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**SCARBOROUGH BOROUGH COUNCIL**

**Residential Regulation Enforcement Policy**

**February 2017**

## **1.0 Introduction**

- 1.1 The Council's aim is to raise the standard of housing throughout the Borough and improve the welfare of residents by addressing those matters which have a negative impact on the residential environment (statutory nuisances, draining issues etc.). We try and achieve this by working in partnership with owners, landlords, letting agents and tenants. Whilst an informal approach is often the most effective way of improving standards and we recognise that when the law is broken or where there has been non-compliance or poor management then robust enforcement action is necessary to protect the public and the environment.
- 1.2 This policy outlines the Council's approach to securing compliance with the law in relation to housing and associated environmental standards. In particular, the policy explains how the Council's Residential Regulation Team will intervene to make use of the various powers available to it to ensure landlords and owners of dwellings undertake necessary repairs and improvements to their properties and tackle those responsible for environmental issues associated with residential property.
- 1.3 In developing this policy the Council has had regard to a wide range of housing and environmental health related legislation and good practice guidance. Regard has also been given to the Governments Enforcement Concordat Good Practice Guide and the Better Regulation Delivery Office – Regulators Code 2014.

## **2.0 The Council's Residential Regulation Inspection Regime**

- 2.1 Complaints about housing conditions or associated environmental concerns from tenants, the public, home owners, landlords and other agencies can be made via the Council's Customer First Centre and can be made in person, on the phone, by e-mail, via the Council's website or in writing.
- 2.2 We aim to make initial contact to all complainants within 5 working days. The purpose of this initial contact is to ensure we fully understand the issues and to arrange a time for an inspection if needed.
- 2.3 Further to this initial contact, where an inspection is required we aim to undertake this within 10 working days.
- 2.4 During periods of high demand, the Council reserves the right to introduce a prioritisation system to ensure that the most urgent cases are dealt with first. This shall be based on an assessment of the vulnerability of the household and the nature of the complaint being raised.
- 2.5 In respect of disrepair issues, prior to our involvement the Council generally expects that tenants will have notified their landlord of the issues and given their landlord reasonable opportunity to rectify the problems.
- 2.6 Where we undertake a housing standards inspection we will normally give a landlord or managing agent 24 hour notice and will also ask the landlord to be in attendance.

- 2.7 In certain situations the Council has the power to gain entry to a building without giving the relevant notice to the landlord or managing agent. This action would typically be taken where we suspect there may be an imminent risk of harm to the occupiers, or where it is suspected that a property is operating as an unlicensed HMO, or where it is suspected that an HMO is operating in breach of license conditions, or where it is suspected there has been a breach of HMO Management Regulations. Similarly, when dealing with Statutory Nuisances, the Council has a right of entry to land or premises at any reasonable time. In the case of residential premises 24 hours-notice of entry will be issued if the occupier refuses or is likely to refuse entry.
- 2.8 Where access to a property is required by the Council to undertake a housing standards inspection but a landlord refuses permission or where access is denied the Council may apply to the Courts for a warrant to ensure admission, by force if necessary.
- 2.9 The Council receives a number of requests for housing standards inspections from households on the housing waiting list who are seeking additional priority due to the condition of their accommodation. In these instances it is anticipated inspections and home visits will be undertaken either by Yorkshire Coast Homes (who administer the Council's allocation scheme) or by the Council's own Housing Options Service. Generally an inspection from an Environmental Health Officer will only be required where the member of staff (either from YCH or the Council's Housing Options team) has concerns that the property may present a risk to the occupiers or visitors and requests an inspection, or where there is a history of poor management practice from the landlord or disrepair issues within the property.
- 2.10 In addition to undertaking reactive inspections, triggered by a complaint, the Council also reserves the right to undertake planned proactive inspections. These include inspections of property owned by landlords who have a history of poor management practice. In addition inspections are carried out in licensed Houses in Multiple Occupation (HMOs) to check compliance against licence conditions.
- 2.11 The majority of inspections undertaken by the Council are carried out in accordance with our duties under **Part 1 of the Housing Act 2004** using the Housing Health and Safety Rating System (HHSRS). The HHSRS is a system for assessing the health and safety risks in dwellings. The inspection is comprehensive as it checks for a wide range of potential hazards including fire safety, excess cold, damp and electrical safety.
- 2.12 Following the inspection of a dwelling the surveyor is required to risk rate any of the hazards identified. Hazard scores fall into one of two broad categories: Category 1 or Category 2 hazards. Category 1 hazards are more serious and the local authority must take enforcement action. Category 2 hazards are generally less serious and the Council has discretion as to whether enforcement action should be instigated.
- 2.13 In addition to undertaking an HHSRS survey, the inspecting officer will also look at wider issues, particularly in relation to the standard of management practices and where applicable compliance against **HMO Management Regulations**. Many properties within the Borough are defined as being

