

Regulatory Services

Private Rented Sector Housing Enforcement Policy



Contents

1. <u>Introduction</u>	4
2. <u>Scope</u>	4
3. <u>The regulations and legislation under which the Council acts</u>	5
3.1 <u>The Housing Act 2004 (The Act)</u>	5
3.2 <u>Housing Health and Safety Rating System (HHSRS)</u>	5
3.3 <u>Private Rented Property Licensing</u>	5
3.3.1 <u>Fit and Proper Person Test</u>	6
3.3.2 <u>Mandatory HMO Licensing</u>	6
3.3.3 <u>Additional HMO Licensing</u>	7
3.3.4 <u>Selective Licensing</u>	7
3.3.5 <u>Temporary Exemption Notice (TEN)</u>	7
3.3.6 <u>Authorisation of Officers and Power of Entry</u>	7
3.3.7 <u>Diversity and equal opportunities</u>	8
4. <u>Approach to enforcement</u>	8
4.1 <u>The Council's approach to enforcement</u>	8
4.2 <u>Most appropriate course of action</u>	9
4.3 <u>Tenure</u>	9
4.4 <u>Situations where the Council will not act</u>	9
5. <u>Staged Approach to Enforcement</u>	10
5.1 <u>Stage 1: Informal action</u>	10
5.1.1 <u>Inspections</u>	10
5.1.2 <u>28 day letter requiring action</u>	10
5.1.3 <u>Hazard Awareness Notice</u>	10
5.2 <u>Stage 2: Formal action</u>	11
5.2.1 <u>Serving of a Statutory Notice or Order</u>	11
5.2.2 <u>Hazard Awareness Notice</u>	11
5.2.3 <u>Improvement notice</u>	12
5.2.4 <u>Suspended Improvement Notice</u>	12
5.2.5 <u>Prohibition Order</u>	12
5.2.6 <u>Suspended prohibition order</u>	13
5.2.7 <u>Demolition order</u>	13

5.2.8	<u>Clearance Area</u>	13
5.2.9	<u>Emergency remedial action</u>	13
5.2.10	<u>Emergency Prohibition Order</u>	14
5.2.11	<u>Licencing enforcement actions</u>	14
5.3	<u>Stage 3: Formal action following non-compliance</u>	15
5.3.1	<u>Formal Warning</u>	15
5.3.2	<u>Simple caution</u>	15
5.3.3	<u>Works in Default</u>	15
5.3.4	<u>Interim Management Order (IMO)</u>	16
5.3.5	<u>Suspended Improvement Notice or Prohibition Order</u>	16
5.3.6	<u>Penalty Charge Notice</u>	16
5.3.7	<u>Financial Penalty (Civil Penalty)</u>	17
5.3.8	<u>Rent Repayment Order (RRO)</u>	17
5.3.9	<u>Prosecution</u>	18
5.3.10	<u>The Proceeds of Crime Act (POCA)</u>	18
5.3.11	<u>Banning Order</u>	18
5.3.12	<u>Rogue Landlord Database</u>	19
6.	<u>Appeals</u>	19
7.	<u>Complaints</u>	19
8.	<u>Costs and Charges for Enforcement</u>	19
8.1	<u>Charges</u>	19
8.2	<u>Land Charge</u>	20
9.	<u>Review</u>	20

1. Introduction

- 1.1 The purpose of this policy is to give guidance to officers and outline the Council's approach to housing enforcement in relation to private rented housing. The policy outlines the extent to which the Council will intervene to make use of the powers in Parts 1 to 4 of the Housing Act 2004 (The Act), and Housing Act 1985 where applicable.
- 1.2 Duties fall under four main headings as follows:
 - Undertaking inspections/audits and providing guidance to ensure that residential accommodation meets minimum legal standards. Taking formal action as necessary to secure compliance with statutory requirements
 - The administration and enforcement of the mandatory licensing of HMO accommodation.
 - The administration and enforcement of the additional licensing of HMO accommodation
 - The administration and enforcement of the selective licensing of other privately rented homes
- 1.3 This policy document sets out what owners, landlords, their agents and tenants of private rented sector properties can expect from officers when dealing with non-compliance. This policy is consistent with the aims and objectives of the Council Plan 2018-2022: Creating a lifetime of opportunities in Enfield and Enfield's Housing and Growth Strategy 2020 – 2030: 'More and Better Homes for Enfield'.
- 1.4 All investigations and enforcement action will be conducted having regard to this Private Sector Housing Enforcement Policy and the Enfield's overarching Enforcement Policy, and statutory guidance.

