

**ISLE OF WIGHT COUNCIL**

**HOUSING AND COMMUNITY SUPPORT SERVICES**

**HOUSING RENEWAL SECTION**

**ENFORCEMENT POLICY**

**(INCLUDING RESIDENTIAL HOUSING, HMO'S (STANDARDS AND LICENSING),  
EMPTY AND UNSECURE PROPERTIES AND PRIVATE DRAINAGE)**

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## PREFACE

This document is the update to the review of the existing policy, and has been made due to the many changes that the field of Housing enforcement has seen in the recent years.

In addition to the statutory changes, the Isle of Wight Council has introduced a new Housing Strategy for 2007-2012, which also reflects the changing demands on the Island's housing and the need to improve the quality of rented accommodation and aspire to the Government's Decent Homes targets.

This document incorporates the 'Enforcement Concordat' (see Appendix) and should be read in conjunction with any other document that may be appropriate.

## 1.0 INTRODUCTION

The Housing Renewal Section is part of Housing and Community Support Services, which is part of the Directorate of Community Services of the Isle of Wight Council.

The aim of the Section's work is to raise the standard of private sector housing conditions, improving home safety, bring empty properties back into use and to intervene where private drainage is causing a nuisance. In doing so, the Section helps to achieve the vision of the Authority which is "a progressive island built on economic success, high standards and aspirations and a better quality of life for all", as well as the following Council Corporate Objectives: -

- Driving the sustainable regeneration and development of the Island
- Improving the health and well-being of Island communities
- Creating safer and stronger communities
- Improving outcomes for children and young people
- A high performing cost effective Council

One method by which the Housing Renewal Section achieves this aim is by the appropriate use of enforcement. Enforcement action can be taken against landlords and owner-occupiers alike.

The Housing Renewal Section carries out enforcement intervention by responding both **reactively** and **proactively**.

In the case of **reactive** work, the Section will respond to:

- Tenants of private landlords and Housing Associations who contact the Council complaining about conditions in the properties they live in.

- Complaints about properties that are causing problems for neighbouring occupiers where appropriate and applicable within the remit of the Housing Section.
- Complaints about unsatisfactory individual residential caravans.
- Enquiries regarding empty and unsecured property for residential purposes.
- Enquiries to survey and report on property conditions in relation to immigration requests.
- Complaints about unsatisfactory drainage.
- Requests to License a HMO.

**Proactively, we will**

- Seek to identify houses in multiple occupation (HMO's) by carrying out surveys of the district
- Carry out a programme of inspections of HMO's.
- Inform and advise private landlords on matters relating to housing standards
- Seek to identify empty properties and return to occupancy
- Generally monitor our area whilst out on site visits

We will ensure that all appropriate enforcement officers are empowered to undertake their duties by means of authorisation from Delegated Powers, in the form of a written statement.

## **2.0 PRINCIPLES OF GOOD ENFORCEMENT**

We consider the following principles as the basis for good enforcement.

### **OPENNESS**

- If language barriers or access to service problems exist we will endeavour to provide assistance to remove and/or reduce the barriers to achieve the required results.
- We will provide information and give advice in plain language and, as far as possible, avoid jargon. If the information is of a legal nature we will be willing to discuss its meaning and advise the customer of where they can obtain their own legal advice if necessary.
- We will be open about how we do our work.
- We will always discuss general issues, specific failures or problems with anyone who has been enforced against.
- We will seek to ensure that people understand what is expected from them as well as knowing what they can expect from us.

### **HELPFULNESS**

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

- We will always provide a contact point and telephone number for further dealings with Officers.

## **PROPORTIONALITY**

Where we can, we will endeavour to minimise the costs of compliance with enforcement action by ensuring the action we take is proportionate to the risks. We will work with property owners if requested so that they can meet their legal obligations without unnecessary expense.

Similarly, any sanctions we impose will take account of the seriousness of the offence.

## **CONSISTENCY AND FAIRNESS**

Officers will carry out their duties in a fair and consistent manner. To this end, we will develop, put in place and publish procedures for the range of enforcement activities we carry out and ensure that Officers follow such procedures.

Although Officers have to exercise judgement in individual cases, we will endeavour to see that procedures wherever possible are the same and people are treated fairly.

## **PROVISION FOR CONSUMERS AND STAKEHOLDERS**

The enforcement duties of the Housing Renewal Section are usually carried out during normal weekday office hours. The Council also has an 'out of hours' telephone number for reporting housing matters which would normally be dealt with the next working day. However there is an officer(s) available for advice if required in an emergency in relation to drainage matters. This service is currently accessed via the Wightcare service, telephone number 821105.

## **HUMAN RIGHTS AND DIVERSITY IMPACT**

The Housing Renewal Section will have due regard to the relevant Human Rights and diversity issues in the carrying out of its duties. Further to this we will ensure that no actions will result in the discrimination of any group or individual.

When contracting out our services we will ensure that the contractor either has their own satisfactory policy, or they are willing to adopt the Council policy.

### **3.0 IDENTIFYING THE NEED FOR ACTION, LEGISLATION AND ENFORCEMENT**

This chapter lists the legislation commonly used by the Housing Renewal Section and outlines the provisions. It is not exhaustive but is the legislation that is most in use. It should also be noted that this is not a definitive interpretation of the legislation and does not provide a full statement of the law - it is simply a summary.

In line with the enforcement concordat we seek to provide a service with standards, openness, helpfulness, have access to a complaints procedure, be proportionate in our undertakings and consistent in approach.

By exercising its powers of delegation, the Council has authorised the Housing Renewal Manager to carry out enforcement action and to progress the imposition of sanctions on its behalf, and for the Housing Renewal and Empty Property Officers to prepare enforcement cases by intervention, investigation, and the collection of evidence, and to then administer the undertaking of the Authority's work in default, or in agreement, within its legal powers.

#### **3.0.1. INFORMAL AND FORMAL ACTION**

All enforcement intervention is carried out to the principles of the Enforcement Concordat. To this end procedures are in place to ascertain the seriousness of the matter in question (see Housing Enforcement Service Request eform guidance, in Appendix), and where possible informal communications will always be attempted with the person(s) responsible. This may not always be achievable depending on the seriousness of the matter and the availability of the person(s) responsible.

In the case of Housing Associations (HA) informal working is preferable to resorting to formal enforcement measures where the HA has a timetable for achieving the decent homes standard. However, occupiers should not be left for long periods in unsafe housing. We will always contact a HA by telephone initially and back this up with email or letter correspondence.

The Local Authority is not prevented from taking immediate action in any case where such action appears necessary.

**Informal action** will include verbal advice given by Officers and advisory letters.

The Housing Renewal Section has a number of information leaflets and booklets for tenants and landlords, and people suffering drainage nuisance advising them on their rights and obligations. These are available at no cost from the Council Offices.

In considering the representations made by the recipient of advisory letters, consideration will be given to the track record (if any) of the person (or company). In particular, Officers will consider whether any Notices (either informal or formal) have had to be served in the past, the recipient's response to them and the ability and willingness of the recipient to keep to agreed timetables of work.

Informal action will usually result from any service request automatically if deficiencies or a nuisance exist, however it should be noted that it is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken straight away, or the situation is so hazardous that immediate action is required.

**Formal action** involves the serving of Notices or prosecuting individuals. Most Notices served by the Housing Renewal Section require the recipient of the Notice to commence and complete specified works within specified time limits.

All Notices have notes with them that explain the effect of the Notice and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the Notice and the reason for the service of the Notice and will advise where the recipient(s) of the notice should obtain their own legal advice.

The decision to take formal action (except in cases involving Empty or Unsecured Properties) will be made by the Housing Renewal Manager in conjunction with the Senior Housing Renewal Officer and the case officer together with any specialist advice that may be considered necessary. Consideration must be given to the extent of any Delegated Powers given to any officer.

### **3.0.2. GUIDANCE AND STRATEGY**

Any intervention will have regard to any relevant statutory powers, strategy, protocol, partnering agreements or guidance, specifically but not limited to;

- Housing Strategy 2007-2012,
- HHSRS Operating Guidance,
- HHSRS Enforcement Guidance,
- A Decent Home: Definition and guidance for implementation June 2006 – update,
- Isle of Wight Council Empty Property Strategy 2007,
- The Management of House in Multiple Occupation (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007
- The Isle of Wight Council Houses in Multiple Occupation Space Guidelines and Amenity and Facility Guidelines,
- UK statutory Instruments 367-373
- Fire Safety Risk Assessment guidance publications following the Regulatory Reform (Fire Safety) Order 2005,
- The Protocol between the Isle of Wight Fire and Rescue Service and the Local Housing Authority.
- Civil Procedure Rules
- Criminal Procedure Rules
- Statutory duty under the Housing Act 1985 to be aware of the housing needs of the residents of the district and produce a Housing Strategy to address those needs
- Statutory duty under the Housing Act 1996 (as amended by the Homelessness Act 2002) to provide Homelessness Service

- Statutory duty under the Housing Act 1996 (as amended by the Homelessness Act 2002) to provide a homelessness prevention service which gives free advice to the user
- Various Statutory duties covering drainage nuisance including:
  - Public Health Act 1936
  - Public Health Act 1961
  - Local Government (Miscellaneous Provisions) Act 1976 and 1982
  - Building Act 1984
  - Environmental Protection Act 1990
  - Water Industry Act 1991
- LACORS, and other professional standards organisations such as Chartered Institute of Environmental Health, Royal Institution of Chartered Surveyors, Chartered Institute of Housing.

### **3.1.1. HOUSING ENFORCEMENT INCLUDING BOTH THE RENTED AND OWNER OCCUPIER TENURE**

The repealed Housing Act 1985 used to refer to 'unfitness'. The term 'unfitness' no longer exists in respect to housing enforcement and has been replaced by a system that focuses on, and assesses *potential hazards*. This new method is referred to as the Housing Health and Safety Rating System (HHSRS), and provides the underlying principle that –

*'Any residential premises should provide a safe and healthy environment for any potential occupier or visitor'.*

The role of the Housing Renewal Officer is to identify deficiencies that lead to hazards that exist on a property, and rate the severity of the hazards, taking into account the judged 'likelihood' of a hazard occurring, and what 'outcome' could occur. A hazard 'score' is produced which falls into one of a range of 'bands'. Category 1 hazards fall into bands A to C, and Category 2 hazards fall into bands D to J.

Statute requires that where the Council consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to that hazard. "appropriate enforcement action" means taking one of the following courses of action:

- a) Serving an improvement notice,
- b) Making a prohibition order,
- c) Serving a hazard awareness notice,
- d) Taking emergency remedial action,
- e) Making an emergency prohibition order,
- f) Making a demolition order,
- g) Declaring the area in which the premises is situated a clearance area.

By undertaking a course of action as above the Council may also take the same course of action again, or some other course of action, if it is considered that the action taken so far has not proved satisfactory.

Where a category 2 hazard exists the Council have the discretion to take action, it is not mandatory. The courses of action open to the Council in respect to category 2 hazards are:

- a) Serving an improvement notice,
- b) Making a prohibition order,
- c) Serving a hazard awareness notice,
- d) Making a demolition order,
- e) Declaring the area in which the premises is situated a clearance area.

By undertaking a course of action as above the Council may also take the same course of action again, or some other course of action, if it is considered that the action taken so far has not proved satisfactory.

The following is a summary of the courses of action that may be considered.



### **Section 11- improvement notice for Category 1 hazards**

A Notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice. It may require remedial action to any part the dwelling or HMO, and even any part of the building if it is a flat or flats with or without common areas (with conditions, see S.11(4)). The remedial action required must, as a minimum, ensure the hazard ceases to be a category 1 hazard, but may extend beyond such action. The notice can relate to more than one category 1 hazard. The improvement notice can be suspended. Remedial action can be the carrying out of work or otherwise which removes or reduces the hazard accordingly.

### **Section 12- improvement notice for Category 2 hazards**

A Notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice. It may require remedial action to any part the dwelling or HMO, and even any part of the building if it is a flat or flats with or without common areas (with conditions, see S.11(4)). The notice can relate to more than one category 2 hazard, and possibly also include remedial action in relation to both categories of hazard. The improvement notice can be suspended. Remedial action can be the carrying out of work or otherwise which reduces the hazard accordingly.

Improvement notices generally become operative 21 days after the day it is served beginning on the day of service. Appeal can be made to the residential property tribunal (RPT) within 21 days, or 28 days in respect to a decision relating to variation or revocation of improvement notices. The RPT may allow an appeal out of time if there is good reason.

The Council can undertake the action required by the notice either with or without the agreement of the person served, and will recover all reasonable expenses from the relevant person. The Council have the authority to also charge interest on the expenses. Improvement notices can be suspended, varied or revoked.

### **Persons to be served with Improvement Notices**

The person who is to be served with an improvement notice depends upon the nature of the residential premises;

- a) **Licensed dwellings and HMO's** – service is on the licensee.
- b) **Dwellings and HMO's which are not flats** – service on the person having control of the dwelling or HMO, or in the case of a HMO the person managing it. 'Person having control' and 'person managing' is defined in S.263 Housing Act 2004.
- c) **Flats** – service on the owner of the flat or HMO who in the opinion of the Council ought to take the specified action, or in the case of a HMO the person managing it.
- d) **Common parts** – service on the owner who in the opinion of the Council ought to take the specified action. The Council must also serve a copy of the notice on every other person who, to our knowledge is a freeholder, mortgagee or lessee of the premises, or is an occupier of them. Copies must be served within 7 days.

