

Appendix 2i

Proposed property licensing enforcement and compliance guide

Introduction

The private rented sector plays a significant and important role in the housing market helping to create a vibrant and diverse City. The Council seeks to work closely and engage positively with the range of those involved in providing housing to a growing population including:

- owners
- landlords
- licence holders
- managers and
- other partners

Where these individuals or companies are failing in their responsibilities and duties the Council may take enforcement action. This document provides a guide to what landlords and other partners can expect when dealing with the Council's Safer Housing and Housing Licensing and Compliance team.

When considering taking enforcement action under the Housing Act 2004 the Council shall have regard to its own enforcement policy 'Nottingham City Council Enforcement Policy 2015' available at:

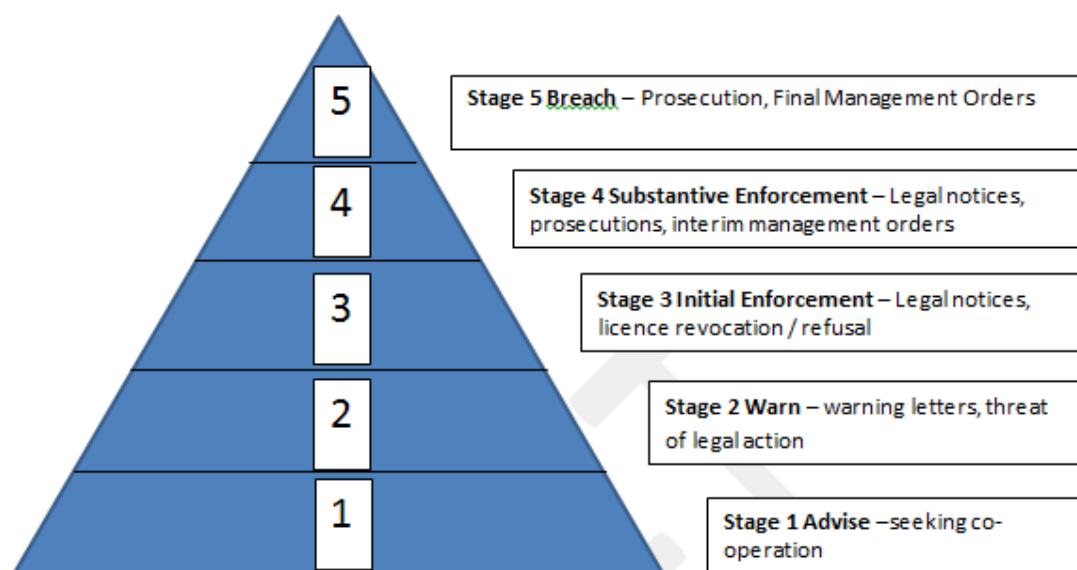
<http://beta.nottinghamCity.gov.uk/business-information-and-support/better-business-regulation/>

The Council's enforcement policy has been developed in line with the principles of the Regulators Code, published by the Department for Business Innovation and Skills, 2014, available at:

<https://www.gov.uk/government/publications/regulators-code>

Summary of Enforcement Policy

The Safer Housing and Housing Licencing and Compliance teams are based in Community Protection. This service operates a 5 stage model of enforcement (shown below), recognising that the majority of issues the Council deal with can be resolved through advice and informal action. As the degree and level of enforcement activity increases, the number of cases reduces.



Where for example issues present an immediate risk or there is a history of non-compliance the right is reserved to move directly to higher stages of enforcement.

The Council deals with a range of activity under the Housing Act and associated legislation, the key areas of licensing activity are listed below. This is not a definitive list, but gives an overview of how the Council will seek to work with landlords. The Council will seek to ensure it recovers appropriate costs from those landlords who are not being proactive in managing their properties or are letting unsafe houses. For example the Council will charge for 2nd inspections where landlords do not comply with their licence conditions or where the Council has to take other enforcement action.

Unlicensed properties

After promotion of the scheme it is expected landlords will make application for a licence. Where applications are not made the Council will investigate those properties which there is reason to believe should be licensed but are not. Failure to licence properties can lead to a prosecution. It may also affect any decision regarding existing or future licences.

Other actions may be taken if there are concerns about the property revealed during the investigation, e.g. a safety inspection under part 1 of the Housing Act 2004, to deal with category 1 or 2 hazards that have been identified at the inspection, therefore improving property conditions. Currently the Council charges where it has to serve statutory notices under this legislation such as improvement notices, or prohibition orders. Breach of these notices may result in prosecution or charges being made if works in default have to be carried out. Again there may be an impact on decisions regarding suitability to hold a licence.

Licence applications

- **Application stage**

Applicants should ensure they apply in good time. The Council will aim to determine applications within 6 months of a valid applications being made.

Applications shall be made online, where online applications are not made, paper forms are available but an additional administration charge is made.

Where an application is missing information that is required as part of the application process, one opportunity will be offered to supply the correct information. Where information is still not supplied as required to comply with the requirements of an application the application will be returned. The applicant will be deemed to have not made a valid application and may be at risk of further investigation for failing to licence the property.

Where applications are poor and there are issues that may raise questions about the suitability of the property or management of the property further investigation will be undertaken and possible inspection, prior to any licence being determined, which may include taking action under Part 1 of the Housing Act 2004.

- **Determining the licence**

The Council will grant a licence where it is satisfied that the statutory requirements of part 3 of the Housing Act 2004 have been met. The licence will usually be granted for the duration of the scheme. Where the Council has concerns, and is not fully satisfied with regards to the licence holder, manager or other relevant person meeting the necessary provisions within the legislation the Council may choose to:

- Propose to grant a licence for a shorter term.
- Propose to refuse the licence.

