

# PRIVATE HOUSING SERVICE

## ENFORCEMENT POLICY AND PROCEDURES

*Thurrock  
Housing  
Services*

June  
2013

**THURROCK**  **COUNCIL**

# About this document

<i>Title:</i>	<b>Private Housing Service–Enforcement Policy &amp; Procedures</b>
<i>Purpose:</i>	<b>To set out how Thurrock Private Housing Service will demonstrate good practice in enforcement practices and procedures.</b>
<i>Prepared by:</i>	<b>Louisa Moss Service Manager Private Housing Services</b>
<i>Who should read:</i>	<b>All authorised private housing officers who have the delegated powers to carry out enforcement action.</b>
<i>Access:</i>	<b>Via Private Housing Service, Main Council Office Electronic intranet access Electronic internet access</b>
<i>Consulted with:</i>	<b>Thurrock Council Private Landlord/Agent Forum Housing Management Team Senior Management Team Regularity Services - Environmental Health Legal Services</b>
<i>Approved by:</i>	<b>Director of Housing, Barbara Brownlee</b>
<i>Strategic responsibility:</i>	<b>Richard Parkin, Head of Housing</b>
<i>Operational responsibility:</i>	<b>Louisa Moss – Team Manager, Private Housing Service</b>
<i>Date:</i>	<b>6<sup>th</sup> June 2007 (created) – 1<sup>st</sup> April 2013 (interim review)</b>
<i>Version Number:</i>	<b>01</b>
<i>Review Frequency:</i>	<b>Continuous operational monitoring.</b>
<i>Next review date and reviewing responsibility</i>	<b>July 2013 Louisa Moss, Service Manager, Private Housing Service</b>

# CONTENTS

---

	Page	
1.0 INTRODUCTION	5	
2.0 SCOPE AND MEANING OF 'ENFORCEMENT'	5	
3.0 PRIVATE HOUSING SERVICE AIMS AND OBJECTIVES	5	4.0
PRINCIPLES OF GOOD ENFORCEMENT	8	
5.0 LEVELS OF ENFORCEMENT ACT	9	
▪ Prosecution		
▪ Formal Caution		
▪ Formal Notice		
▪ Works in Default		
▪ Written warning and advice		
▪ Verbal warning and advice		
▪ Revisit of dwellings		
▪ No action		
6.0 THE EVIDENTIAL TEST	12	
7.0 THE PUBLIC INTEREST TEST	12	
8.0 WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN	13	
9.0 LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES	13	
10.0 OFFENCES	13	
▪ Considering the views of those affected by offences		
11.0 PROTECTION OF HUMAN RIGHTS	14	
12.0 PERFORMANCE MEASURES	14	
13.0 REVIEW OF THE ENFORCEMENT POLICY	14	
14.0 HOUSING LEGISTRATION	15	
15.0 HOUSING ACT 2004 – HOUSING HEALTH & SAFETY RATING SYSTEM	15	
▪ Investigation		
▪ Enforcement Action		
▪ Education		
▪ Informal Action/Advice		
▪ Formal Action		
▪ Right of appeal		
▪ Non-compliance		

<b>16.0 POWERS OF ENTRY</b>	<b>18</b>
<b>17.0 IMPROVEMENT NOTICE</b>	<b>19</b>
<b>18.0 PROHIBITION ORDER</b>	<b>20</b>
<b>19.0 HAZARD AWARENESS NOTICE</b>	<b>21</b>
<b>20.0 EMERGENCY REMEDICAL ACTION</b>	<b>21</b>
<b>21.0 EMERGENCY PROHIBITION ORDER</b>	<b>21</b>
<b>22.0 DEMOLITION ORDERS</b>	<b>22</b>
<b>23.0 CLEARANCE AREA</b>	<b>22</b>
<b>24.0 OTHER ACTS ENFORCED BY THE PRIVATE HOUSING SERVICE</b>	<b>22</b>
▪ Protection from Eviction Act 1977	
▪ Caravan Sites and Control of Development Act 1960	
▪ Environmental Protection Act 1990	
▪ Building Act 1984	
<b>25.0 FORMAL ENFORCEMENT – COUNCIL OWNED PROPERTY</b>	<b>23</b>
<b>26.0 FORMAL ENFORCEMENT – OWNER OCCUPIED PROPERTY</b>	<b>24</b>
<b>27.0 HOUSES IN MULTIPLE OCCUPATION</b>	<b>25</b>
▪ Links to licensing	
<b>28.0 CONCLUSION</b>	<b>27</b>
<b>APPENDIX 1 -Factors we consider when taking enforcement action</b>	<b>28</b>
<b>APPENDIX 2 - Who decides what enforcement action is taken</b>	<b>29</b>

## **Private Housing Service Enforcement Policy and Procedures**

---

### **1.0 Introduction**

Fair and effective enforcement is essential to protect the health and safety of the Borough's residents. Decisions about enforcement action and in particular the decision to prosecute has serious implications for all involved. The Private Housing Service applies this Policy to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent;
- Officers apply current Government guidance and codes of practice;
- To ensure understanding of the principles applied when enforcement action is considered.

