

# REGENERATION SERVICES COMMITTEE AGENDA



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**Monday 19 June 2017**

**at 2.00 pm**

**in Committee Room B  
at the Civic Centre, Hartlepool**

## REGENERATION SERVICES COMMITTEE:

Councillors S Akers-Belcher, Cook, Cranney, Lindridge, Loynes, Moore and Thompson

### 1. **APOLOGIES FOR ABSENCE**

### 2. **TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**

### 3. **MINUTES**

- 3.1 Minutes of the meeting held on 10 March 2017 (*previously circulated and published*)

### 4. **BUDGET AND POLICY FRAMEWORK**

No items

### 5. **KEY DECISIONS**

- 5.1 Housing Services Enforcement Policy – *Assistant Director (Economic Growth and Regeneration)*
- 5.2 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 – *Assistant Director (Economic Growth and Regeneration)*



**6. OTHER ITEMS REQUIRING DECISION**

No items

**7. ITEMS FOR INFORMATION**

7.1 Five Year Supply of Deliverable Housing Sites – November 2016 – *Assistant Director (Economic Growth and Regeneration)*

**8. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT**

**FOR INFORMATION:**

Date of next meeting – Monday 17 July 2017 at 2.00 pm in the Civic Centre, Hartlepool.



# REGENERATION SERVICES COMMITTEE

19 June 2017



**Report of:** Assistant Director (Economic Growth and Regeneration)

**Subject:** HOUSING SERVICES ENFORCEMENT POLICY

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## 1. TYPE OF DECISION/APPLICABLE CATEGORY

1.1 Key decision test (i) and (ii) – Forward Plan Reference No. RN 08/16

## 2. PURPOSE OF REPORT

2.1 The purpose of the report is to seek approval of an updated Housing Services Enforcement Policy which sets out a summary of the legal powers available to the Council when dealing with housing standards, empty properties, licensing of houses in multiple occupation, selective licensing, statutory nuisance and protection of tenants and sets out the range of available enforcement options. The revised draft policy is attached in **Appendix 1**.

## 3. BACKGROUND

3.1 The previous Housing Services Enforcement Policy was approved in October 2011 and whilst the principles of good enforcement remain the same, there have been some procedural changes as well as the introduction of new powers and sanctions which needed to be incorporated into the policy.

3.2 The purpose of the policy is to explain clearly the approach of Housing Services towards enforcement. It provides guidance to enforcement officers, businesses, consumers and the general public on the range of options that are available to achieve compliance with the legislation that we enforce.

3.3 The aims of the enforcement policy are to:

- ensure that the law is enforced in a fair, equitable and consistent manner;

- assist authorised officers to make informed decisions as to appropriate enforcement action at an early stage;
  - help businesses and individuals understand our actions;
  - raise general awareness of the powers available;
  - raise housing standards
- 3.4 The policy sets out the enforcement options available to the Council ranging from informal advice through to prosecution. In accordance with the policy, the most appropriate action will be selected depending on the circumstances of the case but as a general rule the Council would always seek to use informal action in the first instance. Depending upon the circumstances, enforcement action may be taken against the owner, landlord, letting agent, managing agent, occupier or (in the case of statutory nuisance) the person responsible for the nuisance.
- 3.5 The policy applies to the whole range of enforcement activities undertaken by Housing Services which includes:
- Housing Standards
  - Empty Dwellings
  - Licensing of Houses in Multiple Occupation (HMOs) and Other Residential Accommodation (Selective Licensing)
  - Protection of Tenants
  - Statutory Nuisance
  - Private Drainage
- 3.6 General enforcement options available include:
- Service of legal notice
  - Refusal, suspension or revocation of a licence/permit
  - Simple caution
  - Prosecution
  - Penalty Charge Notices
- 3.7 Since the previous policy was prepared, the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 introduced new requirements to protect tenants and property owners. These introduced a new sanction of issuing fixed penalty charges for some new offences which is a significant departure from traditional powers such as serving legal notices and prosecution. The legislation introduced sets out processes to be followed and sets out maximum fine levels; however, the Council has discretion when imposing penalty levels.
- 3.8 The Housing and Planning Act 2016, which received Royal Assent in May 2016, introduced a wide range of new measures designed to tackle rogue landlords and property agents including:
- Banning orders for most prolific offenders

- Database of rogue landlords/property agents
- Civil penalties of up to £30,000
- Extension of Rent Repayment Orders
- Tougher Fit and Proper Person test for landlords
- Tenancy Deposit Protection Scheme data sharing

3.9 The Act also introduces:

- A new mechanism allowing landlords to legally recover abandoned properties without needing to go to court
- Powers on electrical safety and client money protection

3.10 The Department for Communities and Local Government (DCLG) is in the process of producing and issuing regulations and guidance covering the full package of measures introduced by the 2016 Act. New measures are expected to be in force by October 2017.

3.11 Approval was given by the Neighbourhoods Services Committee on 28 September 2015 to transfer the lead role for enforcement of the Unauthorised Encampments Policy from Housing Services to the Community Safety Engagement team and the updated enforcement policy has been updated to reflect this change.

3.12 The Department for Business Innovation and Skills Better Regulation Delivery Office published a Regulators' Code in 2014 which regulators must have regard to when developing policies and operational procedures that guide their regulatory activity. This code and associated guidance has been used to develop the updated Housing Services Enforcement Policy. The code sets out that regulators should, amongst other things, consider the impact on business and business representatives before changing policies.

3.13 Approval was granted by Regeneration Services Committee on 13 January 2017 to undertake a consultation exercise regarding the updated policy. This consultation was undertaken between 20 January and 17 March 2017, and was available on the Council's website and was promoted through social media. In addition to this, landlords, letting agents, advice agencies and members of the Housing Partnership were contacted directly by email to raise awareness of the consultation. The consultation questions are set out in **Appendix 2**.

#### 4. RESULTS OF CONSULTATION

4.1 There were 11 responses to the consultation; the results of which are set out in **Appendix 2**. Taking the responses into consideration, there were no fundamental changes required to be made to the policy. Two respondents indicated that they would like to be consulted on any future amendments to the policy.

## **5. PROPOSALS**

- 5.1 It is proposed that the updated Housing Services Enforcement Policy attached in **Appendix 1** is adopted.
- 5.2 It is proposed that further changes to the policy will be made as and when secondary legislation is introduced and/or guidance is produced and that these changes will be made under authority delegated to the Director of Regeneration and Neighbourhoods in consultation with the Chair and Vice Chair of the Regeneration Services Committee.
- 5.3 It is proposed that, where changes may have a significant impact, such as the level of Civil Penalties, separate reports will be presented to Committee as appropriate.

## **6. RISK IMPLICATIONS**

- 6.1 There are no risk implications relating to this report.

## **7. FINANCIAL CONSIDERATIONS**

- 7.1 There are no financial considerations relating to this report.

## **8. LEGAL CONSIDERATIONS**

- 8.1 Legal considerations have been considered when drafting the policy which sets out the principles of enforcement across Housing Services.

## **9. CHILD AND FAMILY POVERTY**

- 9.1 There are no child and family poverty implications relating to this report.

## **10. EQUALITY AND DIVERSITY CONSIDERATIONS**

- 10.1 There are no equality and diversity considerations relating to this report.

## **11. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS**

- 11.1 There are no Section 17 considerations relating to this report.

**12. STAFF CONSIDERATIONS**

- 12.1 There are no staff considerations relating to this report.

**13. ASSET MANAGEMENT CONSIDERATIONS**

- 13.1 There are no asset management considerations relating to this report.

**14. RECOMMENDATIONS**

- 14.1 It is recommended that:-

- (i) the updated Housing Services Enforcement Policy attached in **Appendix 1** is approved for adoption.
- (ii) approval is given that further changes to the policy will be made as and when secondary legislation is introduced and/or guidance is produced and that these changes will be made under authority delegated to the Director of Regeneration and Neighbourhoods, in consultation with the Chair and Vice Chair of the Regeneration Services Committee.
- (iii) where changes may have a significant impact, such as the level of Civil Penalties, separate reports will be presented to Committee as appropriate.

**15. REASONS FOR RECOMMENDATIONS**

- 15.1 The current Housing Services Enforcement Policy is out of date and requires updating.
- 15.2 New legislation has been enacted which may require amendments to the policy.

**16. BACKGROUND PAPERS**

- 16.1 Regulators' Code, Department for Business Innovation & Skills, Better Regulation Delivery Office, April 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)
- 16.2 Regulators' Code Section 6: Local Authority Toolkit
- 16.3 The Code for Crown Prosecutors, CPS, January 2013  
[https://www.cps.gov.uk/publications/docs/code\\_2013\\_accessible\\_english.pdf](https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf)

**17. CONTACT OFFICER**

Andrew Carter  
Assistant Director (Economic Growth and Regeneration)  
Civic Centre  
Hartlepool Borough Council  
TS24 8AY

Tel: (01429) 523596  
E-mail: [andrew.carter@hartlepool.gov.uk](mailto:andrew.carter@hartlepool.gov.uk)

Joanne Burnley  
Principal Environmental Health Officer  
Civic Centre  
Hartlepool Borough Council  
TS24 8AY

Tel: (01429) 523324  
E-mail: [joanne.burnley@hartlepool.gov.uk](mailto:joanne.burnley@hartlepool.gov.uk)





# Hartlepool Borough Council

## Housing Services

### Enforcement Policy

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## **1. Introduction**

### **1.1 Purpose of the Policy**

The purpose of this policy is to explain clearly the approach of the Council's Housing Service towards enforcement. It provides guidance to enforcement officers, businesses, consumers and the general public on the range of options that are available to achieve compliance with the legislation that we enforce.

The aims of the enforcement policy are to:

- ensure that the law is enforced in a fair, equitable and consistent manner;
- assist authorised officers to make informed decisions as to appropriate enforcement action at an early stage;
- help businesses and individuals understand our actions; and
- raise general awareness of the powers available.