2. Scope

- 2.1 The range of enforcement matters dealt 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 London Fire Authority or the Health and Safety Executive, by carrying out joint inspections.
- 2.2 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.
- 2.3 Where matters are identified by or reported to our officers that are the enforcement responsibility of another council service or external agency, persons involved will, so far as is reasonably practicable, be informed that the matter will be referred to the appropriate service or agency.

3. The regulations and legislation under which the Council acts

There are a number of Acts and associated Regulations under which the Council must exercise its duties in relation to enforcement in the private rented sector. These include (not exhaustive):

- The Housing Act 1985
- The Housing Act 2004
- The Environmental Protection Act 1990
- The Public Health Act 1936
- The Local Government [Miscellaneous Provisions] Act 1976 and 1982
- The Housing and Planning Act 2016
- Smoke and Carbon Monoxide Alarm (England) Regs 2015
- Tenants Fees Act 2019
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

3.1 The Housing Act 2004 (The Act)

The principle legislation used by the Private Rented Property Licensing Team is the Housing Act 2004. This policy outlines the extent to which the Council will intervene making use of the powers in Parts 1 to 4 of the Housing Act 2004, and Housing Act 1985 where applicable.

3.2 Housing Health and Safety Rating System (HHSRS)

The Housing Act 2004 together with Regulations made under it, prescribes HHSRS as the means by which the Council assesses housing conditions and decides on action to deal with poor housing. It is a risk assessment system looking at the effect of housing conditions on the health of occupiers, in which 29 potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in bands. Hazards falling into bands A to C are most serious and are classed as category 1 hazards. Less serious hazards fall into bands D to J and are classed a category 2 hazards. The Council is under a duty to take the most appropriate action in respect of a category 1 hazard but has discretion to exercise power in relation to a category 2 hazard.

The score is based on the risk to the potential occupant who is in the age group most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, but also whether the Council has a duty or discretion to act. We will also consider such matters as the views of occupiers; track record of the owner; the risk to the current and likely future occupiers and regular visitors; the presence of other significant hazards in the property; and the risk of social exclusion of vulnerable groups of people from the private rented sector.

A notice may be served on the landlord requiring works to be carried out to reduce or eliminate hazards. Once the notice becomes operative failure to comply with the notice without reasonable excuse is an offence and the Council can carry out works in default and/or prosecute.

3.3 Private Rented Property Licensing

On 22 January 2020, Enfield Cabinet approved the implementation of two licensing schemes; a borough wide Additional Licensing Scheme to become operational on 1 September 2020, and Selective Licensing in 14 wards, alongside the mandatory HMO licensing scheme for Houses in Multiple Occupation (HMOs). These licensing schemes require a landlord to obtain a licence to rent their property. The Council must decide

whether to grant or refuse a licence to the proposed licence holder based on a number of criteria. The licence period is for a maximum of 5 years.

Subject to a 'fit and proper' person test, the Council will normally grant a licence that has a 'full-term' duration of up to 5 years. However, where the Council identifies concerns relating to either the property to be licensed, for example a breach of planning regulations, or with the licence holder or manager, (but not such that the 'Fit and Proper' Person test is failed outright), then a shorter licence term may be granted dependent upon the circumstances and nature of concerns as to why a 'full-term' should not be granted.

3.3.1 Fit and Proper Person Test

In order to secure a property licence, the licence holder [and manager if different] will be assessed against 'Fit and Proper Person' criteria. In granting a licence, the Council must be satisfied that the licence holder, any separate manager of the address and any person associated with them or formerly associated with them* are fit and proper persons. Each case will be considered on its own merits and any mitigating factors considered. The Council will adopt a common-sense approach, exercising its discretion reasonably and proportionately.

A person will generally be considered fit and proper if the Council is satisfied that:

- they have no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- they have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
- they have no unspent convictions relating to housing or landlord and tenant law
- they have no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
- they have not been refused an HMO licence, been convicted of breaching the conditions of a licence, or have acted otherwise than in accordance with the approved code of practice under section 233 of the Act within the last five years
- they have not been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority.

*If a person associated or formerly associated with the applicant or any manager, has been subject to any of the items stated above, the Council will only take these issues into account if they are relevant to the applicant or manager being a fit and proper person to manage the house.

3.3.2 Mandatory HMO Licensing

An HMO is a building or part of a building occupied by more than one household as their only or main residence, where they share basic amenities such as a kitchen or bathroom. Examples of HMOs include houses containing bedsits, hostels, and shared houses, including student houses. A full definition is given under Section 254 and Schedule 14 of The Act.