This policy has been reviewed in line with Thurrock's Housing Strategy and supports the Strategic Priorities

1. Managing and Improving Housing Supply and Choice
2. Meeting and supporting the needs of vulnerable residents.
3. Investing in Housing Stock and Environmental Sustainability.
4. Ensuring all services are effective and achieve value for money.

From June 2013 the Council's Private Sector Housing Team will implement a fee structure of charges for some of the services that they provide and some enforcement action.

## **2.0 Scope and Meaning of 'Enforcement'**

This Policy applies to all the legislation enforced by Officers from the Private Housing Service.

'Enforcement' includes any action taken by Officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution; it also includes, for example, the inspection of dwellings for the purpose of checking compliance with Acts of Parliament and regulations.

## **3.0 Private Housing Service Aims and Objectives**

The Private Housing Service aims to improve the borough's private housing stock and will work with other services to ensure accommodation provides a safe and healthy environment for any potential occupier, visitor and local neighbourhoods.

The service works with residents to achieve this by providing advice, and education. The service will also use its powers to ensure that all tenants who privately rent their home have accommodation that is at least up to the statutory minimum standards. It provides one of the Council's regulatory services.

The purpose of an enforcement policy for the Private Housing Service is to ensure that Thurrock residents who own or rent property are aware of what they can expect

from the council's authorised Private Housing Officers. It will set out the different action that can be taken to ensure housing standards are achieved.

Most issues can be resolved informally, without resorting to the powers of enforcement, but the council is serious about using its powers when it is clear there is no alternative.

The Private Housing Service has a range of Legal Powers and Duties, these include the duty to: -

- Improve housing need and conditions
- Secure the repair and improvement of dwellings where appropriate, in order to provide a safe and healthy environment for any potential occupier, visitors and local neighbourhoods.
- Licence categories of Houses in Multiple Occupation (HMOs)
- Bring empty properties back into use
- Protect tenants against harassment and eviction
- Provide advice and assistance to people seeking accommodation
- Report on home energy efficiency
- Award Disabled Facilities Grants

Other Powers, include:-

- 'Environmental Health' related powers under the Building, Public Health, and Environmental Protection Acts

The Private Housing Enforcement Policy aims to ensure these powers and duties are used to meet the council's service priorities to:-

- continually review the occurrence of hazards in the local housing stock
- ensure the provision of good quality private rented accommodation
- ensure the condition of private housing meets local housing needs
- ensure adequate protection from fire, provision of basic amenities and good property management for residents in Houses in Multiple Occupation, in accordance with the requirements of the Housing Act 2004.
- ensure that the people who own and rent property in Thurrock are aware of what they can expect from the Council's Enforcement Officer.
- provide Officers with guidelines to ensure a consistent approach to enforcing the Housing Act 2004, and all relevant statutory provisions.
- Take swift, effective action against those who fail to meet acceptable housing standards
- Develop effective partnerships with key Council Departments e.g. Environmental Health Service and external agencies e.g. Fire & Rescue Service, which will contribute to an improved service for our community;
- Prioritise our resources where we can make a difference

The Private Housing Service will work with residents to ensure the best outcome is achieved, and ensure its service is open and fair to all. It will help provide clear explanations of what needs to be done and by when. It will ensure opportunities are

given to resolve differences before enforcement action is taken - unless immediate action is needed.

### **3.1 Approval of the enforcement policy**

As an important part of developing this policy, it has been scrutinised and discussed with Thurrock's Landlord Forum and other interested parties. The Policy, as set out, seeks to accord with the principles of good enforcement, which forms part of the Government's Enforcement Concordat, which the Council has formally adopted.

### **3.2 How to obtain a copy of the Enforcement Policy or make comments**

This Policy is available on the Council's web site: [www.thurrock.gov.uk/housing](http://www.thurrock.gov.uk/housing)

To obtain a paper copy of the Policy and/or to comment on the Policy contact:

Private Housing Service  
Thurrock Council  
Civic Offices  
New Road  
Grays  
Essex RM17 6SL

Tel. (01375) 652387

Fax: (01375) 652946

Email: [private.housing@thurrock.gov.uk](mailto:private.housing@thurrock.gov.uk)

## **4.0 Principles of good enforcement**

### **4.1 OPENNESS**

We will make information about our services available to staff and the public in a wide variety of media and styles to ensure that all members of the community can access them

We will provide information and advice in plain language and as far as possible avoid jargon.

