



East Lindsey
DISTRICT COUNCIL

HOUSING STANDARDS ENFORCEMENT PROCEDURE

Safer Communities (Housing Standards)
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HOUSING STANDARDS ENFORCEMENT

The Council has adopted a formal Corporate Enforcement Policy that covers all departments within the Council. This document explains the procedures adopted by the Housing Standards department in order to fulfill their obligations within this Policy.

1. Introduction

1.1. The Housing Standards Team aims to support the local economy and promote continuing growth whilst making sure that there is a balanced housing market that provides for a range of individual needs and income levels. The Council is committed to fair and effective housing enforcement, which protects both the economic interest and health and safety of the public, businesses and the environment.

1.2. The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way to ensure that compliance is achieved for the benefit of all.

1.3. This document sets out the enforcement procedure for the Council's Housing Standards Team when dealing with non-compliance of laws enforced by the service.

1.4. The content of the Housing Standards Enforcement Procedure has been written having regards to:

The Enforcement Concordat – The concordat is a voluntary, non - statutory code of practice which East Lindsey District Council has signed up to. It sets out principles with regards to good enforcement practice. The principles cover: Standards of Service and Performance, Openness, Helpfulness, Proportionality, Consistency and Complaints about Service.

1.5. The Council has a general duty to regularly monitor the condition of the housing stock within the district. In order to comply with this duty the Council will carry out reviews of various types of housing stock on a pro-active basis. The focus of this pro-active work will be reviewed regularly, and is likely to include the inspection or monitoring of specific types of property (ie Houses in Multiple Occupation, large blocks of converted flats) or properties within specific geographical areas within the district.

2. Human Rights and Equality Issues

2.1. Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.

2.2. Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation.

3. Purpose and Methods of Enforcement (including penalties for non-compliance and Penalty Charge Notices)

3.1. The Housing Standards Team expects full voluntary compliance with the law. We will help property owners to meet their legal obligations by providing clear and concise information about what they need to do to comply. However, we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, against those who flout the law or act irresponsibly.

3.2. Enforcement includes any action aimed at ensuring compliance with the law.

Actions that will be considered include:

3.2.1. Informal Action – will be considered where one or more of the following circumstances apply; there is no legislative requirement to serve formal notice or order and the circumstances are not serious enough to warrant formal action without first attempting an informal approach; past history suggests informal action will achieve compliance; there is confidence in the management or the individual; the consequences of non-compliance will not pose an imminent risk to occupiers or others.

3.2.2. Serve a Statutory Notice / Order – This will be considered where it is appropriate, where informal action has failed to remedy the issues, and/or where there is evidence to justify the issuing of a notice or order. In relation to Part One offences under the Housing Act 2004 service of statutory notices / orders will be based on the hazards found and how serious they are deemed to be. This is assessed using the Housing Health and Safety Rating System (HHSRS). The Housing Standards Team has a legal duty to take the most appropriate course of action available in relation to category 1 hazards. This is where the risk to health and/or safety is high. There is also a power for the Housing Standards Team to deal with category 2 hazards. This is where the risk to health and/or safety is less significant.

In certain circumstances the Housing Standards team may carry out an inspection of an empty property, however the use of this power should only be considered where there is an exceptional reason to do so. It must be remembered that the overriding assessment of the property using the HHSRS is to score hazards that are noted within the property *at the time of the inspection* and present a risk to the occupier. **Where there is no occupier, there is clearly no risk present at the time of the inspection.** Inspections should not be undertaken to satisfy any other function that would more properly be dealt with by separate legislation, such as removal of council tax liability to an empty property.

Under Section 49 of the Housing Act 2004 the Council is entitled to recover *reasonable* costs incurred when serving these notices/orders. Details of these charges can be found within the '**Housing Standards Department – Locally Adopted Charges**' document.

Notices will include reasonable time limits having regard to the seriousness of the defects and/or contraventions. The notice/order will contain all required information

as specified by the relevant Act or Regulation. All appropriate persons will be notified of the formal action, e.g. tenants, mortgagees etc. The types of notice/order that can be issued by the Housing Standards Team under the Housing Act 2004 include;

- Hazard Awareness Notice – notice advising the person on whom it is served of a category 1 and/or category 2 hazard at the property, but not requiring any specific action to be taken at this time.
- Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the hazards found.
- Prohibition Order – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property.
- Emergency Prohibition Order – same as a prohibition order but the order will take effect immediately.
- Demolition Order – an order requiring the demolition of the property.
- Declaring a Clearance Area – an area which is to be cleared of all buildings.