### **1.2 Scope and meaning of 'Enforcement' and 'Duty Holder'**

This policy applies to the whole range of enforcement activities undertaken by Hartlepool Borough Council's Housing Services, including -

- Housing Standards
- Empty Dwellings
- Licensing of Houses in Multiple Occupation (HMOs) & Other Residential Accommodation (Selective Licensing)
- Protection of Tenants
- Statutory Nuisance
- Private Drainage

A summary of the legislation enforced by Housing Services is attached at **Appendix 1**.

'Enforcement' in the context of this policy, includes action taken by officers aimed at ensuring that individuals or businesses comply with the law. Enforcement does not extend to enforcement against the Local Authority but does extend to tenants of the Local Authority.

The term 'enforcement' therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities; i.e. the duty holder. It is not limited to formal enforcement action such as prosecution, but can include a range of interventions that seek to achieve compliance with the law, such as the provision of advice.

Within the context of this policy the term 'duty holder' applies to all individuals or corporate bodies who have a statutory duty under any of the legislation enforced by Housing Services e.g. private landlords, letting agents, proprietors and licence holders and, in respect of statutory nuisance, members of the public.

### **1.3 Legal Status of the Enforcement Policy**

This policy is intended to provide guidance for officers, businesses, consumers and the public. It is not in itself a statement of law and does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

### **1.4 General Principles**

This policy is written in accordance with the Government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Regulators' Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006 and other relevant guidance.

Each case is unique and will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy, departmental procedures and in the Regulators' Code.

Decisions on enforcement action are taken in accordance with the principles set out by the Macrory Review, which expects policies to:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

The Council will employ the services of interpreters and use such other means as necessary to help enable effective communication.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action. This may include actual harm or loss or the impact on the well being of the individual or animal, or potential or actual harm to the environment.

All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation. This legislation includes, but is not limited to, the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and in accordance

with any formal procedures and Code of Practice made under this legislation in so far as they relate to our enforcement powers and responsibilities.

This policy aims to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens, in accordance with the Regulators' Code. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **2. Principles of Good Enforcement**

### **2.1 Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires Hartlepool Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function<sup>1</sup>. For local authorities, the specified functions include those carried out by housing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where communications are similar, we will endeavour to act in similar ways to other local authorities;
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return; and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

The Council places great importance on the consistent use of enforcement action and does not set itself numerical targets for prosecutions or the service of statutory notices. Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.

Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment. Decisions about enforcement action, and in particular the decision to prosecute, have serious implications for all involved.

Housing Services will apply this policy to ensure that:

- Decisions about enforcement action are fair, proportionate, risk-based and consistent and will take into consideration factors such as the size and capacity of the business;

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<sup>1</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

- Officers apply current Government guidance and relevant codes of practice; and
- Everyone understands the principles which are applied when enforcement action is considered.

## **2.2 The Regulators' Code**

Hartlepool Borough Council has had regard to the Regulators' Code, in the preparation of this policy. In certain circumstances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

## **2.3 Human Rights Act 1998**

Hartlepool Borough Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This policy and all associated enforcement decisions take account of the Human Rights Act 1998. The rights most relevant to enforcement are those set out in Article 6 (which provides that everyone is entitled to a fair and public hearing), Article 8 (which provides that everyone is entitled to respect for their private and family life, home and correspondence) and Article 1 Protocol 1 (protection of property).

## **2.4 Data Protection Act 1998**

Where there is a need for Hartlepool Borough Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

## **2.5 The Code for Crown Prosecutors**

When deciding whether to prosecute, Hartlepool Borough Council has had regard to the Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a) Evidential Test – is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Hartlepool Borough Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- b) Public Interest Test – is it in the public interest for the case to be brought to court?

Hartlepool Borough Council will balance factors before and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in section 3.

## **2.6 Working in Partnership**

Where appropriate, enforcement activities within Housing Services will be co-ordinated with other regulatory bodies and enforcement agencies, both within and outside the Council. In this way, we will seek to maximise the appropriateness and effectiveness of any enforcement and have an integrated approach to problem solving.

## **2.7 Authorisations and Indemnification of Officers**

All appointed officers will be properly authorised and act in accordance with our policy and the scheme of Delegation contained in the Council's Constitution. We will ensure that enforcement officers are suitably trained and competent for the purpose of enforcing Housing functions.

The final decision on whether to prosecute in all cases will be made by the relevant Head of Service or Assistant Director.

The Council will indemnify authorised inspectors against the whole of any damages and costs or expenses provided they act honestly, within their powers and not against instructions/operating procedures.

Only authorised inspectors that have been indemnified by the Council will take enforcement action and exercise their statutory powers.

## **2.8 Conduct of Investigations**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Housing Services:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.



## **2.9 Powers of Entry and Obstruction**

Authorised officers are given various powers of entry, inspection and seizure under a variety of statutes. Persons should not attempt to stop an authorised officer who is properly exercising any of these powers as such action constitutes an offence.

## **3. Enforcement Action**

### **3.1 Enforcement Options**

#### **3.1.1 Advice, Guidance and Support**

We will take a balanced approach to enforcement, using compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

Decisions about the most appropriate enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

Decisions will take account of the following:

- the nature and seriousness of the offence;
- any obstruction on the part of the offender;
- the past history of the offender(s);
- in the case of a new business, an assessment of the duty holder's willingness to undertake any work identified by an authorised officer;
- confidence in the duty holder's willingness and ability to prevent a recurrence;
- the consequence of non-compliance;
- the likely effectiveness of various enforcement options;
- what is in the public interest;
- the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance;
- sufficiency of evidence to support the action.

We have a range of specific enforcement options available to us, which are set out in detail in section 4.

#### **3.1.2 Statutory (Legal) Notices**

In respect of many breaches, Hartlepool Borough Council has powers to issue statutory notices, for example, Improvement Notices and Prohibition Notices. Such notices are legally binding and failure to comply can be a criminal offence which can lead to prosecution and/or (where appropriate), the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be done. Some notices may require activities to cease immediately where circumstances relating to health, safety, environmental damage or

nuisance demand. In other circumstances, the time allowed to rectify a contravention will be reasonable, and take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice.

Statutory notices will only be served when the following criteria apply;-

- where one or more contraventions have occurred and they are likely to be repeated; and/or
- standards are generally poor with little management awareness of statutory requirements; and/or
- there is history of non-compliance or a lack of confidence in the duty holder responding to an informal approach; and/or
- the consequence of non-compliance could be potentially serious; and/or
- in the case of a statutory nuisance, where the nuisance requires abating.

In serious cases, it may be necessary to adopt a variety of enforcement options, which may include prosecution as well as serving notice.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

### **3.1.3 Financial Penalties**

Hartlepool Borough Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach, we will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from further action in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their use is at our discretion.

Where there is a clear breach of legislation, which is punishable by the imposition of a monetary penalty, we will only impose this penalty when the statutory guidance and relevant Council policy has been followed. We will take into account all relevant factors and will (in accordance with legislation and guidance) give prior notification that we are considering the imposition of a penalty. Once a penalty has been issued, clear guidance will be provided in order for the aggrieved party to make an appeal.

We will consider the merits of each case when deciding on the level of fine imposed, having regard to a range of factors which may include, history of compliance, relevant convictions and incidence of offending. We will also consider mitigating factors such as evidence of steps taken to remedy the issue and co-operation with the Council.

If we deem fit, we may grant a business or an individual a grace period in which to comply with the terms of the relevant legislation rather than imposing a monetary penalty immediately.

### **3.1.4 Simple Caution**

A simple caution may be offered where there is an admission and acceptance of guilt by the duty holder. Normally a caution will only be offered for first offences; the offender should not have received a simple caution for a similar offence within the last two years.

The aim of a simple caution is to:

- deal quickly and simply with less serious offenders;
- divert them from unnecessary appearance in the criminal courts; and/or
- reduce the chances of their re-offending.

For a simple caution to be issued a number of criteria must be satisfied:

- sufficient evidence must be available to prove the case;
- the offender must admit the offence;
- it must be in the public interest to use a simple caution; and
- the offender must be 18 years of age or over and understand the significance of accepting a simple caution.

This course of action is normally considered when the criteria for prosecution are met but extenuating circumstances suggest a more lenient approach would achieve the same objectives.

A simple caution will appear on the offender's criminal record. It is likely to influence how Hartlepool Borough Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

### **3.1.5 Prosecution**

We will use discretion in deciding whether to initiate a prosecution. Our primary purpose is to help prevent harm, and while prosecution can draw attention to the need for compliance with the law, other approaches to enforcement can be more effective.

When deciding whether to prosecute we will consider the following factors:

- the seriousness of the offence;
- whether statutory defences are satisfied;
- whether action has been taken to avoid further offences;
- the validity of any explanation offered;
- what course of action best serves the public interest;
- the availability of any important witnesses and their ability and willingness to co-operate;
- if there is a realistic chance of conviction.

Circumstances which are likely to warrant prosecution are where:

- death was a result of a breach of legislation;
- there has been a blatant or reckless disregard of the law;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- the offence involves a risk to public health, safety or wellbeing, harm to the environment or where an unacceptable business advantage is gained;
- the offender has failed to correct potential risks after being given a reasonable opportunity to do so;
- the offence involves failure to comply with a Statutory Notice or a repetition of a breach which was subject to a Simple Caution;
- evidence suggests that the offence was premeditated;
- an officer was intentionally obstructed or deceived in the course of their duties.

We will also consider prosecution, where the following circumstances apply:

- it is considered appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;
- a breach that gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity; and
- where officers are assaulted we will also seek Police assistance with a view to seeking the prosecution of offenders.

Throughout the decision making process proper and informed legal advice will be taken.

### **3.1.6 Refusal, Suspension and Revocation of a Licence/Permit**

A business or individual may require prior approval such as a licence, registration or permit before carrying out a certain activity. The Council administers numerous licensing regimes, each having different rules for making applications and their determination.

Usually the Council will grant a licence or permit upon receipt of a valid application if the requirements for licensing are met. These standards may be specified in legislation, local byelaws, or other suitability criteria adopted by the Council. In most cases, an application must be consulted upon and the determination of the licence or permit may be affected by representations received. We will determine the application and grant the licence or permit, with or without conditions, or to refuse the licence or permit within a reasonable time period.