HMOs. These include HMOs that fall within the Council's Mandatory and Additional Licensing schemes as well as properties that whilst not requiring a Licence to operate are still classed as being HMOs. These include converted blocks of self-contained flats, defined under s257 of the Act that do not comply with the 1991 or later Building Regulations). These properties are subject to a different set of management regulations. Details of both the Council's Licensing Schemes and the rules regarding HMOs that fall within s257 of the Act are available separately at [www.scarborough.gov.uk](http://www.scarborough.gov.uk).

- 2.14 Inspecting officers also have a much wider range of powers at their disposal including powers under the **Environmental Protection Act 1990** to deal with statutory nuisance (such as problems with rubbish accumulations, drainage issue and filthy and verminous properties); powers under the **Town and Country Planning Act 1990** to deal with properties whose appearance is detrimental to the amenity of an area and powers under the **Building Act 1984** to deal with drainage problems as well as dangerous or dilapidated buildings and structures.
- 2.15 The Council works in very close partnership with North Yorkshire Fire and Rescue Service. The Fire Service also has a number of duties and powers in relation to residential properties and enforces the **Regulatory Reform (Fire Safety) Order 2005**. This Order requires 'the responsible person' to carry out a fire safety risk assessment and put in place necessary controls, in any properties with communal areas. As both the Council and the Fire Authority have legal duties in this area we have an agreed joint protocol with them to ensure effective joint working arrangements locally. This protocol includes both receiving and referring matters between both authorities, undertaking joint inspections where needed and consulting with them on matters relating to Fire Safety.
- 2.16 In addition to undertaking joint inspections with the Fire Service, the Council also reserves the right to undertake joint inspections with other agencies where required. These could include the Police or the Community Safety team where there are wider issues concerning crime or anti-social behaviour or the Social Services Authority where there are safeguarding concerns.

### **3.0 How does the Council deal with Housing issues identified?**

- 3.1 On completion of a housing standards inspection, where issues are identified by the Council, be they 'hazards' under HHSRS, breaches of Management Regulations or wider issues, landlords shall generally be notified in writing of the issues, advised what they need to do to resolve them and given a reasonable period of time in which to do so. This notification could be provided in the form of a Hazard Awareness Notice or via a letter or e-mail. Landlords shall be advised of the consequences of not complying with the works required and asked to confirm that they are prepared to undertake the work needed within the time specified.
- 3.2 In relation to hazards identified under HHSRS, the Council must ensure that action is taken by landlords to resolve the most serious (category one hazards). In addition however the Council will generally also require landlords to reduce category two hazards to an acceptable level.

- 3.3 Where works are being recommended to resolve issues identified, officers will have regard to relevant guidance. For example in relation to fire safety matters, the Council uses LACORS Guidance to help provide the baseline in terms of the level of works required.
- 3.4 Whilst the Council will recommend to landlords the work required to resolve issues identified, the responsibility to ensure works are undertaken to a satisfactory standard sits wholly with the landlord. The Council does not have the capacity to provide on-going advice or support to landlords to help them bring properties up to a certain standard. The onus sits with the landlord to ensure that all works are undertaken by competent tradesman to a suitable standard. It is also the responsibility of a landlord to ensure that any wider regulations (such as matters relating to Building Control or planning issues are met). Where specialist advice is needed it is anticipated that landlords will source this directly. The Council cannot provide this service. Similarly it is wholly the responsibility of landlords to ensure that adequate management arrangements are in place.
- 3.5 At the end of the time period given to complete housing works the Council will check they have been completed and that the hazards identified have been resolved. This check could be in the form of a further inspection or via contacting the complainant or seeking other proof of completion.
- 3.6 It is anticipated that the majority of housing complaints dealt with by the Council shall be resolved through this initial action. However in certain circumstances the Council may need to resort to more formal action to resolve the issues.
- 3.7 Formal action will be considered where the initial approach has not been successful in ensuring compliance or in situations where there the hazards identified present an imminent risk to health and safety of the occupants or visitors to a property.
- 3.8 In addition the Council reserves the right to commence formal action from the outset where a landlord has a history of poor management practices and or non-compliance and where we lack confidence in the landlord to resolve the issues identified.
- 3.9 Formal action usually consists of one or more of the following:-
- Service of appropriate statutory Notice.
  - Prohibition including Emergency Prohibition where required.
  - Undertaking Emergency Remedial Action
  - Issuing formal cautions.
  - Making management orders
  - Prosecution.
  - Issuing fines as an alternative to prosecution.
  - Undertaking works in default.
  - Issuing civil penalties.
  - Rent repayment orders

