



# **BROMSGROVE DISTRICT COUNCIL** **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY**

## **1. Introduction**

The purpose of this policy is to outline the Council's approach to tackling poor housing conditions particularly within the private sector. This work is primarily undertaken by the Private Sector Housing Team within the Strategic Housing Section of Community Services. Work to improve housing conditions is mainly undertaken through our advisory and partnership role with landlords, the Landlord Forum, with owner occupiers, empty home owners and businesses.

Our primary aim of this policy is to ensure compliance with the relevant legislation by providing an effective, equitable, practical and consistent service. Bromsgrove District Council considers that fair and proportionate enforcement is essential in protecting the health, safety and economic interests of all those concerned. The Enforcement Policy therefore provides advice and guidance to officers, businesses, owners, landlords and tenants on the range of options that are available to achieve this.

The Council recognises the important role that the private rented sector has to play in reducing the burden on social housing by providing good quality accommodation to meet the housing need of the District. The majority of landlords maintain their properties to a good standard but there are some who neglect their responsibilities and have properties that are in a substandard condition.

Similarly the majority of home owners act responsibly in maintaining their properties. However, there are small numbers of owners who give little consideration to the condition of their home, the safety of the occupiers or the quality of the surrounding environment.

The primary role of the Private Sector Housing Team is to provide advice and support to those seeking compliance, but at the same time tackle those who choose not to comply by using proportionate action. In some circumstances it is necessary to take appropriate formal action to resolve disrepair issues which may include utilising powers to improve, repair, close or demolish dwellings that are not fit for purpose. The detail on how and when action may be taken is outlined within the body of this policy.

## **2. Background**

In 2009 the Council carried out a stock condition survey across all housing tenures. The findings from these surveys highlighted that approximately 11662 (36%)

dwellings failed the Decent Homes Standard, with 7630 (24%) failing as a result of a Category 1 Hazard being present. It was determined that 2476 (8%) of the housing stock was considered to be in serious disrepair.

From this stock condition survey, a number of actions were identified which were outlined in more detail in the Council's Private Sector Housing Strategy 2009-2014. The overriding private sector housing priority is *'Improving the Quality and Availability of Private Sector Housing.'*

This enforcement policy will contribute to the Council addressing a broad range of issues such as preventing homelessness, tackling fuel poverty, reducing empty homes and contributing to Community Plans. Tackling poor housing conditions also supports the work of many other organisations including social care, health organisations and the Police.

### **3. General Enforcement Policy and Principles**

The Local Authority must comply with any statutory requirement placed upon it and align its procedures with best practice. Enforcement in the context of this policy is not limited to formal enforcement action such as serving notices or prosecution, but includes the provision of advice.

All investigations into alleged breaches of legislation will follow best professional practice and the requirements of: -

- The Human Rights Act 1998
- Enforcement Concordat
- The Regulation of Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 – Codes of Practice
- The Criminal Procedures and Investigations Act 1996
- The Code for Crown Prosecution
- Enforcement Guidance issued under section 9 of the Housing Act 2004

Particular regard must be made to the following 7 principles specified in the Statutory Code of Practice for Regulators made under Section 23 of the Legislative and Regulatory Reform Act 2006: -

- **Economic Progress** - The Private Sector Housing service will only intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property. It is widely recognised that the supply of good quality, affordable privately rented accommodation is essential in meeting the local housing needs and promoting economic activity. Private landlords in the area range from those with large portfolios to those with one or two properties.
- **Risk Assessment** – The Service will use risk assessment to concentrate resources in the areas that need them most and on the properties in the worst condition. For example, the results of the most recent Stock Condition Surveys will be used to identify areas or types of accommodation in the District to pro-actively target action accordingly.

Following the receipt of a service request or complaint about poor housing conditions, an initial risk assessment will be carried out. Any follow up advice or action will be dependant upon the outcome of the initial assessment.

- **Advice and Guidance** – The Service will provide information that will distinguish between statutory requirements and advice or guidance. General advice will be made readily available on the Council's website. This will ensure landlords, agents, home owners and others understand their regulatory obligations. The information provided will be in clear, concise and accessible language, using a range of appropriate formats and media.