Where a licence or other form of prior approval is refused, the business/individual will be advised on the reason for refusal, and where appropriate the action which must be taken in order to enable the authority to issue the appropriate licence/approval. Advice will be given on the appeal processes open to the business or individual concerned.

Various sanctions are available to the Council where breaches of statute, licence or permit conditions are identified. Informal advice or warnings may result, alternatively the conditions of the licence or permit may be modified or varied and where it is deemed necessary in the interests of public safety or where there is a risk of serious pollution a licence or permit may be suspended or revoked with immediate effect.

In certain circumstances, a licence may be revoked. A decision to revoke a licence will only be made as a last resort when all other avenues have been exhausted.

### **3.1.7 Orders**

In some circumstances, we will need to apply to the court or Residential Property Tribunal to confirm an order before a statutory power can be enacted. In such cases, the reasons for making such applications and the effect of the order will be fully explained in addition to the grounds and process for making objections.

### **3.1.8 Enforcement Action against Individuals (including Prosecution, Disqualification or Prohibition)**

Subject to the above, we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. We will take action against them where it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.

Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

### **3.1.9 No Action**

In some circumstances it will be appropriate to take no action. This includes where there is no statutory contravention, or risk to public health or safety and where there is evidence of satisfactory practices and management controls.

It may be also appropriate to take no action where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community.

A decision to take no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender has ceased to trade, or is elderly and frail or suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases, we will take into account the public interest principle and advise the offender and/or the complainant of the reasons for taking no action.

Where the law provides the complainant with other options to resolve the issues which affect them, such as civil remedies we will make sure that they are directed to the most appropriate source of information to assist them. This may involve referral to other

council departments, external organisations or advising them to seek independent legal advice.

### **3.2 Right of Appeal against Notices, Withdrawal and Works in Default**

Where there are rights of appeal against a statutory notice or any other statutory action, advice on appeal procedures will be clearly set out in writing at the time the action is taken, together with an explanation of the implications of non-compliance. Whenever possible, this advice will be issued with the notice.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with (a breach of the notice) we may decide to carry out any necessary works to satisfy the requirements of the notice ourselves. In most cases, there will be an additional charge to cover administration costs incurred in arranging the work as well as the costs incurred for the work itself. We will ensure that the recipient of a notice is made aware of the possibility of works in default.

If a notice is withdrawn, we will notify the person or organisation of this and an explanation as to the reason.

Where an offence is punishable by the issuing of a Penalty Charge Notice, the offender will be given prior notice of the Council's intention to issue a monetary fine and will be allowed a period of time in which to make a representation, in accordance with the relevant legislation. There will be a procedure in place which will be followed to ensure consistency. Full details on how to make a representation and subsequent appeals will be issued with the notice.

### **3.3 Warrant to Enter Premises**

Officers may apply to a Magistrates' Court for a warrant to enter premises in the following circumstances:

- necessary entry is required at an unreasonable time; and/or
- entry to a premises is refused; and/or
- entry is expected to be refused; and/or
- the premises are vacant and entry is required.

In all cases, officers will exercise their powers courteously and with respect for persons and property, and only use reasonable force when this is considered necessary and proportionate to the circumstances.

### **3.4 Determining Whether Formal Enforcement Action is Viable and Appropriate**

Two 'tests' will be applied to determine whether a prosecution or simple caution is viable and appropriate. Enforcement officers will follow guidance set by the Crown Prosecution Service when applying the tests.

The two tests are:

- The Evidential Test

- The Public Interest Test

### 3.4.1 The Evidential Test

When deciding whether there is enough evidence to charge, the investigating officer(s) must consider whether the evidence can be used in court and if it is reliable. The Council must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

### 3.4.2 The Public Interest Test

A prosecution will usually take place, unless the public interest factors against prosecution clearly outweigh those in favour of prosecution. When applying the test the Council will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be more appropriate.

A Simple Caution or prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

Circumstances which might indicate that it is not appropriate to prosecute include cases where:

- a conviction is likely to result in a nominal penalty; and
- the offence resulted from a genuine mistake and the offender is prepared to rectify the problem and its causes; or
- the loss or harm caused was minor;
- there has been undue delay in bringing the matter to court (unless the delay was the fault of the offender);
- prosecution proceedings are likely to have a significant detrimental effect on the victim's physical or mental health;
- the offender is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

Deciding on what is in the public interest is not simply a matter of adding up the number of factors for or against prosecution. An overall assessment must be made as to the relative importance of each factor.

Throughout the decision making process proper and informed legal advice will be taken.

### **3.5 Action by the Courts**

Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. This may include guidance given by the Court of Appeal.

### **3.6 Representation to the Courts**

In cases of sufficient seriousness, and where legislation allows, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed.

### **3.7 Keeping Parties Informed**

If we receive information (for example from a complainant) that may lead to enforcement action against a business or individual, we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or to the general public.

During the progression of enforcement investigations or actions, all relevant interested parties such as duty holders and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

### **3.8 Publicity**

We will consider, in all cases, drawing media attention to factual information about charges that have been laid before the courts, but will take great care to avoid any publicity which could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements, or deter anyone tempted to disregard their duties.

### **3.9 Costs and Debt Recovery**

We will seek to recover all our costs associated in undertaking works in default, utilising the Council's corporate debt recovery. Where legislation allows, we will make a charge for preparing and serving statutory notices and making orders. We will also seek to recover any costs incurred obtaining specialist reports which assist in identifying any action to be specified on a notice served under the provisions of the Housing Act 2004. The sums recoverable in most cases will become a local land charge on the property concerned.

Where we take enforcement action through the courts we will seek to recover legitimate costs from convicted offenders.



### **3.10 Civil Action**

The enforcement action we take is distinct from any civil claims for compensation. We will not necessarily pursue enforcement actions in all cases where civil claims are anticipated, nor will the Council actively assist in such cases. We will share relevant information with aggrieved parties where relevant.

## **4. Detailed Enforcement Powers**

### **4.1 Housing Standards**

The Housing Act 2004 is the primary piece of legislation used to enforce housing standards in all residential accommodation (including Houses in Multiple Occupation), however, there are other pieces of legislation that may provide a more appropriate enforcement tool. Officers are expected to exercise their discretion when deciding the most appropriate piece to use. In some cases it may be appropriate to employ a range of enforcement options.

The Housing Health & Safety Rating System (England) Regulations 2005 sets out the method for assessing a dwelling house (see appendix 1) and determines whether a hazard rates as a 'category 1' or a 'category 2' and the possible enforcement actions available under the Act. The Authority is under an obligation to take action with respect to category 1 hazards, whilst there is discretion to act with regards to lower scoring category 2 hazards.

It is the policy of Housing Services to deal with all category 2 hazards which fall within bands D to F (i.e. scoring more than 100) and officers are expected to apply discretion when scores fall below that level. Where it is not deemed appropriate to take enforcement action, advice will be provided to both the tenant and the landlord and recommendations made where appropriate.

We will provide a summary of the Housing Health and Safety Rating System whenever we contact a landlord regarding property condition.

When determining the most appropriate course of action, officers will have regards to the Housing Health and Safety Rating System Operating Guidance and Enforcement Guidance.

We will also take into account the wishes of the occupier before proceeding with any action.

There are a number of enforcement tools available to deal with category 1 and 2 hazards across all tenures.

- Informal Action and Advice
- Improvement Notice
- Prohibition Order
- Emergency Prohibition Order
- Emergency Remedial Action
- Hazard Awareness Notice

- Demolition Order
- Clearance Area

#### **4.1.1 Informal Action and Advice**

In most cases following an inspection, officers will informally contact the duty holder (by letter, telephone or email) to advise them what action may be taken to reduce the identified hazards to an acceptable level. This is to allow an opportunity to the duty holder to agree a proposed course of action.

Informal action can take the form of advice, a verbal warning or a request for action. Informal action may not be considered appropriate if a serious risk is identified and taking informal action would cause undue delay. It may also be considered inappropriate where there is a poor history of non-compliance.

In cases where the hazard score falls below that which we would act upon, we would advise the duty holder accordingly and make recommendations. We will advise the occupying tenant that we are unable to take enforcement action at that time but advise them to let us know if circumstances change.

#### **4.1.2 Improvement Notice**

This notice would specify remedial works, which in the opinion of the officer would reduce the severity of a hazard to an acceptable level and would prevent the recurrence or worsening of the hazard in a reasonable period. A minimum of 28 days must be allowed for compliance, in accordance with the legislation.

#### **4.1.3 Prohibition Order**

A Prohibition Order may be used to close the whole or part of a building, restrict the number of occupants or prohibit the occupation of the dwelling by vulnerable persons where:

- Remedial Action is considered unreasonable, impractical or unreasonably expensive; or
- The dwelling is a listed building

#### **4.1.4 Emergency Prohibition Order**

We may use this course of action if there is a category 1 hazard present and there is an imminent risk of serious harm. For example, this may be used to prohibit the use of a House in Multiple Occupation (or part of it) if there are inadequate means of escape in case of fire.

This will prevent the occupation of all or part of the house with immediate effect.

#### **4.1.5 Emergency Remedial Action**

This form of action may only be taken if there is a category 1 hazard present and there is an imminent risk of serious harm. Under these circumstances we will take

appropriate action to remove that risk. For example, this may be used where there is evidence of a defective gas appliance posing a risk to the health or safety of the occupant. In this instance, the Council may take steps to make the appliance safe.

If this course of action is followed, we are obliged to serve a notice on the owner to inform them of the action taken and the reason for doing so.

We will then seek to recover all costs incurred from the owner.

#### **4.1.6 Hazard Awareness Notice**

We may serve a Hazard Awareness Notice in circumstances where:

- There is not a vulnerable person in occupation;
- Remedial Action is considered unreasonable, impractical or unreasonably expensive;
- The duty holder has already agreed to take action; or
- The occupant has requested that no formal action is taken.

#### **4.1.7 Demolition Order**

Demolition Orders may be used to deal with category 1 and 2 hazards, but when reaching a decision, consideration will be given to:

- The availability of accommodation for re-housing occupants;
- The demand for, and sustainability of, the accommodation if the hazard was remedied;
- The prospective use of the cleared site;
- The impact of a cleared site on the appearance and character of the local environment.

