



**Housing Enforcement Policy  
2003-2008**

**July 2003**

## **INTRODUCTION**

This policy provides guidance on the aims and objectives of the Housing department to make homes on the Island fit and available for occupation.

*Poor quality housing can have an impact on the health of the occupants and on the quality of life in an area.*

In developing a Policy which responds adequately to these overarching objectives, the Council has recognised the need to engage two principal methods through which it will deliver the required outcomes:

- Encouragement through advice and assistance,
- Enforcement of minimum standards through an enforcement policy.

Together, these represent both a `carrot and stick' approach which offers a balanced approach to the diverse circumstances which exist on the Island. The Isle of Wight Council therefore has to make a decision, based on the merits of each case, whether assistance is provided through Housing Renewal Programmes or through intervention.

This document sets out the tools available to the Housing Renewal Team and also the process that it has to go through in deciding the most satisfactory course of action to take in each case.

The council has made a judgement that wherever possible that it should work with owners and landlords on the Island to maintain the maximum number of available dwellings for the community. Empty Properties are a wasted asset for the local community and often attract vandalism. For an Island relying on Tourism for its economic growth, empty properties are an eyesore and do not benefit the community.

The Isle of Wight Council expects to make major revisions to its Empty Property Strategy and Enforcement Policy by April 2004. changes may also be necessary due to proposed changes in legislation and in particular the Housing Bill. This Bill will introduce major changes to the fitness standard with an evidence based Housing Health and Rating System (HHSRS). Additionally changes will be introduced to the controls on Houses in Multiple Occupation (HMOs)

This policy does not contain any reference to other action that may be undertaken by the council under the following statutes:

The Environmental Protection Act 1990

The Building Act 1984

The Local Government Miscellaneous Provisions Act 1976

The Public Health Act 1961

The Housing Act 1985 Part X1-Houses in Multiple Occupation

A revision of this policy will be undertaken in line with the Housing Renewal Action Plan and actions taken under the Acts listed above will be included in the review.

## **The Human Rights Act 1998**

Throughout this policy the council will have regard to the Human Rights Act 1998.

Any enforcement action will have due regard to the rights set out in Article 8 (right to privacy) and Article 1 of the First protocol (right to peaceful enjoyment of possessions) of the European Convention on Human Rights.

## Definitions

Should there be any question over the definition of any expressions or terms within this document the definitions given in the Housing Act 1985 will be taken as the definitive ruling.

### 1. Over-arching principles

- 1.1 This policy follows guidance given by the Secretary of State for the Environment under section 604A of the Housing Act 1985 (the 1985 Act) and section 85 of the Housing Grants, Construction and Regeneration Act 1996 (the 1996 Act).
- 1.2 The policy sets out what the Council will have regard to in deciding for the purposes of sections 189, 264, 265 and 289 of the 1985 Act and sections 81 and 84 of the 1996 Act whether the '**most satisfactory course of action**' in respect of premises that have been identified as unfit for human habitation is:
- **Repair** – that is a service of a repair notice in accordance with section 189(1) or (1a) or 189 (1b) or 190 or 190A of the 1985 Act; or
  - **Deferred Action** – that is the service of a deferred action notice in accordance with section 81 of the 1996 Act; or The renewal of a deferred action notice in accordance with section 84 of the 1996 Act; or
  - **Closure** – that is the making of a closing order in accordance with subsection (1) or subsection (2) of section 264 of the 1985 Act; or
  - **Demolition** – that is making of a demolition order in accordance with subsection (1) or subsection (2) of section 265 of the 1985 Act; or
  - **Clearance** – that is the declaration of the area in which the premises are situated to be a clearance area in accordance with section 289 of the 1985 Act.

- 1.3 Under section 97 of the 1996 Act the authority is also required to have regard to guidance given under section 604A of the 1985 Act and section 85 of the 1996 Act in deciding whether completion of the relevant works for which housing renewal assistance is sought is the most satisfactory course of action.
- 1.4 In any fitness enforcement action the council will comply with its Enforcement Policy to ensure cases are dealt with in a fair, open and consistent manner.

## **2. Charging for fitness enforcement**

- 2.1 Under section 87 of the 1996 Act the authority will make a reasonable charge of up to £300 as a means of recovering certain expenses incurred in:
  - Serving a repair notice (under section 189 of the 1985 Act);
  - Serving or deciding to renew a deferred action notice;
  - Making a closing or demolition order.
- 2.2 The charge will be waived in cases of financial hardship. This matter will be the responsibility of the Principal Housing Officer.