Our approach should be to inform people about how we do our work. We will seek to ensure that people understand what is expected for them as well as knowing what they can expect from us.

Administrative procedures will be minimised; but where they are unavoidable they will be clear, simple and rational.

### **4.2 HELPFULNESS**

We will provide a courteous and efficient council service. All staff that visit properties will identify themselves by name and carry identification cards.

We will always provide a contact name and telephone number for further dealing with officers.

### **4.3 FAIRNESS**

We will treat people as equals, while respecting differences.

Procedures, wherever possible, will be consistent, with people given equal access to service.

We will keep an open mind and if people feel they have been poorly treated and where we find errors we will apologise and try to positively redress them.

In cases where disputes cannot be resolved informally the council has in place a corporate complaints procedure.

### **4.4 PROPORTIONALITY**

We will ensure that action taken will be proportionate to the assessed risks.

We will work with the property owners, where possible, so that they can meet their legal obligations without unnecessary expense.

## **5.0 Deciding what level of enforcement action is appropriate**

A number of factors are considered when determining what action to take. These factors are detailed in **Appendix 1 [*Factors we consider when taking enforcement action*]**. These factors are used to determine the *level* of enforcement action we may take:

### **5.1 Levels of enforcement action:**

There are a large number of potential enforcement options. The level of the action taken varies from proceedings in Court through to no action. Examples of the main types of action that can be considered are shown below:

- Prosecution
- Formal Caution
- Formal Notice
- Works in Default
- Written warning and/or advice
- Verbal warning and/or advice
- Revisit of dwellings
- No action



## **5.2 Prosecution**

A prosecution will normally ensue where the individual or company meets one or more of the following criteria:

- Deliberately or persistently breached legal obligations, which were likely to cause risk or harm others,
- Deliberately or persistently ignored written warnings or formal notices,
- Assault or obstruction of an Officer in the course of their duties.

## **5.3 Formal Caution**

This procedure is used as a final warning, before prosecution. For a formal caution to be issued a number of criteria must be satisfied:

- sufficient evidence must be available to prove the case, and;
- the offender must admit the offence; must agree to be cautioned and must not have been committed by the offender before.

If the offender commits a further offence, the Formal Caution may influence our decision to prosecute.

If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

## **5.4 Formal Notice**

Notices may require contraventions identified to stop immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed must be reasonable, but must also take into account the health, safety, and environmental damage or nuisance implications of the contravention.

All notices issued will include details of any applicable *Appeals Procedures*.

Certain types of notice allow 'works to be carried out in default'. This means that if a notice is not complied with [a breach of the notice] the council can arrange to carry out the necessary works to satisfy the requirements of the notice. Where the law allows, the Council may then charge the person/company that has been served notice.

## **5.5 Works in Default**

Where a formal notice has not been complied with Officers have the option of carrying out the works required in the notice, in order to eliminate the hazard. In these cases the council will recover all expenses incurred.

## **5.6 Written warning and advice**

For some contraventions offenders are sent a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

## **5.7 Verbal warning and advice**

For minor breaches of the law verbal advice is given to the offender. The contraventions of the law are clearly identified and advice is given on how to put them right, including a deadline by which this must be done. A clear distinction will always be made between what they *must do* to comply with the law and what is advice only.

Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

## **5.8 Revisit of dwellings**

Following a formal notice, written warning or verbal warning, Officers may revisit the dwelling to check compliance has been achieved. For very minor contraventions officers may advise that a revisit may be carried out after the agreed deadline. Officers will then decide whether to actually make a revisit depending upon the health, safety, environmental damage or nuisance implications of the contravention, and the perceived likely response of the offender to the warning/ advice.

## **5.9 No action**

In exceptional circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken on rare occasions where formal enforcement is inappropriate in the circumstances, such as where the owner is elderly and frail and formal action would seriously damage their well being. A decision to take no action will be recorded in writing and must take into account the health, safety, and environmental damage or nuisance implications of the contravention.

## **5.10 Determining whether a *Prosecution or Formal Caution* is viable and appropriate**

Two 'tests' are applied to determine whether a Prosecution or Formal Caution is viable and appropriate. Regard is had to guidance set by the Crown Prosecution Service when applying the tests:

1. The **Evidential Test** –

There must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on charge.

2. The **Public Interest Test** –

There may be public interest factors, which are in favour of, or are against prosecution. These have to be weighed-up before enforcement action is taken.