The use of Demolition Orders in respect of dwellings containing category 2 hazards will be subject to an order made by the Secretary of State.

#### **4.1.8 Clearance Area**

A Clearance Area may be declared:

- If it can be shown that each residential building in an area contains one or more 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 of the area; or
- The residential buildings are dangerous or harmful to the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the streets, and that the other buildings (if any) are dangerous or harmful to the health and safety of the inhabitants of an area.

#### **4.1.9 Housing Standards in Houses in Multiple Occupation (HMOs)**

In addition to the enforcement powers described above, the Management of Houses in Multiple Occupation (England) Regulations 2006 apply to all HMOs and cover management and repair. There are no notice provisions with these regulations. If we

are unable to deal with these issues informally we will seek to prosecute unless the matters could be dealt with using alternative legislation.

#### 4.1.10 General Provisions of Housing Act Enforcement

Only one form of enforcement action may be taken at any one time under the provisions of part 1 of the Housing Act 2004 in relation to any hazard, but more than one form of action may be taken in relation to two or more hazards. For example it would not be possible to serve an improvement notice to deal with an excess cold hazard at the same time as a hazard awareness notice, but it would be possible to use both notices to deal with two different hazards.

We will make a charge for taking enforcement action under the provisions of the Housing Act as allowed under section 49 for covering administrative and other expenses incurred in the following circumstances:

- 1) Serving an Improvement Notice;
- 2) Making a Prohibition Order;
- 3) Serving a Hazard Awareness Notice;
- 4) Taking Emergency Remedial Action;
- 5) Making an Emergency Prohibition Order;
- 6) Making a Demolition Order under section 265 of the Housing Act 1985.

Before taking enforcement action under part 1 of the Housing Act 2004, we are obliged to give notice to the owner that an inspection will be carried out. We will carry out an initial survey with the consent of the occupier and will notify the owner informally that hazards have been identified and provide a schedule of work that will reduce these hazards to an acceptable level. If we do not receive satisfactory proposals or the owner fails to undertake proposals, we will invite them to a joint inspection at the property before deciding whether to take enforcement action.

This prior notice provision will not apply if we have reason to believe that Emergency Remedial Action will be required to avoid unnecessary delay.

All Housing Act enforcement decisions will be accompanied by a **statement of reasons** stating why that particular course of action has been taken. This statement will provide a detailed explanation as to why that particular course of action has been taken rather than any other.

#### 4.1.11 Environmental Protection Act 1990

Under the Provisions of this Act we are under a duty to investigate and take action to abate statutory nuisances; this includes 'any premises in such a state as to be prejudicial to health or a nuisance'. If a state of affairs exists that required urgent action and it is considered that the premises are prejudicial to health, consideration will be given to serve a notice under the provisions of section 80 of the Environmental Protection Act. This would allow for certain works to be carried out in a shorter timescale. Examples of issues where this notice could be used are:

- Dangerous gas appliance or installation;
- Dangerous electrical installation;
- Defective heating or hot water; or

- Water leaks that may result in collapse of an element.

## 4.2 Empty Properties

There are a number of enforcement options available to deal with empty dwellings, either aimed at making them safe, secure and/or reducing the impact of their appearance; or returning them into residential use. In most cases we will use informal means to deal with empty properties unless there is a risk to the public and/or a nuisance which is prejudicial to health.

Where an empty property is insecure and/or presents a risk to public health we will normally serve a notice under the provisions of the Local Government (Miscellaneous Provisions) Act 1982, section 29 advising that we intend to make the building secure giving at least 48 hours notice. When officers consider that it is necessary to carry out works immediately, for example if there is a likelihood that the property could be subject to a deliberate fire, they will arrange for the property to be secured without the service of a notice.

Officers will take steps to secure openings to the property, including yard gates, entrance doors and ground floor windows. Openings to the first floor will not generally be required to be secured unless they are accessible, for example via a flat roof.

There are a number of other legislative powers available to us to deal with the condition of an empty property including:

- Town and Country Planning Act 1990, section 215 to improve the external appearance of unsightly property or land considered detrimental to the amenity of the neighbourhood;
- Building Act, sections 77 & 78 to deal with dangerous or dilapidated buildings. This would enable us to require the owner to make the property safe;
- Environmental Protection Act 1990, section 80 requires the owner to abate a nuisance;
- Building Act 1984, section 76 enables the Council to take emergency action to abate a nuisance;
- Building Act 1984, section 78 allows the Council to fence off a property if there is a risk of unauthorised entry or if it likely to suffer vandalism, arson or similar.

Any enforcement aimed at bringing empty properties back into use will only be used when repeated attempts to encourage the owner to bring the property back into use have failed. We will ensure that appropriate advice and guidance is offered and that property owners are made fully aware of the potential enforcement options. 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.

There are three enforcement options available to secure re-occupation of an empty dwelling –

- Compulsory Purchase Order
- Empty Dwelling Management Order
- Enforced Sale

#### **4.2.1 Compulsory Purchase Order**

The Housing Act 1985, section 17 allows the Local Authority to acquire dwellings where there is a general housing need. Therefore, we will only use this enforcement option where there is evidence of a housing need.

#### **4.2.2 Empty Dwelling Management Order (EDMO)**

Where a dwelling has been unoccupied for a period of at least two years and the owner does not intend to take steps to secure the re-occupation and there is a reasonable prospect that the dwelling will become occupied if an interim EDMO is made, we will consider applying to the Residential Property Tribunal for an interim EDMO. The use of this power is limited to properties that have become magnets for vandalism, squatters and other forms of anti-social behaviour that blight the local neighbourhood. We must give the property owner at least three months notice before the order can be issued.

We will monitor any progress during the 12 months period in which the interim EDMO is in force and will assess the need to make a final EDMO to replace the interim order where:

- The dwelling is likely to become or remain unoccupied (for example if the owner refused to allow a tenancy to be granted);
- We have taken all such steps as appropriate for securing the occupation of the dwelling; and
- We have taken account of the interests of the community and the effect that the order will have on the rights of the relevant proprietor and the rights of third parties.

We will ensure that a management scheme is in place for any property to be subject to a final EDMO which will set out how we intend to manage the property and account for all money spent or collected.

#### **4.2.3 Enforced Sale**

Where a debt has been secured against a property we will consider the use of the enforced sale powers as set out by the Law of Property Act 1925. If successful, this would give the Council the ability to sell the property in order to recover any debts outstanding against it. We will only consider using this power when the debt amount reaches a minimum level and that we are reasonably confident that the sale would be successful and that the sale value would cover our costs.

#### **4.3 Mandatory & Discretionary Licensing of Houses in Multiple Occupation (HMOs) & Discretionary Licensing of other Residential Accommodation (Selective Licensing)**

Certain Houses in Multiple Occupation (HMOs) are required to be licensed under the provisions of part 2 of the Housing Act 2004 (the Act), broadly speaking these are HMOs that are occupied by 5 or more occupants and are three or more storeys in size. The Housing Act also introduced a discretionary power under part 2 of the Act to

introduce licensing of other HMOs, if it can be demonstrated that there are specific problems associated with them.

We will continue to review the need to introduce discretionary licensing of other HMOs and seek approval to adopt this power if deemed necessary.

Part 3 of the Act also introduced a further discretionary power (which was amended in 2015) to introduce selective licensing in areas experiencing one or more of the following:

- low housing demand,
- a significant or persistent problem caused by anti-social behaviour;
- poor property conditions;
- an influx of migration;
- a high level of deprivation or high levels of crime.

Since 2009, the Council has introduced two schemes which designated selective licensing areas in the Borough (one of which remains in force); this requires all privately rented dwellings in the area to be licensed.

The Council has a duty to ensure all reasonable steps are taken to ensure applications are made. Should enforcement action become necessary for failure to make an application, we will be required to demonstrate the steps we have taken.

#### **4.3.1 Applications for New Licences and Renewals of Existing Licences**

Applications for HMO and Selective Licences will only be accepted if made on application forms submitted electronically through the gov.uk website or (in the case of HMO licence applications supplied by Housing Services) and must:

- Contain all of the required information;
- Be accompanied by the supporting documentation, as indicated; and
- Be accompanied by the appropriate licence fee.

Any deficient application received will be deemed invalid and the applicant will be contacted and given advice on how to rectify it.

In the case of HMO licence applications, we will offer pre-application guidance with regards to standards on space and amenities, making the property suitable for the proposed occupants and the maximum number of households and individuals that the property may accommodate.

#### **4.3.2 Approving and Issuing Licences**

In order to be able to issue a licence, there are a number of tests that must be satisfied:

- The proposed licence holder must be a fit and proper person – this assessment will be based primarily on a self declaration by the applicant. We will also consult with relevant partners and agencies, including other local authorities. We will also undertake further investigations where necessary to follow up on the validity of information provided.

- The proposed management arrangements must be satisfactory having regard to the competence of the proposed manager, whether the proposed manager is a fit and proper person and that the proposed management structure and funding arrangements are acceptable.
- In the case of HMO licence applications, we will determine whether the property is suitable for the proposed number of occupants having regard to the provision of amenities such as bathrooms and cooking facilities.

Once consultation has taken place, a notice must be served stating the reasons for granting the licence, the main terms of the licence and the date by which representations regarding the proposed licence or conditions. Any representations will be considered and may result in the amendment of the licence or conditions which will also need to be consulted on.

We will refuse a licence application if we are not satisfied that the property can be made suitable for the number of individuals or householders (in the case of an HMO); the proposed licence holder or manager is not a fit and proper person; or the management arrangements are not deemed to be satisfactory.

If we are unable to grant a licence for any reason, we will explain this to the applicant and offer advice and guidance to enable the licensing to proceed.

We will apply a set of mandatory conditions to each licence issued in addition to any discretionary conditions which relate to the management, use and occupation of the house and its condition and contents. We will take into account any representations made by any person having an interest in the property or any other consultees. In the case of HMOs we may require additional amenities be provided or works carried out within a given timescale to make the property suitable for the number of occupants.