Where a notice is revoked or varied copies must also be served in the same way the original notice is copied.

### **Section 30 – offence of failing to comply with improvement notice**

When an improvement notice becomes operative it is recorded as a local land charge. Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he or she fails to comply with it. Compliance means, in relation to each hazard, any remedial action specified in the notice is to be started not later than the date specified and completing it within the time specified. If an appeal is made such dates and periods will be decided by the appeal tribunal.

Note. The failure to comply does not have to be 'intentional' as per the repealed Housing Act 1985, a person served now commits an offence by merely not complying. The offence is summary and carries a fine not exceeding level 5 on standard scale, currently £5,000.

### **Section 31 – enforcement action by local authorities**

Schedule 3 of the Housing Act 2004 enables local authorities to undertake action with or without the agreement of the person responsible, and provides for the recovery of expenses.

#### *Action with agreement-*

The person served with the notice may agree that the authority may take the action required by the notice, in which case the authority will have all the rights which that person would have against any occupying tenant or any other person having an interest in the premises, e.g. right of entry to inspect and carry out works. Any action taken will be at the expense of the person served with the notice, and the authority will include all reasonable administration costs as well as the costs of the work.

#### *Action without agreement-*

If the notice is not complied with or, even before the date of compliance if works are not proceeding at a reasonable progress, the authority may take the action specified in the notice. In order to take the action the Council has the Power of Entry, for which an additional Notice will be served, identifying the improvement notice it relates to, the premises and hazards concerned, the intention to enter and the action that will be undertaken once entry has been gained, and the power which gives this entry provision in law. We will serve this notice on any original recipient of the improvement notice, and also serve a copy on any other occupier of the premises. Further to this we will endeavour to give reasonable notice to owners and occupiers of premises of any intention to enter, typically this will be at least 7 days, however this may not be appropriate if the need to enter is to undertake emergency works.

Once the required notice period has expired on the entry notice, it will be an offence for any person who has been served with the notice if either they, or any workmen of theirs, is in the premises to carry out any of the work at the same time at which the Council's contractors are on site, unless it can be shown that they were there to resolve any immediate danger to the occupants. The offence being one of obstruction under section 241 Housing Act 2004.

Any action taken will be at the expense of the person served with the notice, and the authority will include all reasonable administration costs as well as the costs of the work.

### **Section 20 – prohibition orders for category 1 hazards**

In effect this replaces the old closing order under the Housing Act 1985. This is a course of action the local authority may take if a category 1 hazard exists and no management order is in force. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people. The prohibition order may relate to more than one category 1 hazard in respect to the same premises.

The operation of a prohibition order may be suspended under S. 23. For appropriate situations and considerations to serve a prohibition order, see appendix.

Prohibition Orders generally become operative 28 days after the day it is served beginning on the day of service. Appeal can be made to the residential property tribunal (RPT) within 28 days.

For further guidance on Prohibition Orders see Appendix.

### **Section 21 – prohibition orders for category 2 hazards**

This is a course of action the local authority may take if a category 2 hazard exists and no management order is in force. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

The prohibition order may relate to more than one category 2 hazard in respect to the same premises. A prohibition order under this section may be combined within one document where an order under S.20 imposes prohibition on the same premises. The operation of a prohibition order may be suspended under S. 23. For appropriate situations and considerations to serve a prohibition order, see appendix.

Prohibition Orders generally become operative 28 days after the day it is served beginning on the day of service. Appeal can be made to the residential property tribunal (RPT) within 28 days.

For further guidance on Prohibition Orders see Appendix.

### **Section 32 – offence of failing to comply with prohibition order etc.**

When a prohibition order becomes operative it is recorded as a local land charge. An offence is committed by any person who knows a prohibition order has become operative, in relation to any specified premises, and he or she uses the premises in contravention of the order, or permits the premises to so be used. The offence attracts a fine not exceeding level 5 on the standard scale, currently £5,000, on summary conviction, and a further fine not exceeding £20 for every day, or part day, that the contravention exists, after conviction.

A reasonable defence for a landlord could be that notice to quit has been served on the occupiers, and before it expires the landlord tries to persuade the occupiers to leave, even if this is unsuccessful.

### **Section 43 – Emergency prohibition orders**

A course of action the authority may take if a category 1 hazard exists on any residential premises, the hazard involves an imminent risk of serious harm to the health and safety of any of the occupiers of those or any other residential premises, and no management order is in force. This order works with immediate effect. The contents details to be

provided are detailed in S.44. Apart from the speed of the notice everything else is the same as a normal prohibition order.

### **Section 28 – hazard awareness notice for category 1 hazards**

A notice advising the person on whom it is served of the existence of a category 1 hazard on the premises. The notice can relate to more than one category 1 hazard. It will state the desired remedial action, if any, which could be the carrying out of work or otherwise which removes or reduces the hazard accordingly. It does not require any action on the part of the recipient.

In making a decision to serve this notice the authority will consider that works of improvement, or prohibition of the premises, are not practical or reasonable for some reason. For appropriate situations and considerations to serve category 1 hazard awareness notices see appendix.

Hazard awareness notices must be served in the same way as improvement notices.

### **Section 29 – hazard awareness notice for category 2 hazards**

A notice advising the person on whom it is served of the existence of a category 2 hazard on the premises. The notice can relate to more than one category 2 hazard, and may be combined with a joint notice under S.28, if category 1 hazards also exist. It will state the desired remedial action, if any, which could be the carrying out of work or otherwise which removes or reduces the hazard accordingly. It does not require any action on the part of the recipient.

Such a notice is much more likely to be served in relation to this category of hazard. For appropriate situations and considerations to serve category 2 hazard awareness notices see appendix.

Hazard awareness notices must be served in the same way as improvement notices.

### **Persons to be served with Hazard Awareness Notices**

The person who is to be served with an improvement notice depends upon the nature of the residential premises;

- a) **Licensed dwellings and HMO's** – service is on the licensee.
- b) **Dwellings and HMO's which are not flats** – service on the person having control of the dwelling or HMO, or in the case of a HMO the person managing it. 'Person having control' and 'person managing' is defined in S.263 Housing Act 2004.
- c) **Flats** – service on the owner of the flat or HMO who in the opinion of the Council ought to take the specified action, or in the case of a HMO the person managing it.
- d) **Common parts** – service on the owner who in the opinion of the Council ought to take the specified action. The Council must also serve a copy of the notice on every other person who, to our knowledge is a freeholder, mortgagee or lessee of the premises, or is an occupier of them. Copies must be served within 7 days. Where a notice is revoked or varied copies must also be served in the same way the original notice is copied.

### **Section 241 – penalty for obstruction**

A person who obstructs, without a reasonable excuse, a Council Officer or any other person authorised to enter the premises by virtue of Parts 1 to 4, or Section 239 or 240 of the Housing Act 2004 commits an offence liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500)

#### **Section 46– Power to make Demolition Order (taken from section 265 Housing Act 1985)**

Where category 1 or 2 hazards exist on a non-listed building, and a management order is not in place, another option for the Council to deal with the property is demolition. A demolition order requires the property to be vacated within a specific time (not less than 28 days) and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly.

For further guidance on Demolition Orders see Appendix.

#### **Section 47– Clearance Areas (*slum clearance declarations*)**

Where, in an area, each of the residential buildings contains a category 1 hazard and that the other buildings, if any, in the area are dangerous or harmful to the health and safety of the inhabitants, declaring the area a clearance area is an option open the Council. The Council may also use this power if they are satisfied that the residential buildings are dangerous or harmful to the health and safety of the inhabitants as a result of their bad arrangement or narrowness or bad arrangement of the streets. Further to this the Council may also use this power if they are satisfied that each of the residential buildings contains a category 2 hazard and that the other buildings, if any, in the area are dangerous or harmful to the health and safety of the inhabitants, in circumstances specified by an order made by the Secretary of State.

For further guidance on Clearance Areas see Appendix.

### **3.1.2. HOUSING ENFORCEMENT PROCESS**

In undertaking enforcement of deficient housing conditions we will usually seek to ENCOURAGE, PERSUADE and then ENFORCE. Many factors may influence where we need to start on this sliding scale of intervention, and will be assessed on a case-by-case basis.

The factors affecting the starting point could be that the situation requires immediate or urgent action, the type and severity of the hazard, the likelihood of the hazard worsening, the previous history of dealings with the person responsible for the enforcement matter. This list is not exhaustive and other factors may be taken into account.

Procedures will be adopted for enforcement action to provide consistency of approach.

NOTE: officers must be aware that any informal action in the form of letters or verbal discussions and agreements should be copied to ALL parties to whom a notice could eventually be served upon, otherwise it may not be consistent and fair. It is expected that for non emergency situations all parties that could be served with a notice will be

informed of the subject matter at least once before the service of a formal notice (at the encourage or persuade stage).

Information on specific types of action can be found in section 3.1 above, and it is for the Housing Renewal Officer to establish the most appropriate course of action at the time of serving a formal Notice. To this end the officer must complete a 'statement of reasons' for undertaking any type of action under the Housing Act 2004 and this will be kept on file for future reference. The statement will outline the reasons for choosing a particular course of action and also why another course of action was not chosen.

The Council are permitted to charge for undertaking enforcement action under the Housing Act 2004, and to that end we will charge each recipient of a Notice according to the amount of work put into the case. Typical charges for certain Notices have been set, but these are variable dependant on the amount of work undertaken by the Housing Renewal Section, and deductions or additions to the charge will be made accordingly. The cost of charges will be reviewed regularly by the Housing Renewal Manager, adjusted accordingly, and made available to the public on the website.

For further guidance on charging see Appendix – 'Charging Structures etc.'

For further guidance on Emergency Works see Appendix – 'Emergency Works, what we would expect to do'.

For further guidance on use of HHSRS in mobile homes see Appendix – 'use of HHSRS to deal with poor conditions in mobile homes.'

For further guidance on overcrowding see Appendix – 'Overcrowding guidance'

### **Owner Occupiers.**

The underlying principle of the HHSRS is that 'Any residential premises should provide a safe and healthy environment for any potential occupier or visitor'. Under the Human Rights Act it is also considered that owner-occupiers have the right to live how they wish, and there is a balance to be met between the like rights of owners and those of potential occupiers or visitors. Because of these rights it would normally be appropriate for the Council to inform the owner-occupier of the deficiencies so that they can choose to attend to the problem or live with it. Therefore the usual formal notice to be served in these cases, once the usual process has been followed, is a hazard awareness notice, even for category 1 hazards.

The Council may consider that there will be some situations where the service of a different notice is appropriate, and these are considered in the Appendix – 'HHSRS enforcement on owner occupied and long leasehold property.'

### **Long leaseholders.**

Property resided in under a long lease can have a complicated scenario for establishing who is the person responsible for provision and maintenance of certain elements of a property. There can be multiple leaseholders, these may be sublet at various levels,

there will be a freeholder and more often than not maintenance and responsibility is contracted out to managing agents.

It is for the Housing Renewal Officer to investigate as far as is reasonably practical whom is the most appropriate person to serve Notice upon should it become necessary, and it is prudent in these situation to copy all interested parties in on any informal action, and a requirement for formal action, to cast a wide net ensuring mitigation against any legal action can be kept to a minimum. Further to this, due to the complicated nature of leasehold property hierarchy, by copying in all interested parties the person responsible may come forward and undertake the necessary work prior to the need for formal action.

Typically, unless we discover otherwise, we would communicate with the long leaseholder regarding any deficiencies within the flat they hold, and the managing agent or freeholder, as appropriate, with any deficiencies to common areas or common elements (e.g. a common fire alarm system).

See Appendix – ‘HHSRS enforcement on owner occupied and long leasehold property for further guidance.’

### **3.2.1. HOUSES IN MULTIPLE OCCUPATION (HMO'S)**

A HMO is defined in the Housing Act 2004 as a property which passes S.254 of the Act, in that it passes the 'Standard Test', the 'Self Contained Flat Test' or the 'Converted Building Test', or the Local Authority have made a HMO Declaration, or finally it is a property which falls into the category of a block of self-contained flats as described in S.257.

The Council take a proactive approach to enforcement with HMO's due to the statistically higher risks associated with these types of premises. In this respect the Housing Renewal team have various tools for intervening and improving the standards of the accommodation. All intervention will follow the approach of the enforcement concordat, in that we will encourage, persuade and enforce, and depending on the various factors of the situation we are intervening with we will start at any point on the encourage to enforce scale.

As a general rule for enforcement purposes, if a deficiency is covered by more than one of the various enforcement tools the licence conditions (if any) will take precedent, and then the management regulations, and then the HHSRS. However we reserve the right to adopt a different approach using a different enforcement tool if it is more appropriate for any reason.

### **3.2.2. Licensing**

HMO licensing on the Isle of Wight has been developed in close partnership with all other Local Authorities in Hampshire. Having undertaken a project to develop common processes and forms it is hoped that the approach to licensing HMO's across Hampshire and the Isle of Wight is similar, if not exactly the same.