The Service welcomes enquiries from home owners and landlords about complying with minimum standards and ensuring homes are safe and warm on the basis that this will not directly trigger any enforcement action.

- **Inspections and other visits** – No inspection will take place without a reason. Inspections and other visits will take place in response to a reasonable complaint, a request for service, where poor conditions have been brought to our attention or as part of a risk-based and targeted programme.

Unless the visit is intended solely for advice purposes, the landlord or his or her agent will be contacted and will be given the opportunity to accompany the investigating officer during the visit. Following an inspection, positive feedback will be provided wherever possible to encourage and reinforce good practices.

- **Compliance and Enforcement Actions** – The Service will seek to identify landlords, agents, property owners or businesses that persistently breach the regulations. Proportionate and meaningful action will be taken. The service will facilitate compliance through a positive and proactive approach therefore reducing the need for reactive enforcement action.
- **Accountability** - The Service will be accountable for the decisions that it makes. Officers will provide a courteous, prompt and efficient service and will identify themselves by name and position. A contact point, telephone number and email address will also be provided. Applications for licences e.g. HMO or Caravan Site will be dealt with efficiently and promptly, and services will be effectively coordinated to minimise unnecessary overlap and time delays.

Information relating to the appeal mechanisms e.g. Residential Property Tribunal and the Council's corporate complaints procedure will be provided. The complaints procedure will be followed for any complaints received about the Service or the application of this Enforcement Policy.

#### **4. Shared Enforcement**

The range of enforcement matters dealt with by the Council in this policy area is such that there may well be occasions when there is a need to work with other agencies, for example the Fire Authority, by carrying out joint inspections. Where a

fire hazard is identified, the Council will consult with Hereford and Worcester Fire Authority on works required in accordance with the jointly agreed consultation policy.

In determining the most appropriate form of investigation and enforcement action, officers will have regard, so far as they are aware, to any potential or existing action of other Council services or outside agencies. Where matters are identified by, or reported to our officers that are the enforcement responsibility of another Council service or outside agency, persons involved will, so far as is reasonably practicable, be informed that the matter will be referred to the appropriate service or agency.

Where enforcement action is being taken by another Council service or outside agency, we will provide all reasonable assistance including the production of witness statements and collection and sharing of evidence etc. subject to any legal constraints and the meeting of any reasonable expenses.

## **5. Authority to investigate or enforce**

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that the Council has in relation to regulating property standards in its capacity as Local Housing Authority. Powers are also contained in the Housing Act 1985 as amended and other legislation, such as the Environmental Protection Act (this list is not exhaustive).

This policy deals with housing enforcement in all residential dwellings, Houses in Multiple occupation, empty dwellings, mobile home sites and unauthorised encampments.

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004. A notice is not required where entry is to ascertain whether an offence has been committed. If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace upon written application. A warrant under this section includes power to enter by force, if necessary.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with exercising its function and investigations as to whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

### **Inspections**

The Housing Act 2004 introduced the **Housing Health & Safety Rating System (HHSRS)**. It is a calculation of the effect of 29 possible hazards on the health of

occupiers and any visitors. The legislation provides a range of actions to address these hazards.

The process of a HHSRS is two stage, the inspection and the subsequent calculations. HHSRS calculation provides a combined score for each hazard identified, however it does not provide a single score for the dwelling as a whole.

The scoring of any hazard combines the likelihood of an occurrence taking place (within 12 months) and then the range of probable harm outcomes that may arise from that occurrence. A numerical value is then provided which is then converted into bands (from A to J).

Bands A to C (ratings of 1,000 points and over) are considered to be the most severe and are known as **Category 1 hazards**. The Council has a **duty** to take appropriate action in response to a Category 1 hazard. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options is the most appropriate course of action. These are explained in more detail within Section 5.