3.2.3. Take Emergency Remedial Action – this will be considered where there is an imminent risk of serious harm. The Housing Standards Team will take the action necessary to mitigate and/or remove this risk and formal action will be taken by the Housing Standards Team to recover the full costs incurred.

3.2.4. Suspend, revoke or refuse to renew or grant a licence or authorisation – This will be considered where licensing conditions are not being met. Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and other Local Housing Authorities.

A Public Register of licensed HMOs, dwellings with interim/final/empty dwelling management orders and HMOs with temporary exemption notices will be maintained and will be available, upon request, for public inspection at the appropriate Council office, in line with the requirements of the legislation and guidance. If a copy of the register is requested by a member of the public, this may be subject to a reasonable fee to cover administration costs.

3.2.5. Formal (Simple) Caution – used to deal quickly and simply with less serious offences and to divert them away from the courts. There must be sufficient evidence of guilt to give a realistic prospect of conviction and the offender must formally admit to the offence. Simple cautions will be issued in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders (Nov 2013) in consultation with the Councils Legal Services.

3.2.6. Penalty Charge Notices – for some offences the Housing Standards Team is permitted to issue penalty charge notices to address non-compliance. How these notices will be issued is detailed in the Statements of Principles within **Appendix 1**, **Appendix 2** and **Appendix 3** of this procedure.

3.2.7. Prosecution – may be considered for more serious offences. It aims to punish wrongdoing, to avoid a reoccurrence of the offence and to act as a deterrent to others. The Housing Standards Team will take account of the Code for Crown Prosecutors (https://www.cps.gov.uk/publications/code_for_crown_prosecutors/) and will only prosecute where:

- There is sufficient admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction.

AND

- We believe that it is in the public interest to do so.

The following factors will be considered in deciding whether or not to prosecute:

- Social, physical or economic, environmental or personal health and safety effect of the offence in order to quantify the serious nature of the offence.
- Failure to comply with the requirements of an improvement, enforcement, or prohibition notice.
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.
- Excessive or persistent breaches of regulatory requirements.
- Foreseeability of the offence and the circumstances leading to it,
- Intent of the offender, individually and/or corporate body,
- History of offending,
- Attitude of offender,
- Deterrent effect of a prosecution on the offender and others,
- Culpability of the offender,
- A history of similar offences.
- Carrying out operations without a relevant licence,
- Failure to comply or to comply adequately with formal remedial requirements,
- Obstruction of an authorised officer

The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Housing Standards Team will decide how important each factor is in the circumstances of each case and go on to make an overall assessment

3.2.8. Rent Repayment Order – if a landlord has committed an offence under The Housing Act 2004 for failing to comply with an improvement notice, failing to comply with a prohibition order, being in control of or managing an unlicensed HMO, having carried out an illegal eviction, having breached a banning order and certain other specified offences, the Council has a power to consider an application to the First Tier Tribunal for a rent repayment order. Each case will be considered on its own

merits and where appropriate a notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations.

3.2.9. Works in Default – may be considered as an alternative to, or in addition to prosecution. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the Courts or by the use of financial recovery agents. This will include where applicable, administration costs and officer time. The Financial Rules and Financial Operating Procedures of the Council will be fully adhered to. Where appropriate the costs will be placed against the property as a Charge. The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

3.2.10. Database of rogue landlords – The Housing and Planning Act 2016 has introduced a national database that will be used to record details of landlords and property agents that are convicted of certain offences. This will include landlords who have received a Banning Order, who have been convicted of a Banning Order offence, or who have received 2 or more civil penalties over a 12 month period. The Council will comply with their obligations in respect of this database, and details of landlords will be added in accordance with the relevant legislation.

3.2.11. Banning Orders – The Housing and Planning Act 2016 has also introduced Banning Orders for the most serious and prolific offenders. This introduces a range of offences which, if committed by the landlord, allow the Council to apply to the First-Tier Tribunal for a Banning Order, thereby preventing the person from acting as a landlord. The Council will utilise these powers where it is felt appropriate to do so.

3.2.12. Redress Schemes – The Enterprise and Regulatory Reform Act 2013 imposes on Letting Agents and persons engaged in Property Management Work a requirement to belong to a Redress Scheme. Where the Council believes *on the balance of probabilities* that this requirement is not being complied with, the Act imposes on the Council a duty to take enforcement action. This action takes the form of a Monetary Penalty.