We have only adopted the Mandatory licensing of certain HMO's, and therefore Additional or Selective is not currently applicable on the Island. This situation will be reviewed from time to time and if the need arises the Council will apply for an Additional licensing scheme as appropriate.

Mandatory licensing applies to HMO's where there are 5 or more occupants, sharing an amenity, and the HMO is within a building of 3 or more storeys.

Statutory Instrument 2006 No. 371 describe the stories that are included in any calculation. Basically stories can include the following, with caveats (therefore check with the Statutory Instrument if in doubt):

- basements;
- attics;
- where the living accommodation is situated in a part of a building above business premises, each storey comprising the business premises;
- where the living accommodation is situated in a part of a building below business premises, each storey comprising the business premises;



- any mezzanine floor not used solely as a means of access between two adjoining floors;
- and any other storey that is used wholly or partly as living accommodation or in connection with, and as an integral part of, the HMO.

Premises stated in paragraph 3 of Schedule 14 of the Housing Act 2004 are excluded from Mandatory licensing as they are not considered as HMO's. These include the following, with caveats (therefore check with the Statutory Instrument if in doubt):;

- Buildings controlled or managed by public sector bodies etc.;
- Buildings regulated otherwise than under this Act;
- Buildings occupied by students where the person managing or having control of it is the educational establishment;
- Any building which is occupied principally for the purposes of a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering;
- Buildings occupied by owners; and
- Any building which is occupied only by two persons who form two households

The Housing Renewal team will adopt procedures for dealing with HMO licensing, and review these from time to time. Any changes will be publicised on the Council website.

The Council charges a fee to supply a licence, or undertake any variations, which is based on the time taken to process an application. Various additions and deductions can be made, and for further detail see appendix. A licence will not be issued until the Council receives the correct fee as indicated on the notice to licence (which is always sent to an applicant). We will review the charges from time to time and make adjustments as appropriate and in line with any guidance (statutory or otherwise), and any variations in cost will be publicised.

During the process of licence application the applicant must inform any interested parties of the application, and we have designed helpful forms for this use, which are sent to applicants. We will also consult with any interested parties by issuing copies of the Notice to Licence and any schedules, prior to issuing a full licence.

The Council and Government has widely publicised the requirements of licensing, however we will still proactively seek licensable HMO's that are not licensed and on occasion advertise the requirement through various sources. Ultimately it is for owners and landlords of licensable HMO's to come forward to apply for the requisite license as it is a criminal offence to operate a licensable HMO without one, with punishments of up to £20,000 and the possibilities of paying back rent to tenants.

The Council may take action against a landlord where we believe that the landlord is, or should be, aware of the need to be licensed, and they are operating a licensable HMO without having applied for a licence or a Temporary Exemption Notice (TEN). For prosecution see section on Sanctions.

If there is any doubt about the landlord's, owner's or agent's understanding of the need to be licensed then we will send any relevant party a HMO application pack, which includes an application form and guidance on HMO Licensing, along with a letter of explanation of why we have sent the application form.

On some occasions the reason of doubt to become licensed is due to the interpretation of whether the property is indeed a licensable HMO. If this is the case an officer will inspect the property at the earliest opportunity to establish the facts. If there is further disagreement, and the Council still believe it is a HMO we will serve a HMO Declaration. It is an offence for any person to obstruct a Housing Officer carrying out any investigation to establish these details.

An interested party of a Licensable HMO may apply instead for a TEN. A maximum of 2 TEN's can be issued at the end of which, if the premises is still licensable, the landlord must apply for a licence. We will take care that a landlord is not illegally evicting tenants to avoid HMO Licensing, and we will take appropriate action where we believe this may occur typically by informing the Council's Homelessness section and/or the tenants of the HMO, however, we have no enforcement power in this respect as the power operates as a defence for a tenant against a landlord giving Notice to Quit to a tenant.

Where landlords are in the process of applying the Council will take no action against that landlord in respect to operating without a licence, unless it is deemed that the applicant is taking an unreasonable amount of time. Where it has been decided that a landlord, in the process of applying to the Council for a licence, is taking an unreasonable amount of time we will inform the landlord of our intention to prosecute if a full application, or the information required to process the licence, is not received within a specified date (usually 5 working days). For prosecution see section on Sanctions.

Matters of dispute about the contents of, or whether to issue, a licence should be dealt with under the normal appeal procedures via the RPT.

Where a landlord has applied but the Council decided not to issue a licence, for example if the applicant is deemed not a fit and proper person, or not the appropriate person, the Council will work with the applicant to overcome the problem. We may suggest that the management is passed to another more appropriate person, or company, and that suitable management arrangements are set up.

If licence holder problems cannot be overcome, or if the Council deem that the management of a HMO is so bad that immediate control is needed due to health and safety reasons, then we will consider taking over the management of the HMO by issuing a Management Order. The Council may operate with a partner to undertake these services.

When a Licence is issued it will include any Mandatory and Discretionary Conditions that the Council wish to apply to the situation. It is a criminal offence to breach any of these

conditions, and as such the Housing Renewal section will undertake regular monitoring of Licensed HMO's.

Where any breach of the conditions on a Licence has been evidenced we will consider whether prosecution is appropriate and will seek to persuade the person responsible to rectify the problem and then enforce if necessary.

As with Housing enforcement this is an adaptation of our sliding scale of intervention and our compliance with the Concordat, however in this case it is deemed that the responsible person is already aware of the Licence Conditions and therefore the usual initial 'encouragement' stage is not appropriate.

The factors affecting whether we Persuade or Enforce could be that the situation requires immediate or urgent action, the type and severity of the hazard, the likelihood of the hazard worsening, the previous history of dealings with the person responsible for the enforcement matter. This list is not exhaustive and other factors may be taken into account. If there is any doubt that the person responsible is unaware of the need to rectify the problems witnessed then we will start at the Persuade stage, giving the person responsible dates by which time we expect the matters to be resolved, and if necessary any further information about our expectations and assistance that we may be able to offer.

For further guidance on overcrowding see Appendix – 'Overcrowding guidance'

### **3.2.3. The Management of House in Multiple Occupation (England) Regulations 2006 (as amended)**

These Regulations apply to houses in multiple occupation ("HMO's") in England. The Regulations impose duties on a person managing an HMO in respect of;

Providing information to occupiers (regulation 3); taking safety measures, including fire safety measures (regulation 4); maintaining the water supply and drainage (regulation 5); supplying and maintaining gas and electricity, including having it regularly inspected (regulation 6); maintaining common parts (defined in regulation 7(6)), fixtures, fittings and appliances (regulation 7); maintaining living accommodation (regulation 8); and providing waste disposal facilities (regulation 9).

Regulation 10 imposes duties on occupiers of an HMO for the purpose of ensuring that the person managing it can effectively carry out the duties imposed on him by these Regulations.

A person who fails to comply with these Regulations commits an offence under section 234(3) of the Housing Act 2004, punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

We will deal with breaches in HMO Management Regulations in exactly the same way we do with breaches in License Conditions as it is deemed that the responsible person is already aware of the Regulations and therefore the usual initial 'encouragement' stage is not appropriate. See section Licence Conditions section above for guidance.

#### **3.2.4. HHSRS IN HMO'S**

For purposes of enforcement all of the above policy in relation to HHSRS applies to HMO's also.

Where HMO's are licensable mandatory conditions will apply and discretionary conditions may apply to the premises. This could overlap with improving standards and remove or reduce hazards. Only those items that are related to licensing will be applied to any condition, for example provision of bathing or kitchen arrangements, or provision of suitable fire precautions. Other hazards will be dealt with in the normal manner under the HHSRS.

For matters that fall solely and properly under the HHSRS the process for Housing Enforcement (above) should be used.

All HMO owners/managers must abide by the 'management regulations' that apply to the particular type of HMO they own/manage. The management regulations make it a criminal offence to breach any of the conditions, and it is expected that owners/managers are fully aware of their responsibilities under the management regulations by reason of their involvement in the HMO. As with licensing conditions, the regulations are in place to improve and upkeep standards in HMO's, and can sometimes overlap with intervention by the HHSRS and Licensing conditions.

For further guidance on overcrowding see Appendix – 'Overcrowding guidance'

### **3.3.1. EMPTY AND UNSECURE PROPERTIES**

Government statistics indicate that, as at April 2004, there were nearly 700,000 empty properties in England, and the majority of these were in areas of housing need, such as the Isle of Wight. 3.7% of all private homes are empty.

The Council's Housing Strategy includes an objective to improve conditions within private sector housing, and from this the Empty Property Strategy has been formulated. This strategy provides for a multitude of objectives and actions to achieve the aims of the strategy.

This section of the Enforcement Policy must be read in conjunction with the Empty Property Strategy as the aims and policy overlap.

The Council's Empty Property Officer will undertake proactive monitoring of the empty property situation on the Island through several means; researching and compiling information from other Council and Government departments, receiving service requests, surveying the area, managing existing known data.

On occasions unsecured properties are reported or discovered by the Council and we may take action to prevent harm to any potential person entering the premises or damage being made to the property. Our powers under this area also come into play when we have had to force entry into a property for other enforcement reasons.

The main powers the Council has to bring back Empty Properties into use are Empty Dwelling Management Orders (Interim and Final), Compulsory Purchase Orders (CPO). However by far the most productive tool is that of informal intervention, and this is always extensively used before any formal enforcement action is considered.

#### **Section 29 Local Government (Miscellaneous Provisions) Act 1982– Power to board up empty/derelict property**

Empty property can be the target for vandals particularly if it is neglected. The Council is able to require the owner to board up a property to prevent unauthorised access and can carry out the work in default if the owner fails to comply or cannot be found. In certain circumstances they can carry out the works without serving a Notice.

### **3.3.2. Empty and Unsecured Property Enforcement Process**

The first step in any investigation into this type of enquiry is to establish who is the owner, or owners, and any other person with an interest in the property. This is done by word of mouth, perhaps the enquirer or neighbours have information, however if it is not that simple then a Land Registry search is made, and also enquiries are put to the Revenues Department of the Council. Typically these sources produce results, however, where an owner cannot be traced any Notices will be placed upon the property itself and advertised in the London Gazette.

This process follows the Enforcement Concordat principles and that of other types of enforcement that we undertake, in that we will 'Encourage', 'Persuade' and then 'Enforce'. Indeed, for this process the ultimate outcome may end in the loss of the owners property, and due to this we will tend to engage the owners much more on the lines of informal intervention, giving them as much opportunity as possible to bring the property back into use via their own accord.

Where access is needed to assess the premises, which is not supported by the owner then a warrant will be sought to gain entry. It is a criminal offence to hinder an officer undertaking their duties of assessing an empty property, or any other Housing matter, under S.241 Housing Act 2004 (as described above).

At a point where all lines of reasonable informal intervention has been carried out consideration is given to formal enforcement action, and which course of action is the most appropriate. At this stage the Empty Property Officer will consult with the Council's legal section and also with any other relevant departments as appropriate (Housing Enabling Manager, Housing Renewal, Building Control, Property Services), and record his, or her, justification for undertaking the course of action decided upon.

Procedures for dealing with Empty and Unsecured properties will be developed and monitored regularly.

### **3.4.1. DRAINAGE SYSTEMS**

#### **Introduction**

Complaints about unsatisfactory drainage are often directed to the Council for advice and/or action. The law of drainage is complex however, and there is only a limited amount of action the Housing Section of the Council can undertake. Intervention very much depends on the nature of the problem, the status of the drain or sewer, on occasion the age of the drain (for instance new drainage systems that are still being installed may better be dealt with by the Building Control section), and overlapping enforcement responsibilities and abilities (such as between Local Authority and the Environment Agency).

It is the responsibility of the Housing Section to investigate complaints made regarding blocked, surcharging, unsatisfactory or defective drainage systems. The reason for this is to prevent nuisance, risk to public health and environmental damage.

Our approach to dealing with drainage problems is similar to that for housing enforcement in that we will seek to Encourage, Persuade and Enforce. This follows the ethos generated by the Enforcement Concordat, and we will start our activities anywhere along that sliding scale of enforcement intervention dependent upon the circumstances of the case. It will always be preferable to give the responsible person at least one informal opportunity to resolve the matter before formal action is undertaken, and immediate formal action will only be undertaken with good reasons.

We will also seek to provide advice where possible and appropriate, either verbally or in writing. Site visits for advice purposes will only be undertaken where resources allow.

#### **Definitions**

Drain – A drainage channel that serves one or more buildings, or an area, within the same curtilage.

Sewer – A drainage channel that serves different buildings, or areas, not within the same curtilage.

Public Sewer – The status of a sewer vested in the Statutory Sewerage Undertaker (for the Isle of Wight this is Southern Water).

Private Sewer – The status of a sewer not vested in the Statutory Sewerage Undertaker.

Curtilage – A legal term describing the land of a building that is used for its normal enjoyment. Curtilage has been argued in many legal cases and varied situations (*Harris v Scurfield (1904)*, *Sinclair-Lockhart's Trustees v Central Land Board (1950)*), *ibid*.

#### **Enquiries**

The public often do not know what status or ownership of the sewer or drain that is causing a problem when they are reporting it to the Council, and we will therefore always willingly receive service requests where this is the case.

We will endeavour to ascertain as much information as possible about the problem from the initial enquirer to enable us to verify the status of the sewer and the level of risk associated with the drainage system.