HMOs with five or more occupiers who form two or more households and share at least one amenity require a mandatory HMO licence. HMOs owned by Registered Social Landlords (RSLs), 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 house is suitable for occupation as an HMO (or it can be made suitable), the management arrangements are satisfactory, and the licensee and manager are fit and proper persons. The applicant must be the most appropriate person to hold the licence. An inspection is carried out before the issue of a licence.

3.3.3 Additional HMO Licensing

The Council has designated the whole of the borough as an additional licensing area. The scheme comes into force on 1 September 2020 and expires on 31 August 2025. Under the scheme, HMOs houses occupied by three or four persons forming two or more households, sharing one or more basic amenities such as a WC or kitchen, but which fall outside the scope of mandatory HMO licensing and other exemptions, will be required to hold an additional HMO licence in order to be legally let. The Additional HMO Licensing scheme was introduced to improve property standards and management of HMOs and to combat anti-social behaviour.

3.3.4 Selective Licensing

The Council has designated 14 wards as a Selective Licensing area and awaits the Secretary of States' decision on this application for selective licensing. If approved, the selective licensing scheme will be in force for 5 years and will apply to privately rented homes in the 14 wards which are occupied by a single family household or by no more than two unrelated people, are required to have a property licence to operate. The Selective Licensing scheme was introduced to improve property standards, help to eradicate some of the factors which make deprivation worse and combat anti-social behaviour.

Properties in the following wards are subject to the proposed Selective Licensing scheme: Bowes, Chase, Edmonton Green, Enfield Highway, Enfield Lock, Haselbury, Jubilee, Lower Edmonton, Palmers Green, Ponders End, Southbury, Southgate Green, Turkey Street and Upper Edmonton.

Certain properties are exempt from licensing under the selective licensing scheme. This includes, for example, property owned by Registered Social Landlords and Council managed tenancies such as some temporary accommodation.

3.3.5 Temporary Exemption Notice (TEN)

The Council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make a rented property non-licensable e.g. through sale of the property or change of rental type. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances.

3.3.6 Authorisation of Officers and Power of Entry

All Housing and Licensing Officers are authorised under delegated powers to exercise statutory powers and duties. All investigations will be carried out in accordance with the requirements of the:

- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996

Entry to a property is usually required to enable Housing and Licensing Officers to carry out their statutory functions. We will normally make an appointment to visit in the first instance and will give 24 hours' notice to the occupants and owners of our intention to enter properties to inspect them.

If officers fail to gain access to a property, they may exercise a right of entry under s.239 of the Housing Act 2004. Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

Housing and Licensing Officers will exercise their statutory powers to gain entry without giving prior notice to investigate non-compliance with housing related law or to carry out a statutory duty where it is necessary to do so. Reasons for the use of these powers include:

- Protection of the health and safety of any person or to protect the environment without avoidable delay;
- Prevent the obstruction of officers where this is anticipated;
- To determine if a property is an unlicensed Mandatory HMO or does not have an Additional or Selective licence.

3.3.7 Diversity and equal opportunities

The Council is committed to equality of access to its services and aims to treat all people with dignity and respect. Enforcement decisions will be fair, impartial and objective and will not discriminate on grounds of age, colour, disability, ethnic origin, gender, HIV status, immigration status, marital status, social or economic status, nationality or national origins, race, faith, religious beliefs, responsibility for dependants, sexual orientation, gender identity, pregnancy and maternity, trade union membership or unrelated criminal conviction. The Council will promote equality of access and opportunity for those within our community who suffer from unfair treatment on any of these grounds including those disadvantaged through multiple forms of discrimination.

The Council's Valuing Diversity and Equal Opportunities policy refers in more detail to this commitment and is available on request.

4 Approach to enforcement

4.1 The Council's approach to enforcement

The Council wants to work with responsible landlords to help them to raise housing standards, reduce the factors that make deprivation worse and deal with anti-social behaviour in their properties. The Council expects landlords to have a good understanding of the housing standards and management issues that should be met in privately rented accommodation. It is the Council's preference that landlords are first given the opportunity, wherever possible, to investigate any reported problems at their properties. The Council expects responsible owners to undertake necessary repairs and improvements without the need for the Council to instigate formal action.

However, where appropriate and necessary, the Council will instigate robust enforcement action against landlords who fail to comply with their legal requirements. The Council's Private Rented Sector Housing Enforcement Policy gives clear guidance on the approach to be taken when considering a response to any investigation. Officers will seek compliance with legislation through a combination of informal and formal actions, but these are not prescriptive and will be subject to the individual circumstances presenting at the time. In some cases, formal action is prescribed by legislation and consideration must also be given to any statutory guidance.