Licences may be considered for refusal in the following circumstances

Not fit and Proper	The applicant is not deemed fit and proper based on information contained within the application or otherwise known about the applicant
Prosecutions	Proposed licence holder or manager has been prosecuted in the past 5 years for a housing related offence
Non-compliant Notices	Proposed licence holder or manager have failed to comply with a relevant notice in the past 3 years, This includes notices which may have been served under the Housing Act 2004, Building Act 1984, Environmental Protection Act 1990, Prevention of Damage by Pests Act 1949
No or 'unsatisfactory' certificates	No or unsatisfactory gas or electric certificates supplied No Energy Performance Certificate supplied
Refused licences	Applications for Licences have been refused in the last 2 years
No Plans	No or inadequate plans provided, e.g. insufficient information provided within the property e.g. no measurements, no kitchen / bathroom facilities information, smoke alarms not labelled, rooms not labelled etc.
Non-compliance	Failed to comply with previous licence conditions

previous licence conditions	
Licence revoked	Previous licences revoked within last 2 years, e.g. due to non-compliance with conditions or no longer fit and proper.
Other significant issue	<p>Any other significant issue identified and evidenced that is of such concern that it would not be appropriate to issue a licence to a proposed licence holder (within legislative requirements). These people, companies etc. will be reviewed on a monthly basis. It may include the following:</p> <ul style="list-style-type: none"> • Not fit and proper (identified from another source) • Evidence of associates not being fit and proper • Person / company under investigation for contraventions under relevant legislation. • Consistent / repetitive interventions by the Council or other partners. E.g. ASB / police intervention • Planning permission refused • Evidence of insufficient funds to maintain property • Managing Agent not part of a redress scheme • Proposed licence holder based abroad and insufficient ability to manage the property • Landlords / companies 'of interest' to be drawn from Planning, Building Control, Council Tax, Revenue and Benefits, Debtors, Trading Standards, Office of Fair Trading, other local authorities, accreditation partners, Gangmasters Licensing Authority, Police, Fire and Rescue Service, Housing Aid, Law Centre and any other partners

- **During the term of the licence**

It is expected that licence holders will ensure properties are well managed, safe and comply with all relevant conditions. The licence fee covers inspection of a proportion of licensed properties to check on compliance during the scheme. The number checked will partly be dependent on the outcome of the initial inspection. If a licence holder has failed to comply with any condition and further work is required, the Council will charge for a re-inspection.

Where the Council is made aware of any issues related to the property, licence holder, manager, or potential breaches of the licence conditions or any other issue the Council may investigate to determine if there is any appropriate action to be taken. The Council may take into consideration the following factors when determining the most appropriate course of action:

Number of properties, length of time has been a landlord / manager / licence holder etc. willingness to engage / rectify issue, previous history, confidence in management,

Appropriate action that could be taken includes:

- Verbal warning
- Written warning

- Using statutory notices or orders under part 1 of the Housing Act 2004 e.g. improvement notice, prohibition order, etc. The Council may levy a charge when taking action under part 1.
- Varying the licence
- Revoking the licence
- Issuing a caution
- Criminal proceedings
- Undertaking an interim or final management order.

One or more of the above actions may be taken simultaneously depending on the circumstances of the case.

- **Compliance enforcement scoring model**

The Council will consider developing a scoring system to assist in encouraging good management. The system would reflect those landlords and properties where there are repeated lower level problems that on their own would not warrant enforcement action or a change to a licence but when considered cumulatively have a negative impact on the tenant, neighbourhood or are associated with ASB. This would demonstrate evidence of poor management over time, which may show they are not suitable to be the licence holder and there are breaches of the licence conditions or they are no longer fit and proper.

- **Querying a licence decision**

The licensing process allows for a period of time for the licence holder to make a representation to the Council against a proposed condition of licence, refusal, revocation or variation of licence. Where a representation is made to the Council the decision will be reviewed and this will be determined by a senior officer. The matter will be considered on a case by case basis, but an indication of the type of approach that may be taken for certain types of proposed refusal are shown below:-

Proposed Refusal - Fit & Proper

Licence holder will need to prove by providing evidence to show they are or their associates are fit and proper person(s). Guidance on fit and proper persons will be issued by the Council

Proposed Refusal - Unsatisfactory Application

Licence holder will need to demonstrate improvements in the way they manage their properties. Any further information provided should be given promptly and must be of an acceptable standard and quality to enable a final decision to be made without any further information.

Proposed Refusal - Not the Most Appropriate Person to hold the licence

The licence holder will need to demonstrate they have active involvement with the property and that they receive rent on that property and proposed licence holder to provide evidence of such.

Proposed Refusal - Unsatisfactory Management Arrangements

The following factors may be considered:

- Is the property accredited to the Nottingham Standard or actively seeking such accreditation?
- Is the applicant an active member of a landlord organisation or in the process of becoming so
- Relevant training or a willingness to attend relevant training
- No further contraventions over period of the licence
- Evidence of improved management
- Certificates provided promptly (within 7 days of request)
- Supporting documents provided promptly (within 7 days of request)
- Local Authority arrangements complied with for example, planning permission, Article 4 Direction, HMO amenity standards (if holding HMO licensees), Letting Board Policy.
- Meeting all legal requirements not just Housing Act 2004, e.g. redress scheme, deposit protection, EPC, right to rent
- Detailed policy plans or documents available for dealing with complaints, addressing ASB, repairs and maintenance, inspection program, inspection logs, tenants information packs etc. Evidence of Proactive management.

On review the proposed licence decision may be followed or an alternative decision may be made. Once a final decision has been made a dissatisfied applicant may appeal to the Property Chamber – 1st Tier Tribunal. This guide will be reviewed regularly to take into consideration relevant changes to legislation or other guidance that may affect it.