

**23 September 2010**

**Private Sector Landlords and Housing Enforcement**

**Ward(s)** All

**Portfolios:** Cllr Adrian Andrew – Regeneration

**Executive Summary:**

This report provides a summary of the current legal powers that are available to the Council when negotiation proves unsuccessful with landlords of privately rented dwellings. It also proposes the adoption by Cabinet of a formal Housing Standards Enforcement Policy in line with the Enforcement Concordat and guidance laid down in the Code for Crown Prosecutors and Regulators Compliance Code.

**Reason for scrutiny:**

To update members on all available housing powers related to enforcement of standards for private rented dwellings and agree the priorities for action and consider the proposed Housing Standards and Improvement Enforcement Policy contained in Appendix 1.

**Recommendations:**

**That:**

1. The report is noted and
2. That Cabinet considers the Housing Standards and Improvement Enforcement Policy (Appendix 1) for adoption.

**Background papers:**

None.

## **Resource and legal considerations:**

### **Resource**

The Housing Standards Service has existing staff to deliver the enforcement services contained in this report. Whilst the staffing numbers are lower than in comparable authorities, the service has secured funds from the Regional Housing Pot and other sources to undertake complementary work with private tenants and landlords.

### **Legal**

The adoption of a Housing Standards Enforcement Policy is in full compliance with:

- 'Principles of Good Enforcement' outlined in the Enforcement Concordat, to which the Council became a signatory in March 1998;
- the guidance laid down in the Code for Crown Prosecutors; and
- the Statutory Code of Practice for Regulators made under section 23 of the Legislative and Regulatory Reform Act 2006.

### **Citizen impact:**

The work of the Housing Standards Service and use of the proposed Enforcement Policy directly improves the health and safety of tenants within the borough, many of whom are vulnerable.

### **Environmental impact:**

The use of a clear Enforcement Policy will help to continue to improve the environment of Walsall for example improving the condition of existing housing stock and tackling long term vacant dwellings.

### **Performance management:**

The scrutiny exercise will provide a valuable 'health-check' in terms of shaping the future delivery of liaison and enforcement action with private rented sector landlords, as proposed under the new Housing Standards and Improvement Enforcement Policy (Appendix 1).

### **Equality Implications:**

An Equality Impact Assessment has not yet been carried out.

### **Consultation:**

Limited consultation to date.

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## Report

### 1.0 Private Rented Sector in Walsall

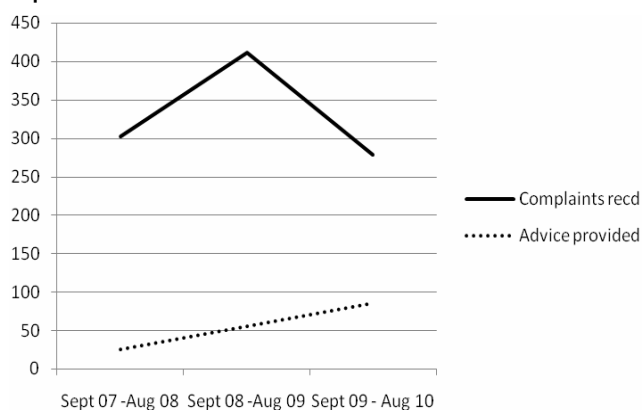
#### Overview

- 1.1 The Private Rented Sector (PRS) accounts for 10% of the total housing stock in Walsall. The Office for National Statistics (ONS) estimated that between 1997 and 2009 the PRS grew by 58% (Social Trends 40, ONS, July 2010).
- 1.2 The 2007 Walsall Private Sector Stock Condition Survey (WPS) estimated that there were 8,385 PRS properties in Walsall. The PRS is typically found in terraced housing, in purpose built flats and in converted flats. PRS single occupation is typically in terraced properties with multiple occupation in flats. The survey highlighted that whilst there is a broad distribution of PRS across the borough, there are significant concentrations which total 65% of all PRS in;
- Palfrey and Pleck;
  - St. Matthews and Birchills; and
  - Leamore and Willenhall.