We may issue a Temporary Exemption Notice (TEN) where we are notified that the owner of a licensable property is taking steps to ensure that the property is no longer required to be licensed, e.g. if the owner intends to occupy the property themselves. A second TEN will only be granted where there are exceptional circumstances and all requests will be assessed on a case by case basis.

#### **4.3.3 Revoking a Licence**

The Housing Act 2004 sets out a number of circumstances under which a licence may be revoked. This can be either:

- on the Council's own initiative, without the agreement of the licence holder, where the prescribed circumstances are met; or
- at the written request of the licence holder or relevant person.

The licence holder and all relevant persons have a right of appeal against the Council's decision to revoke or refusal to revoke a licence.

If the property is to remain licensable, we must make an interim management order. This will be considered an option of last resort.



#### **4.3.4 Offences in relation to operating unlicensed HMOs or other dwellings**

It is an offence to operate a HMO or other dwelling in a designated selective licensing area without a licence. If we have made all reasonable efforts to ensure that an application is made, or have been unable to issue a licence there are a number of enforcement options available, in addition to pursuing a prosecution:

- Rent Repayment Order
- Management Order

We will also advise the landlord that they will not be able to issue a section 21 notice (under the Housing Act 1988) to recover possession on termination of a shorthold tenancy, whilst the property is unlicensed.

#### **4.3.5 Rent Repayment Order**

We will consider applying to the Residential Property Tribunal for a Rent Repayment Order where a landlord has received housing benefits whilst the property should have been licensed but had not. We will take these steps either: following a prosecution for the offence of operating without a licence; or if our officers are satisfied that an offence has been committed.

Where rent has not been paid by housing benefits, we will advise tenants about their rights to make a claim for a rent repayment order.

#### **4.3.6 Interim and Final Management Orders**

The Council has a duty to implement Interim Management Orders (IMOs) with regards to un-licensed dwellings (including HMOs) in defined circumstances in order to protect the health, safety or welfare of residents, or other persons in the vicinity, who may be affected. This would include properties where the licence has been, or is about to be revoked.

An IMO would enable the Council to take immediate steps to protect the health, safety or welfare of residents, or other persons in the vicinity, who may be affected. It would also enable the Council to take further steps to secure the proper management of the property.

Where the health and safety condition is satisfied within a property that is not required to be licensed, on application to the Residential Property Tribunal, the Council may make an IMO.

Where a house is in an area experiencing a significant and persistent problem with anti-social behaviour and the landlord is failing to take action to combat the problem and the health and safety of occupiers or others is at risk, the local authority may apply to the Residential Property Tribunal for a Special Interim Management Order.

A Final Management Order must be made to replace an IMO on the date the house would be required to be licensed but the Council consider that they would be unable to license it.

If not required to be licensed, may be made on the date the IMO expired, for the purpose of protecting the health, safety or welfare of the occupying persons or others affected.

#### **4.3.7 Offences in relation to breaching licence conditions**

When deciding on the most appropriate action to deal with breaches of licence condition, we will have regard to the seriousness of the breach and the likely or actual impact of the breach.

#### **4.4 Harassment and Illegal Eviction**

When an allegation of illegal eviction or harassment of private sector tenants is reported to the council, it is the duty of the council to investigate under the provisions of the Protection from Eviction Act 1977 and with reference to the Criminal Law Act 1977 (sections 6 & 7).

We will make a judgement on the appropriate action to be taken having regard to 'proportionality' and the seriousness of the alleged offence and a judgement will be made on a realistic and achievable outcome.

We will endeavour to keep complainants informed of every stage of the proceedings and process. We will try to resolve the complaint as expediently as possible and discuss the various options available.

The Council views its role not only as the 'prosecution authority' but also to mediate and negotiate with the complainant and the alleged perpetrator and to encourage and promote good practice within the private rented housing sector. Decisions will also take into account the vulnerability of the complainant, and any previous history of the perpetrator. Complainants will be referred to a legal advisor to take a civil action or obtain an injunction against the perpetrator if this deemed appropriate.

Where a complainant can be re-instated back into the property in safety and without fear of further reprisals all parties would be advised of their rights and responsibilities, this could include a verbal or written warning to the perpetrator and the rights and obligations of the complainant.

These cases will be assessed by the Housing Advice Team and be referred on to the Senior Landlord Tenant Officer or the Principal Housing Advice Officer if unable to satisfactorily resolve by agreement. Where all other options have been explored a decision will then be made whether or not to take a formal statement from the complainant and proceed with a formal PACE interview for the perpetrator.

If the perpetrator admits the offence under caution, a 'simple caution' may be given to the perpetrator which can be used by the complainant to obtain civil damages against them.

If the Principal Housing Advice/Senior Landlord Tenant Officer in conjunction with the Council's Solicitor decide a case should be discontinued an explanation will be given as to why action is not being pursued.

#### **4.5 Statutory Nuisance**

We will deal with a wide range of complaints that may be considered a 'nuisance' arising primarily from domestic premises, including:

- Accumulations or deposits, e.g. household refuse, animal faeces
- Defective premises that affect a neighbouring property, e.g. defective guttering causing dampness
- Premises that may be prejudicial to health to the occupier, e.g. with a defective gas appliance
- Filthy or verminous living conditions
- Pests emanating from a property

There are a number of pieces of legislation that are available to us to deal with these situations, including

- Environmental Protection Act 1990
- Public Health Act 1936
- Public Health Act 1961
- Prevention of Damage by Pests Act 1949

We will ensure that the most appropriate legislation is used having regard to the actual circumstances and as to whether the nuisance situation requires swift abatement in order to protect the health or safety of the occupier and other affected parties.

Where possible we will attempt to reach an informal solution.

With regard to properties considered 'filthy' or 'verminous', we will investigate the circumstances around the occupier(s) as in many cases such individuals could be described as vulnerable. We will liaise fully with colleagues in Child & Adult Services before proceeding with any enforcement action.

We may consider the use of Town and Country Planning Act 1990, section 215 powers to improve the external appearance of unsightly property or land considered detrimental to the amenity of the neighbourhood. This would be considered in conjunction with colleagues in Planning Services

#### **4.6 Private Drainage**

With effect from 1 October 2011, Northumbrian Water Ltd assumed responsibility from the Council for all private sewers and some drains where the problems are outside the boundary of the dwelling, although a number of powers in relation to drainage were retained. It is the Council's policy, as agreed with the Water Company to refer all enquiries to Northumbrian Water in the first instance. Where the drainage problem remains the householder's or landlord's responsibility, we will usually deal with such matters by service of statutory notice where there is a public health impact.

#### **4.7 The Letting Agents Redress Scheme**

The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 made it a legal

requirement for all letting agents and property managers in England to join one of three Government approved schemes from 1 October 2014. We will notify letting agents and property managers of the requirement to be registered when we become aware that they are not registered and in most cases will allow a grace period in which they can apply for membership.

Failure to belong to an approved scheme is punishable by the imposition of a financial penalty which is expected to be set at the maximum as the norm. Reduced fines will be set if there are extenuating circumstances. It will be the policy of Hartlepool Borough Council to reduce the fine if an agent joins a scheme following notification.

Where a financial penalty is imposed, the agent will be given full details on how to appeal, as required by the Order. Where a fine is not paid, we will take action to recover the sum imposed, as detailed in the Order.

#### **4.8 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require that landlords fit smoke and carbon monoxide (where applicable) alarms in privately rented properties or face a financial penalty for non-compliance. The regulations require local housing authorities to publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

The Council has a duty to enforce these regulations; the only discretion is around the level of fine which is set. Before issuing a penalty charge notice, the Council is obliged to give notice to the landlord of their intention to do so. This allows the landlord a specific timescale in which they have the opportunity to comply, or to make written representations.

Where a financial penalty is imposed, the landlord will be given full details on how to appeal, as required by the regulations. Where a fine is not paid, we will take action to recover the sum imposed.

### **5. Ancillary Matters Concerning the Enforcement Policy**

#### **5.1 Monitoring the Policy**

It is essential that officers adhere to the enforcement policy and management systems will be maintained to monitor the quality and nature of enforcement activity in order to ensure, as far as is practicable, consistency in approach and quality of service.

#### **5.2 Departure from the Policy**

All authorised officers taking enforcement action and making enforcement decisions shall abide by this policy.

Any departure from this policy will only be accepted in exceptional circumstances where actions are capable of justification and where there has been full consultation with the Head of Service or relevant Director/Assistant Director. All such departures will be recorded on the relevant case file.

Where enforcement action is being considered which is believed may be inconsistent with that adopted by other enforcing authorities or contrary to advice issued by competent authorities, we will seek further advice including from our Legal Section and with relevant regional and national advisory groups.

If a reasonable consensus group view cannot be achieved, or if the issue appears to be of national significance, or it is felt that the existing guidance is not adequate the relevant liaison group will seek appropriate advice.

### **5.3 Compliments, Comments and Complaints about the Service**

If any person is unhappy with the action taken, or the information or advice given by the Council's Housing Services staff, they will be given the opportunity of discussing the matter with the officer's line manager, Head of Service or Director/Assistant Director. This does not affect the right of any aggrieved person to exercise their rights under formal or informal appeal processes.

Details on how to make representations or appeals about any order or notice will be clearly set out in the notice or order issued as required by the relevant legislation.

Hartlepool Borough Council has a corporate Compliments, Comments and Complaints procedure. This sets out the procedure to follow to make a complaint about our services or the conduct of staff. Details on how to make a complaint are publicly available on the Council's website.

We are committed to providing quality services, and the suggestions and criticisms about any aspect of our service will help us to do this.

### **5.4 Development and Review of the Policy**

A draft of this policy was published on the Council's website between 20 January and 17 March 2017 and comments invited through a short questionnaire powered by Survey Monkey. The link was circulated to members of the Housing Partnership and landlords & managing agents known to be operating in the borough. This policy will be periodically reviewed or in line with changes in relevant legislation, or Regulators' Code. Reports on any changes considered to have a major impact will be presented to future committees and incorporated into the policy where necessary.