If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, the Investigating Officer(s), the Private Housing Manager, Head of Housing Services and Council's Solicitors must decide if formal enforcement action is needed in the public interest.

Formal Caution or Prosecution proceedings will only be progressed when the case has passed both tests. When considering whether to prosecute, the following principles will need to be considered, they apply equally to the other types of formal enforcement action that are available.

## **6.0 The Evidential Test**

The Investigating Officer(s), the Private Housing Manager and the Council's Solicitors must be satisfied that there is enough evidence, which can be used and is reliable, to provide a 'realistic prospect of conviction' against each defendant on each charge.

## **7.0 The Public Interest Test**

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

The Investigating Officer(s), the Private Housing Manager and the Council's Solicitors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

## **8.0 Who decides what enforcement action is taken**

For less serious infringements of the law, the Investigating Officer (s) usually determines decisions about the most appropriate course of action. Decisions are based upon professional judgment, legal guidelines, and statutory codes of practice.

For more serious offences, where the nature of the offence points towards prosecution, or formal caution, decisions about enforcement, where appropriate, must be 'authorised' by the:

- Investigating Officer(s)
- Private Housing Manager
- Head of Housing
- Director of Housing
- Council's Solicitors

Details of '*who decides what enforcement action is taken*' is shown in **Appendix 2**.

## **9.0 Liaison with other regulatory bodies and enforcement agencies**

Where appropriate, enforcement activities within the Private Housing Service will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where appropriate, for example where a tenant has been illegally evicted and/or there are allegations of harassment to be investigated, we will liaise directly with local Police.

The Private Housing Service shares intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, examples include:

- Police Forces, such as Essex Police Service
- Fire Authorities, such as Essex County Fire & Rescue Service
- Other Local Authorities

## **10.0 Offences**

The Investigating Officer(s), along with the Private Housing Manager, and Council's Solicitors should select the most appropriate legislation which:

- reflect the seriousness of the offence,
- give the court adequate sentencing powers,
- are made to the appropriate court,
- enable the case to be presented in a clear and simple way.

### **10.1 Considering the views of those affected by offences**

The Private Housing Service undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, of the decision whether or not, and how to take enforcement action, and any views expressed by those affected will, where appropriate, be taken into account.

Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

## **11.0 Protection of Human Rights**

This Policy and all associated enforcement decisions seek to take account of the provisions of the Human Rights Act 1998. Particular attention will be given to:

- Article 6      Right to a fair trial
- Article 8      Right to respect for private and family life, home and correspondence
- Article 14     Prohibition of discrimination on any grounds

## **12.0 Performance measures**

Monitoring performance: The Council's Head of Housing will ensure that effective managerial control is exercised over all enforcement activities.

To ensure that enforcement activity is being carried out effectively, the private housing service will regularly monitor and review performance in accordance with the documented systems.

The Private Housing Service will participate in standardisation/evaluation exercises involving other Essex local authorities, with the aim of ensuring a common approach to inspection throughout the region.

Quality: The Private Housing Service will use documented procedures to ensure a consistent, quality approach to housing enforcement. Regular liaison and joint training with the Councils' Regulation Department will ensure consistency is maintained and monitored

Authorisation: Officers working within the Private Housing Service will be properly authorised to enforce relevant statutory provisions. Authorisation will only be granted to officers possessing the necessary competence through qualifications, experience and /or training.

Officers' level of competence will be established through continual managerial assessment, through the councils performance development review procedures.

## **13.0 Review of the Enforcement Policy**

The policy will be regularly monitored to ensure its workability, implications and effectiveness.

To ensure that Enforcement Officers comply with this enforcement policy, cases will be systematically monitored by the Private Housing Manager, who will carry out monthly case reviews to ensure that the necessary considerations have been given to a case, and that the appropriate advice has been given and adequate documentation is on file.

This policy will be reviewed as necessary, to reflect changes in legislation, recommendations in guidance and standards from Central Government and other associated groups.

## **14.0 Housing Legislation**

This section details the legislation most commonly enforced by the Private Housing Service, and outlines the major provisions.

Note: This policy will only provide a summary of the law and regard must always be had to the legislative document itself for the exact definitions and statement of law.

## **15.0 Housing Act 2004 – Housing Health & Safety Rating System**

The Housing Act 2004 changed the traditional concept of assessing if a property was 'fit for human habitation', and introduced the Housing Health and Safety Rating System (HHSRS).

The Housing Health and Safety Rating System Enforcement Guidance is given to local housing authorities to provide guidance on the exercise of their duties and powers under Part 1 of the Housing Act 2004

The Housing Act 2004 requires local authorities to consider the housing conditions in the district with a view of determining what action to take under the Act, including the duties and powers to deal with hazards identified under the HHSRS.