Where there is an escape of sewage we will always seek to respond within 24 hours, and to this end an out of hours service has been set up to deal with these matters. For all other drainage enquiries we will seek to respond within 5 working days.

Our approach for dealing with Public and Private drainage systems differs and is explained below.

### **3.4.2. Public Sewers**

If in the first instance the enquirer has good reason to believe that the problem being complained about is due to a public sewer we will politely request that the enquirer contacts Southern Water direct.

Southern Water can be contacted on telephone 0845 2780845

Address: Southern House, Yeoman Road, Worthing.

Where the enquirer is unable to contact Southern Water, or is not obtaining a satisfactory response we may intervene.

Intervention can be made where there is an escape of sewage or it is likely, and a third party or the general public is, or will likely be, affected. Our intervention tends only to be informal and works along the lines of partnership working with Southern Water and encouragement is provided where appropriate.

However, where there is evidence to suggest a Public Nuisance exists we will consult with the Legal Services Section and consider taking formal enforcement action if there is satisfactory weight to the case.

Intervention will not be considered where a third party or the general public is not, or will not be, affected. In these cases we advise the enquirer to continue to contact Southern Water direct, and if they are not satisfied with the service or response, then to contact the ombudsman: OFWAT (Office of Water Services) telephone 0845 7581658 or 0121 6251300.

### **3.4.3. Private Drainage Systems**

Initial investigations are necessary to ascertain whether the problem concerns a drain or sewer, and what the problem is. These investigations typically include verbal discussions with occupiers, owners, agents, drainage contractors and any other person who may have an interest or knowledge. Further investigation may then be required, consisting of data searches, site visits, dye testing, rodding, jetting, CCTV survey, sond testing, and ultimately excavation (the latter five options always being undertaken by an external contractor).

The Council will not normally intervene with any matters concerning private nuisance, being experienced between one landowner and another. It will normally be left for the two landowners to resolve between them, and take any private action necessary to resolve the matter. The Council may only intervene, to provide basic advice on responsibilities (this could be in the form of sending information and not visiting site), or if there is, or is likely to be, a statutory nuisance.



The Council will always intervene and investigate matters that are, or likely to become, a statutory or public nuisance.

Pipes serving a single property i.e. drains, are the responsibility of the person(s) who is responsible for the property it serves, no matter what age the property is. This could be the owner(s) or occupier(s). The ruling in *Russell v Shenton (1842)* divides the responsibility for drainage defects between owners and occupiers.

Typically occupiers are responsible for clearing blockages in drains and cleaning pipes, and owners are responsible for providing a suitable pipe in the first place and any structural defects thereafter.

If after investigation, a drainage system problem is found to be caused by a defective drain then the person responsible for the drain will be requested to undertake the necessary remedial action to resolve the problem. It may be necessary to carry out investigations as to who has responsibility for the property.

Private sewers are the responsibility of all those having use of, or a right of use of, the pipe at any given point. The case of *Swansea City Council v Jenkins (1994)* provides that in the case of a blockage or break in a private sewer rendering it insufficient, or for the Council to require satisfactory provision of a drainage system, or where it is prejudicial to health, a notice may only be served on the owners of the premises above the insufficient sewer.

The most appropriate action by the Housing Renewal Officer depends on the legislation available, risk of the situation, resources available, and time constraints.

Where the responsible persons are already known, it may still be necessary to survey the sewer to ascertain what the problem is, to ensure the correct notice is served and, if appropriate, state the correct measures required to remedy the problem.

However, investigation in itself can often clear the problem, for example where jetting is required before a CCTV survey is carried out. This is useful for the person(s) responsible, and the investigation should then confirm which properties the drain/sewer serves if necessary.

On occasion investigating the properties served is not practical or proportional to the rectification of the problem, and a balanced decision by the Officer is needed, possibly in consultation with the Housing Renewal Manager. For example, where a simple blockage (where there is no history of blocking) can be unblocked cheaply, but investigating whom the sewer serves is likely to be very complicated and/or extensive (block of flats, multiple occupancy, housing estate) would likely result in the Council ordering the clearance only. If a particular sewer is constantly becoming blocked and surcharging, or rectifying a defect is going to be expensive, confirming those responsible will be necessary.

In undertaking enforcement for drainage nuisance we will usually seek to ENCOURAGE, PERSUADE and then ENFORCE. Many factors may influence where we need to start on this sliding scale of intervention, and will be assessed on a case-by-case basis.

The factors affecting the starting point could be that the situation requires immediate or urgent action, the type and severity of the nuisance, the likelihood of the hazard or situation worsening, the previous history of dealings with the person responsible for the enforcement matter. This list is not exhaustive and other factors may be taken into account.

Once status has been established as private and we are unable to resolve the matter informally the only option open to us is then to take formal action.

We have various powers to deal with the varied scenarios that we may find using many Acts (as described above), and the HHSRS could also be considered. The scenarios fall into the main categories below with the suggested legislation that would be used to remedy the matter:

- For any statutory nuisances consider Section 80 Environmental Protection Act 1990- consider whether this course of action is the most expedient.
- For drainage deficiencies related to property that also has other deficiencies under the HHSRS consider the use of a notice under the Housing Act 2004.
- Cesspool, private sewer, or drain being insufficient or admits subsoil water, (Section 59 Building Act 1984).
- Unsatisfactory ventilation of a drain, (Section 60 Building Act 1984).
- Blocked private sewer, (Section 35 Local Government (Miscellaneous Provisions) Act 1976).
- Blocked drain, (Section 17 (3) Public Health Act 1961).
- Defective drain or private sewer, if costs less than £250 (Section 17 (1) Public Health Act 1961), if costs greater than £250 (Section 59 Building Act 1984).

The proportion of responsibility ultimately translates into financial responsibility when repairs are required. For purposes of Council policy when requesting repayment for works done by agreement or in default of a Notice the following proportions will be equated;

For defects at a single point (for example a blockage due to a fractured pipe, or defective manhole) all persons responsible for the properties upstream of the defect will be charged equally.

For defects that exist along various lengths of sewer and affect users of the system to different degrees (for example when replacing or lining lengths of pipes) then each responsible person will be charged according to the length of sewer repaired that they are responsible for taking into account how many others are also responsible. See appendix for examples of 'charging structures for enforcement activities'.

An information sheet further explaining private drainage systems, and the responsibilities of their users, is available on request or on the Council website.

For further guidance see Appendix – Service of Drainage Notices.

The following is a summary of the legislation available for private drainage enforcement, this list is not exhaustive, and new legislation may become available within the lifetime of this policy:

### **Section 59 Building Act 1984– Drainage of Building**

If it appears to the Local Authority that in the case of a building-  
satisfactory provision for drainage has not been made;

a cesspool, private sewer, drain, soil pipe, rainwater pipe, spout, sink or other necessary appliance is insufficient, or in the case of a private sewer or drain that ultimately connects with a public sewer is so defective as to admit subsoil water;

a cesspool or other work or appliance is in such a condition as to be prejudicial to health or a nuisance;

a cesspool, private sewer or drain formerly used for the building, but no longer used, is prejudicial to health or a nuisance.

The Council shall by notice require the owner of the building to make satisfactory provision for the drainage of the building, or as the case may be do other such work as is necessary to repair, cleanse or renew the drainage element in question.

In investigating drainage complaints section 59 of this act provides for certain classes of deficiencies to drainage to be dealt with by the service of a notice. If such a notice is served and not complied with, the Council may prosecute the person served, and may carry out the necessary work in default and recharge the person upon whom the Notice was served.

### **Section 60 Building Act 1984– Unsatisfactory ventilation of a drain**

Where it has been found that there is unsatisfactory ventilation to drainage systems this legislation can be used to require improvements. Service of the Notice is upon the owner of every property served by the defective drainage system, and the Council have the power of work in default of the Notice where there is non-compliance.

### **Section 35 Local Government (Miscellaneous Provisions) Act 1976**

This Notice can be served upon the owner and or occupier of a property that is served by a private sewer that has become blocked. It requires a relatively quick response, 48 hours, to unblock the sewer, and the Council may carry out work in default of the Notice after this time if it is not complied with. There is no appeal against this Notice. Appeal may only made against the costs that the Council would attempt to recover on completion. Officers should use a Section 35 (3) Notice for the recovery of apportioned costs.

### **Section 17 (3) Public Health Act 1961**

This legislation is available to remedy a drain or sewer that is blocked. The Notice is served on the person responsible / owner / or occupier of any premises upstream of the blocked pipe. It again is a relatively quick response notice requiring the remedy of the problem within 48 hours. There is no appeal against the Notice itself, only in regard to the costs apportioned. The Council may undertake work in default of the Notice if it is

not complied with. It should be noted that there is no ceiling on the amount to remedy the problem.

### **Section 17 (1) Public Health Act 1961**

Where a drain or a private sewer is not kept in good repair and the cost of remedy is less than £250 the Council may use this legislation. The Council would serve a 7 day Notice of the Councils intention to repair the drain/sewer on any owners of properties upstream of the defect. If the Notice is not complied with the Council will undertake the necessary repairs and recover the costs up to £250.

### **Section 22 Public Health Act 1961**

This gives the Council the power to require the cleansing or repair of drains, W/C's, or gullies, and may recover from the applicant such reasonable charge for doing so if they think fit.

### **Section 80 Environmental Protection Act 1990 (EPA) – Statutory nuisance**

Section 79 of this Act lists what are statutory nuisances. As far as the legislation enforced by the Housing Renewal Section is concerned, a statutory nuisance is any house in such a state as to be prejudicial to health or a nuisance. Once the Council is satisfied that a statutory nuisance exists or is likely to occur, it is under a duty to take action to deal with it. This means that Housing Renewal Officers have to serve a Notice requiring the abatement of the statutory nuisance within certain time limits or preventing the occurrence of a statutory nuisance. If such a Notice is served and not complied with, the Council is able to carry out the necessary work in default and recharge the person upon whom the Notice was served. Not complying with a Notice is a criminal offence and the Council is able to prosecute the person who received the Notice if he does not have a reasonable excuse for not complying with it.

### **Section 82 EPA– Action by persons aggrieved by a Statutory Nuisance**

If after investigating a nuisance complaint the Housing Renewal section has been unable to substantiate the existence of a statutory nuisance it will be unable to take any further action. However, it may be possible for the person aggrieved to take their own action in the Magistrates Court under Section 82 of the Environmental Protection Act, 1990. This would be a private action on the part of a citizen, and that person would have to form their own case and seek their own legal advice.

### **Housing Act 2004**

Unsatisfactory waste drainage is a hazard under the HHSRS, for which a variety of Notices can be served on the person responsible. This legislation could be considered where deficiencies to the drainage system are within the boundary of the property, and/or it represents one of a number of deficiencies that are also being dealt with under this legislation. If it is the latter it may benefit the Council as duplication of work may be cut down slightly and the Council is also able to charge for its costs in serving the Notice, which it is unable to do with the other drainage legislation. If this route is used it should be most appropriate legislation, where no other route offers a more immediate and appropriate remedy.

### **3.4.4. Ex South Wight Borough Council sewers (now South Wight Housing Association)**

Upon transfer of the Council housing stock in 1990 from South Wight Borough Council to South Wight Housing Association an agreement was entered into whereby the Isle of Wight Council is responsible for the ongoing maintenance of the sewers serving those properties. The Council holds plans of the sewers it is responsible for.

The agreement does not include drains serving individual properties. This responsibility rests with the owner or occupier depending upon the problem encountered. Where the property is still owned by South Wight Housing Association the Association is responsible for the provision of suitable drain in good structural condition, and the tenant is responsible for clearing any blockages caused by the tenant's actions. If the property has been sold to an owner-occupier, that person is responsible for structural maintenance as well as blockages for any reason.

The Council will carry out regular maintenance such as cleansing, surveying and repairs as necessary to the sewers it is responsible for within the agreement.

The Council will also react to any service requests in relation to any problem reported in respect to the sewers under this agreement, and undertake any necessary investigation and remedial action as necessary.

The Council accepts no responsibility for defects caused by the actions of others, and will take the necessary action to protect its interests and resources.

#### **3.4.5. Isle of Wight Council drains**

The Isle of Wight Council like any other landowner only has responsibility for the pipes serving its buildings and land.

#### **3.4.6. Overland Drainage**

Drainage law does not cover natural rainwater run off on, or through, land.

Typical problems arise where one owner's land drains onto another owner's land due to the contours, and has done so for hundreds of years, but due to the use by the owners of each piece of land it may arise to be a problem and interfere with that use. The Local Authority has no power to deal with, or advise on, private nuisance between one neighbour and another, other than to advise each party to try and resolve these matters between themselves to an amicable agreement and to seek their own legal advice.

The only time when the Local Authority may have an interest is where a statutory nuisance occurs, for instance where a property has become flooded, or where the rainwater run off, over or through land, comes from land owned or occupied by the Local Authority. In the latter case a service user should contact the Council's Property Service section on telephone 01983 821000, or write to Property Services Section, Isle of Wight Council, County Hall, High Street, Newport, Isle of Wight. PO30 1UD.

### **3.5 OBTAINING INFORMATION ON WHOM ENFORCEMENT ACTION SHOULD BE DIRECTED**

The Housing Renewal Officers will use a variety of techniques to obtain this information within the umbrella of data protection and human rights legislation.

