progress of their enquiry and to achieve overall satisfaction with services received.
- g) Be helpful, courteous and efficient.
- h) Welcome your views, experiences and ideas as customers and we will build these into planning and providing services.
- i) Take complaints about our service seriously. We will seek to resolve all disputes fairly and promptly. Where this is not possible, we will explain how to make a formal complaint through the Council's Corporate Complaints procedure.
- j) Respond to your letters within 10 working days of receipt.
- k) Publish how well we live up to our promises.
- l) Improve our performance continually against key performance indicators.

19.0 Review

19.1 This policy will be reviewed annually or when there are any significant changes in national legislation or local or national circumstances that would necessitate a review.

19.2 Any changes will be discussed with service users, other Council departments and partner organisations.

20.0 Links to other policies, strategies and Council Documents

This policy also links into:

- a) The Housing Strategy
- b) The Community Strategy
- c) Private Housing Strategy

The policy works in conjunction with:

- d) The Empty Property Policy
- e) The Home Assistance Policy
- f) The Affordable Warmth Assistance Policy

Please note that this is not exhaustive list.

Copies are available from either the council website, www.northlincs.gov.uk, or from the Housing Standards team.

21.0 Advice and Information

21.1 Although this document is about our enforcement policy, the Housing Standards team is committed to working in partnership with responsible landlords and to providing the best advice and information to enable them to manage their properties in a professional manner and to appropriate housing standards.

21.2 There are a number of documents available to assist landlords which can be accessed on the council's website. These include:-

- a) Guide to letting your home
- b) Letting rooms in your home, a guide to resident landlords
- c) HHSRS Enforcement Guidance

- 21.3 There are also links to other organisations where further information and help may be obtained.
- 21.4 You can contact the team through the call centre on 01724 297000 for further help and advice, if you wish to become an accredited landlord or need a license for a HMO.

Housing Standards
Church Square House
Scunthorpe
North Lincolnshire
DN15 6NL
Fax 01724 297896
Tel. 01724 297000
housing@northlincs.gov.uk

22.0 Referencies

22.1 Legislation

- a) Housing Acts 1985, 1996, 1988 and 2004
- b) Environmental Protection Act 1990
- c) Local Government(Miscellaneous Provisions) Acts 1976 and 1982
- d) Housing, Grants, Construction and Regeneration Act 1996
- e) Local Government and Housing Act 1989
- f) Building Act 1984
- g) Public Health Acts 1936 and 1961

h) Town and Country Planning Act 1990

i) Protection from Eviction Act 1977

22.2 Regulations and Orders

- a) The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) 2006
- b) The Management of HMO (England) Regulations 2006
- c) The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006
- d) The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006
- e) The Housing Act 2004 (Commencement No. 5 and Transitional provisions and Savings) (England) Order 2006
- f) The Housing Health and Safety Rating System (England) Regulations 2006
- g) Regulatory Reform (Housing Assistance) (England and Wales) Order 2002

22.3 Circulars and Guidance

- a) Housing Act 2004 Part 1 House Conditions: Enforcement Guidance
- b) HHSRS Operating Guidance
- c) LACORS guidance
 - a. Crowding and Space
 - b. Fire safety

October 2011