Bands D to J, are less severe (rating less than 1,000 points) and known as **Category 2 hazards**. This process is repeated for each of the hazards present within the dwelling. The Council has a **power** to take action in response to Category 2 hazards. If the Council decides to take action for category 2 hazards, it will consider taking action in the following circumstances: -

- Where a Category 2 hazard falls within Band D or E and there is one or more Category 1 hazards
- Where the cases involves a vulnerable person that would benefit from having Category 2 hazards addressed
- Cases in which a premises suffers from multiple Category 2 hazards, which when considered together, create a more serious situation,
- Where a Stock Condition Survey highlights specific local hazards relating to that type of dwelling.
- Any other exceptional case determined by the Head of Community Services

The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will take into account the affect of that risk upon the actual occupant.

## **6. Enforcement Options**

This policy is built around a process of escalation; therefore we will only prosecute in serious circumstances such as a deliberate, negligent or persistent breach of legal obligations. The following levels of enforcement actions are available: -

## Stage 1 – Informal Action

- **Prevention:** -We believe that the first step in enforcement is prevention, through raising awareness and promoting good practice. Methods of achieving this include the provision of advice and information at the earliest opportunity.

Bromsgrove District Council holds regular Landlords' Forum and develops landlord newsletters, which have been well received. These have been a critical way for us to advise landlords of their rights and responsibilities as well as for the Council to obtain an insight into the housing market and landlords views, so that our services can be tailored to the changing needs.

The offer of discretionary financial assistance (in certain circumstances) can also assist in avoiding enforcement action, details of which can be found within the Council's Housing Assistance Policy.

- **Advice and Guidance:** -Where appropriate we will seek to resolve situations without issuing formal notices or taking legal action. This will be used to reinforce advice and guidance where minor defects have been discovered but it not considered appropriate to take formal action. Examples of such may be where the consequences of non-compliance do not impose a significant risk to health and safety of the occupants or visitors, or where there is confidence that informal action will achieve compliance.

Information will be provided in a clear manner detailing any works that are required and over what timescale these should be completed. We will ensure that legal requirements are clearly distinguished from recommended works, where applicable. If a landlord or owner agrees to start work we shall wait before serving a notice unless the landlord or owner fails to carry out the works within a reasonable or agreed time.

- **Formal Letters:** - This course of action will be given prior to formal enforcement action taking place and will detail what works are required within the specified timescales. Follow-up visits will normally be made within an agreed time period to ensure the problems have been rectified. This may follow an informal letter where there remains some confidence that compliance may be achieved prior to resorting to formal enforcement.

## Stage 2 – Formal Action

- **Formal notices:** -Where practicable, decisions to serve formal enforcement notices will be taken by the authorised officer in consultation with the Private Sector Housing Team Leader/Strategic Housing Manger. If it is necessary to serve a formal notice under the Housing Act 2004 a reasonable charge will be made to recover administrative and other expenses incurred. See section 9 detailing charges. The following formal notices are available to officers when dealing with substandard properties: -

- (a) **Hazard Awareness Notices:** - This is an informal notice that ensures the relevant person(s) are aware of the hazards that are present within the property, these Notices are often used where the landlord/owner is currently or proposing to undertake works. The service of this notice does not prohibit the Local Authority from taking additional action if works are not carried out.
- (b) **Improvement Notices:** - These specify the contraventions and detail the works or actions required within a specified timescale. These notices are essential when considering the improvement of a property. Where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard (see section 5), it will require works to be undertaken to either remove the hazard entirely or reduce its effect.

If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than it being removed, it will require works to be carried out as far as is reasonably practicable to reduce the likelihood of harm.

- (c) **Suspended Improvement Notices:** - The Local Authority has the power to consider serving a suspended Improvement Notice. The following is a list of situations in which it may be deemed appropriate to suspend such Notices: -
- The need to obtain planning permission (or other appropriate consent) that is required prior to repairs and/or improvements being undertaken
  - Works which cannot properly be undertaken whilst the premises is occupied and which a notice can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided
  - Personal circumstances of occupants, for example, temporary ill-health, which suggests that works should be deferred.

When deciding whether it is appropriate to suspend an Improvement Notice the Council will have regard to:

- The level of risk presented by the hazard(s)
- The turnover of tenants at the property
- The response of the landlord or owner
- Any other relevant circumstances (e.g. whether the vulnerable age group is present)

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at regular intervals, but the suspension of a notice will not normally exceed 6 months.