- 3.10 Where the Council does resort to the use of formal action, landlords shall always be notified of their rights of appeal. The majority of appeals regarding housing matters are heard through the Upper Tier Tribunal service however procedures may vary depending on the powers being used.
- 3.11 Where the Council does resort to formal enforcement action it makes charges against landlords and property owners to cover its expenses. A Notice of Demand for Recovery of Expenses is served. All outstanding charges remain as land charges and accrue interest until paid in full.
- 3.12 The level of charge is calculated based on the amount of officer time taken up in dealing with the matter. An average hourly rate of £45 is charged.
- 3.13 In exceptional circumstances the Council may choose not to charge for a Notice or rescind a request for payment. A person given a demand for expenses can make a request in writing Director outlining the reasons as to why they believe they should not pay.

#### **4.0 How does the Council deal with Environmental issues identified?**

- 4.1 On completion of an environmental inspection or investigation the Council will contact the person responsible for the nuisance or owner of the land or premises in question in writing of the issues, advise what they need to do to resolve them and give a reasonable period of time in which to do so. This notification could be provided in the form of a Notice (statutory nuisances, drainage defects etc.) or via a letter or e-mail. Those responsible and/or the owner of the land or premises affected shall be advised of the consequences of not complying with the Notice or undertaking the works required.
- 4.2 Whilst the Council may make recommendations in relation to the abatement of any nuisance or other environmental concerns, the responsibility to ensure works undertaken achieve compliance rests with the responsible person/s. The Council does not have the capacity to provide on-going advice or support to achieve compliance with any Notice or request for action.
- 4.5 At the end of the time period given to achieve compliance the Council will check that compliance has been achieved and the matter resolved. This check could be in the form of a further inspection or via contacting the complainant or seeking other proof of compliance.
- 4.6 It is anticipated that the majority of environmental complaints dealt with by the Council shall be resolved through this initial action. However in certain circumstances the Council may need to resort to more formal action to resolve the issues.
- 4.7 Formal action will be considered where the initial approach has not been successful in ensuring compliance or in situations where there the nuisance identified presents an imminent risk to health or a serious environmental concern.
- 4.8 In addition the Council reserves the right to commence formal action from the outset where there is a history of non-compliance or where a clear statutory nuisance is identified. Prosecution will be considered in the event of non-compliance with a Notice.

- 4.9 Formal action usually consists of one or more of the following:-
- Service of appropriate statutory Notice.
  - Undertaking remedial action in relation to litter and waste (Public Health Act 1936 Section 78)
  - Issuing formal cautions.
  - Prosecution.
  - Issuing Fixed Penalty Fines as an alternative to prosecution.
  - Undertaking works in default
- 4.10 Where the Council does resort to the use of formal action, person/s responsible shall always be notified of their rights of appeal. Appeals are usually heard at the Magistrates Court.
- 4.11 Where the Council does resort to works in default it will take action to recover its expenses. All outstanding charges remain as land charges and accrue interest until paid in full.
- 4.12 The Council receives a large number of complaints regarding drainage problems. In the majority of instances these were referred to Yorkshire Water. Yorkshire Water deal with all drainage matters outside the curtilage of premises or where drainage is “shared”. Similarly blocked drains within the curtilage of premises are the responsibility of the property owner or landlord.
- 4.13 The Council shall only become involved in a drainage issue where there is a risk to public health, for example a problem with sewage discharging into a public area or sewage discharging into a neighbouring property and where the responsible person is not taking action to resolve the issue. In these instances the Council will investigate to find the cause of the issue and where the responsibility to resolve it lies. Any enforcement action required against the owner of affected premises will follow the steps outlined above.
- 4.14 Where the Council is required to undertake an investigative survey to determine the cause and location of blocked drains any costs incurred shall be recharged to the responsible person.

