

# **Swale Borough Council Enforcement Policy for the Housing Health and Safety Hazard Rating System – Housing Act 2004**

**1. This document sets out how we use these enforcement powers to ensure safe and healthy environments in Swale’s housing sector.**

**The significant issues in addition to our statutory duties under the 2004 Act are that the Council will:**

- Exercises its discretion to take action where a category 2 Hazards exists.
- When specifying works in relation to category 2 hazards require improvements to a standard that must be to a band lower than the existing band for the hazard assessed, where it is possible to do so.
- Take enforcement action where there is an unacceptable risk of injury or ill health due to a hazard outside of a persons control where that it the most appropriate course of action in the circumstances.
- Agrees to use its powers to make charges for taking enforcement action
- Follows the principals of the Regulators compliance code and Enforcement Concordat Policy when making enforcement decisions.
- Acknowledges that a category 1 hazard will replace the fitness standard element in the Decent Homes Standard.

## **Procedural details of how these issues will be administered.**

### **2.Taking Action on Category 2 Hazards**

**In addition to Swale Borough Council’s duty to take action where a category 1 hazard exists the Council will exercise its discretion to take the most appropriate course of action where a category 2 Hazards exists, in the following situations:**

In normal circumstances there will be a presumption that officers will consider taking action under the Housing Act where a hazard is rated at Band D or below unless that would not be the most appropriate course of action. A statement of reasons as required under section 8 of the Act will justify all enforcement action.

2.1.In circumstances where:

- A number of hazards at Band D or below appear to create a more serious situation when looked at together ;or
- There is the impression of a run down property.
- An Authorized Officer or Housing Services Manager may authorize the most appropriate course of action to be taken.

2.2. In exceptional circumstances the Housing Services Manager may authorize the most appropriate course of action to be taken.

### **3.The standard to which Swale Borough Council has decided to improve hazards.**

The Housing Act requires that when requiring works to improve the risk to health and safety from a category 1 hazard, the works specified must result in the hazard presented being reduced to a category 2 hazard.

3.1. Where any works for either a category 1 or 2 hazard are needed Swale Borough Council will require works to standard that will prevent patch and mend repairs. To do this we will specify works that hold a hazard below a level that we would consider taking action for at least the next 12 months.

### **4.Swale Borough Council will take enforcement action against a person where there is an unacceptable risk of injury or ill health due to a hazard outside of a persons control and where that it the most appropriate course of action in the circumstances**

**These are some examples of this:**

4.1. Where a tenanted property contains an actionable hazard the private housing service in the main only requires landlords including housing associations to carry out improvements or make changes to their properties.

4.2. In some circumstances we may be forced to require owners to carry out works to their own homes. This is normally when the state of their property could affect the health and safety of others outside of their household.

For example we may require an owner-occupier of a flat in a House in Multiple Occupation to provide a fire door and smoke detector linked to a communal alarm system to provide safe means of escape in case of fire.

4.3. Where we believe it is more appropriate for someone to pursue their own private action to remedy the situation we will inform them of this.

For example where a leaseholder is in dispute with their freeholder we would normally expect both parties to resolve any issues of disrepair themselves using their leasehold agreements and or the associated Leasehold legislation. We would only normally consider taking action in circumstances where these avenues have been exhausted.

4.4. Where there is an actionable hazard due to noise between dwellings we believe that the most appropriate course of action would normally be to a Hazard Awareness Notice.

### **5.Swale Borough Council will agree to use its powers to make charges for taking enforcement action.**

The Council had power to make charges for serving formal notices under the Housing Act 1985. The charges could be levied where there was no adequate response to informal requests to carry out works, where there was a serious disrepair issue that requires immediate formal action or where there was previous non-compliance with notices served by the Council.

The Housing Act 2004 amends those provisions to allow the Council to charge for:

- deciding which notice to serve (including the cost of any inspections); and whether to serve it,
- Identifying what action to take; and
- for the cost of the service of certain notices, namely improvement notices, prohibition orders, emergency remedial action and emergency prohibition orders and demolition orders.