- (d) **Prohibition Orders:** - These are required where there is a significant risk to the health and safety of the occupant. They can be used in respect of either Category 1 or Category 2 hazards for prohibiting all or part of a dwelling. This action is likely to be used if repairs and/or improvement are deemed inappropriate on grounds of practicality or excessive cost. An example of a Prohibition Order might include part or whole of a dwelling being prohibited as a result of inadequate escape in the event of a fire.

The Council has the power to suspend a Prohibition Order once it has been served and will consider this course of action where it is reasonable to do so. A Suspended Prohibition Order will be reviewed after a maximum of 12 months and then at regular intervals, but suspension will not normally exceed 6 months.

(e) **Emergency Remedial and Prohibition Action:** -There may be situations in which Emergency Remedial Action and Emergency Prohibition Orders are appropriate. However the Council must be satisfied of the following: -

- A Category 1 hazard exists,
- The hazard poses an imminent risk of serious harm to health or safety of the occupant, and that;
- Immediate action is necessary

If these conditions are met the Council may take appropriate emergency action. Situations in which emergency action may be appropriate include where there is a imminent risk of electrocution, fire, explosion or collapse. The costs incurred for carrying out emergency remedial action including administrative charges are recoverable from the recipient.

(f) **Demolition Orders:** -The Housing Act 2004 has retained the power to make Demolition Orders but has amended Section 265 of the Housing Act 1985 to align it with the HHSRS and enforcement provisions. Demolition Orders are considered as part of the enforcement process when dealing with a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

(g) **Clearance Areas:** - The Council can declare an area to be a 'Clearance Area' if it is satisfied that each of the premises in that area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants.) In determining whether to declare a Clearance Area the Council will act only in accordance with Section 289 of the Housing Act 1985 (as amended), have regard to the relevant Government guidance on Clearance Areas and all the circumstances of the case.

(h) **Statutory Nuisance Notices Served under the Environmental Protection Act 1990:** - It is anticipated that the vast majority of statutory nuisances will be eliminated using the enforcement provisions under the Housing Health and Safety Rating System. However, where this is not possible consideration will be given to the service and enforcement of Section 80 abatement notices

### Stage 3 – Non-Compliance

We will always look to the relevant responsible person(s) to resolve matters of concern. However where a Formal Notice has been served and the specified works have not been carried out in compliance with the notice, the Council has a variety of actions it may take to deal with non-compliance these are as follows: -



- **Works in Default:** -This will be considered where it is in the interests of the health and safety of the occupants. The works in default will be carried out only after the service of a notice e.g. Improvement Notice. Any works undertaken will be recharged or placed as a land charge on the property.
- **Simple caution:** -This may be considered for less serious breaches of formal notices and statutory requirements. Under certain circumstances, a simple caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. The procedure adopted and the content of the caution will be in accordance with current LGR (Local Government Regulation) guidance and relevant Home Office Circular.

A caution is a serious matter and may be used to influence a decision as to whether or not to prosecute, should another offence be committed. Simple cautions remain on record for a period of 3 years. The decision whether to offer a formal caution will be made by the Head of Community Services in consultation with the Private Sector Housing Team Leader and Strategic Housing Manager.

Cautions are intended to:-

- Deal quickly and simply with certain, less serious offences;
- Avoid unnecessary appearance in criminal courts;
- Reduce the chance of offenders re-offending.

Before issuing a caution the following matters will be taken into account when deciding whether a caution is appropriate:-

- There must be evidence of sufficient guilt;
- The offender must understand the significance of the formal caution and admit the offence by signing a declaration.
- The seriousness of the offence. As a caution is not suitable for serious offences.

Where an individual chooses not to accept a formal caution the Council will automatically consider a prosecution. In instances where a caution is accepted the assessment of the premises will be reviewed and the inspection frequency may be increased as a result. The decision to issue a caution will be notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

- **Prosecution:** -The Council will use discretion in deciding whether to bring a prosecution and generally will only commence proceedings when it is considered to be in the public interest. Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. In certain circumstances prosecution without prior warning may take place. The officer will ensure that a decision to prosecute and the results of any legal proceedings will be notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

The decision to prosecute will be taken by the Head of Community Services in consultation with the Strategic Housing Manager with the support of the Council's Legal Officers.