4.2 Most appropriate course of action

The Housing Act 2004 provides for a range of enforcement options to address hazards. When considering the most appropriate course of action in relation to the hazard the Council will have regard to the statutory enforcement guidance. This may initially involve informal action in cases that warrant this approach, but otherwise formal action will be taken. Where there is a category 1 hazard the Council is under a statutory duty to take the most appropriate enforcement action available as this is where the risk to health and/or safety is high. If a category 2 hazard is identified, where the risk to health and/or safety is not so significant, the Council has discretion whether to exercise this power.

When a formal enforcement option is taken the Act requires a formal statement of reasons to be given saying why that particular option was chosen. Where possible the Council will seek the views of the landlord or owner and current occupier before deciding on which enforcement option to take.

4.3 Tenure

In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. The Housing Health Safety Rating System (HHSRS) provisions of The Act apply to all housing whether in owner-occupation, privately rented or social housing and it is usually the owner's responsibility to carry out works to reduce or eliminate hazards. Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or more rarely a Registered Social Landlord (Housing Association) to carry out works.

Where we have identified hazards and the Registered Social Landlords (RSL) have a programme of works to make their stock decent, the officer will take into account the programme when determining the most appropriate course of action and will liaise with the RSL over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements. In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in overcrowded conditions which are the subject of a category 1 or high category 2 hazard.

With owner occupiers, in most cases they will not be required to carry out works to their home, and informal action or a Hazard Awareness Notice is likely to be the most appropriate action.

4.4 Situations where the Council will not act

There may be situations where a service may not be provided in full by the Council. This could be:

- Where the tenant unreasonably refuses access for the works to be carried out;
- Where the tenant, in the opinion of the Council, clearly caused damage to the property they are complaining about and there are no other issues with disrepair
- Where there is found to be no justification for the complaint on visiting the property.

In these situations, the Council will ensure both the complainant and landlord are made fully aware of the decisions taken.

5 Staged Approach to Enforcement

5.1 Stage 1: Informal action

Advice and guidance may be given to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing both information and the opportunity for face-to-face contact to discuss and help resolve potential problems.

Informal letters can be used to reinforce advice and guidance where minor defects or breaches of the law may have been discovered but it was not thought appropriate to take formal action or there is no legislative requirement to serve a formal notice. This may be where the consequences of non-compliance will not impose a significant risk to health and safety, or where there is confidence that informal action will achieve compliance.

Generally taken instead of or prior to formal action; the decision to take an informal action rests with the investigating officer. Where category 1 or 2 hazards, within hazard band range of A to F, are identified a minimum response will be the service of a Hazard Awareness notice (see below).

5.1.1 Inspections

In cases where officers visit an address, whether this is a result of a landlord's failure to adequately resolve a highlighted issue or as part of an audit or other investigation, written or verbal advice may be deemed sufficient should the inspection highlight only minor deficiencies.

If the Council has been informed of a hazard, or suspects that a hazard exists, it must inspect the property.

As full an inspection as is reasonably possible will be carried out to establish the nature and extent of hazards in a property, and an accurate record will be kept of the inspection. In accordance with section 239 of The Act at least twenty-four hours' notice must be given to owners (if known) and occupiers (if any) of our intent to inspect the premises.

5.1.2 28 day letter requiring action

We endeavour to work with landlords and their tenants to encourage that they resolve disputes informally and without the need for Council intervention. When we receive a complaint from a tenant, we will assess the nature of the disrepairs. If it appears that there is a category 1 hazard, we will commence an investigation. Where there appears to be less serious hazards, we ask that the landlord, if they have not already done so, liaises with their tenant to resolve the matters informally within 28 days. If after this time the matter remains unresolved, we will arrange a formal inspection. We will also supply a copy of the Communities and Local Government guide "Repairs – a guide for landlords and tenants".

If the tenant is associated to a Registered Social Provider (RSL), the tenant must have exhausted the RSLs formal complaints process before action is taken by the Council, unless the disrepair is deemed an emergency.

5.1.3 Hazard Awareness Notice

A Hazard Awareness Notice gives notification that a hazard exists and draws attention to the need of remedial action. It is normally used for less serious category 2 hazards but may also be used for more serious category 1 hazards where remedial action is not practicable or where informal advice is being acted upon. The notice does not have to be acted upon and consequently there is no provision for appeal. However, service of the notice can be escalated to formal action should an unacceptable hazard remain.