Charges will be determined on the basis of the actual time spent by officers on the chargeable activities and the appropriate hourly rate for those officers.

5.1. It is proposed that the Council charge for taking enforcement action using similar principals i.e. that charges are only made where:

A formal notice is required to remove a serious threat to health and safety unless the risk was outside of the control of the person responsible for carrying out the works to remove the health and safety risk or;

There is evidence of previous non compliance with Housing Act or other related legislation within the last year or;

Within the last 5 years the person or company against whom the action is due to be taken was either personally or as senior officer of a company fined for a contravention of a Housing Act or other related legislation or;

No adequate action has been taken to comply with informal requests to take action or carry out works.

5.2. The government advises that we should take into account the personal circumstances of the person before charging them for the cost of enforcement action.

*Our primary consideration for taking action is to protect people from significant hazards to their health and safety.*

*To assess someone's personal circumstances the Council will consider the vulnerability of the person we intend to charge.*

5.3. We will consider the use of the definition of vulnerability in Swale Borough Council's as:

*"Someone who is 18 or over, who has and may need help with everyday living. This includes disabled people who have physical or sensory impairments, learning difficulties, who suffer from mental illness or emotional distress or are frail older people; and who for any other reason are unable to care for themselves or protect themselves from significant harm or exploitation."*

We will also consider whether someone is financially vulnerable, vulnerable due to a medical condition or vulnerable due to a personal situation not covered by the above definition.

5.4. When making decision on whether to waive costs the Council will take the view that

- Where a person is providing accommodation for others the paramount duty is to ensure the accommodation is safe and healthy to live in.
- This means that only in exceptional personal circumstances will charges be reduced or waived.

5.5. These charges can be waived at the discretion of a Housing Services Manager or Authorized Enforcing Officer in consultation with the each other and evidence as to the reason(s) documented.

**6.Swale Borough Council will follow the principals of its Enforcement Concordat and the Regulators' compliance code (as specified in the Legislative and Regulatory Reform Act 2006) when making enforcement decisions.**

The Council has signed up to the Government's Enforcement Concordat. The Housing and Environmental Services enforcement policy document explains our commitment to the principles of good enforcement.

These proposals build on that policy and the new code giving specific guidance for enforcement action in relation to the Housing Act 2004.

6.1. As a first principal the Council will take an informal approach to the enforcement if the Act.

This will not be appropriate where:

- There is a serious risk to health and safety that needs to be resolved promptly e.g. Band A category 1 hazard exists that requires action either immediately or without the delay of taking informal action first; or
- Where there is evidence of previous non compliance with Housing legislation or related legal provisions as described in section 5.1 above (evidence of non compliance within the last 12 months or convicted in the last 5 years of Housing Act or related offences.
- Discretion is given to the Housing Services Manager or Authorized Officer to serve formal notices where informal notices would normally be served or vice versa.

**7.That the officers recognize a category 1 hazard will replace the fitness standard element in the Decent Homes standard.**

Currently a property has to meet the fitness standard under the 1985 Housing Act (As amended) for it to meet the Decent Homes standard.

When the new Housing Act 2004 powers came into force they replaced the old fitness standard. This means from the date the new provisions came into force to pass the Decent Homes standard a property will need to be free of any category 1 Hazards.

The Decent Homes standard will not be used as enforcement standard.

## **8. Taking action against Registered Social Landlords (RSLs)**

RSL's are required to meet the Decent Homes standard by 2010. RSL's should have an improvement program in place to improve their stock to this standard.

Where RSL's can demonstrate that they have already programmed the improvement works which have been identified as requiring action then officers must take this into account before taking formal enforcement action.

8.1. In all cases officers should follow the principles of the enforcement concordat detailed in section 6 above.

This means that formal action can be taken where:

- an officer believes that formal action is necessary to protect anyone affected by the condition of a Housing Associated owned property from a serious risk to his or her health and safety.
  
- the RSL has a history of non compliance falling to the categories in section 5.1; and
  
- they have the approval of a Housing Services Manager or Authorised Officer.