We will use public registers such as the Land Registry, and also make enquiries to the Revenues section of the Council where appropriate.

If needed we will issue a Notice on any relevant person requesting information:

#### **LOCAL GOVERNMENT (Miscellaneous Provisions) ACT 1976**

##### **Section 16 – Requisition for Information**

When we need to obtain information about a property where we are proposing to take enforcement action we will serve a requisition for information on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

We will always indicate the Act and section of the Act that we are proposing to enforce. Generally a Requisition for Information is served at an early stage to ensure that we are corresponding with the correct person(s) but where the Council feel that urgent enforcement action is necessary it may be served at the same time as a formal Notice.

#### **LOCAL GOVERNMENT ACT 2003**

##### **Section 85**

Provision for a Local Housing Authority to enquire to the Revenues department to enquire about details of Council Tax. Typically used for Empty Property purposes.

#### **HOUSING ACT 2004**

##### **Section 237**

A provision for a Local Housing Authority to enquire to the Revenues department to enquire about details of Council Tax or Housing Benefit data managed by the department for any purpose connected with the exercise of any of the authority's functions under any of Parts 1 to 4 of the Housing Act 2004 in relation to any premises, or for the purpose of investigating whether any offence has been committed under any of those Parts in relation to any premises.

### **3.6 Lead Enforcement Authority**

Where two or more authorities have enforcement powers, for example Housing Renewal and the Fire and Rescue Service, it is considered that a single authority will take the lead if it will achieve the same outcome for both authorities. Matters to consider will be the existence of any protocols, the resources available, costs to the Local Authority, and hazard remediation priority. It is expected that where two or more enforcing authorities are involved that discussion will take place between the parties to agree the most suitable course of action. It is possible that each party will take action.

Factors also to consider are the Housing Renewal's section cross working agreements with other departments - see Appendix – 'Cross working agreements with other departments' for further advice.

In circumstances where enforcement responsibility is shared between enforcement agencies, the Housing Renewal Section will have regard to procedures agreed with other enforcement agencies, particularly where memoranda of understanding exist.

In some cases, enforcement powers will rest solely with another agency (for example the Health and Safety Executive has responsibility for enforcement of gas safety in domestic property, or the Environment Agency for drainage nuisance to waterways). In these situations, the Housing Renewal Section will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

#### 4. SANCTIONS

If the recipient of a Notice does not comply with the Notice, the Council has various sanctions it can impose. Depending on the type of Notice or Licence that is served, non-compliance can be:

- Not doing any work at all,
- Not starting the work by the time specified within the Notice,
- Starting the work but then not making reasonable progress, or
- Starting the work and then not completely finishing it.
- Breaching any Conditions on a Licence.
- Breaching any of the HMO Management Regulations.

The sanctions available, should people not comply with legislative requirements, include:

- Work in default or action by the authority with owner's agreement
- Formal caution
- Prosecution
- Recovery of expenses
- Taking over the management of the property
- Recovering rent paid to the landlord

In deciding when to impose sanctions, each case is looked at individually and the following factors taken into account:

- The effects of the situation on the health and safety of those affected;
- The intentions of both the owner / person(s) responsible / landlord and the tenant in respect of the property;
- Any previous complaints about the owner of the property or his agent;
- The future life of the property;
- The willingness of the owner to put right any problem without the need for further formal enforcement action or sanctions.

The list is not exhaustive and other factors may be taken into consideration.

We will consult with other bodies when taking sanctions who have an interest in outcome, and typically this will always involve the Legal Services Section. An example of this is where we take action under Part 1 of the Housing Act 2004 to improve fire safety in a House in Multiple Occupation. We are required by law to consult with the Fire Authority.

The decision to execute work in default will be made by the Housing Renewal Manager in conjunction with the Senior Housing Renewal Officer and the case officer and, if necessary, the legal services section.

In deciding whether to issue a formal caution or proceed with a prosecution, the decision will be made by the Head of Housing in consultation with the Housing Renewal Manager. Having prepared the case and collected the evidence, either of those two



Officers will then consult with the Council's Legal Services Section to discuss the merit of the action proposed. If a formal caution or prosecution is agreed, the Legal Services Section will be requested to commence the necessary legal action.

#### **4.1. Work In Default**

Work in default is a power given to the Council to ensure that work is carried out to a property. If the recipient of the Notice does not do the work required by the Notice, the Council is able to employ a contractor to enter the property and carry out the work itself. If the Council has to do this, it will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.

For procedures for the Council to carry out works in default of an improvement notice see the Housing Act 2004 Schedule 3: Parts 1 to 3.

In some situations the Council may appoint a consultant to act for it on preparing schedules of work, plans, statutory approvals, obtaining tenders, supervision of work etc.

It should be noted that carrying out work in default does not exclude the Council from either issuing a formal caution or prosecuting the offender. The Council is entitled to ensure that the work is carried out and Officers will then also consider if it is appropriate to take further action.

In determining if work in default is appropriate, Officers will consider the following:

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned,
- The wishes of the tenant where the Notice has been served in respect of a rented property, or the occupiers of land where a drainage nuisance exists,
- The reason for the work not being carried out in the first place.

This is not an exhaustive list and other factors may be taken into account.

If we must undertake work in default we will carry out procurement according to the Council's procurement policies. Any contractor used must have been approved by the Property Services Section (this usually means the contractor is registered with Construction Line). We will endeavour to seek best value for the property owner(s), and will consider the cheapest cost of abating a nuisance, or removing/reducing the hazard over the next ten years. This may therefore mean that the cheapest work quote may not be the best if future maintenance costs or other factors increase the costs over and above that of another initially higher competitive quotation. Any justification will be recorded to be provided at any future information request or defend any future appeal.

There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of Notice that has been served:

- **Sundry debtor method**  
Using this method the Council's Customer Accounts section will send the appropriate person an invoice requesting payment. If this is not paid within three

weeks, a reminder letter is sent requesting payment immediately with a second reminder after six weeks. If the invoice is not paid a recovery officer will normally visit. Failure at this point would be referred back to Housing Renewal for further instructions.

- **Charge on the property**

Sometimes the Council will put a charge on the property, which means that when the property is sold, the Council will expect to be paid the amount of the debt. This is not generally a preferred method as it is slow and dependent on the equity in the property, the Council may not get its money back at all.

- **Sequestering rents**

The Council is entitled to serve a Notice on the appropriate person to reclaim the costs of the work in default. In some cases, if this Notice is not complied with (i.e. the costs are not paid) the Council can then serve a Notice on the tenant requiring him to pay the rent direct to the Council until such time as the costs are recovered.

- **Forcing sale of the property**

If there is a legal charge on the property resulting in an interest for the Council, the ultimate method by which the Council can reclaim its costs is to force the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default and less the amount incurred by the Council in selling the property.

## **4.2. FORMAL CAUTION**

An alternative to prosecuting a person is the issuing of a formal caution. A formal caution is where an offender is given written details of the offence and he/she signs to say that he/she admits the offence. It is not a form of sentence.

A record of the caution is kept at the Council and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

## **4.3. PROSECUTION**

Non-compliance with any of the Notices referred to in section 3 of this policy document is generally a criminal offence. The Council is the prosecuting authority for such offences and as they are criminal in nature, proceedings are taken in the Magistrates Court.

Prosecution for contravention of the HMO management regulations, or breach of HMO Licence conditions, will be taken on a case-by-case basis depending upon the level of evidence. We will normally bring the contravening items to the attention of the person responsible for their action, however where a landlord repeatedly contravenes the code of management, or licence conditions, it is likely that the Council will take a sterner approach and prosecute immediately. Other factors influencing prosecution are severity

of conditions, actual occurrence of harm to occupants or premises, knowledge of knowingly contravening the regulations, lack of progress on improving the conditions.

#### **4.4. RECOVERY OF EXPENSES**

The Council is permitted to recover any expenses that it has reasonably encountered in the processing of Housing Act enforcement, under S.49 Housing Act 2004.

For further guidance see Appendix – Charging structures etc.

#### **4.5. REVOCATION OF A LICENCE**

Not complying with the conditions of a Licence allows the Council to revoke the Licence.

#### **4.6. TAKING OVER THE MANAGEMENT OF THE PROPERTY**

This sanction addresses ongoing management problems of unlicensed or problem properties, with a view to protecting occupiers and those in the vicinity and, where possible, getting properties licensed and properly managed.

The Council makes an Interim Management Order (IMO), or special IMO, which last for 12 months. At the end of an IMO, the Council may make a Final Management Order which lasts for up to 5 years.

Where empty properties are concerned the orders are an Interim Empty Dwelling Management Order, which lasts for 12 months, and then a Final Empty Dwelling Management Order, which lasts for up to 7 years.

The Council would not take the decision of taking over of the management of a property lightly, and would do as much as possible to avoid the situation. However, where no breakthrough with the person(s) can be made it is possible the Council will turn to this enforcement tool. In doing so the Council may contract out the day to day management responsibility.

#### **4.7. RECOVERING RENT PAID TO THE LANDLORD**

This is achieved by Rent Repayment Orders under the Housing Act 2004. Where rent has been paid in respect to an unlicensed property by a tenant or housing benefit. The Council would pursue this sanction if, in consultation with the Revenues section, it is decided that a case exists and the financial benefits of doing so are satisfactory.

## 5.0 SERVICE COMPLAINTS

The Council welcome complaints and perceive the process as a positive one where we can seek to improve our service or support the policy and processes already in existence.

### 5.1. How to complain if you are unhappy with our service

If you are dissatisfied with the service you have received, please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to do this. We will deal with any complaint you have in strict confidence.

### 5.2. What we will do

Wherever possible we will attempt to resolve your complaint informally through the case officer or Housing Renewal Manager. We will keep you regularly updated of progress until your complaint is resolved.

### 5.3. If you are still not happy

If you are still unhappy with the outcome, please tell us and we will advise you how to take your complaint to the User Rights and Complaints Manager who will arrange for the case to be reviewed in accordance with the departments 'complaints procedure'.

### 5.4. The Local Government Ombudsman

If you think that you have been unfairly treated, you can ask the Local Government Ombudsman to investigate.

## 6. How to contact us



You can contact the Housing Renewal Team on telephone- (01983) 823040 or fax- (01983) 823060.



in person at 7 High Street, Newport, Isle of Wight.



You can write to us at the following address: 7 High Street, Newport, Isle of Wight, PO30 1SS



by e-mail - [housing@iow.gov.uk](mailto:housing@iow.gov.uk)

## 7.0 CONFIDENTIALITY AND DATA PROTECTION

The Council will at all times strive to maintain the confidentiality of persons requesting our service. However, in the case of prosecution and witness statements, it may be

required to reveal the names and addresses of both parties involved in a nuisance complaint.

We will adopt policies which ensure personal data is held confidentially and securely.

## **8.0 VARIATIONS TO, AND MONITORING THE POLICY**

- No account has been made for errors, omissions, changes in policy or law, or unforeseen factors affecting this policy. As such we reserve the right to take an alternative form of action as stated if the situation requires it.
- It is essential that in setting a policy for Officers to follow, it should be followed. To ensure that Housing Renewal Officers comply with this enforcement policy, the Housing Renewal Manager will undertake checks to ensure that the necessary considerations have been given to cases, policy is being followed, and that the appropriate documentation is in place on the file to support decisions and evidence policy compliance.
- The policy will be reviewed annually by the Housing Renewal team, or at such earlier period as is required, and any alterations will be published on the website. Where considered necessary consultation will be undertaken, especially if the alterations may impact upon any one of the equality strands.

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## The Enforcement Concordat.

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy.

We are committed to these aims and to maintaining a fair and safe trading environment. The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety. We have therefore adopted the central and local government Concordat on Good Enforcement.

Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

### STANDARDS

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

### OPENNESS

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

### HELPFULNESS

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly.

We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

### COMPLAINTS ABOUT SERVICE

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

### PROPORTIONALITY

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

### CONSISTENCY

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice. Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

Enforcement

CONCORDAT CABINET OFFICE

MARCH 1998



## **HOUSING ENFORCEMENT SERVICE REQUEST (eform Guidance)**

This form can be used to report or request information in the following circumstances:

- You are a non long-leasehold tenant (e.g. 6 month shorthold and the like) of residential accommodation and there are hazards in the property, missing amenities or overcrowding.(NOTE IT IS EXPECTED THAT A TENANT MUST RAISE ISSUES WITH THEIR LANDLORD OR AGENT FIRST BEFORE INVOLVING THE COUNCIL) [click here to download a diary log sheet which could aid this process](#)
- You wish to inform the Council of a House in Multiple Occupation (HMO)- [for a definition of a HMO click here](#)
- You are a tenant of a HMO or a landlord and wish to inform the Council of a HMO that should be licensed but is not, or a landlord/manager requesting an application pack to become licensed- [for further information on HMO licensing click here](#)
- You are a tenant or a visitor of a “converted building with self contained flats” HMO and wish to report poor management standards- [for information on the Management Regulations click here](#)
- You are a tenant or a visitor of a HMO, which is not of the type above, and wish to report poor management standards- [for information on the Management Regulations click here](#)
- You are an owner occupier or a visitor of an owner occupied property seeking advice on enforcement issues which may affect them, e.g. where the owner is vulnerable and requires carers/agents to enter the property to aid daily living and the conditions of the property are extremely hazardous to potential visitors and occupiers, or where an owner occupied premises is in such a state of disrepair that it is causing or is very likely to cause a nuisance to the public or neighbouring property.