5.2 Stage 2: Formal action

Formal action will be taken when a landlord is failing to comply with housing or other health and environmental legislation. In relation to Part 1 offences under the Housing Act 2004, this will be in the form of a statutory notice and will normally require that necessary remedial action be taken at a specified property by the owner within a specified time period.

Where practicable, decisions to serve enforcement notices will be taken by the authorised officer. If it is necessary to serve a notice under The Act, a reasonable charge will be made to recover administrative and other expenses incurred.

5.2.1 Serving of a Statutory Notice or Order

Notices/ Orders are statutory (legal) notices and will generally be served where:

- there are serious threats to the health and safety of occupants
- there is a significant failure or a record of persistent breaches of statutory requirements
- there is a lack of confidence that the recipient will respond to an informal approach
- informal action has failed to achieve a satisfactory resolution.

The Notice / Order will explain:

- what is wrong (the deficiencies)
- what is required to put things right and when remedial works are to start
- the timescale in which to put things right
- what will happen if the notice is not complied with
- the appeal period and the address of the relevant Residential Property Tribunal that would hear the appeal
- the reasons for choosing that course of action.

The Act determines what must be included in each notice.

5.2.2 Hazard Awareness Notice

Hazard Awareness Notices may be served to notify owner occupiers or the person on whom it is served of the existence of category 1 and /or category 2 hazards at the property. This is for example, where the hazard has been identified but the circumstances are not necessarily serious enough to require an improvement notice or prohibition order. It might also be applicable where:

- It is judged appropriate to draw a landlord's attention to the need for remedial action
- To notify a landlord about a hazard as part of a measured enforcement response.
- An occupant has expressed a particular view that this course is desirable (e.g. a private tenant who is concerned that service of an Improvement Notice will affect renewal of their shorthold tenancy; or a tenant who because of ill-health, might not be able to tolerate works).

In all cases where the decision to serve a Hazard Awareness Notice has been determined by occupancy, the Council will review the notice at regular intervals to ensure that any change of occupancy does not put a more vulnerable occupant at risk.

This notice is not registered as a local land charge and has no appeal procedure.

5.2.3 Improvement notice

Where the council determines an Improvement Notice is appropriate action for category 1 and/or category 2 hazards, it will require remedial works to be carried out within a specified time that will either remove the hazard entirely or will significantly reduce its effect so it ceases to be a category 1 hazard. . If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than removed, it will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Failure to comply with the requirements of an Improvement Notice is a criminal offence for which the recipient of the Notice can be prosecuted, or a financial penalty issued. The Council may also carry out the works themselves if reasonable progress is not made and recover reasonable costs incurred.

This notice is registered as a local land charge and an appeal can be made to a residential property tribunal within 21 days from the day of service of the notice if a landlord does not agree with the Notice.

5.2.4 Suspended Improvement Notice

The Council has the power to suspend action taken under Part 1 of The Act in situations where it has the power or duty to take enforcement action through the service of an Improvement Notice. An improvement notice can be suspended where it is reasonable to do so, and enforcement action can be safely postponed until a specified event or time.

The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken
- Works which cannot properly be undertaken whilst the premises are occupied, and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided
- Personal circumstances of the occupants, such as temporary ill-health and works can 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 or otherwise of the landlord or owner
- Any other relevant circumstances (e.g. whether the vulnerable age group is present)

5.2.5 Prohibition Order

A Prohibition Order may be required to impose restrictions on the use of the whole or part of the property and /or who can use the property. This may be used where category 1 and /or 2 hazards are found and conditions present a risk but remedial action is unreasonable or impractical, for example, to reduce overcrowding, or where there is inadequate natural lighting or there is no protected means of escape in case of fire from a top floor room. .

Failure to comply with the requirements of a Prohibition Order is a criminal offence for which the recipient of the notice can be prosecuted. The Council may also carry out the works themselves if reasonable progress is not made and recover reasonable costs incurred.

This notice is registered as a local land charge and an appeal against a Prohibition Order can be made to a residential property tribunal within the period of 28 days beginning with the date specified in the notice as the date on which it was made.

5.2.6 Suspended Prohibition Order

The Council has the power to suspend a prohibition order where it is reasonable to do so, and it can be justified.

Suspended Prohibition Orders will be reviewed after a maximum of 1 year.