## **7. Tenure**

The HHSRS applies equally to all tenures, therefore all enforcement options are available to the Council regardless of whether the premise in question is owner-occupied, privately rented or Registered Providers (RP) property. The Council considers that owner-occupiers are usually in a position to take informed decisions regarding the maintenance of their property, and are therefore able to prioritise finances accordingly. Where applicable they can then apply for Local Authority assistance towards the works. However, tenants, and particularly non-RP tenants, are not usually able to do so. For this reason the Council judges that it is appropriate for its powers to be applied accordingly to each tenure: -

- **Owner-Occupiers:** -The Council anticipates that Hazard Awareness Notices will be issued frequently and considers this to be an appropriate course of action. However, the use of Improvement Notices, Prohibition Orders and their emergency equivalents will be considered in the following circumstances: -
  - Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare
  - Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
  - Hazards that might reasonably affect persons other than the occupants
  - Serious risk of life-threatening harm such as electrocution or fire
  - Any other exceptional case determined by the Head of Community Services in consultation with the Strategic Housing Manager.

Unless the hazard is deemed to pose an imminent risk of serious harm, the Council will contact the owner to explain the nature of the hazard and confirm the action intending to be taken. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will take into account the opinion of the relevant Welfare Authority when considering both the vulnerability and capability of such persons and therefore what action will be taken (where necessary).

- **Social Landlords**  
Registered Providers of Social Housing (RPs) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) their performance is also scrutinised by the Homes and Communities Agency and Tenant Services Authority. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting repairs or problems and will have set out the response times to achieve this.

The Council will not normally take formal action against an RP unless it is satisfied that the problem in question has been properly reported to the RP has

then failed to take appropriate action. If the Council determines that it is appropriate to take action it will then normally notify the RP that a complaint has been received and will seek the RP's comments and proposed action. Only in cases where it has been deemed that an unsatisfactory response has been received will the Council take further action and review what enforcement options are available in order to determine the most appropriate course of action.

- **Private Landlords**

The Council will have regard to the principles of the Enforcement Concordat and relevant guidance from the Residential Property Tribunal decisions. Action will be taken in accordance with Section 6, where the Council will primarily look at informal action. Formal action will be initiated immediately if a hazard in question is judged by the Council:

- To pose an imminent risk of serious harm to any person, or
- The landlord in question is known to have failed to comply with informal action on a previous occasion.

Where the informal approach is judged appropriate the Council will contact the landlord, in writing (or his/her relevant agent) to confirm their involvement and request a joint visit. Following the inspection the Council will confirm its findings from the site visit and specify what is required of the landlord to remedy the problem.

Unless the Council already holds the required information, a Requisition for Information Notice may also be served at this point in order to establish all relevant information e.g. ownership.

Landlords are expected to provide any agent acting for them with sufficient authority to act on their behalf. Failure of an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

The Council will proceed with **formal action** if: -

- No response from the landlord/agent or,
- The response is deemed inadequate or,
- Works that were agreed, have not been carried out

The Council will take whichever of the various available enforcement actions it judges to be the most appropriate in accordance with this Policy.

If the Council receives:

## **8. Houses in Multiple Occupation (HMO) Licensing**

A HMO is a building or part of a building occupied by more than one household as their only or main residence, and there is some sharing or lack of basic amenities. This includes houses containing bedsits, hostels, and shared properties. A full definition is given under Section 254 and Schedule 14 Housing Act 2004.

HMOs of three or more storeys, with five or more occupant require a licence. HMOs owned by Registered Providers of Social Housing (RPs), the Police, Health Authorities and certain other organisations are exempt, as are certain compliant buildings properly converted into flats.

Licences will be granted where the property is deemed suitable for occupation as an HMO unless the following is fulfilled: -

- The property can be made suitable by the application of conditions,
- The management arrangements are satisfactory,
- The licensee and manager are fit and proper persons.

If the property is not assessed prior to the application, a member of the Private Sector Housing Team will normally visit within 12 months of the granting of an HMO licence. During this inspection a HHSRS assessment will be carried out and an assessment will be made to determine compliance with the license conditions and management standards.