This form should not be used where citizens are seeking legal advice on their own tenancy matters or where they are seeking to take their own private action. Tenants and owners should obtain their own private legal advice from a solicitor, or possibly free from the Citizens Advice Bureau (529853) or the Law Centre (524715).

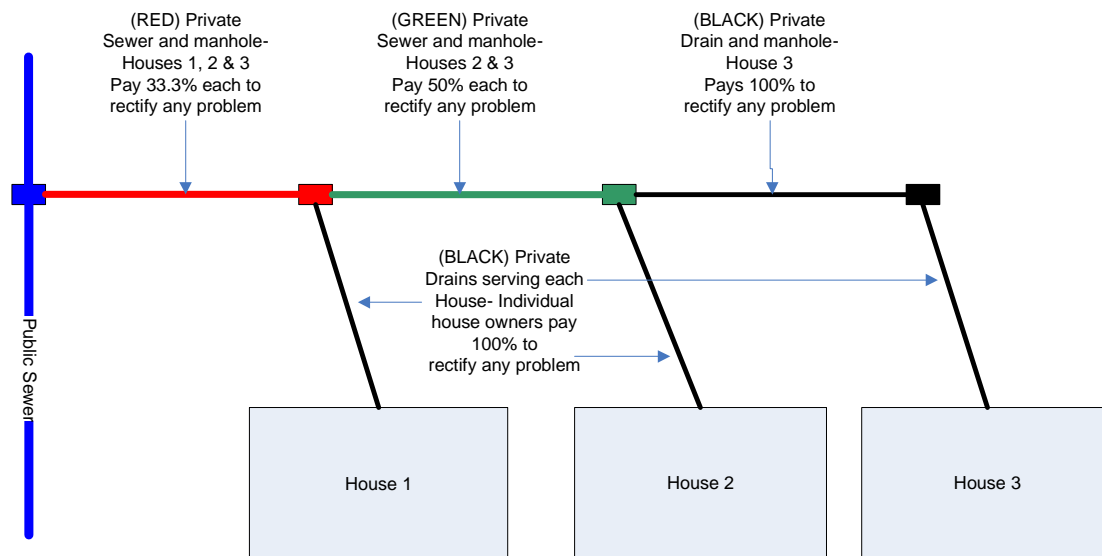
## CHARGING STRUCTURES FOR ENFORCEMENT ACTIVITIES INCLUDING;

### Drainage.

Formal charges for work undertaken in respect to enforcement action can only be requested at the point of prosecution or appeal in court, or via the undertaking of work in default of a notice. However we will informally request a charge to the person(s) responsible for any work that has been undertaken to survey and/or rectify drainage defects which has caused a cost to the Council.

Formal costs will include a charge for the time taken on the case by each Council officer at their hourly rate, from the point of which a request was put to the recipient of the notice to attend to the subject matter. Formal and informal charges will be requested for any third party costs which the Council have paid during the investigation or case, for example drainage surveys and testing, or legal costs. Costs will also be claimed for any work in default of a notice by the Council's agents.

Any costs will be divided according to the number of properties served and % use of the defective item(s). For example if a manhole is replaced at a certain cost, and it serves 3 properties, each property owner must pay 33.3% of the cost each towards it (all three properties having equal use of the manhole). However, if the same 3 properties also renew the shared sewer and each of their drains running into that sewer the calculations could be different, depending on the cost of replacing each section of shared pipeline, and numbers sharing it. Here the cost of replacing the individual drains is charged back to the sole user of the drain 100%, the cost to replace the section of sewer serving only two of the properties is divided 50% to each of the owners, and the cost of replacing the section of sewer serving all three properties is divided by 33.3% between them, and so on for however many properties are served by a sewer in any other situation. Illustration of private drainage responsibility:



In the example above if there is a problem with both the red sewer (costing £900), the green sewer (costing £1,400) and the black drain connecting the green manhole to the black manhole (costing £700), the respective charges per property will be: House 1- £300, House 2- £1,000, House 3- £1,700.

**HHSRS.**

Charges will be requested for enforcement activity where Notices are served to the rates in the attached schedule – ‘charges for the serving of a Notice under the Housing Act 2004’.

Further costs may also be claimed where work in default of a notice, or by agreement, is undertaken at a rate of the time taken on the case by each Council officer at their hourly rate, from the point of which a request was put to the recipient of the notice to attend to the subject matter (less any charges already made in serving the Notice). For any third party costs which the Council have paid during the investigation or case, for example asbestos surveys and testing, or legal costs. Costs will also be claimed for any work in default of a notice by the Council’s agents.

**Prosecution, including HMO management regulation breach.**

Once prosecution for an offence is initiated we will always seek to recoup any costs to the Council, including the time spent by individual officers. These costs will usually be presented to the court for their decision, or to the defendant if a case is withdrawn at an earlier stage by the defendant.

**Immigration inspections.**

Undertaking such inspections is not a statutory duty for the Isle of Wight Council. Currently the Council do not charge for our activities in respect to provision of reports and letters for an immigration enquiry from citizens wishing to reside on the Isle of Wight. However the Council may charge for these services in the future following consultation.

**EXAMPLE OF CHARGES FOR THE SERVING OF A NOTICE UNDER THE HOUSING ACT 2004** (as at Jan 2011. These will be reviewed regularly and made available to the public) (For up to date charges please contact the Housing Renewal Section)

No.	Action	Unit	Amount	Cost	Fixed costs £	Totals
1	Per inspection –	hr/unit of accommodation	1	£28.43	£10.00	£38.43
2	Writing up	hr/unit of accommodation	2	£28.43	£0.00	£56.86
3	letter 1	hr/unit of accommodation	0.5	£28.43	£0.00	£14.22
4	letter 2 (inc s.16)	hr/unit of accommodation	1	£28.43	£0.00	£28.43
5	letter 3 (inc. Notice & charge info)	hr/unit of accommodation	2	£28.43	£0.00	£56.86
6	Informing Land Charges, tenant + other interested parties	hr/unit of accommodation	1	£28.43	£0.00	£28.43
7	Follow up- inspection, phone calls, letter	hr/unit of accommodation	2	£28.43	£10.00	£66.86
Notices other than Hazard Awareness Notice (HAN) Total= MINIMUM						<b>£290.09</b>
HAN for ratings of A, B, C, D, E, F (actions 1-5 + 7)= MINIMUM						<b>£261.66</b>
HAN for ratings of G, H, I, J (actions 1-5) = MINIMUM						<b>£194.80</b>
Emergency Prohibition Order (actions 1,2,5,6,7) = MINIMUM						<b>£247.44</b>

NOTE: Unit of accommodation= single occupied house/flat or in the case of a "shared house" HMO 1= up to 4 bedrooms, 2= 5 to 8 rooms, 3= 9 to 12 rooms, etc. NOTE: Average hourly charge rate calculated at £28.43, from Financial Services July 2008.

The case officer may have been presented with evidence to indicate a decision to reduce the amount of charge, or not to charge at all, for the enforcement action. If this is the case the case officer will discuss this with the Housing Renewal Manager and obtain written confirmation of the decision. This will be explained in writing to the charge recipient.

Where a charge for a Notice will cause undue hardship then the recipient of the charge may appeal to the Housing Renewal Manager in the first instance, stating the nature of their case and reasons for their appeal. It would be helpful if evidence of the reasons is provided. The Housing Renewal Manager will review the situation and make a decision of waiving the whole charge, reducing the charge or keeping it the same. The appellant will be informed of the decision in writing. If the charge recipient is still unhappy with the decision he or she should state their reasons to the Head of Housing and Community Support, who will make a final decision as to the whether the charge stands and its amount. This does not affect the statutory appeal rights of a Housing Notice recipient, or the right to complain.

## **HHSRS ENFORCEMENT ON OWNER OCCUPIED AND LONG LEASEHOLD PROPERTY**

The usual process of encourage, persuade and enforce will be followed. It is at the enforce stage that the human rights factor plays a part in owner occupied and long leasehold occupied (similar equivalent to owner occupied) property.

Situations and considerations to issue a notice other than a hazard awareness notice;

- a) The hazard must be a category 1 hazard to consider enforcement action.
- b) The occupier is suffering from mental illness, or is vulnerable in some way, which, following advice from Social Services, causes inability to make reasoned decisions about the situation.
- c) The occupier is relatively housebound and relies on Council or other agency staff to visit the home regularly to aid in living in some way, e.g. meals on wheels, care workers, therapists, cleaners.
- d) The occupier is a long leaseholder, and the deficiencies relate to common areas or common systems (such as a fire alarm system) for which the long leaseholder is responsible or partly responsible and the deficiency affects a third party.
- e) The occupier is a long leaseholder, and the deficiencies relate to common areas for which another person is responsible, and the leaseholder has made their own enquiries to the person responsible to no effect.
- f) The hazard is also affecting a third party who has no control over the situation, such as children or other relatives, or the general public.
- g) Resolution of the hazard(s) would mean the home would become decent and the occupier is vulnerable in accordance with the Decent Homes definitions.
- h) Consideration of the matters for Demolition, Clearance Area, or Emergency Works should also be taken into account if appropriate.

## **EMERGENCY WORKS, WHAT WE WOULD EXPECT TO DO:**

Enforcement Concordat extract:

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

**Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.**

*List of examples of particular HHSRS hazards and what we would do in exceptional circumstances:*

In all cases the officer, in consultation with managers, may consider that continued occupation is unsatisfactory in any way, but that emergency work is still required to protect the public or other visitors or neighbours.

Fire safety – Firstly liaise with Fire and Rescue to see if they can do anything to improve the situation. If not, consider whether battery operated smoke alarms provided by ourselves would be sufficient to reduce the hazard to a temporarily acceptable level, and then take further alternative enforcement action. If not we would contract a fire alarm engineer or other suitably qualified contractor to resolve the immediate deficiencies and report on the remaining deficiencies.

Gas- Firstly liaise with TRANSCO to see if they have any enforcement powers or advice. If unsatisfactory we will contract a CORGI registered engineer to resolve the immediate deficiencies and report on the remaining deficiencies.

Electrical- We will contract a suitably qualified contractor to resolve the immediate deficiencies and report on the remaining deficiencies.

Structural collapse or falling elements- Firstly contact the Building Control section to ascertain if they have any duties in this respect. If not, or it is agreed that we would lead, we will review the situation to consider whether a structural engineer is required, and if so instruct a suitably qualified person to act. Following the structural engineer's advice, or if that person was not required we will instruct a contractor to make the building element safe in the quickest and cheapest possible manner. This may mean shoring a wall or roof up and restricting access, and not undertaking a rebuild or what is at fault.

*Drainage;*

Where an escape of sewage is occurring, or very likely to occur, we will contract a drainage engineer to survey the situation and undertake any immediate remedial work that is required to remove the deficiency for a period of time which is necessary for us to take further action, or for the public to remain safe.

*Empty and Unsecured properties:*

Boarding up- We will liaise Building Control to see if that section have any powers to undertake the necessary work. If not we will instruct a contractor to undertake the necessary work to make the dwelling safe from entry.

## **PROHIBITION ORDERS – APPROPRIATE SITUATIONS AND CONSIDERATIONS**

Possible situations to make a Prohibition Order

A Prohibition Order under S.20 or S.21 is a possible response to a Category 1 or a Category 2 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

This might be appropriate:

- a) Where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical either because of cost or other reasons. These other reasons may include cases where work cannot be carried out to remedy a serious hazard with the tenant in residence. The landlord may not be able to re-house the tenant, though the local authority may consider offering temporary or permanent alternative accommodation to the tenant to assist in progressing remedial works.
- b) To specify the maximum number of persons that should occupy the dwelling where it is too small for the actual household in occupation, in particular the number of bedrooms (action to deal with future occupation could be taken through the use of a suspended order).
- c) To specify the maximum number of persons who should occupy the dwelling where there are insufficient facilities (e.g. personal washing facilities, sanitary facilities, or food preparation or cooking facilities) for the numbers in occupation (action to deal with future occupation could be taken through the use of a suspended order).
- d) To prohibit the use of a dwelling by a specified group (until such time as improvements have been carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others. The specified group relates to the class of people for whom the risk arising from the hazard is greater than any other group, for example elderly people or those with young children.
- e) In a HMO, to prohibit the use of specified dwelling units or of common parts.

Considerations to make a Prohibition Order

When considering serving a Prohibition Order, the local authority should also:

- a) Have regard to the risk of social exclusion.
- b) Consider whether the premises are a listed building or a building protected by notice pending listing. Where improvement is not the most appropriate course of action, serving a Prohibition Notice on a listed or protected building should always be considered in preference to demolition. In cases where a listed or protected building is the subject of enforcement action the Housing Renewal section will consult fully with the Conservation section of the council for their views and wishes.
- c) Take account of the position of the premises in relation to neighbouring buildings. Where improvement is not the most appropriate course of action and demolition would have an adverse effect on the stability of

neighbouring buildings, prohibition of the whole or part of the building may be the only realistic option.