The amount of the penalty charge is as specified within the 'Housing Standards Department – Locally Adopted Charges' document, and must not exceed £5000.

3.2.13. Electrical Test Certificates – The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 introduced a requirement for landlords to carry out periodic checks on the electrical safety at all rented properties. Where the Council has *reasonable grounds* to believe that this requirement is not being complied with, the Act imposes on the Council a duty to take appropriate enforcement action. This action can include a monetary penalty of upto £30,000.

3.2.14. Owner/Occupied Properties – The Housing Act 2004 permits the Council to take enforcement action in respect of owner/occupied properties where the property condition contributes to the existence of Hazards as defined within the legislation.

However the Council recognises that an individual's right to make decisions about a property they own and occupy should be taken into account, therefore due

consideration will be given to an individual's wishes when determining the most appropriate course of action in each case.

In most cases it is likely that a Hazard Awareness Notice will be deemed the most appropriate course of action for hazards within owner/occupied properties. Where the hazard is of a serious nature, or the Council has evidence that the person lacks capacity to make an informed and reasoned decision it is possible that an alternative course of action will be deemed more appropriate.

4. Delegation & Decision Making

4.1. Decisions about the most appropriate enforcement action to be taken will be made in line with this procedure and based on professional judgement, legal guidelines and advice, statutory codes of practice and priorities set by the Council and/or Central Government.

4.2. A decision to instigate a prosecution will be taken by a Senior Officer in consultation with the Council's Legal Services Department.

5. Costs of Enforcement

5.1. The Council is able in certain circumstances to charge for enforcement action, e.g. service of an improvement notice. Actions covered by this charge will depend on the type of action taken, examples include; costs associated with determining whether to serve a notice, costs involved in identifying any action required and costs associated with serving a notice. When costs are to be charged an invoice will be sent to the relevant party outlining the amount to be paid, the reason for the charge and the payment terms. The charge levied will only cover the cost of the enforcement action to the authority.

5.2. This is a separate payment and is not the same as a penalty charge which is issued as an enforcement mechanism to address non-compliance.

6. Appeals

6.1. Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate.

6.2. Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant First Tier Tribunal (Property Chamber). Further details on this process are contained in the relevant notice/order.

6.3. All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served.

6.4. The Council will rigorously defend any appeals where the notice/order has been correctly served.

7. Complaints

7.1. East Lindsey District Council provides a well-publicised, effective and timely complaints procedure. The procedure is accessible on the Council website at <http://www.e-lindsey.gov.uk>. Alternatively it can be made available by telephoning the Council on 01507 601111.

7.2. The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal.

8. Review

8.1. This Enforcement Procedure shall be reviewed periodically and amended to reflect any change in legislation, corporate procedure or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest.

Appendix 1 – Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Section 3 of the Housing Standards Enforcement Procedure sets out the enforcement options available to the Housing Standards Team when addressing non-compliance with housing legislation. All notices will include information on the reason for the penalty charge, the amount, acceptable methods of payment, and any information required by statute.

Determining the Amount of the Penalty Charge

Should a landlord fail to comply with a notice, the Council is required to arrange for a suitable contractor to carry out the work, and in addition will require the landlord to pay a penalty charge of such amount as the authority may determine.

The amount of the penalty charge is as specified within the '**Housing Standards Department – Locally Adopted Charges**' document.

In determining the amount, the Council has taken the following into consideration:-

- cost likely to be incurred by the Council in fulfilling its administrative and legal duties by arranging for a suitable person to carry out remedial work
- a monetary penalty as permitted within the regulations

Rights to Make Representations

The recipient of a penalty charge notice has the right to make written representation regarding the notice. Full details of this process and timescales are detailed on the notice. Any representations to the penalty charge will be considered by a Senior Officer. The Senior Officer will then review the penalty charge in line with the mitigating factors. All representations will be considered on their own merit.

Appeals

In the case of a penalty charge notice recipients may appeal to the First-tier tribunal if they remain unhappy with a penalty charge notice following a review of their written representations to the Housing Standards Team. An appeal can only be made on specific grounds which are:

- the decision to confirm or vary the penalty charge notice was based on an error of fact;
- the decision was wrong in law;
- the amount of the penalty charge is unreasonable;
- the decision was unreasonable for any other reason.