- **Offences relating to Licensable HMOs**

- **Revocation** – This action may be taken for the offence of operating an HMO without a licence or for failing to satisfy the conditions of the licence without reasonable excuse.

Where an HMO requiring a licence is operating without a licence, or the licence has been revoked but the revocation is not yet in force the local authority has a duty to make an Interim Management Order (IMO). This may be followed by a Final Management Order (FMO) for a further five years. The Council may appoint a preferred partner to manage HMOs subject to management orders.

- **Rent Repayment Order** - Where a licence is required, and notice has not been received to notify the local authority the tenants or Council may make an application to the Residential Property Tribunal for a Rent Repayment Order. This requires the landlord to repay rent to the tenants for up to 12months.

Whilst local authorities are responsible for implementing mandatory licensing of HMOs and assessing the fire safety risks in all dwellings under the HHSRS, the Fire Authority also have responsibilities under the Fire Safety Order 2005 for fire safety in common (shared) parts of HMOs. An agreement has therefore been drawn up between the Council and the Fire Authority for joint working to secure fire safety in HMOs.

The HMO Management Regulations apply to all HMOs, whether or not they require a licence. These require HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration. The HHSRS applies to all dwellings, to which the previously mentioned enforcement action must be followed. Where there are issues relating to overcrowding within a HMO, an Overcrowding Notice may be served where no

Interim Management Order or Final Management Order is in force on an un-licensable HMO.

## **9. Improvement Works for Empty Homes**

In many cases the powers that can be used to require improvements to an empty home rest with other services within the Council and will be covered by the appropriate services enforcement policies. Any action taken under powers available to this service will be taken in accordance with the staged approach to enforcement detailed previously. The following table details the issues, main legislation that may be used to require improvements, and the action required of the owner. These powers are not restricted to empty homes, however the powers under Part 1 of the Housing Act 2004 to remedy hazards will often not be appropriate for empty homes, unless occupation seems likely.

<b>Problem</b>	<b>Legislation</b>	<b>Enforcing body</b>	<b>Action Required</b>
Dangerous or dilapidated buildings	Building Act 1984, section 77 and 78	Building Control Department	Requires the owner to make the property safe and/ or enables the Local Authority to take emergency action to make the property safe
Property in such a state as to be a nuisance (e.g. causing dampness in adjoining property) or prejudicial to health	Environmental Protection Act 1990, section 79	Housing Strategy	Requires the owner to take steps to abate the nuisance
	Building Act 1984, section 76	Building Control Department	Enables the Local Authority to take emergency action to abate the nuisance
Unsecured property posing a risk of unauthorised entry or likely to suffer vandalism, arson or similar	Local Government (Miscellaneous Provisions) Act 1982, section 29	Housing Strategy	Requires the owner to take steps to secure the property or allows the Local Authority to board it up in an emergency
	Building Act 1984, section 78	Regulatory Services	Allows the Local Authority to fence off the property
Blocked or defective drains or private sewers Blocked or defective drains or private sewers (continued)	Local Government (Miscellaneous Provisions) Act 1976, section 35	Housing Strategy	Requires the owner to address obstructed private sewers
	Building Act 1984, section 59	Regulatory Services	Requires the owner to address blocked or defective drains

	Public Health Act 1961, section 17	Regulatory Services	Requires the owner to address defective drains or private sewers
Vermin either present or a risk of attracting vermin that may detrimentally affect peoples health	Prevention of Damage by Pests Act 1949, section 4	Regulatory Services	Requires the owner to take steps to clear the land of vermin and/or requires the owner to remove waste likely to attract vermin
	Environmental Protection Act 1990, section 79	Regulatory Services	
	Public Health Act 1936, section 83	Regulatory Services	
Unsightly land or property affecting the amenity of the area	Public Health Act 1961, section 34	Regulatory Services	Requires the owner to remove waste from the property
	Town and Country Planning Act 1990, section 215	Planning Department	Requires the owner to address unsightly land or external appearance of the property
	Building Act 1984, section 79	Regulatory Services	Requires the owner to address the property adversely affecting the amenity of the area through its disrepair

## **10. Empty Homes**

In addition to the actions under the Housing Act 2004 there are other enforcement actions the Council may choose to take to help bring empty homes back into use.