### **5.5 Feedback**

We value input to ensure that our service is meeting your needs. We would like to hear from you whether your experience of us has been good, or in need of improvement. This helps us to ensure that we keep doing the right things and make changes where we need to. We would welcome your feedback at any time.

A copy of this policy is available on the Hartlepool Council website at:  
<http://www.hartlepool.gov.uk/>

You can provide feedback to us in the following ways:

By telephone: 01429 523705

By email: [privatesectorhousing@hartlepool.gov.uk](mailto:privatesectorhousing@hartlepool.gov.uk)

Web: [www.hartlepool.gov.uk](http://www.hartlepool.gov.uk)

By post, or in person at: Housing Services, Regeneration & Neighbourhoods  
Hartlepool Borough Council, Civic Centre, Victoria Road  
Hartlepool TS24 8AY

Opening Hours: Monday to Thursday 8:30am to 5:00pm, Friday 8:30am to 5:00pm

**This policy was approved by Hartlepool Borough Council's Regeneration Services Committee on <Date to be inserted>**

**Appendix 1 - Summary of Legislation Enforced by Housing Services**

The following table sets out the main legislation enforced by Housing Services and includes all relevant regulations and Statutory Instruments made under these enactments.

<b>Housing Act 2004</b>	Housing Conditions – Housing Health and Safety Rating System HMO Licensing Selective Licensing Management Orders Empty Dwellings Management Orders
<b>Housing Act 1985</b>	Overcrowding HMO Regulations Compulsory Purchase Orders Demolition/Closing Orders Clearance Areas
<b>Environmental Protection Act 1990</b>	Statutory Nuisance – premises, accumulations or deposits
<b>Building Act 1984</b>	Defective drainage Sanitary Conveniences Dangerous or dilapidated buildings Nuisance Premises Properties adversely affecting amenity of area through disrepair
<b>Public Health Acts 1936 &amp; 1961</b>	Sanitary Conveniences Defective Drainage Filthy or Verminous Premises Accumulations of Rubbish
<b>Local Government (Miscellaneous Provisions) Act 1976</b>	Power to Obtain Information regarding interest in land
<b>Prevention of Damage by Pests Act 1949</b>	Power to clear land of vermin and/or removal of waste
<b>Local Government (Miscellaneous Provisions) Act 1982</b>	Securing Empty Properties
<b>Protection from Eviction Act 1977</b>	Unlawful Eviction & Harassment
<b>Landlord And Tenant Act 1987 &amp; 1988</b>	Tenants Rights
<b>Town and Country Planning Act 1990</b>	Unsightly land or external appearance of property

<b>Law of Property Act 1925</b>	Enforced Sale to recover debts secured against a property
<b>The Smoke and Carbon Monoxide Alarm (England) Regulations 2015</b>	Requirement that landlords fit smoke alarms (and carbon monoxide alarms in some instances)
<b>The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014</b>	Requirement for letting agents and property managers to belong to an approved scheme
<b>The Housing and Planning Act 2016</b>	Banning Orders Database of Rogue Landlords/ Property Agents Civil Penalties Changes to Mandatory Licensing Tenancy Deposit data information sharing Powers on electrical safety and client money protection New process to recover abandoned properties



## **Appendix 2 - Publications/Guidance**

**1.**

Housing Act 2004 Housing Health and Safety Rating System  
Operating Guidance

Housing Act 2004 Guidance about inspections and assessment of hazards given under  
Section 9

February 2006

Office of the Deputy Prime Minister: London

**2.**

Housing Health and Safety Rating System  
Enforcement Guidance

Housing Act 2004

Part 1: Housing Conditions

February 2006

Office of the Deputy Prime Minister: London

**3.**

Town and Country Planning Act 1990 Section 215 Best Practice Guidance

January 2005

Office of the Deputy Prime Minister: London

**4.**

Professional Practice Note – The Law of Statutory Nuisance – Part 1 “Premises”  
1992

David Ormandy

Institute of Environmental Health Officers (Now Chartered Institute of Environmental Health)

**5.**

Regulators’ Code

April 2014

Department for Business Innovation & Skills

Better Regulation Delivery Office

**6.**

The Code for Crown Prosecutors

January 2013

CPS

**Housing Services Enforcement Policy 2016 Consultation****Purpose of the Policy**

The purpose of this policy is to explain clearly the approach of the Council's Housing Service towards enforcement. It provides guidance to enforcement officers, businesses, consumers and the general public on the range of options that are available to achieve compliance with the legislation that we enforce.

The aims of the enforcement policy are to:

- ensure that the law is enforced in a fair, equitable and consistent manner;
- assist authorised officers to make informed decisions as to appropriate enforcement action at an early stage;
- help businesses and individuals understand our actions; and
- raise general awareness of the powers available.

**Question 1 How strongly do you agree/disagree with the purpose of the policy?**

Strongly agree **7**

Agree **4**

Neither agree nor disagree **0**

Disagree **0**

Strongly disagree **1**

**Would you like to make any further comments?**

1. The Council needs to improve local areas and not enforce a punitive policy on landlords.

2.PROVISO: Any enforcement action taken must take into account the tenant's responsibilities and not simply pursue the landlord as a 'soft option'

**Principles of Good Regulation**

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence;
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;

- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where communications are similar, we will endeavour to act in similar ways to other local authorities;
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return; and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

Housing Services will apply this policy to ensure that:

- Decisions about enforcement action are fair, proportionate, risk-based and consistent;
- Officers apply current Government guidance and relevant codes of practice; and
- Everyone understands the principles which are applied when enforcement action is considered.

**Question 2 – How strongly do you agree/disagree with this approach in how we will exercise our regulatory activity?**

Strongly agree **1**

Agree **7**

Neither agree nor disagree **0**

Disagree **0**

Strongly disagree **0**

(Did not answer **3**)

**Would you like to make any further comments?**

1. I would like to see action taken against serial tenant offenders who cause damage to properties and neighbourhoods with anti-social behaviour.
2. PROVISIO: Any enforcement action taken must take into account the tenant's responsibilities and not simply pursue the landlord as a 'soft option'

**Enforcement Options**

We will take a balanced approach to enforcement, using compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to

assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

Decisions about the most appropriate enforcement action to be taken are based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

Decisions will take account of the following:

- the nature and seriousness of the offence;
- any obstruction on the part of the offender;
- the past history of the offender(s);
- in the case of a new business, an assessment of the duty holder's willingness to undertake any work identified by an authorised officer;
- confidence in the duty holder's willingness and ability to prevent a recurrence;
- the consequence of non-compliance;
- the likely effectiveness of various enforcement options;
- what is in the public interest;
- the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance;
- sufficiency of evidence to support the action.

**Question 3 – there are a range of enforcement options available to us, which include: no action; the service of legal notices; carrying out works in default; and prosecution. How strongly do you agree with the matters we will take into consideration when deciding on the most appropriate course of action?**

Strongly agree **1**

Agree **4**

Neither agree nor disagree **1**

Disagree **1**

Strongly disagree **0**

(Did not answer **4**)

**Would you like to make any further comments?**

1. I would like to see enforcement action taken against serial tenant offenders who move from house to house seemingly at will causing damage to properties and dumping rubbish in surrounding areas. Tenants who cause damage to properties from their lifestyle choices and then complain about the damage they have caused should have action taken against them.

2. PROVISIO: Any enforcement action taken must take into account the tenant's responsibilities and not simply pursue the landlord as a 'soft option'

**Question 4 – The range of enforcement options are set out in paragraphs 3.1.1 to 3.1.9 of the policy. In summary, the options are as follows:**

- **Statutory (legal) notices**
- **Financial Penalties**
- **Simple Caution**
- **Prosecution**
- **Refusal, suspension and revocation of a licence/permit**
- **Orders**
- **Enforcement against individuals**
- **No action**

**How strongly do you agree/disagree with the range of enforcement options set out in the policy?**

Strongly agree **2**

Agree **4**

Neither agree nor disagree **0**

Disagree **0**

Strongly disagree **1**

(Did not answer **4**)

**Would you like to make any further comments?**

1. As previously, improve local areas and stop punishing landlords for the Council's lack of action.

2. PROVISIO: Any enforcement action taken must take into account the tenant's responsibilities and not simply pursue the landlord as a 'soft option'

**Question 5 – Is there anything else you would like to see included in the policy?**

1. Improve local areas.
-------------------------

**About you**

Are you:

A resident of Hartlepool **1**

Owner Occupier **1**

A business within Hartlepool **0**

A landlord operating within Hartlepool **7**

A letting agent operating within Hartlepool **0**

An organisation providing advice **0**

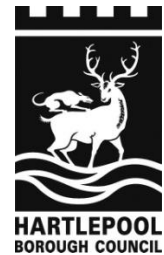
An employee of Hartlepool Borough Council **0**

Other (please state) **0**

(Did not answer **4**)

# REGENERATION SERVICES COMMITTEE

19<sup>th</sup> June 2017



**Report of:** Assistant Director (Economic Growth & Regeneration)

**Subject:** THE REDRESS SCHEMES FOR LETTINGS  
AGENCY WORK AND PROPERTY  
MANAGEMENT WORK (REQUIREMENT TO  
BELONG TO A SCHEME ETC) (ENGLAND)  
ORDER 2014

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## 1. TYPE OF DECISION/APPLICABLE CATEGORY

1.1 Key Decision test (ii) Forward Plan Reference No. RN 03/17

## 2. PURPOSE OF REPORT

2.1 The purpose of the report is to update Members on legislation which was introduced in 2014 to protect tenants living in privately rented accommodation. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme, etc.) (England) Order 2014, made it a legal requirement for all letting agents and property managers in England to join one of three Government approved scheme. This requirement, made under the Enterprise and Regulatory Reform Act 2013 became effective on 1 October 2014.

2.2 This report sets out the requirements of the Order and the penalties for non-compliance and outlines the proposed approach to implementation to be adopted.

## 3. BACKGROUND

3.1 The Order was brought in as part of the Government's response to the Communities and Local Government Select Committee inquiry into the private rented sector which was published on 18 July 2013. As part of this inquiry, evidence was taken about consumer detriment concerning the business practices of some letting agents.