5.2.7 Demolition order

Section 46 of The Act, and Part 9 of the Housing Act 1985. A demolition order can only be used in response to category 1 hazards. This course of action will only be taken where a Neighbourhood Renewal Assessment has been carried out which determines that this is the most appropriate action. They are not appropriate for listed buildings, and the Council would take into account the availability of suitable accommodation for rehousing the occupants, the demand for and sustainability of the accommodation if the hazard was remedied, prospective use of the cleared site, and the impact on the neighbourhood.

The Council must be satisfied that a category 1 or category 2 hazard exists in a dwelling or HMO which is not a flat, and a management order is not in force, or in the case of a building containing one or more flats, where the Council is satisfied that a category 1 exists in one or more of the flats contained in the building or in any common parts of the building and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State.

5.2.8 Clearance Area

Section 47 of The Act, and Part 9 the Housing Act 1985

A Clearance Area may be declared when the Council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

This may be declared when the Council is satisfied that each of the residential buildings in the area contains a category 1 or category 2 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State.

This course of action will only be taken where a Neighbourhood Renewal Assessment has been carried out and this determines that this is the most appropriate action, having regard to a range of considerations including the degree of concentration of dwellings containing serious and intractable hazards in the area, the proportion of sound premises which will also need to be cleared, and the presence of listed buildings.

5.2.9 Emergency remedial action

The Council has discretion to take emergency enforcement action where there are hazards which present an imminent risk of serious harm to occupiers or any other residential premises and no management order is in force under Chapter 1 or 2 of Part 4 of The Act. This is likely where the Council considers it is immediately necessary to remove the imminent risk of serious harm; there is no confidence in the integrity of any offer made by the owner, landlord or agent to immediately address the hazard, and the imminent risk of serious

harm can be adequately addressed through remedial action to negate the need to use an Emergency Prohibition Order. This includes the power to force entry to a property if there is a category 1 hazard.

If this action is taken, notice will be given to the occupier prior to the action being taken and formal notice will be served on the owner within seven days of taking the emergency remedial action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action was taken, and include information on rights of appeal.

5.2.10 Emergency Prohibition Order

This gives the Council power to immediately prohibit, by order, the use of all or part of a premises where there is imminent risk of serious harm. This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason. Where this action is taken the Council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

5.2.11 Licencing Enforcement Actions

The operation of licensing schemes in the borough places a number of obligations on landlords, including the need to:

- Ensure that relevant properties are licensed
- Carry out necessary safety checks and provide relevant documentation when necessary
- Comply with a set of licence conditions, including the need to deal with any anti-social behaviour at their rented property and to keep the property in a reasonable state or repair

Failure to meet one or more of the licensing requirements will be individually assessed but may result in one, or a combination of two or more, enforcement outcomes including:

- A written warning or simple caution
- The service of formal notices
- Refusal or revocation of a licence and/or the granting of a shorter licence period through a consequent failure to meet fit and proper person criteria
- The imposition of a civil penalty
- Prosecution
- Rent Repayment Order

Refuse or revoke a licence

Where there is a failure of a licence holder or manager to meet the Fit and Proper test, a licence application will be refused (unless an appropriate alternative licence holder or manager is identified) and any existing licence revoked (unless the failure relates to the property manager and an appropriate alternative manager is identified).

Issuing a licence of shorter duration

Where the Council identifies concerns relating to either the property to be licensed (for example a breach of planning regulations) or to the licence holder/manager (but not such that the Fit and Proper Person test is failed outright) then a shorter licence term may be granted dependent upon the circumstances and nature of concerns as to why a 'full-term' should not be granted.

5.3 Stage 3: Formal action following non-compliance

Where there is a failure to comply with a formal notice without reasonable excuse, or reasonable progress is not being made within the specified timescale, or there is a significant breach of statutory requirements.

Enforcement will normally progress from stage 1 (advice and guidance) to stage 2 (formal enforcement) except where emergency action is required.

The following formal actions will be considered:

5.3.1 Formal Warning

Formal Warnings are generally given with a timescale for compliance prior to prosecution or carrying out works in default.

5.3.2 Simple Caution

A simple caution may be considered for less serious breaches of formal notices and statutory requirements. Simple Cautions will be kept on file for three years. A Caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the Caution. If the offender refuses to accept a Simple Caution, a prosecution will normally be pursued.

5.3.3 Works in Default

The enforcement options for non-compliance with formal notices or breach of licence conditions include the carrying out of works specified in the notice. Works in Default are carried out where specified work has not been carried out in compliance with a notice. The Council may use its powers to carry out the work in the owner's default, reclaiming the costs. In some cases, it may also be in the public interest to prosecute.

