



Private Sector Housing Group:

Enforcement Policy

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1. Introduction

- 1.1. In general any enforcement action will be taken in line with the principles of good enforcement outlined in the Enforcement Concordat, a copy of which can be viewed on the Cabinet Office website; <http://www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf>
- 1.2. This policy together with a set of procedures for staff contain information on how the enforcement tools, provided by the Housing Act 2004 and general public health legislation, can be used fairly and consistently to achieve improvement to housing, health and the environment in the Borough.
- 1.3. An opportunity will be given to small landlord businesses to be self regulating, where ever possible and to put things right when things go wrong. We will therefore focus our enforcement activity where this self regulation fails.
- 1.4. The Council expects landlords to support their tenancies throughout any enforcement action and if the tenant leaves the property enforcement action will continue until the property is brought up to a satisfactory condition.
- 1.5. Where a prosecution is taken officers/legal will in most cases request the Court to consider a compensation claim on behalf of the tenant if the prosecution is successful. The Council will inform the defendant if they are intending to do this prior to the Court hearing.
- 1.6. The Council will use its full range of financial powers to influence the professionalization of private landlord services, including procurement of properties for private sector leasing and bond scheme.

2. How do we decide what to inspect or investigate?

- 2.1 We will target our programmed, routine and reactive inspections on those premises, nuisances and other public health matters that are statutory requirements and/or present the greatest risk to occupiers, neighbours and the public. Vacant properties and sites will be identified and dealt with in the context of Newham's Empty Property Strategy
- 2.2 We have a service charter which explains how and when we aim to respond to complaints. Some categories of complaints are urgent and will receive an urgent response (within 24 hours).
- 2.3 **Leaseholder complaints:** The Private Sector Housing Group often receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. Private Sector Housing Group this assistance will be limited to;
 - Contraventions of the Management regulations (this may necessitate action being taken against the leaseholder themselves)
 - Category 1 and high Category 2 hazards where the leasehold flat is tenanted.
 - Statutory nuisances

In all other situations the leaseholder will be redirected to;

- The Leasehold Advisory Service - 31 Worship Street, London E2CA 2DX, telephone 020 7374 5380 info@lease-advice.org.uk
- Advised to contact a solicitor who specialises in leasehold law

3. General Enforcement Policy

- 3.1. This policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing and environmental standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from Council officers.
- 3.2. It is recognised that there may be circumstances where shared or complimentary enforcement action may be taken with other agencies. In these cases, regard shall be taken of policies and procedures of those agencies, and where ever possible enforcement activity will be co-ordinated and complimentary.
- 3.3. The three main principles are;
 - Consistency
 - Proportionality
 - Openness
- 3.4. **Consistency:** means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, the history of compliance and the attitude and actions of those involved.
- 3.5. **Proportionality:** means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.
- 3.6. **Openness:** means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements and advice or guidance.
- 3.7. The Council regards enforcement as encompassing all the actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful there will be cases where formal action will be necessary, which may ultimately lead to prosecution or other summary action.
- 3.8. There may be circumstances, such as when there is an imminent risk to health, where it may be necessary to take formal action in the first instance.

Table 1: Enforcement Options

Action	Circumstances
1. No action	<ul style="list-style-type: none"> Complaints or allegations of housing legislation or statutory nuisances are unsubstantiated Formal action is inappropriate in the circumstances
2. Verbal advice	<ul style="list-style-type: none"> There is insufficient evidence of breaches Immediate action is taken to comply with failures
3. Informal letters	<ul style="list-style-type: none"> Past history of dealing with the relevant parties allows confidence that informal action will achieve compliance Conditions are not serious enough to justify formal action To notify the responsible person that action is required prior to taking formal action
4. Advisory notices e.g. minded to	<ul style="list-style-type: none"> The conditions are serious enough to justify formal action Opportunity given to landlords and tenants to make representations
5. Formal notices	<ul style="list-style-type: none"> There are significant failures of statutory requirements There is a lack of confidence in the individual or management i.e. the willingness to respond to an informal approach There is obstruction or assault There is a history of non compliance The Council is required to serve a statutory notice The defect presents an imminent risk to health
6. Works in Default - Emergency remedial action	<ul style="list-style-type: none"> There is an imminent risk to health and safety to the public Prosecution would not adequately protect the public interest
7. Works in Default – non-compliance with a notice	<ul style="list-style-type: none"> We may choose to carry out works required by a notice if they have not been completed within the permitted time. This may be taken in conjunction or followed with a prosecution
8. Formal (Simple) Caution	<ul style="list-style-type: none"> Where a prosecution is determined not to be in the public interest
9. Revocation of licenses and approvals	<ul style="list-style-type: none"> Manager is not a 'fit and proper person'
10. Prosecution	<ul style="list-style-type: none"> There is sufficient and reliable evidence that an offence has been committed There is a realistic prospect of conviction The prosecution is in the public interest

3.9. To ensure consistency and adherence to the enforcement policy there are internal procedures in place for all cases to be monitored and reviewed.

3.10. Where formal action is required officers will provide;

- Clear information and advice to all relevant parties
- Ensure an opportunity is given to discuss what is required before formal action is taken (unless urgent action is required)

- Advise the relevant parties of the named officer responsible for dealing with their case.
 - Give written explanation of any rights of appeal at the time the notice is served
 - Notify the relevant parties about any financial charge that the Council may apply and seek to recover as part of the enforcement process
- 3.11. **Complaint:** In the event that an individual or company is not satisfied with the service or if you do not agree with the action taken by the investigating officer, you should first contact the Team Manager of the officer's Section. If this does not resolve your complaint the Council also has a formal complaints system, please contact:-

**Head of Housing & Public Protection:
Newham Dockside
3rd Floor West Wing
Dockside Road
E16 2QU**

- 3.12 This policy will be monitored and reviewed annually by the private sector housing management team.

4. Charging

- 4.1 There will be a charge for Notices served under the Housing Act 2004, excluding management regulations.
- 4.2 The Housing Act 2004, s49: *Power to charge for certain enforcement action* and section 50: *recovery of charge under s49* permits the Council to charge and recover expenses incurred in respect of certain enforcement action exercised under Chapter 5, Part 1 of the Act.
- 4.3 These include improvement notices (sections 11 & 12), prohibition and emergency prohibition orders (sections 20, 21 and 43), emergency remedial action (section 40) and demolition orders (sec 265, Housing Act 1985).
- 4.4 The London Borough of Newham will charge up to **£350** if formal action is required under the Housing Act 2004. Additional activities are to be charged at a rate of **£25.00 per hour**. This charge may be waived if the landlord makes representations and agrees the extent of the works and timescales prior to the service of the notice. If there is an appeal against the Notice then the charge will not be applied until the appeal is resolved and if the notice is upheld.

5. Publicity

- 5.1 Media coverage will normally be sought in the following cases:-
- The offence is widespread in the area and coverage will assist in securing compliance by others;
 - To draw attention to particular serious hazards;

- The offence is serious and/or was committed wilfully and the Council wishes to draw attention to their willingness to take a hard line in such cases.
- Coverage is otherwise in the public interest;
- A press release will also be issued about convictions where it is considered that publicity will bring in benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors, as well as the boroughs environment.

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