The Government's new approach evaluates the potential risk to health and safety from any deficiencies identified in all types of housing, including houses in multiple occupation (HMO). The underlying principle of the new HHSRS is: "Any residential premises should provide a safe and healthy environment for any potential occupier or visitor."

The new system is based on 29 possible hazards e.g. excess cold and falls on stairs. The assessment process addresses the likelihood of an occurrence and then the range of probable harm outcomes. The likelihood and the severity combine to generate a hazard score. Scores are divided into one of ten bands (A-J). Band A is the most serious and J the least serious. Hazards, which fall into bands A to C, are category 1 hazards e.g. lack of adequate heating. With those in bands D –J being category 2 hazards e.g. dampness and mould.

### **15.1 Investigation**

An initial response to any service request will be made within 3 working days and any written correspondence will be responded to within ten days, in writing.

To maintain a proportionate response, investigations will be prioritised to the more serious circumstances. The following circumstances will be taken into account:

- The number of the category 1 and 2 hazards.
- The vulnerability of the current occupiers.
- Where occupancy factors e.g. In large houses in multiple occupation increase the risk.
- The seriousness of any potential breach of the Housing legislation.

### **15.2 Enforcement Action**

When Private Housing Officer become aware of a hazard, Officers will secure compliance with the Housing legislation through the use of:

- Education
- Informal action/advice
- Formal action, use of statutory notices

### **15.3 Education**

The private housing service will organise training; hold landlord forums and publish leaflets and information packs, to raise awareness of housing issues.

### **15.4 Informal Action/Advice**

Wherever appropriate a visit and full survey of the property will be carried out to determine whether works are required. The Officer will clearly identify whether any works are advisory or required under legislation.

Subsequent informal action includes verbal or written advice. Where written documentation is issued it will be clearly defined in an inspection report and schedule which will be sent to the person in control of the property/receiving the rent i.e. Agent/Landlord.

The report will clearly detail

- what work is required and the reasons
- what are legal requirements and what are recommendations
- the specific legislation contravened
- a timescale for compliance.

Consideration will also be made on whether the Council's Housing Renewal Policy is appropriate.

Informal action will be taken in the following cases. Where:

- The Agent/Landlord has agreed to eliminate the hazard identified e.g. remedy the disrepair, within a timescale agreed with the Private Housing Officer, who is satisfied that this will be complied with.

- The hazard is minor and there is no risk or harm identified.

The action agreed will be monitored to ensure works are carried out to the council's satisfaction. However, if no response is given or timescales are not progressed for those legal requirements, the case will progress to more formal action.

### **15.5 Formal action – use of statutory notices**

All the relevant evidence will support enforcement action, and all records will be recorded in written or electronic format. Where possible a full inspection of the property will always be carried out.

The Housing Act legislation imposes a general duty to take appropriate action in relation to a category 1 hazard.

Private Housing Officers have similar general powers to deal with category 2 hazards.

To maintain a proportionate response, investigations will be prioritised to the more serious circumstances.

The Private Housing Service will deal with Category 1 hazards and moderate Category 2 hazards (d-e). The moderate hazards are those where deterioration is likely to occur and result subsequently as a hazard in a higher band.

Residential properties that contain a number of more modestly rated hazards, which appear to create a more serious situation, will be dealt with.

The Private Housing Manager would evaluate all exceptional circumstances i.e. other category 2 hazards relating to health, and vulnerability.

The following courses of action are available to Private Housing Officers:

- **Serve an improvement notice**
- **Make a prohibition notice**
- **Serve a hazard awareness notice**
- **Take emergency remedial action**
- **Make an emergency prohibition order**
- **Make a demolition order**
- **Declare a clearance area**

Officers cannot take more than one of these actions at one time, unless it is an emergency action. However, the action can be varied if the action already taken has not proved successful.



All notices and orders will include a statement of reason, detailing why this specific enforcement action was taken.

### **15.6 Right of Appeal**

There is a right of appeal against any notice, order or decision made by the Council (Private Housing Officers). All appeals are made to a Residential Property Tribunal and must be made within a specified time from the date the notice was served. The Tribunal may confirm, quash or vary the notice, order or decision.

### **15.7 Non-compliance**

If a notice is not complied with Private Housing Officers will consider the following options:

- Prosecution
- Works in default + recovery of costs
- Works in default + prosecution + recovery of costs
- Formal Caution

### **16.0 Powers of Entry**

Under normal circumstances 24 Hours notice has to be given to enter into any residential property.

Authorised Officers have the power to enter any premises at any reasonable time in order to;

- Determine whether any powers under the relevant Acts should be exercised in respect of the premises, or
- Carry out any actions or works authorised in accordance with this policy.