### 2.0 Improving standards in the private rented sector

#### Advice support and negotiation

- 2.1 The council has a key role to undertake in securing improvements to private rented accommodation. National best practice guidance (Enforcement Concordat) recommends the use of negotiation before the use of statutory enforcement and we work proactively with a range of partners to continue to improve the quality of this valuable housing option.
- 2.2 The Council's Housing Standards service receives enquiries from both private tenants and landlords about their rights and responsibilities.
- 2.3 Between September 2009 and end of August 2010 a total of 364 enquiries were received. Of these, 86 (24%) were for matters where private sector housing advice was provided and 278 were complaints about landlords or the rented property. The level of complaints received as shown in the graph below has reduced on the comparison levels of 2008/09.



- 2.4 The overwhelming majority (estimated 95%) of the complaints received are from tenants about their landlord or rented property with the minority (5%) being from landlords about their tenants conduct / alleged damage or misuse of property.
- 2.5 In addition to the complaints / enquiries from tenants and landlords advice is provided for other agencies who deal with private rented matters, for example, West Midlands Fire and Rescue, Adult Social Care and Children's Services. During the period September 2009 and end of August 2010 a total of 396 enquiries / complaints have been received.

<b>Enquiry area / complaint</b>	<b>Number</b>
Disrepair	255
Illegal Eviction & Harassment	15
Overcrowding	4
Advice to landlords and tenants	86
Advice to others(other agencies etc)	18
HMO Inspections	18
Total	396

- 2.6 The vast majority of complaints (64%) are about issues of property disrepair and are assessed in line with Housing Health and Safety Rating System (HHSRS). This system introduced in April 2006 replaced previous 'fitness / unfitness standards'. Under the HHSRS properties are assessed for 29 potential hazard types. For each of the 29 a hazard rating is calculated, the worst being a Category 1 Hazard.
- 2.7 Category 1 hazards in summary mean that, for example, there is a risk of extreme harm including death from any cause, regular severe pneumonia, 80% burn injuries or permanent loss of consciousness.
- 2.8 Our priorities on managing responsive complaints and enquiries are listed below and are based on a 'risk' to health and safety basis;

<b>Priority</b>	<b>Issue / concern</b>	<b>Response within</b>
<b>1</b>	Complaint about dangerous living conditions; <ul style="list-style-type: none"> <li>- Electric or gas problems</li> <li>- Structural collapse</li> <li>- Fire service referrals after incident</li> </ul> Illegal evictions – taking place at the time Complaint about vacant dwelling where unauthorised access can be gained and or there is a risk to health of the public	24 hours
<b>2</b>	Complaint about severe living conditions; <ul style="list-style-type: none"> <li>- Leaks</li> <li>- No heating (winter)</li> <li>- No hot water</li> <li>- Category 1 Hazards</li> </ul>	5 days
<b>3</b>	Complaint about unsatisfactory living conditions; <ul style="list-style-type: none"> <li>- General disrepair</li> <li>- Overcrowding (where not a Cat 1 hazard)</li> </ul> Complaint about vacant dwelling not in dangerous state or where unauthorised access can be easily gained	15 days

### **3.0 Enforcement Action**

3.1 When negotiation is unsuccessful or where a hazard is of such an extreme nature the council has a wide range of housing enforcement remedies that are considered on a case by case basis. The key enforcement areas are listed below. In Walsall in the last 12 months 5 Improvement Notices and 1 Prohibition Order have been issued. These relatively small numbers are the result of securing improvements through negotiation in line with national recommended best practice.

#### **Occupied dwellings – action to improve conditions**

3.2 The council has a full range of enforcement powers available to it to ensure that dwellings are free from hazards and safe for occupation. Assessments are undertaken in line with the HHSRS ensuring they are free from full range of Category 1 and Category 2 hazards (for example, overcrowding, excess cold, electrical hazards, falls on stairs etc.) Possible action includes;

- Hazard awareness notice – advising a landlord of works that should ‘ideally’ be undertaken to improve their property. These can be used as first part of negotiation where Category 2 hazard or other improvements are identified.
- Improvement notices – requiring a landlord to carry out works in a specified time to remove for example, Category 1 hazards.
- Emergency Remedial action – works carried out by council in default of the landlord carrying out the required improvements.
- Emergency Prohibition Order – which can be served to ensure no-one returns to live in a property until improvements have been carried out.
- Demolition order / clearance order – these are essentially the ‘ultimate’ and last remedy to be used and are rarely used by Councils.