The requirement to join a redress scheme was identified as one of the recommendations to improve standards in the sector. Definitions of what constitutes letting agency and property management work is set out in the Enterprise and Regulatory Reform Act 2013 and this is set out in **APPENDIX 1**. There are a number of specific exclusions from the requirement to belong to a redress scheme and these are also set out in **APPENDIX 1**.

- 3.2 There are three Government approved schemes:
- a) Ombudsman Services: Property ([www.ombudsman-services.org/property.html](http://www.ombudsman-services.org/property.html));
  - b) Property Redress Scheme ([www.theprs.co.uk](http://www.theprs.co.uk)); and
  - c) The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk)).
- 3.3 Business guidance for lettings agents and property managers was published by the Department for Communities and Local Government in October 2014.
- 3.4 The purpose of the schemes is to provide a mechanism for tenants and landlords to complain to an independent organisation about the service they have received from their letting or property management agent.
- 3.5 If a complaint is upheld, there are a number of options available:
- Require an apology;
  - Issue a reprimand;
  - Order compensation;
  - Fine a member; or
  - Expel a member
- Compensation is capped at £25,000, so any aggrieved party wishing to claim a greater amount would have to proceed through the Courts rather than the ombudsman scheme.
- Whilst complainants do not have to accept the decision of the scheme and may opt to go to court, scheme members are bound by the decisions.
- 3.6 All three schemes publish lists of members on their websites so that any interested parties, including Local Authorities, may readily ascertain whether an agent belongs to one of the three schemes.
- 3.7 Local Authorities can impose a fine of up to £5,000 where an agent fails to join one of the schemes. Before doing so, however they must give written notice of intention to impose a penalty, setting out the reasons and the amount of the penalty. The agent would then have 28 days to make written representations or objections. The enforcement process is set out in **APPENDIX 2**.
- 3.8 At the end of the period of representation, the Local Authority must decide whether to impose the fine and if so, must then issue a final notice giving at least 28 days to pay. At this stage, the fine may be lowered if there are 'extenuating circumstances'. There has been no specific guidance issued about fining structures; it is for each Local Authority to decide.



- 3.9 Local Housing Authorities are responsible for enforcing the Order but this role is not limited to Housing Officers, and could also be enforced by Trading Standards Officers. Un-registered agents could be identified through a number of means including:
- Complaints;
  - Mystery shopping;
  - Property checks;
  - Website checks; and
  - Licence applications and licence conditions.
- 3.10 Complaints about lettings and management in the private rented sector could include the way agents handle deposits, poor customer service, misleading advertisements, un-clear fees, unfair charges and agents not carrying out repairs in a timely manner. Areas of concern for leaseholders could include service charges, lease extensions, freehold purchase and management.
- 3.11 Article 7 of the Redress Schemes for Letting Agency Work and Property Management Work (requirement to belong to a scheme etc.) (England) Order 2014 makes it a duty for an enforcement authority to enforce the order.
- 3.12 Prior to the Order coming in to force, some awareness raising was carried out by Housing Services staff through email bulletins to landlords and known agents and information was available on the gov.uk website. The requirement was also communicated through professional bodies to their members.
- 3.13 Department for Communities and Local Government enforcement guidance states an expectation that £5,000 should be considered the normal penalty to be imposed for a breach of the Order but does allow discretion for a lower charge if the local authority is satisfied that “extenuating circumstances” apply.
- 3.14 The monetary penalties received by an enforcement authority may be used by the authority for any of its functions.
- 3.15 Further financial penalties can be imposed if a letting agent or property manager still fails to join a redress scheme and there is no limit to the number of penalties that can be imposed for continued failure.

#### **4. PROPOSALS**

- 4.1 It is proposed that the enforcement of the Order will be undertaken by Housing Services staff who have more regular contact with, and more detailed knowledge of, the property managers and letting agents operating within the borough.

- 4.2 It is proposed to adopt a monetary penalty structure to take into account the compliance of the relevant agent. In most cases, it would be the intention to allow a “grace period” to allow the agent an opportunity to apply for membership of an approved scheme. In some cases, where there has been a serious incident, this grace period may be dispensed with and these cases will be considered on a case by case basis. The proposed penalty structure is set out in table 1.

**Table 1 – Proposed Monetary Penalty Structure**

£5,000	Businesses that have failed to join an approved scheme after being issued with a <b>final notice</b> and no appeal has been made
£4,000	Businesses that have joined an approved scheme following the service of a <b>final notice</b>
£3,000	Businesses that have joined an approved scheme after being served with a <b>notice of intent</b>

- 4.3 It is proposed that any day to day decisions made about whether to issue a monetary penalty will rest with the Principal Environmental Health Officer (Housing). It is proposed that any requests to review the charge are approved by the Head of Service.
- 4.4 It is proposed that any income generated is used for the purposes of housing enforcement including the enforcement of the Order.

## 5. RISK IMPLICATIONS

- 5.1 There are no risk implications attached to this report.

## 6. FINANCIAL CONSIDERATIONS

- 6.1 Enforcement of the Order is not expected to generate significant income as the agent will be given sufficient opportunity to register with one of the three approved schemes before the imposition of a monetary penalty. It is expected that the threat of a significant penalty charge will trigger compliance in most cases.
- 6.2 Article 10 sets out that any sums received by the Local Authority may be used for any function. At this stage it is difficult to predict the level of income that may be generated but it is anticipated that the cost of additional enforcement will be met through the monetary penalties received.

## 7. LEGAL CONSIDERATIONS

- 7.1 The Council is obliged to enforce the Order and all legal considerations are contained within the body of the report.

**8. CHILD/FAMILY POVERTY IMPACT CONSIDERATIONS**

- 8.1 There are no child and poverty impact implications attached to this report.

**9. EQUALITY AND DIVERSITY CONSIDERATIONS**

- 9.1 The Council is committed to delivering services to people who need them without discriminating against any client or service user. It aims to treat all clients with courtesy and respect regardless of their gender, race, age, disability, religion, belief or sexual orientation.

**10. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS**

- 10.1 Hartlepool Borough Council recognises that Community Safety affects all our lives, people, communities and organisations. People need to feel safe and this means developing stronger, confident and more cohesive communities. Community Safety includes reducing crime and disorder and tackling anti-social behaviour, offending and re-offending, domestic abuse, drug and alcohol abuse, promoting fire safety, road safety and public protection.

**11. STAFF CONSIDERATIONS**

- 11.1 Existing Housing Services staff will enforce the Order; no additional resources are required. It is not expected to significantly increase the workload of officers as the number of requests for service, specifically regarding breaches of the Order, is expected to be low. Proactive enforcement will be undertaken when workloads allow.

**12. ASSET MANAGEMENT CONSIDERATIONS**

- 12.1 There are no asset management considerations attached to this report.

**13. RECOMMENDATIONS**

- 13.1 It is recommended that:-
- (i) Enforcement of the Order is undertaken by existing Housing Services staff.
  - (ii) The proposed monetary penalty structure as set out in table 1 is adopted, unless there has been a serious incident which justifies a more substantial penalty.

- (iii) Any day to day decisions made about whether to issue a monetary penalty will rest with the Principal Environmental Health Officer (Housing) and any requests to review the charge are approved by the Head of Service.
- (iv) Any income generated is used for the purposes of housing enforcement including the enforcement of the Order.

#### **14. REASONS FOR RECOMMENDATIONS**

- 14.1 Enforcement authorities have a duty to enforce the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014.
- 14.2 Housing Services staff are considered best placed to enforce the Order due to the nature of the work already undertaken with private landlords, tenants, lettings agents and property managers.

#### **15. BACKGROUND PAPERS**

- 15.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (2014 No. 2539)

<http://www.legislation.gov.uk/ukxi/2014/2359/contents/made>

- 15.2 Lettings Agents and Property Managers Which Government approved redress scheme do you belong to? (DCLG Guidance).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/361556/Lettings\\_Agents\\_and\\_Property\\_Managers\\_redress\\_scheme\\_leaflet.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361556/Lettings_Agents_and_Property_Managers_redress_scheme_leaflet.pdf)

#### **16. CONTACT OFFICER**

Andrew Carter  
Assistant Director (Economic Growth and Regeneration)  
Civic Centre  
Hartlepool  
TS24 8AY

Tel: (01429) 523596  
E-mail: [andrew.carter@hartlepool.gov.uk](mailto:andrew.carter@hartlepool.gov.uk)

Joanne Burnley  
Principal Environmental Health Officer  
Housing Services  
Civic Centre  
Hartlepool  
TS24 8AY

Tel: (01429) 523324

E-mail: [joanne.burnley@hartlepool.gov.uk](mailto:joanne.burnley@hartlepool.gov.uk)



**Meaning of ‘lettings agency work**

‘Lettings agency work’ is defined in the Enterprise and Regulatory Reform Act 2013 as things done by an agent in the *course of a business* (see below for definition) in response to instructions from:

- a private rented sector landlord who wants to find a tenant; or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 except where the landlord is a registered provider of social housing or the tenancy is a long lease.

Lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided; and
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example where the authority helps people to find tenancies in the private rented sector because a local authority is already a member of the Housing Ombudsman Scheme.

The intention is that all “high street” and web based letting agents and other organisations, including charities, which carry out lettings agency or property management work in the course of a business will be subject to the duty to belong to an approved redress scheme.

**Exclusions from the requirement to belong to a redress scheme – lettings agency work**

**Employers** who find homes for their employees or contractors – Article 4(2) of the Order excludes things done by an employer where the prospective tenant is an employee or a contractor. It excludes the person the prospective tenant provides work or services to where the prospective tenant is a worker, or a contractor, or is on secondment. It also excludes the hirer where the prospective tenant is an agency worker.

This is because an employer may either directly, or via a third party, help an employee find accommodation as a way to attract and then retain workers, especially in areas of high labour demand. This would fall within the definition of lettings work but, to avoid discouraging organisations to provide housing assistance to those who work or provide services for them, they have been exempted from the requirement to belong to a redress scheme.