Before using such powers it must be confirmed that informal action would

- not be appropriate
- not be successful or has already failed.

If entry is refused, an Officer may apply to a Justice of Peace for a warrant to enter the premises, if necessary, by force.

The Authorised Officer may:

- Take equipment or other persons that may be necessary.
- Carry out an inspection, take photographs and measurements, and where necessary carry out tests
- Take away any samples

### **17.0 Improvement notice**

An improvement notice will be the most practical remedy for most hazards; repair or renewal is generally cost effective because of property values within the borough.

- An improvement notice will be used where there are category 1 & moderate category 2 hazards and will require the removal of the category 1 and/or category 2 hazard and any reoccurrence within 12 months from the notice.

It will detail the following minimum information:

- the premises to which the notice relates
- the deficiencies and the associated hazards
- the remedial action to be taken, which must be reasonable in relation to the hazard.
- The date when action is to start, (minimum 28 days notice must be given).
- The time period in which the action is to be completed (Different timescales can be set for different hazards)
- information on the right to appeal

Where the Private Housing Officer is satisfied that the works have been complied with the improvement notice will be revoked formally in writing.

The notice will be registered as a local land charge.

## **18.0 Prohibition order**

A prohibition order may be used where there are category 1 hazards, but remedial action is considered unreasonable or impractical. Such an order will

- specify the maximum number of persons that should occupy the dwelling, where the property is found to be overcrowded, or there are insufficient amenities.
- Prohibit the use of part or all of the premises for specified group, where the property is hazardous to particular vulnerable persons e.g. elderly, young children.
- In a HMO, prohibit the use of specified dwelling units or of common parts.

Officers will also have regard to:

- The risk of social exclusion
- Whether the property is listed or in a conservation area
- The owners proposals to consider alternative uses
- The effects on the neighbourhood
- The effect on the availability of local accommodation where re-housing is necessary.

The prohibition order will become effective 28 days after it is served and will detail the following minimum information:

- the premises to which the notice relates
- the deficiencies and the associated hazards

- the remedial action to be taken, which will result in the notice being revoked.
- information on the right to appeal

Where the Private Housing Officer is satisfied that the works have been complied with and the hazard no longer exists, the prohibition order will be revoked formally in writing. The notice will be registered as a local land charge.

### **18.1 Suspending an improvement notice/prohibition order**

The Private Housing Officer may formally suspend the action specified. The notice will clearly detail the trigger points that will end the suspension e.g. non-compliance to an undertaking given to the authority or a change in occupancy.

A suspension notice can be used to deal with future occupation, and a notice in this case would require an owner or landlord to notify the authority of a change of occupancy. Regard will always be given to the likely tenants who could potentially occupy the premises in the next 12 months. All suspended notices will be reviewed within 12 months after the date the notice was served.

## **19.0 Hazard Awareness Notice**

The Hazard Awareness Notice may be used in response to a minor hazard, and may be considered as part of the informal action agreed with the landlord, e.g. defective seals to the kitchen sink, or bath: missing wall tiles.

There is no provision for an appeal and the notice is not registered as a local land charge.

A Hazard Awareness Notice will detail the following minimum information:

- the premises to which the notice relates
- the reason for serving the notice
- the deficiencies and the associated hazards
- the remedial action to be taken, which must be reasonable in relation to the hazard.

The service of a hazard awareness notice does not prevent further formal action being taken.

## **20.0 Emergency Remedial Action**

Where a category 1 hazard is found to exist, and there is an imminent risk of serious harm e.g. a family with young children, where there is no hot water and heating.

The Private Housing Officer may enter the premises (if applicable with a warrant ) at any time to carry out the necessary emergency remedial action.

A notice of emergency remedial action will be served within 7 days of taking the action.

The notice will detail the following minimum information:

- the premises to which the notice relates
- the deficiencies and the associated category 1 hazard(s)
- the nature of the action
- the power under which the remedial action was or is to be taken
- the date when the action was or is to be started
- information on the right to appeal

## **21.0 Emergency Prohibition Orders**

Where a category 1 hazard is found to exist, and there is an imminent risk of serious harm, the Private Housing Officer may enter the premises (if applicable with a warrant) at any time to make an Emergency Prohibition Order, prohibiting the use of all or any part of the premises with immediate effect.

The notice will detail the following minimum information:

- the premises to which the notice relates
- the nature of the category 1 hazard(s)
- the remedial action, which would result in the order being revoked.
- information on the right to appeal

Where the Private Housing Officer is satisfied that the works have been complied with and the hazard no longer exists, the Emergency Prohibition Order will be revoked formally in writing.