## **5.0 Prosecution and Civil Penalties**

- 5.1 The following circumstances are likely to warrant prosecution:-
- Where there is a failure to comply in full or part with statutory notices;
  - Where there is a failure to comply with HMO licence conditions;
  - Where the owner of a licensable HMO fails to obtain a licence;
  - Where there is a failure to comply with the HMO Management Regulations;
  - Cases of illegal eviction and/or harassment;
- 5.2 The **Housing and Planning Act 2016** gives the Council the option of imposing fines against landlords for a number of offences as an alternative to prosecution. These offences may include failure to comply with an improvement notice or less serious management offences.
- 5.4 Consideration of whether to prosecute or whether to impose a fine for any offence will be based on the Code for Crown Prosecution Guidance.

## **6.0 Variations in approach because of tenure**

- 6.1 The Council's enforcement powers relate to all housing regardless of tenure however the Council will vary its approach depending on the tenure of the household.
- 6.2 The Council considers that owner occupiers are usually in a position to make informed decisions concerning maintenance or safety issues to properties that they own and reside in. We would generally consider such properties a lower risk and only inspect where there is the likelihood of a serious risk to the health and safety of occupants or the wider public. Where hazards are identified within owner occupied properties we will generally deal with these through the service of a Hazard Awareness Notice.
- 6.3 When notified of potential hazards within the common parts of blocks of flats that are wholly made up of owner occupiers, the Council will not generally inspect unless there is a likelihood of a serious risk to the health and safety of occupants or the wider public. The Council does not have the capacity to become involved in disputes between different home owners with regard to required works in the common parts of such blocks of flats or to use its enforcement powers to make reluctant home owners undertake works. In these instances the Council will advise different owner occupiers of their obligations but will rarely inspect or intervene unless there is the likelihood of category one hazards being present.
- 6.4 Tenants within rented accommodation do not have the same level of control that owner occupiers benefit from. They are reliant on landlords to adequately maintain their homes. The Council is more likely to take enforcement action where needed against landlords who are putting the health and safety of their tenants at risk. In relation to the common parts of blocks of flats that are made up of a combination of home owners and private tenants the Council will where required use its enforcement powers against both home owners and landlords in order to resolve identified hazards.
- 6.5 The Council also varies its approach in relation to the way complaints from tenants from Registered Providers (RPs) are handled. RPs must provide suitable and properly maintained accommodation for their tenants. They have their own Regulatory Code they must adhere to and their performance is scrutinised by the Homes and Communities Agency and the Housing Ombudsman.
- 6.6 RPs employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service-failure. Homes must meet decent homes standards and be free of hazards.
- 6.7 Because of the additional regulation placed on them, RP properties are generally deemed to be lower risk by the Council. The Council will not normally undertake inspections of RP properties unless there is the likelihood of an imminent risk to the health and safety of tenants and the wider public. Where complaints from RP tenants are received we will generally refer that complaint to the RP and advise the tenant of their rights and how to complain.

6.8 Where RPs do not deal with the complaint or respond to our referral we may inspect and use our enforcement powers.

## **7.0 Illegal Eviction and Harassment**

7.1 Under the **Protection from Eviction Act 1977**, the Council has powers to investigate allegations of illegal eviction and harassment. Decisions to prosecute will be determined in accordance with the criteria set down in the Code of Conduct for Crown Prosecutors.

7.2 Referrals may be made in certain circumstances to the local Police who will review the circumstances when taking a prosecution for other related factors that might include theft of residential occupier's belongings, criminal damage, assault or protection from harassment.

## **8.0 Empty Homes and Enforced sale**

8.1 The Council has an adopted strategy that is aimed at reducing the number of empty homes within the Borough. That strategy includes a range of discretionary measures undertaken by the Council in order to help landlords and home owners bring properties back into use.

8.2 There are occasions however where empty homes have a detrimental impact, either because they are in a poor state of repair, are dilapidated or are attracting anti-social behaviour. In these instances, where homes have been vacant for lengthy periods and where the owners are persons responsible for maintaining the buildings and are not taking the necessary action needed to either improve their appearance or bring them back into use, the Council will consider using the enforcement powers available to it. Typically this would be via the service of an improvement or abatement notice.