- d) Irrespective of any proposals the owner may have, consider the potential alternative uses of the premises.
- e) Take into account the existence of a conservation or renewal area and of any proposals generally for the area in which the premises are situated. Short-term prohibition may be an option if the long term objective is revitalisation of the area.
- f) Consider the effect of complete prohibition on the well being of the local community and the appearance of the locality.
- g) Consider the availability of local accommodation for re-housing any displaced occupants. It is unrealistic to expect a landlord owning a small number of properties to re-house the tenant. Landlords have no legal responsibility to re-house their tenants as a result of action by the local authority, although the tenant may be able to seek redress. Under the Land Compensation Act 1973 the local authority may have a duty to re-house persons displaced by the making of a housing order. (S.39), and may also be required to make a 'home loss payment' (S.29) or a 'disturbance payment' (S.37).
- h) Consider whether it is appropriate to offer financial advice or assistance.



## **DECISIONS TO SUSPEND AN IMPROVEMENT NOTICE OR PROHIBITION ORDER**

The local authority may suspend the action specified in an Improvement Notice or a Prohibition Order. The notice to suspend may specify an event that triggers action, such as non-compliance with an undertaking given to the authority, or a change of occupancy. Suspension might be appropriate where the hazard is not sufficiently minor to be addressed by a Hazard Awareness Notice but the current occupiers are not members of a vulnerable group and the risk to their health and safety is lower. However, in this kind of circumstance, the Housing Renewal section will consider the hazard assessment, and whether a risk remains which warrants a programme of action, such as improvements over a more relaxed timescale.

Suspension could also be appropriate where enforcement can safely be postponed while a more strategic approach to area renewal is considered. In the case of Category 1 hazards, the authority will consider very carefully whether a suspended notice is an appropriate way of responding. It will be rare for Category 1 hazards to be dealt with in this way where the occupant is in a vulnerable group, unless there is a risk to the health or safety of the occupant through the action itself.

Typically, an event that might trigger the action of a suspended notice would be a change of occupancy, where an occupier considered less vulnerable to the hazard is replaced by another occupier. The authority needs to know who is living in a property and consider the kind of circumstances that would be a reasonable trigger. The circumstances that will trigger the action must be in the notice. The notice might require an owner or landlord to notify the authority of a change of occupancy to ensure that the notice can be reviewed.

Review of suspended Improvement Notices and Prohibition Orders:

The authority will review suspended notices and orders after at least 12 months, and may do so earlier. The review could be a further visit and inspection of the property, or an assessment of reliable information collected on the dwelling.

## **DEMOLITION ORDERS – APPROPRIATE SITUATIONS AND CONSIDERATIONS**

Considerations to make a Demolition Order and possible situations

When considering serving a Demolition Order, the local authority should also:

- a) Take into account the availability of local accommodation for re-housing the occupants.
- b) Take into account the demand for, and sustainability of, the accommodation if the hazard was remedied.
- c) Consider the prospective use of the cleared site.
- d) Consider the local environment, the suitability of the area for continued residential occupation and the impact of a cleared site on the appearance and character of the neighbourhood.
- e) Consider the NRA guidance (if appropriate).

## **CLEARANCE AREAS – APPROPRIATE SITUATIONS AND CONSIDERATIONS**

Considerations to make a Clearance Area and possible situations

A local authority should consider the desirability of clearance in the context of proposals for the wider neighbourhood of which the dwelling forms part. In deciding whether to declare the area in which hazardous dwellings are situated to be a clearance area we will have regard to:

- a) The likely long-term demand for residential accommodation.
- b) The degree of concentration of dwellings containing serious and intractable hazards within the area.
- c) The density of the buildings and street pattern around which they are arranged.
- d) The overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands.
- e) The proportion of dwellings free of hazards and other, non-residential, premises in sound condition which would also need to be cleared to arrive at a suitable site.
- f) Whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether added land can be acquired by agreement with the owners.
- g) The existence of any listed buildings protected by notice pending listing - listed and protected buildings should only be included in a clearance area in exceptional circumstances and only when building consent has been given;
- h) The results of statutory consultations.
- i) The arrangements necessary for re-housing the displaced occupants and the extent to which occupants are satisfied with those arrangements;
- j) The impact of clearance on, and the scope for relocating, commercial premises.
- k) The suitability of the proposed after-use(s) of the site having regard to its shape and size, the needs of the wider neighbourhood and the socio-economic benefits which the after-use(s) would bring, the degree of support by the local residents and the extent to which such use would attract private investment into the area.

Possible situations:

The Council could consider that a clearance area would be appropriate where there are plans to redevelop areas where there is low demand for housing or other reasons for redevelopment. If the reasons are not primarily related to housing conditions then the clearance area powers will not be the most appropriate. A clearance area should only be made for the 'well being' of the residents. An alternative to clearance area could be the use of compulsory purchase powers.

## **CROSS WORKING AGREEMENTS WITH OTHER DEPARTMENTS.**

The following guidance notes are formed to help assist the Housing Renewal Officers in their interpretation of an enforcement situation, and clarify which department should 'take the lead'. However, where another department makes an untimely or inadequate response, and the Housing Officer considers an imminent health risk the Housing Renewal section must consider taking the appropriate action within their powers.

**Temporary Holiday Accommodation-** These types of premises generally fall under the HSE for enforcement purposes. However if the holiday letting period is more than 20 weeks the responsibility falls to the Local Authority, and it is likely that the Environmental Health Section are the lead section. Consideration must also be given to whether planning permission exists for the type of property usage being undertaken, and for this we will contact the Planning Enforcement section.

**Caravans and Mobile Homes-** for housing enforcement see specific guidance. The Environmental Health section (specifically the Licensing department) have an enforcement responsibility in respect to licence conditions, should the premises have a licence. The planning section may have an interest also in respect to permission for use.

**Malodour** - can be a nuisance under the Environmental Protection Act 1990, and would normally be dealt with by the Environmental Health section. Housing Renewal may become involved where the source is due to a defective or insufficient private drainage system. These matters are unlikely to end in formal enforcement action due to the difficulties in proving sources of malodour, and an informal encouraging response is desirable, offering advice on possible drainage problems and solutions for the householder to take up. Possible use of a monitoring sheet by the customer should be considered to gain evidence for Housing or Environmental Health section use.

**Rats** – a pest that Environmental Health section have a duty to deal with. The Environmental Health section will undertake initial investigations and take their own action in respect to the rats. Where a defective or insufficient private drainage system has been witnessed by the investigating officer of another department this will be reported internally and the Housing Renewal section will become involved to resolve to the drainage matter.

**Private Water Supplies** – Local Authorities have a duty to test certain private water supplies. EH will undertake the testing of the supply, and if a problem is found to exist they will contact us with the details for intervention under the HHSRS. Typically these situations are rare, and where found with owner occupier we will take an advisory stance, offering information on how to continue occupation if able to, and possibly ending action with a Hazard Awareness Notice under the HHSRS (see advice on enforcement against owner occupiers in the appendix above). Where the property is let, and a tenant is in occupation, or likely to be, our stance will follow the normal HHSRS route – encourage, persuade, enforce. The difference with the latter situation is that stronger enforcement action than a Hazard Awareness Notice may be taken.

**Fire and Rescue.**

See separate protocol for joint working arrangements on HMO's.

**Building Control.**

We have an informal arrangement currently offering joint working and advice both ways as and when the need arises. The Building Control section have a responsibility to deal with dangerous properties, which has obvious overlaps with Housing enforcement, and consultation will take place between the departments to decide which section will take the necessary action.

**Planning.**

No arrangement currently exists, however there is a wish to form an 'eyesore group' incorporating Housing Renewal, Planning Enforcement and Conservation – dealing mainly with empty listed buildings, and empty and unsecured premises which are used or could be reasonably converted for residential use.

Where no planning permission exists for residential use, and a premises is currently being used for that purpose and hazards exist, it is expected that planning enforcement take the lead, to resolve any planning issues first before any HHSRS or drainage enforcement action can be undertaken (to avoid undermining the primary legislation issue).

Consideration must be given to consulting with the planning section where a cross working matter arises to resolve the situation to the benefit of the Council and wider public.

If the building concerned is a listed building or in a conservation area and either the deficiencies, or the work to resolve the deficiencies, are considered to impact upon this planning status, the Housing Renewal officer will consult with the Conservation section to discuss the way forward and any cross enforcement responsibilities.

**The Environment Agency.**

This external agency has enforcement responsibilities and powers in respect to drainage systems causing or likely to cause pollution to a watercourse. There are clear overlaps between our services and the approach is of an informal collaborative one that has not been formally adopted, but appears to work well. We will continue to establish links and a good working relationship with the officers of the Environment Agency to benefit both partners and wider public.

## **SERVICE OF DRAINAGE NOTICES**

It is our policy to serve on the person(s) whose act, default or sufferance is causing the problem which needs remedying. Where it is unknown who this person is, or where specific responsibility is unclear, we will intervene and serve notice on all parties who have an interest in problem who can be legally served with notice, i.e. single or multiple owners, a limited company secretary, any other person who could be defined as a person responsible or as owner (agent receiving or able to receive rack-rent), and in some cases occupiers of a property.

Service of notice will always be in writing, and usually sent by post. However where we believe the recipient may not receive the notice in a timely manner, or if we do not know the postal address of a notice recipient, we will display the notice in a prominent position where the recipient has control of a premises, building, property or land. We will consider whether it would also be suitable to send a copy of the notice by post.

We will always try and take the most suitable and expedient course of action, and this may include utilising Housing Act enforcement powers. An example could be where a property is let by a landlord to a tenant and there are other hazards at the property, or if an escape of sewage has been abated and the likelihood of recurrence is higher than average, but not significant, then it may be suitable to serve a Housing notice such as a Hazard Awareness Notice.

## **USE OF HHSRS TO DEAL WITH POOR CONDITIONS IN MOBILE HOMES OR OTHER NON-TYPICAL DWELLINGS**

### **ISLE OF WIGHT COUNCIL NOTE- ENFORCEMENT OF CARAVAN SITE LICENCE CONDITIONS FALLS TO ENVIRONMENTAL HEALTH SECTION**

Section 1 of The Housing Act 2004 provides guidance and definitions for 'residential premises' and 'dwelling'.

It indicates that assessment of conditions in such residential premises and any subsequent enforcement using the actions contained in Chapter 2 shall be able to be carried out in respect to a 'dwelling', amongst other more typical scenarios such as a HMO or Flats.

For the purpose of this particular guidance piece a 'dwelling' is defined in the Act as 'a building or part of a building occupied or intended to be occupied as a separate dwelling'.

Guidance by Sweet and Maxwell in the Encyclopedia of Housing Law and Practice March 2007 suggests that *the "Dwelling" in previous legislation (e.g. Housing Act 1985 s.189) has permitted action to be taken in relation to "dwelling-houses" defined as either a house or a flat (see Housing Act 1985 s.183). The definition of house had for these purposes been given a broad meaning: see Key Issue F: House/Dwelling-house. The issue of what is meant by a house is neatly side-stepped in this Part (Housing Act 2004) by permitting action in relation to "dwellings" defined as a building or part of a building occupied or intended to be occupied as a separate dwelling. Thus it will not matter for what purpose the building was originally constructed, simply how it is currently occupied or intended to be occupied.*

*The concept of a "separate dwelling" is one which is well known in landlord and tenant law. See Key Issue G: Let As a Separate Dwelling.*

The Housing Act 2004 definition of "dwelling" is independent of the definition of "caravan" in the Caravan Sites and Control of Development Act 1960 Section 1(4) and is not affected by the requirement for homes on caravan sites to be "capable of being moved".

The local authority needs to consider each case on its own merits as to whether a mobile home, or other structure in question, can be defined as a dwelling.

Added weight to the argument for being a dwelling may include factors of the materials and construction methods used, the permanency of the building including the degree of annexation and connection to services, whether once in position it is designed to be moved again and, if so, whether any parts of the structure would require demolition or excavation to make the structure moveable. In addition to this factors such as how the building is being used, is intended to be used, and has been used in the past may play a part, for example has it been occupied continually for the last 10 years even though it is not a typical 'dwelling' that one would normally occupy under these conditions.

This approach is also relevant to residential boats and other more temporary structures, which have been adapted to be permanently positioned in one

place. If they can be said to be buildings and therefore dwellings, the HHSRS can be enforced in them.

Dictionary definitions say a building is a more permanent structure, which has been constructed. For example dictionary.com defines building as:

“a relatively permanent enclosed construction over a plot of land, having a roof and usually windows and often more than one level, used for any of a wide variety of activities, as living, entertaining, or manufacturing”, or

“anything built or constructed”.

Prefabrication is becoming more common in the construction of new homes and so some prefabricated homes are considered to be buildings and are therefore dwellings too. Some structures which are called “mobile” homes are permanently on the same site with proper connections to mains drainage and gas/electrical services and so are effectively pre-fabricated buildings; here the mobile home is a dwelling and HHSRS can be enforced.

Where enforcement action is taken under Housing Act 2004, Part 1 on a mobile home or similar structure, the owner has the right of appeal to the Residential Property Tribunal. Any tribunal decision, though not binding, will indicate whether such enforcement action is appropriate for these types of homes.