## **22.0 Demolition Orders**

This is a possible response to a category 1 hazard. The following factors will be taken into account before deciding to make a Demolition Order:

- the availability of stock for re-housing occupants
- the demand for and sustainability of the accommodation if the hazard was remedied
- the prospective use of the cleared site
- the local environment and neighbourhood

## **23.0 Clearance Area**

A Clearance Area can be declared if the authority can be satisfied that each of the residential buildings in the area contains one or more category 1 hazards, or that these buildings are dangerous or harmful to the health or safety of the occupants as a result of their sub-standard arrangement.

There are many other matters, which require enforcement under various Acts for which the Private Housing Service is not directly responsible, but may have some shared interest, if an occupier's living conditions are affected. In circumstances where enforcement responsibilities are shared between other external agencies and Council

Departments e.g. Environmental Health Department, regard shall be had to jointly agreed procedures.

## **24.0 Other Acts enforced by Private Housing Service:**

### **Protection from Eviction Act 1977- Protection from Harassment Act 1997**

The Private Housing Service works with the Council's Housing Advice Service to protect tenants from harassment and illegal eviction. Dependent on the severity of the allegation, the first stage of the investigation will normally be carried out by the Housing Advice caseworkers i.e. liaising with the landlord, mediating and prevention work.

Information gathered by the Private Housing Service and other external and internal agencies, is documented and a decision made on the most appropriate course of action. The general principles of the enforcement policy are following, with reference to Appendix A & B.

### **24.1 Caravans Sites, and Control of Development Act 1960**

All parks with the relevant planning permission for use of the land as a 'caravan site', must have a site licence, issued by the Local Authority. The Private Housing Service will grant a licence and may attach conditions about the physical characteristics of the park. The private housing service will have regard to the governments Model Standards, and all relevant planning decisions.

All approved 'caravan sites' will be programmed to be visited by the Private Housing Service to assess and monitor site conditions. On-going inspections are carried out based on a risk based assessment programme. A manual and electronic register is kept of all inspected and approved sites.

### **24.2 Environmental Protection Act 1990**

Where disrepair to the property is not a risk to its occupants but is causing a statutory nuisance to a neighbouring property, a Notice will be served under the Environmental Protection Act 1990. The Notice will be served following failure to agree informally to the works being carried out

Further details of the procedures followed, are contained in the "Statutory Nuisance Enforcement and Prosecution Policy".

### **24.3 Building Act 1984**

Where premises are in a condition deemed to be prejudicial to health and where unreasonable delay would occur, if the Housing Act or Environmental Protection Act Notices were used, then a Notice will be served under the Building Act requiring the works to be completed within 9 days. If it is not, then works will be carried out in default.

## **25.0 Formal Enforcement – council owned property**

More formal action will be taken in the following circumstances. If:-

- it is found that the landlord i.e. the Council has not complied with the informal agreement, and
- subsequent complaints are received from the tenant(s) concerning the same deficiencies, and
- the works required have been assessed as a category 1 hazard(s).

Formal correspondence will be forwarded to the relevant Estate Officer and Service Manager. The correspondence will clearly indicate the works to be carried out and the time period within which the work must be completed. Copies will be sent to the tenant(s).

Where there has been non-compliance with the formal correspondence, the Private Housing Service may initiate further formal proceedings, through the following procedures:-

- The tenant is referred to the Council's formal Corporate Complaints procedures.
- The case may be taken to the Head of Service, in order for the relevant Officers to make the appropriate decision on resolving the case in question.

### **25.1 Complaints applicable to all tenants**

Persons are encouraged to contact the Officer's Line Manager in the first instance if they have a complaint.

All complaints will be dealt with in accordance with Council's Corporate Complaints procedures.

## **26.0 Formal Enforcement –owner occupied property**

Owner-occupiers, including long leaseholders are in a strong position to evoke their lease or their statutory rights, and will be responsible themselves, for carrying out the necessary remedial works to eliminate any hazards found.

Housing Loans are available to some owner-occupiers to help with category 1 hazards; moderate category 2 hazards (d-e) and energy efficiency works.

The Private Housing Manager will decide whether there are exceptional circumstances where enforcement may need to be taken for owner – occupier dwellings e.g. where this is an imminent risk of harm.

## **27.0 Application of Housing Health & Safety Rating System (HHSRS) and enforcement in Houses in Multiple Occupation (HMO).**

### **Ref: Licensing policy for HMO's**

#### **27.1 Link with licensing**

Part 2 and certain provisions of Part 7 of the Housing Act 2004 aim to introduce a mandatory licensing scheme for HMO's.