Charges for works in default - Carrying out works by agreement

The Act provides the option for a person on whom an improvement or prohibition notice has been served, on agreement, to request the Council to carry out the remedial work. This Council will consider any such written request on an individual basis.

Any undertaking by this Council would be dependent on full consensus that all the costs of the Council's contractor and the administrative costs would be met by the person on whom the Notice was served.

Charges for works in default - Carrying out works without agreement

Enfield Council may exercise its right to carry out works in default without agreement from the person on whom the notice is served. This is to safeguard and protect tenants who may be living in substandard accommodation, where prolonged exposure to a category 1 hazard may be prejudicial to their health.

Any case where there is an immediate danger to a tenant would be dealt with by either using a Prohibition Order or taking Emergency Remedial action. Work can also be taken, without agreement, where the Council believes reasonable progress is not being made in completing repairs.

Enfield Council will charge the full costs incurred and an administrative fee. This has been set at 20% of the costs of the total works. There will be a minimum charge of £300 to ensure that all the administrative costs are covered. The Council considers this charge to be fair and reasonable.

5.3.4 Interim Management Order (IMO)

The Council must make an Interim Management Order (IMO) where the property is an HMO and that should be licensed, or is a house to which selective licensing applies, but is not, and:

- there is no reasonable prospect of it being licensed, or
- the health and safety condition are satisfied (see below).

The Council can make an IMO to ensure that:

- immediate steps are taken to protect the health, safety or welfare of occupiers and adjoining occupiers/owners and
- any other steps are taken to ensure the proper management of the house pending further action.

An IMO must also be made where the house or HMO is licensed, and:

- the licence has been revoked but the revocation is not yet in force, and once revocation is in force there is no foreseeable prospect of a licence being granted, or
- the health and safety condition is satisfied (see below).

Health and safety condition

The health and safety condition is that the making of an IMO is necessary to protect the health, safety or welfare of occupiers or adjoining occupiers/owners. If there is a threat to evict persons occupying the house in order to avoid the house being required to be licensed, this may constitute a threat to the occupiers' welfare.

The health and safety condition are not satisfied where there is a category 1 hazard requiring the local authority to take enforcement action and where such action would adequately protect the health, safety and welfare of the people in question.

5.3.5 Suspended Improvement Notice and Prohibition Order

The Council also has the power to suspend action taken under Part 1 of The Act in situations where it has the power or duty to take enforcement action through the service of an Improvement Notice or a Prohibition Order. A suspension of such action would usually be instigated where the circumstances of the current occupiers were such that other options were not practical.

An Improvement Notice or Prohibition Order may be suspended until a specified time or event. Failure to comply with the requirements of an Improvement Notice or Prohibition Order is criminal offence for which the recipient of the notice can be prosecuted. The Council may also carry out the works themselves if reasonable progress is not made and recover reasonable costs incurred.

5.3.6 Penalty Charge Notice

A number of Acts and Regulations provide for the issuing of a penalty charge notice for non-compliance. These include:

- Smoke and Carbon Monoxide Alarm (England) Regulations 2015
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require that the Council has a statement of principles for its application of penalty charge notices in relation to offences under those regulations.
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Where the Council decides to issue a penalty, charge notice it will follow the principles of statement. The amount of penalty will be capped at the maximum provided for the offence.

5.3.7 Financial Penalty (Civil Penalty)

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provides local authorities with the power [through the creation of section 249A Housing Act 2004] to impose a civil penalty (in the form of a financial penalty) as an alternative to prosecution in respect of certain offences under the Housing Act 2004.

A civil penalty will be considered where there is a failure to comply with a notice within the specified time period or reasonable progress is not being made within the specified timescale. The decision to issue a final notice of financial penalty following representations made by the recipient will be taken by the Head of Service.

The Council may serve notices imposing a civil penalty, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- I. Failure to comply with an Improvement Notice
- II. Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- III. Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
- IV. Failure to comply with an Overcrowding Notice
- V. Failure to comply with a management regulation in respect of an HMO
- VI. Breaching a Banning Order

The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above.

Examples of situations in which a decision to prosecute would normally be taken include:

- Where the offence committed is judged to be particularly serious
- Where the offender has committed similar offences in the past
- Where offender's actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.

5.3.8 Rent Repayment Order (RRO)

The Council may apply to the First Tier Tribunal for a Rent Repayment Order (RRO) where a landlord has committed an offence, including:

- failing to comply with an improvement notice (Housing Act 2004),
- failing to comply with a prohibition order (Housing Act 2004),
- being in control or managing an unlicensed HMO or house (Housing Act 2004)
- concerning violence for securing entry (Criminal Law Act 1971)
- concerning eviction or harassment of occupiers (Protection from Eviction Act 1977)
- breach of a banning order (Housing and Planning Act 2016).