3.3 Other enforcement action for occupied PRS properties includes;

- Ensuring fire resistant furnishings are present;
- Supporting action by our partners (Health and Safety Executive) in terms of landlords who fail to have an annual Gas safety inspection and certificate;
- Smoke detection systems;
- Means of escape in case of fire.

#### **Houses in Multiple Occupation – Tackling the higher risks**

3.4 A key private rented sector that has additional focus is Houses in Multiple Occupation (HMO). HMO's are in summary properties that either have occupants who share amenities or flats that have been developed and not conforming to building regulations. Common types of properties include bedsits, shared houses and hostels.

3.5 These properties have significantly higher overall risk to their often vulnerable tenants. For this reason legislation has been in place since July 2006 to provide a system of robust licensing and management standards. It is an offence to operate a licensable HMO without a license.

- 3.6 In addition to ensure that all licensable HMOs are licensed other HMO enforcement action relates to ensuring:
- All license conditions are being adhered to on the 15 licensed properties
  - HMO Management Regulations are being complied with including;
    - Annual Gas safety certificate
    - Electrical safety certificate
    - Fire resistant furnishings
    - Smoke and heat detection systems
    - Overcrowding notice
- 3.7 Our work has shown that the key issue with HMOs in Walsall is that there is normally a lack of fire protection for the occupants, this runs alongside poor management of the properties (based on the statutory management standards). We work jointly with the West Midlands Fire service to ensure landlords improve their properties to a suitable level to protect the occupants.
- 3.8 The Council has also appointed a Healthy Houses in Multiple Occupation Assistant to help work with vulnerable and at risk HMO residents and their landlords. This groundbreaking role, the first in the UK, is funded by a Health and Housing grant and will directly improve conditions in some of the highest risk homes in the borough and ensure residents have access to health services that most of us take for granted.

### **Harassment and Illegal evictions**

- 3.9 Where landlord and tenant relations break-down unfortunately, harassment and illegal evictions can follow. In addition to supporting tenants seek appropriate legal advice, we ensure that they are aware of both their rights and responsibilities. Similarly, we provide advice for landlords to ensure that if they are wishing to end a tenancy that they are able to do this legally and not unintentionally in an illegal manner.
- 3.10 The twice yearly landlord forum attended by almost 100 landlords provides a valuable opportunity in line with national best practice to update landlords on changes in relevant legislation including case law on illegal evictions etc.
- 3.11 It should be noted that with the high mobility of many PRS tenants there has been a tendency for many to initially raise valid complaints about their property or landlords conduct and then within a relatively short space of time not wish to see action progressed or not be available for witness statements. This can in cases of alleged illegal evictions seriously impact upon the council's ability to act.

### **Vacant dwellings**

- 3.12 Our priority in tackling vacant dwellings relates to works to stop unauthorised entry to a vacant dwelling or to prevent the dwelling becoming a danger to public health. Depending upon the urgency, we will either undertake works directly or serve notice on the owner. We also seek improvements through negotiation or legal notices to vacant dwellings that are considered to be injurious to the amenity of an area.

## **4.0 Enforcement Policy**

4.1 In line with national recommended guidance a published Housing Standards and Improvement Enforcement Policy is proposed (Contained in Appendix 1) which details issues such as;

- The principles of enforcement
- Enforcement Strategy – including informal action
- Service of formal notices
- Formal cautions and prosecutions



# Housing Standards and Improvement

## Enforcement Policy

### 1.0 Introduction and Scope

The Council has statutory responsibility for enforcing the minimum housing standards set out in the Housing Act 2004 (and the associated regulations). The aim is to ensure all housing, but particularly private rented housing is safe, does not give rise to injury or illness to the occupiers, is warm and energy efficient.

In general, landlords can expect to be offered the opportunity to put housing defects right through informal action initially, unless it is clear there is a real threat to the health and safety of occupiers. In such cases emergency action can be taken to carry out essential works.