### **Statutory Nuisance Powers**

Where the HHSRS cannot be enforced, statutory nuisance powers in the Environmental Protection Act 1990 can be used. Public Health Act 1936, Section 268 (as amended) applies these powers to mobile homes or other non-typical dwellings:

*(2) For the purposes of [Part III of the Environmental Protection Act 1990] a tent, van, shed or similar structure used for human habitation—*

*(a) which is in such a state, or so overcrowded, as to be prejudicial to the health of the inmates; or*

*(b) the use of which, by reason of the absence of proper sanitary accommodation or otherwise, gives rise, whether on the site or on other land, to a nuisance or to conditions prejudicial to health, shall be a statutory nuisance, and the expression “occupier” in relation to a tent, van, shed or similar structure shall include any person for the time being in charge thereof.”*

The definition of statutory nuisance in premises and mobile homes has been affected by the case law established in *R v Bristol City Council, ex parte Everett* [1999]. To be prejudicial to health the condition of the premises must present a risk to health of the occupants rather than a safety risk likely to cause injury. So where a safety hazard is found in a mobile home that creates a risk of accidental injury, this power cannot be used as an alternative to Housing Act 2004, Part 1. But the Environmental Protection Act 1990 does provide a remedy for premises which are prejudicial to health.



In the event of an appeal against such a notice, HHSRS evidence can be used to justify that the premises is injurious to health. Warwick University's Legal Research Institute, who devised the HHSRS, advised in an email to LACORS of 23rd November 2006:

“there is no reason why the HHSRS cannot be used to justify why a dwelling such as a Mobile Home is prejudicial to health or otherwise unsatisfactory under other legislation. For example it has been used to support the argument in a magistrates' court that premises are a statutory nuisance.

The HHSRS is an assessment tool, and the national data is provided as guidance” (see above) “and as a reference point. If, for a non-typical dwelling such as a Mobile Home, it is considered that there are deficiencies (including inherent problems) that increase the likelihood of an occurrence under the hazard of cold by comparison with the traditional construction (the majority of buildings) then the assessment has already started. As with some other forms of construction, it may be considered appropriate to take measurements, such as SAP ratings to compare with more conventional dwellings.”

So in many cases a Category One hazard found in a mobile home can be enforced by serving a notice under Environmental Protection Act 1990, Section 80.

## OVERCROWDING GUIDANCE

There are various methods of enforcing against overcrowding in residential situations on the Isle of Wight.

Four separate powers are available to tackle overcrowding in the private rented sector, as follows:

- HHSRS Hazard 11 “Crowding and space”
- Housing Act 1985 Part 10.
- Housing Act 2004 Part 2 for licensable HMO’s
- Housing Act 2004 Part 4 Chapter 3 for other HMO’s

Guidance for HMO’s is dealt with later in this chapter, and non HMO situations is reviewed first.

There is a statutory standard which applies to dwellings in Housing Act 1985, Part X; however this is an outdated standard, which is subject to review by CLG.

HHSRS includes the hazard relating to crowding and space, which applies to all dwellings, serious overcrowding may cause various category one hazards and may require a (suspended) prohibition order to reduce the number of occupiers.

We will assess overcrowding of a property on the basis of both Housing Acts (1985 and 2004), and where a property is statutorily overcrowded we will be obliged to follow action required by that route. If the property is not statutorily overcrowded we can assess it under the HHSRS, and take action as deemed appropriate.

As part of the Government’s plans to tackle overcrowding issues in England they have produced the paper ‘Tackling overcrowding in England: An action plan’. For enforcement purposes the intention is to update the statutory overcrowding standards to the Bedroom Standard.

The Bedroom Standard is based on the ages and composition of the family. A notional number of bedrooms is allocated to each household in accordance with its composition by age, sex and marital status and relationships of family members. A separate bedroom is allocated to each:

Married or cohabiting couple,

Adult aged 21 years or more,

Pair of adolescents aged 10-20 years of the same sex,

Pair of children aged under 10 years regardless of sex.

Any unpaired person aged 10-20 years is paired, if possible, with a child aged under 10 years of age of the same sex or, if that is not possible given a separate bedroom. The same applies to any unpaired child aged under 10 years.

This standard is then compared with the number of bedrooms available for the sole use of the household. Bedrooms converted to other uses are not included; bedrooms not in use are included unless they are uninhabitable.

It may be useful to apply the Bedroom Standard to a situation that is being assessed under the HHSRS to provide additional support to any justification of a hazard.

### **Space Guidelines and Amenity and Facility Guidelines for HMO's**

The Isle of Wight Council has adopted minimum space guidelines for rooms in Houses in Multiple Occupation. These guidelines can be seen on a separate guidance sheet, and the officer must relate these matters to hazards under the HHSRS for enforcement purposes.

We will take each individual person, even children, to equal 1 unit where this is described in the guidelines.

Housing Officers will survey the situation and apply the guidance to the building. Any difference between the existing situation and the guidance may be given leeway if the style of use of the HMO permits. For example, it is common to find HMO's that are occupied by workers who have come together to form the HMO. This style of occupation often finds the use of bunk beds in rooms shared by the tenants, which is satisfactory to all parties. In these cases, due to the space saved by the reduction in bed footprint area it may be reasonable to reduce the space guideline by up to 1m<sup>2</sup> maximum. Thus, if the existing occupancy is less than 1m<sup>2</sup> below the guidelines then we would let this pass in this situation, but if the style of occupancy changed we may not, and therefore the landlord must be informed about the situation and why we have decided to allow the apparent overcrowding.

Equally HMO's are also used for temporary accommodation. This is where the Homelessness Section utilise rooms on a temporary, and sometime emergency, basis (no single occupier allowed to stay for longer than six weeks on the premises). Here, again, we may allow variation by allowing one additional person over and above the guidelines. This is because the occupiers will not be exposed to the health effects of the apparent overcrowding for a prolonged period, thus reducing the hazard.

Other examples of when this situation may arise, and it is for the Housing Officer to apply a reasoned justification if the apparent overcrowding is to be allowed.

However, having regard to S.141 Housing Act 2004, persons in control of a HMO must refrain from permitting persons to occupy the HMO as sleeping accommodation in such numbers that it is not possible to avoid persons of opposite sexes who are not living together as husband and wife sleeping in the same room. Children under the age of 10 are disregarded for this purpose. A notice under these sections would ultimately be served on the person responsible to enforce this situation.

In addition to the space guidelines, the Council has adopted Amenity and Facility Guidelines, to provide HMO owners and tenants alike information on what constitutes a reasonable standard of facility for the number of people in the HMO.

Controls for licensable HMO's are greater, and generally these matters are covered within the licensing system, indicating the maximum number of occupants allowed in a HMO, and where amenities are deficient it is common

for discretionary conditions to be included on the Licence. Enforcement of these matters is dealt with under HMO Licence enforcement above.

For unlicensed HMO's the guidelines still apply, and the officer must relate these matters to hazards under the HHSRS for enforcement purposes. Bearing in mind these are guidelines it is expected that many different situations and factors can arise, and each situation will be dealt with on a case by case basis.

### **Licensed HMO's**

All licensed HMO's have a stated maximum occupancy level on the licence, which is decided upon by a combination of rooms, space and amenity within the HMO.

Any breach of the Licence conditions in respect to overcrowding will be dealt with under the HMO Licensing enforcement process above.

The only exception is where the overall maximum occupancy has not been exceeded, but individual rooms are being overcrowded. In which case refer to the HMO Space Guidelines above.

## **Made up Fire Doors- further guidance**

We do not accept at any time that a made up door is as good as a purpose built fire door to known tested criteria and quality controls, due to unknowns in control and quality of workmanship and materials. And it is therefore inherently deficient.

However this does not mean that we will not allow them to remain in a property, typically a HMO, where they appear to have been constructed to a good design and be in very good condition, and there are no other fire safety deficiencies. It depends upon the wider fire safety situation, and all the deficiencies and factors will be taken into account on a case by case basis, and a decision made.

It will be prudent to consult with the Fire and Rescue service, if only by email or telephone to seek their views and ascertain if they have already made a judgement previously.

For example if a HMO has made up fire doors throughout, and there is also deficiencies with the alarm system and other matters of fire safety, it is very likely that we would insist on all of the deficiencies to be improved, probably by an improvement notice or a prohibition order perhaps.

Alternatively, a made up fire door may be the only deficiency, and it poses a low risk under the HHSRS (perhaps it is the only made up fire door and it is located on the top floor. There are satisfactory other fire precautions such as alarm, extinguishers, lighting etc.). In this case an officer may decide, overall, that ultimately a Hazard Awareness Notice is the most suitable course of action.

A factor to take into account is the likelihood for future damage to occur and render the door more deficient, due to occupancy type or construction materials and methods used.

In any case we will undertake our normal enforcement procedure as described above, i.e. informal before formal action.

## **Structural Fire Resistance and Fire Detection Systems- risk assessment and compensatory measures (typically in blocks of flats/HMO's)**

### **- further guidance**

We often come across situations where guidance on structural fire resistance from the Authorities can be contradictory, especially concerning separation between units that form basement areas, or units over certain heights.

In general we shall take the advice as described in the HM Government Fire Safety Risk Assessment - Sleeping Accommodation, and of the LACORS Housing Fire Safety. However each case which is borderline will be based on it's merits, in that the Housing renewal Officer should assess the Fire risk under the HHSRS in the situation.

Where a block of flats or HMO has a separate or integral basement or lower ground floor unit it will be the ultimate situation to have both one hour fire separation and an interlinked fire alarm system. This is likely to be disproportionate to the situation however, and therefore it would be acceptable for either of the following situations to be adopted in order of preference: 1 hour fire separation (especially where the existing ceiling or structure is in disrepair), or (if the existing structure is in good repair and likely to provide about ½ hour fire resistance) provision of an interlinked fire detection and alarm system suitable for the situation / layout.

It will be prudent to consult with the Fire and Rescue service, if only by email or telephone, to seek their views and ascertain if they have already made a judgement previously.

If, for example, a block of flats/HMO does not have the required structural fire resistance, and there is also deficiencies with the alarm system and other matters of fire safety, it is very likely that we would insist on all of the deficiencies to be improved, probably by an improvement notice or a prohibition order perhaps.

Alternatively, the required structural fire resistance may be the only deficiency, and it poses a low risk under the HHSRS (perhaps it is only a small area/location in a low risk fire area, and there are satisfactory other fire precautions such as alarm, extinguishers, lighting etc.). In this case an officer may decide, overall, that ultimately a Hazard Awareness Notice is the most suitable course of action.

A factor to take into account is the likelihood for future damage/deterioration to occur and render the structure more deficient, due to occupancy type or construction materials and methods used. Also the factor of ownership of the different units may cause the management of common systems to become difficult and cause a hazard to the occupants if not maintained.

In any case we will undertake our normal enforcement procedure as described above, i.e. informal before formal action.

## **Provision of Heating**

A property should ideally have a heater in each habitable room that is Appropriate, Efficient, Controllable, and is well Installed and Maintained. We will review the existing situation in non-habitable rooms and areas, and decide if heating is needed. We will only accept solid fuel fires where there is a secondary form of heating that is suitable under the minimum standards, above, and that it is safe under the HHSRS.

Habitable rooms are taken as- lounge, bedroom, dining room, study or room that could be or is used as a habitable room.

For 'appropriateness' we will take into account the capacity and/or size of heater/appliance and its ability to meet HHSRS guidance for minimising the risk of adverse health effects (i.e. 19 degrees Celsius and above), we may take into account the time taken to heat the room to a reasonable temperature (which is 16 degrees Celsius and ideally 19 degrees centigrade at any time or season of the year), that the heaters should be fixed to suitable wall surface, and that there are no trailing leads or protruding fuel lines, that there is no other deficiency produced by the heating system which causes a secondary hazard, and the weather conditions at the time of inspection (i.e. is it an exceptional event causing severely low temperatures, if so we must measure over a period of time over the colder months). If the heater(s) do not heat the room to the minimum 16 degrees centigrade it is likely that the service of a Hazard Awareness Notice would be inappropriate, where the heater(s) heat the room(s) to between 16 to 19 degrees centigrade then the appropriate intervention would likely be a Hazard Awareness Notice. Account should also be taken of the overall heating situation, especially where some rooms are heated adequately but others are not; in these cases it may be appropriate for a Hazard Awareness Notice depending upon who is occupying the property and how.

In assessing 'efficiency' we should take into account the fuel efficiency of the design, construction, capacity, repair and deterioration of the heater, and also the 'cost' efficiency. By cost efficiency we mean that a factor could include what tariff a landlord has provided for a tenant to use the heating system provided, for example storage heaters should ideally be on a cheaper economy tariff available from most suppliers, or in some situations landlords recharge the electricity to tenants via a separate meter.

In assessing 'controllable' each individual heating appliance should have the ability to be turned on or off, and to vary the heat produced, at any time. The ability for 'programmable control' is an ideal and can be aimed for, but would not in itself cause a deficiency.

In checking how well installed and maintained a heating system is we will assess the element(s) for deficiencies in design, construction or manufacture, disrepair or lack of repair, or general deterioration. We may ask the landlord to produce, or commission ourselves, a landlord's gas safety certificate, or other appropriate service check (e.g. electrical safety). In commissioning our own gas safety check we will usually request the cost back from the landlord either informally or formally as appropriate.