An assessment under the HHSRS is *not* part of the licensing procedure, but the licensing process may bring to light properties which the Private Housing Service wants to prioritise in order to mitigate possible hazards. Such hazards would be removed or reduced using the appropriate enforcement action as detailed in the Enforcement Policy.

Where all matters in relation to the application for a licence are satisfied, the Private Housing Service will not unreasonably delay the grant of a licence pending its consideration of its duties or powers under Part 1 of the Housing Act 2004.

There are circumstances where separate action under the HHSRS may be considered a priority prior to proceeding with a licence application:-

- Where a Prohibition Order has been served to restrict the number of occupants e.g. because of fire hazards
- Management regulations under section 234 of the Act impose duties on landlords and managers of HMOs (whether or not subject to licensing). When considering such action the Private Housing Service will consider whether they should also or alternatively take action in relation to such facilities by exercising their powers under Part 1.

#### **27.2 Factors to consider in HMOs**

Hazards are assessed for each individual unit of accommodation and the shared facilities and common parts linked to that unit. The same enforcement tools will be appropriate to HMOs as to other sorts of housing.

Where, following the issue of a statutory notice or order, an HMO reverts to single occupancy, the Private Housing Service will consider whether a different course of action is now more appropriate. Consideration will need to be given to consider whether any notices or orders should be revoked or varied.

### **27.3 Consultation with Essex Fire & Rescue Service**

Section 10 of the Housing Act requires Local Housing Authorities to consult the Local Fire and Rescue Authority before taking enforcement action in respect of a prescribed fire hazard in a HMO or in the common parts of a building containing flats.

For large, 3-storey HMOs all Officers work with the standards detailed in the Essex Environmental Health Managers, Code of Practice which has been adopted by all Essex authorities, including the Essex Fire Service. Using this code, a countywide working protocol has been adopted. The Private Housing Service has agreed operational procedures in place and dependent on the complexities of the case, joint visits may be carried out by Officers, or alternatively draft enforcement documents including plans, and schedule of works, will be forwarded to the local Fire Officers for their comment, within an agreed timescale of 28days for response.

For 2-storey HMOs, local standards have been adopted in consultation with the Local Fire Service.

### **28.0 Conclusion**

The Private Housing Policies and Strategies encourage co-operation between the Private Housing Service and the community, to help keep homes in good repair. Overtime it is hoped that these strategies should lead to a reduced need for formal enforcement action to deal with properties, which fall below acceptable standards.

An Enforcement Policy is particularly important in the case of rented properties and HMOs, where some of the worst housing conditions are to be found. The Private Housing Service will continue to work with Thurrock's Landlord Forum, and develop closer working relationships with individual landlords.

Adopting the principles of the Enforcement Concordat will form the basis for a **fair, practical and consistent** enforcement approach.



## Appendix 1- Private Housing Enforcement Policy

### Factors we consider when taking enforcement action?

Officer(s) carry out investigations/inspections. This can be done in response to a complaint: request for assistance: as part of planned inspections of private rented accommodation, or survey work.

Investigating Officer discovers evidence and is satisfied that a criminal offence may have been committed or is about to be committed. **facie evidence.**

#### Investigating Officer considers a range of factors including:

- Previous History - whether any similar situation has been found before.
- Seriousness of the alleged offence(s), including:
  - Risks to the occupants(s), public or the environment
  - Any intent or recklessness of the person(s) committing the offence
  - Any obstruction of the Investigating Officer
  - Whether the alleged offence(s) are considered a special area of priority by Central Government.
- Is there enough evidence to provide a realistic prospect of conviction
- Would any further action be in the public interest

For **LESS SERIOUS infringements** of the law and/or where there is no previous history of offences/non-compliance with legislation, the following options are considered:

- **Informal Action** – verbal or written advice/warning
- **Statutory Notice** – serving of a legal notice that will require certain specified action to be taken by the recipient

In all cases we will advise the alleged offender what he/she needs to do in order to comply with the law.

For **MORE SERIOUS offences** the following options will also be considered:

- **Formal Caution** – a Formal Caution is an alternative to prosecution and can only be issued if strict criteria are met. The Home Office sets these criteria. A Caution stays on public record for three years.
  - If a Formal Caution is offered to an offender, but he/she refuses to accept it then we may prosecute instead.
- **Prosecution** – legal proceedings are taken against the offender that results in the offender being summonsed to appear in Court. Any decision to prosecute is based upon guidelines set by the Crown Prosecution Service

In all cases the alleged offender will be informed of the matters under investigation and invited to attend a formal interview in accordance with the Police and Criminal Evidence Act 1984.

## Appendix 1- Private Housing Enforcement Policy

### Who decides what enforcement action is taken?