Landlords can further expect to be offered advice, information and the chance to discuss the works with an officer. This may include possible alternative courses of action which may be acceptable to reach a satisfactory outcome.

The policy also covers related housing areas of;

- Houses in multiple occupation (HMOs)
- Empty dwellings
- Harassment and illegal evictions
- Licensed Caravan sites

### 2.0 Principles of Enforcement

The Council is bound by the Statutory Code of Practice for Regulators made under section 23 of the Legislative and Regulatory Reform Act 2006 which ensures fairness for all those affected by Council enforcement action. Our enforcement action is carried out in line with the 7 principles set in the Regulators Compliance Code;

**Economic Progress.** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

**Risk Assessment.** Regulators, and the Regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.

**Advice and Guidance.** Regulators should provide authoritative, accessible advice easily and cheaply.

**Inspections and other visits.** No inspection should take place without a reason.





**Information Requirements.** Landlords/Agents should not have to give unnecessary information or give the same piece of information twice.

**Compliance and Enforcement Actions.** The few landlords/agents that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.

**Accountability.** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

The Council's enforcement policies are based on the 5 guiding principles of the Enforcement Concordat previously adopted by the Council including transparency, fairness, proportionality, consistency, complaints about service, standards, helpfulness and objectivity.

Enforcement in the context of this policy is not limited to formal enforcement action such as serving notices or prosecution, but includes for example, the inspection of properties to check for compliance with legislation and the provision of advice.

All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 – Codes of Practice
- The Criminal Procedures and Investigations Act 1996
- The Legislative and Regulatory Reform Act 2006
- The Code for Crown Prosecutors
- All relevant Guidance issued under section 9 of the Housing Act 2004

### **3.0 Relevant Legislation**

This is not an exhaustive list of the legislation used and other legislation may be used where relevant:

- Housing Acts 2004, 1988 and 1985
- Protection from Eviction Act 1977
- Management of Houses in Multiple Occupation 2006
- Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- Town and Country Planning Act 1990
- Landlord and Tenant Act 1985
- Caravan Sites and Control of Development Act 1960
- Building Act 1984
- Local Government (Miscellaneous Provisions) Acts 1982 and 1976



## 4.0 Enforcement Strategy

All officers will use a broadly similar approach to achieve consistency. This uniformity of approach will extend to all areas of enforcement. Any advice given will be confirmed in writing and there will be the opportunity for discussion in all cases.

In carrying out their duties, officers will have due regard to statutory codes of practice and relevant guidance. All officers carrying out statutory duties will be duly authorised and are required to exercise professional judgment in the implementation of this policy. They will also adhere to legal obligations relating to intention of entry. In most cases, officers will give the landlord 24 hours notice that they intend to inspect a property however this may not be appropriate in some cases e.g. overcrowding investigation.

Any investigation where a statutory breach is observed will result in one or more of the following actions being taken:

- Informal action including advice
- The serving of statutory notices/orders
- The use of formal cautions
- Prosecutions
- Works in default

Housing Standards and Improvement also issue and monitor specific housing related licences and the following action can be taken in these cases;

- Informal action
- The suspension and revocation of licences specifically in relation to Houses in Multiple Occupation (HMO's) and caravan sites
- The serving of statutory notices/orders
- Prosecutions
- Works in default

### 4.1 Informal Action

Informal action may be taken where the seriousness of the act or omission is such that formal action is not required. For a short period following the introduction of new legislation, consideration may be given to the use of informal action, or formal caution, as an alternative to prosecution.

Informal action includes warnings and requests for action, both verbally and in writing. This will include the provision of advice, information and assistance to ensure future compliance.

Any correspondence will clearly differentiate between matters, which are;

- required to meet statutory standards and those,



- which are recommendations of best practice.

## **4.2 Service of Enforcement Notices (under the Housing Act 2004)**

Properly authorised officers will serve enforcement notices/ orders for more serious issues or repeated contravention. Notices may also be issued in conjunction with prosecutions to secure immediate improvements. They will be served when issues present a significant danger to the health and safety of the public and informal action is unlikely to resolve the issues.