An application for an RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a Civil Penalty.

5.3.9 Prosecution

The Council will use discretion in deciding whether to bring a prosecution and this course of action will usually only be considered if there is a significant breach of statutory requirements or a failure to comply with a notice and it is considered to be in the public interest. The decision to prosecute lies with the Head of Regulatory Services or Head of Private Rented Sector Licensing and will always consider this policy, the overarching Enforcement Policy and the criteria laid down in the Code for Crown Prosecutors issued by the Crown Prosecution Service.

Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. The following factors will be taken into account:

- The seriousness of the offence
- The previous history of the party concerned
- The willingness of the party to prevent a recurrence of the problem
- Whether the issuing of a simple caution would be more appropriate or effective
- Whether the offence was committed deliberately, any evidence of obstruction of the officers in their lawful duty or of the investigation
- Financial considerations - the benefit obtained from the alleged offending.

5.3.10 The Proceeds of Crime Act (POCA)

The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. This legislation can be applied to criminal landlords and may be used, where appropriate, through investigation of a financial investigation by an Accredited Financial Investigator following a successful conviction, and in consultation with legal services.

5.3.11 Banning Order

Where a landlord has committed one or more offences specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017, the Council may apply to the First Tier Tribunal for a banning order that bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

A banning order, if granted, must be for a minimum period of 12 months. There is no statutory maximum period for a banning order.

The Council will generally pursue a banning order for the most serious offenders. It will take into account the seriousness of the offence(s), whether the landlord has committed other banning order offences (or received any civil penalty in relation to a banning order offence) and any history of failing to comply with their obligations or legal responsibilities. It will also take into account other relevant factors, including:

- The harm, or potential harm, caused to the tenant
- The need to punish the offender
- The need to deter the offender from repeating the offence
- The need to deter others from committing similar offences.

5.3.12 Rogue Landlord Database

The Council must enter the details of a landlord onto the [Rogue Landlord Database](#) where:

- a landlord has received a banning order or
- a landlord has been found guilty of committing a banning order offence (but no banning order has been made) or
- a landlord has received two or more civil penalties in respect of banning order offences

When deciding whether to make an entry onto the rogue landlord database the Council may take into account the severity of the offence and any mitigating factors.

6 Appeals

Most legal notices / Orders have a statutory appeals procedure, and landlords are entitled to appeal against such notices through the specified appeal provisions.

7 Complaints

To discuss our approach to enforcement or a particular case (if you are involved), you can contact our team housingenforcement@enfield.gov.uk

We manage complaints about our service through the Enfield Council [Corporate Complaints process](#).

8 Costs and Charges for Enforcement

Section 49 & 50 of The Act gives the Council the power to make a reasonable charge as a means of recovering certain expenses incurred in serving formal notices. A charge will normally be made where it has been necessary to take one of the enforcement actions listed below.

- a) serving an improvement notice under section 11 or 12
- b) making a prohibition order under section 20 or 21
- c) serving a hazard awareness notice under section 28 or 29
- d) taking emergency remedial action under section 40
- e) making an emergency prohibition order under section 43
- f) making a demolition order under section 46
- g) reviewing a suspended improvement notice under section 17
- h) reviewing a suspended prohibition order under section 26

8.1 Charges

The expenses when Notices/Orders are served 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 as follows (fee as of 2020/21):

Enforcement action	Charge (£)
Hazard Awareness Notice (if subsequent notice is required)	195.90
Improvement Notice	391.70
Prohibition Order	391.70
Emergency Prohibition Order	391.70
Emergency Remedial Action	391.70
Demolition Order	391.70
Review of a suspended Improvement Notice	224.50
Review of a suspended Prohibition Order	224.50
Charge for any subsequent notice served at the same time for the same property	168.40

These charges are reviewed annually, and changes will reflect current rates at time of service.

A demand for payment will be served at the time of service of the notice /order to which it relates. A demand for payment becomes operative 21 or 28 days from the day on which it is served unless the notice is appealed.

Once a demand for payment becomes operative, the sum recoverable by the Council is, until recovered, a charge on the premises concerned and is a local land charge.

8.2 Land Charge

The service of an improvement notice, or a prohibition order will be registered as a local land charge on the relevant property in accordance with section 37 of The Act.

9 Review

This policy will be reviewed every three years.