Non-Payment of Penalty Charge

If any notices are not paid within the specified period following issue, or where applicable following a review procedure, the Council will pursue non-payment of the penalty through a Court order process or by the use of financial recovery agents.

Appendix 2 – Statement of Principles – Penalty Charge (Section 249A) The Housing Act 2004 introduced by (The Housing and Planning Act 2016)

Section 3 of the Housing Standards Enforcement Procedure sets out the enforcement options available to the Housing Standards Team when addressing non-compliance with housing legislation. All notices will include information on the reason for the penalty charge, the amount, acceptable methods of payment, and any information required by statute.

Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:

- Failure to comply with an Improvement Notice (Section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The Council will consider each offence on a case by case basis to determine if it is appropriate to impose a financial penalty, or if it would be more appropriate to commence prosecution proceedings. This decision will be made by considering the seriousness of the offence, by having reference to guidance issued by the Government, and by having reference to the general principles used when determining whether to prosecute as outlined within section 3.2.7 above.

Where it is determined that a financial penalty is the most appropriate course of action, the Council will follow the procedure as laid down within Section 13A of the Housing Act 2004.

Prior to issuing a financial penalty the Council will serve a 'Notice of Intent', this will detail the reasons for the penalty, the proposed amount of the penalty and the persons right to make representations to the Council.

The Council will consider any representations received, and will then decide whether to impose a penalty, and if so the amount. If a penalty is to be imposed a 'Final Notice' will be served.

Any person served with a Final Notice has the right of appeal to the First-tier Tribunal, this may be on the grounds that it was unreasonable to impose a penalty, or the amount of the penalty.

On receipt of an appeal the First-tier Tribunal will consider evidence from both parties and will determine if it is appropriate to confirm the penalty, vary the amount of the penalty or cancel the penalty.

Determining the Amount of the Penalty Charge

The financial penalty will meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence. It will not be cheaper to offend than to take the appropriate precautions. The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences.

The amount of the financial penalty

The amount of the financial penalty will be determined by having reference to the following factors:- Culpability, Removal of Financial Incentive, Offence and History, and Harm (or Potential Harm) to Tenant.

The amount of the penalty charge must not exceed £30,000.

A table detailing these factors in more detail, together with the scoring applicable to each factor and the financial penalty assigned to each scoring band, can be found within the 'Housing Standards – Locally Adopted Charges' document, which is available separately.

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty. This information will then be used when determining any appropriate level of penalty.

Review of the penalty

The Council will review the penalty and, if necessary in exceptional cases, adjust the initial amount to ensure that it fulfils the general principles set out above.

Additional actions

In all cases the Council will consider whether to take additional action. This may include works in default, Interim Management Orders or Rent Repayment Orders.

Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for reaching the amount of financial penalty that will be imposed.

Appendix 3 – Statement of Principles –The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Section 3 of the Housing Standards Enforcement Procedure sets out the enforcement options available to the Housing Standards Team when addressing non-compliance with housing legislation. All notices will include information on the reason for the penalty charge, the amount, acceptable methods of payment, and any information required by statute.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions.

From the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an Energy Performance Certificate (EPC) rating of band F or G.

From 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of F or G (as shown on a valid EPC for the property).

Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

Under prescribed circumstances within the Regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register.

The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Landlords of property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The Council will:

Issue a compliance notice requesting information where it appears that a property has been let in breach of the Regulations.

Serve a penalty notice where satisfied that the landlord is, or has in the past 18 months, been in breach of the requirements of the regulations.

The Council will have regard to guidance in the application of this legislation, the penalty amount and the publication of the penalty.

Determining the Amount of the Penalty Charge

The amount of the penalty charge is as specified within the '**Housing Standards Department – Locally Adopted Charges**' document.

Rights to Make Representations

The recipient of a penalty notice has the right to make written representation regarding the notice. Full details of this process and timescales are detailed on the notice. Any representations to the penalty will be considered by a Senior Officer. The Senior Officer will then review the penalty charge in line with the mitigating factors. All representations will be considered on their own merit.

Appeals

In the case of a penalty notice being confirmed after representations, recipients may appeal to the First-tier tribunal if they remain unhappy with a penalty notice.

Non-Payment of Penalty Charge

If any notices are not paid within the specified period following issue, or where applicable following a review procedure, the Council will pursue non-payment of the penalty through a Court order process or by the use of financial recovery agents.