The following options are available:

1. Hazard Awareness Notice – merely makes the owner aware of a hazard. It does not require any works.
2. Improvement Notice – requires owner to carry out works to remove/reduce the hazard.
3. Prohibition Order – this forbids use of the whole or part of the dwelling until works have been carried out to remedy the hazard.
4. Emergency Prohibition Order – this would be appropriate when there is an imminent risk to health and safety
5. Emergency Remedial Action – this gives the council power to carry out works if there is an imminent risk to health and safety
6. Enforced Sale - The Law of Property Act 1925 gives Local Authorities the power to sell properties in order to recover a debt secured against that property. This power can be used where a debt has been incurred for example following works undertaken to an empty home in the owners default.
7. Demolition Orders and Clearance Areas – are used in extreme circumstances to require a property or number of properties to be demolished perhaps through use of Compulsory Purchase Orders.

The officer responsible will ensure that relevant guidance and codes of practice are adhered to and relevant statutory time limits or, in their absence realistic time limits are specified in any notices.

Officers will endeavor where appropriate to hold full and frank discussions concerning any remedial action required and the range of available solutions. It is important that the recipient of a notice is made fully aware of the reason for such action being taken and any rights of appeal available to them.

## **4.3 Formal Cautions and Prosecutions**

The following criteria will also be taken into account when a formal caution or prosecution is being considered:



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1. Whether there has been an illegal obstruction or assault of any officer in the course of their duty
2. The seriousness of the infringement or offence:
  - whether the contravention is of an isolated, trivial or technical nature
  - the magnitude of any deficiency excess or discrepancy,
  - whether any injury or serious ill health has resulted as a result of the infringement or the potential for an accident, injury or serious ill health as a result of an infringement,
  - whether the environment or economic well being or health and safety of the public has been disregarded for financial reward,
  - Whether the infringement causes serious public alarm, or distress.
3. The previous history of the offender:-
  - whether there is a history of similar offences,
  - previous responses to enforcement action, warnings and advice.
4. Mitigation offered by the offender and their attitude and willingness to prevent a recurrence of the infringement.
5. Whether the prosecution is in the public interest. Prosecutions will fall within this criterion where:
  - the outcome impacts upon the environment or a section of the community
  - there has been pecuniary interest in goods or services, or
  - There has been some other interest affecting their protection, safety, health, well being or legal rights.

Additionally the importance of a prosecution in establishing an important precedent may be considered.
6. Whether, when an offence has been detected as a result of a complaint, the complaint is malicious or vindictive.
7. The suitability of witnesses and their willingness to give evidence. Whether a prosecution may result in unjustified harm or suffering to a witness or complainant.
8. The prospect of Courts imposing reasonable penalties or awarding prosecution costs.
9. The sufficiency of the evidence provided to prove the alleged offence(s). Due regard must be given to any statutory defenses and relevant case law.



10. The professionalism with which an investigation has been conducted and the likelihood of a successful conviction being obtained. Whether any unreasonable delay has occurred in commencing proceedings or completing the investigation, which might influence the outcome.
11. Formal cautions may only be given where there is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.

## **4.4 Works in Default**

The local authority can in certain cases carry out works in default and re-charge the owner. The cost to the owner will usually be more than if the owner carries out the works themselves as they will be charged for officer time on visits, carrying out schedules of work and any other reasonable costs incurred by the local authority.

Enforced sale of empty properties will be considered where appropriate in line with The Law of Property Act 1925 where a debt has been incurred for example following works undertaken to an empty home in the owners default.

## **4.5 Tenure**

In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. The Housing Health and Safety Rating System applies to all housing whether in owner-occupation, privately rented or social housing and it is usually the owner's responsibility to carry out works to reduce or eliminate hazards.

Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or more rarely a Registered Social Landlord (Housing Association) to carry out works.

Where we have identified hazards and the Registered Social Landlords (RSL) have a programme of works to make their stock decent, the officer will take into account the programme when determining the most appropriate course of action and will liaise with the RSL over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements. In particular, with the Crowding and Space hazard, account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in statutorily overcrowded conditions.