### 3. Identifying the need for action

- 3.1 The **housing fitness standard** (section 604 of the 1985 Act as substituted by paragraph 83 of schedule 9 to the Local Government and Housing Act 1989) sets out the standard for determining whether premises are fit for human habitation. There are a number of ways in which unfit premises might come to the attention of the authority. These include:
- As a result of a request for enforcement action to be taken on the premises,
  - As a result of an application for Housing Renewal Assistance
  - As a result of inspections of the local area
- 3.2 On identifying an unfit property the council is obliged to consider the most satisfactory course of action to deal with it.
- 3.3 Whilst formal action is a necessary and an important part of the enforcement process, it should generally be viewed as a last resort. In carrying out private sector renewal activities where the authority identifies premises that while not unfit are likely to become so in the future unless remedial action is taken, the authority will normally consider the case for drawing this informally to the attention of the owner or landlord as the case may be. It may be necessary to follow this up with serving a notice under section 190 of the 1985 Act.
- 3.4 Where the authority has expressed an informal opinion it will provide a written explanation to the owner, landlord, agent or person in control as defined by the 1985 Act. The written explanation will include:
- the action which in the authority considers is needed and the timescale in which the authority considers such action needs to be taken;

- why the authority considers remedial action needs to be taken and the nature of the enforcement action the authority might be required to take in the future if the premises become unfit, including the right to make representations before, and the right of appeal against such action.

The action considered necessary may be incorporated in to a notice under section 190 of the 1985 Act. (house in state of disrepair but not unfit)

- 3.5 Prior to taking formal action under section 189 of the Act the authority will carry out pre-formal enforcement procedure as required by the Housing (Fitness Enforcement Procedures) Order 1996. This is designed to improve the transparency of the enforcement process through the issuing of a "considering to take formal action notice"; to help the local authority reach sensible decisions with owners and landlords by giving them the right to make representations; and to help reduce the burden that can arise from having to take formal enforcement action.
- 3.6 The authority will act in the way specified in the order. However, the order provides that local authorities are not **prevented from taking formal enforcement action in any case where such action appears to them to be necessary**. This broad exemption recognises the need for local authorities to be able to take immediate enforcement action. Such decisions will only be taken by the authority in the light of the circumstances of each case. While those circumstances will inevitably vary, examples where immediate action might be warranted include:
- where the council considers there is an imminent risk to health and safety of the occupant of the premises;
  - where the council has followed pre-formal enforcement procedures with the owner or landlord on previous occasions and considers that to repeat the 'minded to take action' notice procedures set out in the Housing (Fitness Enforcement Procedures) Order 1996 would amount to an unreasonable duplication of effort.

Whilst not included in this policy the council may consider action under the Building Act 1984 or such other legislation it may consider appropriate if urgent action is required and the Housing Act notice procedure would cause unnecessary delay.

#### **4. Formal action**

- 4.1 In deciding the most satisfactory course of action the authority will have regard to a wide range of factors. Wherever possible decisions will be made within the constraints of the Housing Renewal Policy and taking into account the views and circumstances of those affected by any decision taken.
- 4.2 Whatever the circumstances, the authority has to satisfy itself that a fitness enforcement decision represents the most satisfactory course of action. The council will be able to provide reasons for that decision and be able to demonstrate that it has reached its decision whilst having regard to the Government's Housing Renewal Guidance.

#### **5. Information requirements and initial assessment**

- 5.1 The council will endeavour to obtain sufficient information to enable it to undertake an initial assessment of the alternative courses of action.
- 5.2 This assessment will help to decide the most satisfactory course of action in the prevailing circumstances; and
  - Explain the chosen course of action to those directly affected; to a county court in the case of an appeal; or to an inspector and any public enquiry.
  - Economic, social, and environmental factors are taken into account in determining the most satisfactory course of action;



- The long term consequences of action are considered;
- The action on the unfit premises takes into account the effect of that action on neighbouring premises.

## **6. Relevant factors in deciding the most satisfactory course of action**

- 6.1 The factors set out below do not have any specific weighting, nor do they represent an exhaustive list. Decisions will be based on individual circumstances and the council will need to take into account any other factors it considers relevant.
- 6.2 In reaching a decision on whether any of the enforcement options represents the most satisfactory course of action the council will normally take the results of the initial assessment and then consider:
- Each option within the context of the housing renewal strategy and the resources for taking this strategy forward,
  - The practicality of the options having regard to the physical condition of the premises and any other premises onto which they abut,
  - The life expectancy of the premises if repaired,
  - The need to take into account the relationship of the premises with neighbouring properties and the condition of those properties,
  - The owners and occupants of the premises including their circumstances and wishes and any proposals they may have for the future of the premises,
  - In the case of landlords the management record of the landlord,
  - The effect of each option on the community in the area and how it will affect the local environment and appearance of the locality
  - The long term aim of the Housing Strategy to maintain as many properties in a habitable state on the Island.