8.3 Where owners do not undertake required works themselves and the Council undertake works in default a charge against the property shall be levied. This charge shall include both the costs of the work undertaken and the Council's reasonable costs in relation to the Service of any Notice

8.4 Where a debt has been registered as a Local Land Charge against a property, enforced sale enables the Council to convert the charge to a substantive charge registered with the Land Registry. This allows the Council to sell or force the property to be sold in order to recover these charges.

8.5 Prior to sale, the owner is given the opportunity to repay the debt. If the debt is not repaid within a specified period of time, the Council can serve a demand for the debt to exercise a power of sale, then the property will normally be sold by the council at auction. Alternatively, the owner may be forced to sell the property themselves. On the sale of the property all debts owed to the Council (including officer time) are repaid and the balance of the sale is then made available for the owner to claim. Any unclaimed money is paid to the court.

8.6 The power shall only be used by the Council where:

- The property is an empty home.

- It has been empty for two years or more.
- The owner has demonstrated a failure to deal with the property's conditions.
- The Council has had to resort to the service of a statutory enforcement notice or notices(s) to tackle the problems associated with the property.
- The owner of the property has failed to comply with the requirements of that notice and the Council have undertaken works in default.
- Where works have been undertaken in default, the statutory notice served allows for a charge to be registered against property as a Local Land Charge.
- A minimum debt of £500 will have been registered
- That debt is less than 12 years old.
- The owner has been given reasonable opportunity to repay the debt

## **9.0 Smoke and Carbon Monoxide Alarms**

- 9.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 place legal requirements on all landlords to ensure that smoke alarms are fitted within properties (one per story on which there is a room used wholly or partly as living accommodation) and that these alarms are checked and in working order when new tenancies begin. The same regulations require Carbon Monoxide Alarms to be fitted where solid fuel appliances are present.
- 9.2 Where the Council has reasonable grounds for believing that these regulations are being breached the Council shall serve on the landlord a Remedial Notice detailing the actions that must be taken to comply with the Regulations.
- 9.3 If after 28 days, the Notice has not been complied with, then a Penalty Charge will be levied by means of a Penalty Charge Notice on the landlord.
- 9.4 Under the Regulations, penalty charges levied will cover the cost of all works in default, officer time, recovery costs, administration fee and a penalty up to a maximum of £5000.
- 9.5 It is the Council's view that the provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on landlord, and the lack of compliance directly impacts the safety and security of tenants, especially those that are vulnerable and those with families.
- 9.6 It is the Council's policy therefore to fine the maximum of £5,000 for any initial non-compliance of a Remedial Action Notice. This is the standard amount charged in line with the legislation, a discount of 50% is offered on payment within 14 days of the charge being issued. This discount shall not apply when:
- The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
  - The person / company has previously received a penalty charge under this legislation;

- 9.8 The discount shall also only apply to the first non-compliance if a number of remedial notices have been served covering a number of premises under the persons / company control.
- 9.9 The landlord has a right to seek a review of the penalty charge notice by writing to the Council within 28 days of the Notice being issued.
- 9.10 On consideration of any representation and evidence, the penalty charge notice can be confirmed, varied or withdrawn. This decision is confirmed by issuing a decision notice on the landlord. If varied or confirmed, the notice shall state a further appeal can be made to the First-tier Tribunal and details given.

## **10.0 High Hedges**

- 10.1 The council has the power, under the Anti-Social Behaviour Act 2003 and the High Hedges Regulations 2005, to deal with complaints about high hedges which affect residential properties
- 10.2 The legislation in relation to high hedges is limited to evergreen hedges in excess of 2m which are causing severe light loss to a residential property. If these criteria are met then the complainant may decide to apply for a formal high hedges investigation by the Council. There is a charge for this service with a reduced fee for those in receipt of benefits.
- 10.3 The Council will take no action unless the appropriate information is submitted and the relevant fee paid. If the information is received and the fee paid an assessment will be undertaken using the appropriate published guidance. If the criteria for formal action are not met then the applicant will be advised and no further action taken. If the criteria are met then the Council will serve the appropriate formal Notice.
- 10.4 The Council does not have the capacity to act as a mediator between neighbours regarding disputes concerning the height of hedges. In addition the Council will only become involved under the above legislation where it is clear that all reasonable steps have been taken to resolve the dispute.