There are three enforcement routes that may be used which are as follows: -

- Empty Dwelling Management Order
- Enforced sale, and
- Compulsory purchase

Any enforcement action aimed at bringing empty property back into use will only be used when repeated attempts to encourage the owner of an empty property to bring it back into use, have failed. When considering enforcement options for empty homes, each case will be assessed on its merits and will only be recommended for enforcement action where there are clear benefits to the neighbourhood or it could address a housing need.

- **Empty Dwelling Management Order (EDMO)**

Where a dwelling has been wholly unoccupied for a period of at least 6 months, the Council may apply to the Residential Property Tribunal for an interim EDMO where the following is satisfied: -

- There is no reasonable prospect that the dwelling will become occupied unless an interim EDMO is made, and
- The Council has made reasonable efforts to notify the proprietor of the dwelling and to ascertain what steps are being taken to occupy that dwelling.

The second stage of the process would be for the Council to seek a final EDMO provided that the relevant conditions have been met.

There are a number of situations where EDMO powers do not apply including for second homes, properties being sold or let, and properties going through probate.

It is important to note that the Council would only consider pursuing an EDMO in circumstances where every effort to work with the owner of the property to bring it back into occupation had proved to be unsuccessful. There would be significant financial implications for the Council and it is envisaged that circumstances where use of these powers would be suitable would arise only in very exceptional circumstances.

- **Enforced Sale**

The Law of Property Act 1925 gives Local Authorities the power to sell properties in order to recover a debt secured against that property. This power can be used where a debt has been incurred for example following works undertaken to an empty home in the owners default.

- **Compulsory Purchase**

The Housing Act 1985, Section 17 allows the Local Authority to acquire under-used or ineffectively used property for residential purposes if there is a general housing need in the area.

In addition section 226 of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) allows Local Authorities to acquire land or buildings if acquisition will allow improvements or redevelopment to take place. Compulsory purchase will be used only as the enforcement route of last resort for returning empty homes to use.

## **11. Power to charge for Enforcement Action**

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, Prohibition Order, Emergency Prohibition, Demolition Order or taking Emergency Remedial Action.

When deciding whether to make a charge, Officers will need to consider the personal circumstances of the persons concerned and the degree of co-operation previously obtained. If a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises along with the administration costs for producing such Notices and Orders. Costs incurred carrying out Work in Default or Remedial Action will be charged separately the sum of which will be recoverable through a local land charge.

The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken, and the service of notices or orders. When considering the most appropriate course of action to deal with hazards, if it is considered necessary to have to take formal action a standard charge will be made:-

### **Charges 2012/13:**

<b>Notice/Order</b>	<b>Amount</b>
Hazard awareness Notice	£0
Improvement Notice	£200
Prohibition Order	£200
Emergency Remedial Action	£200
Emergency Prohibition Order	£200
Demolition Order	£200

The charge is based on the average time and cost spent on the chargeable elements but in certain cases it may be increased or reduced where there is a significant difference between the cost of the enforcement action and the average charge. In addition to the standard charge, reasonable expenses may include specialist support such as testing of electrical or gas installations. However, no charge will be made if informal action results in hazards being addressed to the satisfaction of the Council. The Head of Community Services has the discretion to waive or reduce the charge if there are exceptional or extenuating circumstances.

## **12. Risks**

There are risks associated with undertaking enforcement action particularly in relation to the potentially spiralling costs of enforcement and undertaking works in default. There are also potential damages to the Council's reputation in the event of a successful appeal at the Residential Property Tribunal (RPT). The findings of the RPT are published nationally to assist all Local Authorities to provide learning experiences. There are also risks associated with not taking Enforcement action, in the event that we are aware of a Category 1 Hazard but chose not to pursue any enforcement action without justification.

## **13. Review**

This policy will be reviewed on a regular basis and, in any event, at least every two years.



## **14. Contact**

Private Sector Housing Team  
Strategic Housing Section  
Community Services  
Bromsgrove District Council  
The Council House  
Burcot Lane,  
Bromsgrove  
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