With owner – occupiers, in most cases they will not be required to carry out works to their own home, and informal action or a Hazard Awareness Notice is likely to be the most appropriate action.

However, the Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or serve an Emergency Prohibition



Order, in respect of an owner – occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property, for example lack of fire precautions to a flat in a block in multiple occupation.

An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases may be more appropriate than a Hazard Awareness Notice. Typically the event will be a change of occupancy. For example, an Improvement Notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where the vulnerable age group is not present. The notice might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

## **5.0 Houses in Multiple Occupation (HMO's)**

All Houses In Multiple Occupation (HMOs) are bound by the ;

- Management of Houses in Multiple Occupation 2006 or
- the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Any breach of these will follow the same steps as with any other breach listed under 4.0 above. The same procedure will be followed for breach of licence conditions.

HMOs of 3 storeys or more with shared amenities and occupied by 5 or more persons require a licence to operate. Failure to do so is an offence. Landlord's will be encouraged and given every opportunity to apply for a HMO licence (to be accompanied by a fee fixed by the Council). If they are then found to be operating a licensable HMO without a licence the same steps will follow as in 4.0.

The HMO fee takes into account all costs incurred by the Council in carrying out our HMO licensing functions. The level of fees are reviewed on an annual basis and are published on the Council's web-site.

## **6.0 Empty Dwellings**

Where the local authority becomes aware of an empty dwelling we will aim to bring it back into appropriate use as soon as reasonably practicable. We will prioritise our activity on those properties which have been vacant for the longest period and or create the most detrimental impact on the immediate neighborhood. We will firstly try to do this through negotiation to bring action by the owner.

Any enforcement action aimed at bringing empty property back into use will only be used when repeated attempts to encourage the owner of an empty property to bring it back into use voluntarily have failed. When considering enforcement



options for empty homes, each case will be assessed on its merits and will only be recommended for enforcement action where there are clear benefits to the neighbourhood or it could address a housing need. If enforcement action is necessary the following routes can be taken;

- Service of notice under the Town and Country Planning Act 1990 to require the owner to properly maintain land/property to remove the disamenity to the local area
- Serve notice under the Building Act 1984 for ruinous and dilapidated buildings to require the owner to carry out works to either restore the property or demolish it completely
- Serve notice under the Local Government (Miscellaneous Provisions) Act 1982 to secure the building. However if there is an immediate risk to the public we are not required to give notice
- Negotiated purchase with the co-operation of the owner or in extreme cases serving a Compulsory Purchase Order (CPO)

## **7.0 Harassment**

Initial contact with the council is made by tenants to the Supported Housing Team. The Housing Standards and Improvement Team will deal with allegations of sustained/prolonged harassment they will advise tenants to seek legal advice and or contact Shelter UK. Possible enforcement action can include;

- informal action
- formal cautions
- or prosecution.

If other problems are raised with regards to the property condition, we will carry out a full inspection of the property and take any necessary enforcement action.

## **8.0 Illegal Eviction**

In cases of alleged illegal eviction we will advise tenants to contact a solicitor to help them gain access back into their home and or contact Shelter UK. If other problems are raised with regards to the property condition, we will carry out a full inspection of the property and take any necessary enforcement action.

## **9.0 Licensed Caravan Sites**

Where the Council issues a licence for a caravan site under the Caravan Sites and Control of Development Act 1960 they may inspect to enforce licence conditions. Where a breach of conditions is found they will aim to resolve it through informal means and then follow the other enforcement options which could result in revocation of the licence and/or prosecution.

## **10.0 The Suspension or Revocation of Licenses**

Where any statutory breach is observed or contravention of any condition attached to the issue of a licence by Walsall Metropolitan Borough Council an



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Officer shall use the criteria outlined above to decide whether the licence should be suspended immediately and /or permanently revoked.

### **11.0 Review**

This policy will be reviewed on a regular basis and in any event, at least every two years.

### **12.0 Contact Us**

If you would like to discuss any aspect of this policy or require any advice or guidance please contact us on:

Telephone: 01922 652171

Email: [housingstandardsandimprovements@walsall.gov.uk](mailto:housingstandardsandimprovements@walsall.gov.uk)

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Housing Standards and Improvements

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