## **7. Decision to serve a repair notice**

7.1 In deciding to serve a repair notice under section 189 of the 1985 Act, the council will normally;

- Consider the circumstances and views of owners and occupants, including the extent to which they are willing and able to carry out repairs; and the advice and assistance that might be available to help with that;
- Consider the long term of the Housing Strategy to maintain as many properties in a habitable state on the Island.

## **8. Deferred action notice option - background guidance**

8.1 Section 81 of the 1996 Act enables the authority to serve a deferred action notice on an unfit property where they are satisfied that this is the most satisfactory course of action. Section 81 also provides that a deferred action notice which has become operative is a local land charge so long as it remains operative.

8.2 A deferred action notice must:

- State that the premises are unfit for human habitation,
- Specify the works which, in the opinion of the council, are required to make the property fit,
- State the other courses of action which are available to the council if the premises remain unfit.

8.3 The fact that a deferred action notice has been served does not prevent the council from taking any other course of action in relation to the premises at any time. The authority may review a deferred

action notice at any time and must do so not later than 2 years after a notice becomes operative and at intervals of not more than two years thereafter. The authority must also inspect the premises for the purpose of reviewing the deferred action notice.

- 8.4 If on review the authority is satisfied that a deferred action notice is the most satisfactory course of action as required then a renewal notice must be served on all parties concerned. There is a right of appeal to the county court against service or renewal of a deferred action notice (section 83 and section 84(4) of the 1996 Act).
- 8.5 The council will use the deferred action notice sensibly and in relation to the degree of formal enforcement activity undertaken at present. The council may wish to serve a deferred notice on a property when it does not have sufficient resources in the current financial year but the application would qualify for Housing Renewal Assistance; or where the nature of unfitness is not considered by the authority to be seriously detrimental to the well being of the occupants.
- 8.6 The council has considered the difference between owner occupied premises and private rented properties in the light of a finite housing resource on the Island. The widespread use of deferred action notices in the rented sector would have a serious and detrimental impact of the Housing Renewal Strategy in that:
  - Little progress would be made in improving the 11% of private rented stock which is unfit; and
  - A significant amount of the council's resources would be engaged in serving and reviewing deferred action notices.

## **9. Provision of advice and assistance**

9.1 When serving or renewing a deferred action notice the authority will normally additionally consider whether it would be appropriate- using its powers under section 169 of the Local Government and Housing Act 1989 and Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Reform Order 2002 – to provide the person on whom the notice has been served with practical advice and assistance. Such help might include advice:

- On how to remedy the unfitness problems,
- On ways the works could be financed,
- On how to employ a suitable builder
- On other services which might be able to assist

## **10. Decision to serve a closing order**

10.1 In deciding to make a closing order under section 264 of the 1985 act, the council will normally;

- Consider whether the premises are a listed building or a building protected by notice pending listing – where repair is not the most satisfactory course of action, serving a deferred action notice on or closure of a listed or protected building should always be consider in preference to demolition,
- Take account of the position of premises in relation to neighbouring buildings- where a repair is not the most satisfactory course of action and demolition would have an adverse effect on the stability of neighbouring buildings, closure or the service of a deferred action notice may be the only realistic option,
- Irrespective of any proposals the owner may have, considered the potential alternative uses of the premises,

- Take into account the existence of a conservation area or Housing Improvement Zone. Short term closure may be an option if the long-term objective is revitalization of the area.
- Consider the effect of closure on the well being of the local community and the appearance of the locality,
- Consider the availability of local accommodation for rehousing any displaced occupants.

In considering the above the views of other sections of the council will be obtained i.e. planning, highways etc.

10.2 A closing order may be made in respect of a dwelling house (section 264(1) of the 1985 Act) or of a building containing flats, some or all of which are unfit (section 264(2)). The factors listed in the above paragraph -and the need to have regard to the general factors referred to earlier- will be as relevant to a building containing flats as to a dwelling house. In the case of the former, however, the authority will normally also consider the condition of the common parts of the building and the proportion of unfit flats compared with fit flats.

## **11. Decision to serve a demolition order**

11.1 In deciding whether to make a demolition order under section 265 of the 1985 Act, the authority will normally:

- take into account the availability of local accommodation for re-housing the occupants;
- consider the prospective use of the cleared site;
- 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.

11.2 A demolition order may be made in respect of a dwelling house (section 265(1) of the 1985 Act) or a building containing flats, some or all of which are unfit (section 265(2)). The factors listed in the previous paragraph -and the need to have regard to the general factors referred to earlier -will be as relevant to a building containing flats as to a dwelling house. In the case of the former, however, the authority would normally also consider the condition of the common parts of the building, the proportion of unfit flats compared with fit flats and the reasons why certain flats are unfit.