**Higher and further education establishments** – Article 4(3)(a) of the Order excludes higher and further education establishments. Universities, for example, often provide a service for their students to help them find property to rent. While this is lettings agency work according to the definition, the housing teams are not acting as independent agents and have a wider duty of care for the students at their

institution. If an individual student feels that the housing teams have not provided a good service there are existing channels for making complaints.

**Legal professionals** – Article 4(3)(b) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. Legal professionals could be considered as carrying out lettings type work, for example, when they draft tenancy agreements. They are excluded from the duty as they are already heavily regulated and complaints about their service can be made to the Legal Ombudsman.

The Order does not exclude **charitable organisations** because any charity that is not operating as a business will already be exempt from the requirement. It is important that where charitable organisations are operating in the course of a business and especially where they are dealing with the most vulnerable that those most in need of support are not denied the opportunity to seek redress when things have gone wrong.

### Meaning of ‘property management work’

Property management work in relation to the Enterprise and Regulatory Reform Act 2013, means things done by a person *in the course of a business* (see below for definition) in response to instructions from another person who wants to arrange service, repairs, maintenance, improvement or insurance or to deal with any other aspect of the management of residential premises.

However, it does not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme by schedule 2 of the Housing Act 1996.

For there to be property management work, the premises must consist of, or contain:

- A dwelling house let under a long lease. Long lease includes leases granted for more than 21 years, leases granted under the right to buy and shared ownership leases;
- An assured tenancy under the Housing Act 1988; or
- A protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas, corridors, stairwells et.) that contains flats let under a long lease or let to assured or protected tenants.

The legislation will apply to people who in the course of their business manage properties, for example, high street and web based agents, agents managing leasehold blocks and other organisations who manage property on behalf of the landlord or freeholder.

### Exclusions from the requirement to belong to a redress scheme – property management work



Managers of commonhold land – Article 6(2) of the Order excludes managers of commonhold land even if one of the units is subsequently let on an assured tenancy. This is to avoid the manager having to join a relevant tenancy type, when this is not something they are likely to be aware of. A relevant tenancy type means:

- A tenancy which is an assured tenancy for the purposes of the purposes of the Housing Act 1988;
- A tenancy which is a regulated tenancy for the purposes of the Rent Act 1977; or
- A long lease other one to which part 2 of the Landlord and Tenant Act 1954 applies.

The exemption for managers of commonhold land only applies to the manager of the whole development – where an agent manages an individual dwelling house in such a development, the duty to belong to a scheme will apply.

**Managers of student accommodation** – Articles 6(3) to (7) of the Order exclude student accommodation, in particular halls of residence (which may be run privately), accommodation provided to students by education authorities and charities; and accommodation provided by any landlords where the students are nominated by an educational establishment or charity. Educational institutions will often rent bed space from trusted private providers (frequently agreeing a certain number of beds for a number of years and hence guaranteeing a level of rental income for the private provider) who will actually take up residence each year. The legislation is not aimed at university managed accommodation which is already well regulated and students have other mechanisms to complain, including through the students union.

**Managers of refuge homes** – Articles 6(8) to 6(10) of the Order exempt organisations that provide accommodation (refuge homes) for people who are fleeing actual, or threat of, violence or abuse of any other description (including physical and mental). Where those organisations are not operated on a commercial basis and the costs of operation are provided wholly or in part by a government department or agency, a local authority, or the organisation is managed by a voluntary organisation or charity then there is no requirement for the managers of the building to join a redress scheme. The management and letting of such properties goes significantly wider than property management per se and the person living in it will not be occupying it as their permanent residence.

**Receivers and insolvency practitioners** – Article 6(11)(a) of the Order excludes work done by a person (“A”) in the course of a business where the property is subject to a mortgage and A is the receiver of the income for it. When a borrower defaults on a mortgage the receiver is appointed as agent for the mortgagor and steps into their shoes. As such it would not be appropriate to treat the receiver as a managing agent and require them to join a redress scheme.

**Other authorities** - Article 6(11)(b)(i) of the Order excludes authorities where part 3 of the Local Government Act 1974 applies, as these authorities will already be subject to investigation by the Local Government Ombudsman. Such bodies include a local authority as not all local authorities are social landlords, a National Park authority, police and crime commissioners, or fire and rescue authorities, etc. The

requirement to belong to a scheme under this Order does not apply to work carried out by these authorities.

**Right to Manage companies** – Article 6(11)(b)(ii) of the Order excludes Right to Manage companies who acquire the right to manage under part 3 of the Commonhold and Leasehold Reform Act 2002 as they are in effect long leaseholders who have taken direct management of their block of flats from the landlord.

**Legal Professionals** – Article 6(11)(b)(iii) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. This is because they are already heavily regulated and complaints by relevant persons about their services can already be made to the Legal Ombudsman. Where a property management firm is part of a joint venture with a legal firm but is operating under its own identity and is carrying out property management work then it will have to join an approved or designated redress scheme as under these circumstances it will not be authorised or licensed under the Legal Services Act 2007.

**Managers instructed by local authorities and social landlords** – Article 6(12) of the Order excludes things done where a local authority or a social landlord have instructed the person undertaking the work. This is because local authorities and registered providers are already heavily regulated and consumers already have guaranteed access to an Ombudsman.

If a person is exempt from the redress scheme as they are not operating in the course of a business but they are collecting rent, they will still have legal responsibilities as “manager” where the property is a House in Multiple Occupation.

**Head tenant as a manager** – where a leaseholder receives a reduced service charge in exchange for maintenance work around the property for example gardening in a block of flats, or cleaning and maintains common areas such as stairwells, car parks and corridors. In such cases, they are not required to be part of a redress scheme, as they are not doing the work in the normal course of business. In cases where the level of service is deemed to be substandard, other leaseholders can complain to the main agent or freeholder that their subcontractor is not up to standard.

### **Implicit exclusions from the requirement to belong to a redress scheme**

Landlords are not explicitly excluded by the Order but are generally not caught by the Enterprise and Regulatory Reform Act as they are not acting on instructions from another party.

Resident management companies are not explicitly excluded by the Order although, in many cases, these are not caught by the Enterprise and Regulatory Reform Act 2013. Resident management companies can arise in different circumstances, but where the residents’ management company owns the freehold and manages the block itself there is no requirement for the company to join a redress scheme. This is because, under the definition in the Act, property management work only arises where one person instructs another person to manage the premises and, in this

case, the person who owns the block (and is responsible for its management) and the person managing the block are one and the same.

Likewise, where a resident management company does not own the freehold but is set up and run by the residents and manages the premises on behalf of the residents this would also be excluded as the work is only in respect of the residents' own premises and would not be operating in the normal course of business.

### **Meaning of 'in the course of business'**

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work 'in the course of business' as referred to in sections 83-84 of the Act. The requirement will therefore not apply to informal arrangements where a person is helping out rather than being paid for a role which is their usual line of work. Some examples of informal arrangements which would not come under the definition of 'in the normal course of business' are set out below:

- Someone looking after the letting or management of a rented property or properties on behalf of a family member or friend who owns the property/properties, where the person is helping out and doesn't get paid or only gets a small thank you gift of minimal value;
- A friend who helps a landlord with the maintenance or decoration of their rented properties on an ad-hoc basis;
- A person who works as a handyman or decorator who is employed by a landlord to repair or decorate their rented property or properties when needed;
- A landlord who occasionally looks after a friend's property or properties whilst they are away and doesn't get paid for it;
- A joint landlord who manages the property or properties on behalf of the other joint landlords.

Whilst it is not possible to cover all eventualities in this, one of the key issues to consider when deciding what could be considered an 'informal arrangement' is whether the person doing the letting or property management work is offering their services to genuinely help out a friend or acquaintance, instead of being paid for their services.

**Charities** – the Order does not explicitly exclude charitable organisations because any charity that is not operating as a business will already be exempt from the requirement, Charities which find accommodation for homeless people in the private rented sector often deliberately mirror the activities of a letting agent but only work with homeless people. Unless they are charging a fee for this service it is likely that the charity could argue that is not operating in the course of a business and therefore be excluded from the duty.



## **The Redress Schemes for Lettings Agency Work and Property Management Work - Enforcement Process**

### **Step 1: Notice of Intent**

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

- a) The reasons for the penalty;
- b) The amount of the penalty; and
- c) That there is a 28 day period to make written representations or objections, starting from the day after the notice of intent was sent.

This written notice must be served within six months of the date on which the enforcement authority is in the position to issue the fine (i.e. have gathered sufficient evidence and satisfied requirements that a fine is appropriate).

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

### **Step 2: Representations and Objections**

The person served with the notice of intent has 28 days starting the day after the notice of intent was sent, to make written representations and objections to the enforcement authority in relation to the proposed fine.

### **Step 3: Final Notice**

At the end of the 28 day period, the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must require the penalty to be paid within 28 days, from the day after the day on which the final notice was sent. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

- i. Why the fine is being imposed;
- ii. The amount to be paid;
- iii. How payment may be made;
- iv. The consequences of failing to pay; and
- v. That there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

### **Step 4: Appeals**

If an appeal is lodged, the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- i. The decision to impose a fine was based on a factual error or was wrong in law;

- ii. The amount was unreasonable; or
- iii. That the decision was unreasonable for another reason.

The first-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

#### **Step 5: Recovery of the penalty**

The penalty fines received by the authority may be used by the authority for any of its functions. If the lettings agent does not pay the fine within the 28 day period, the authority can recover the fine on the order of the county court. Where proceedings are necessary for the recovery of the fine, a certificate signed by the chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that a fine has not been paid.

# REGENERATION SERVICES COMMITTEE

19<sup>th</sup> June 2017



**Report of:** Assistant Director (Economic Growth and Regeneration)

**Subject:** FIVE YEAR SUPPLY OF DELIVERABLE HOUSING  
SITES - NOVEMBER 2016

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## 1. TYPE OF DECISION/APPLICABLE CATEGORY

1.1 Part of the Budget and Policy Framework.

## 2. PURPOSE OF REPORT

2.1 To provide an update on the five year supply of deliverable housing sites evidence which informed the production of the Publication Stage Local Plan.

## 3. BACKGROUND

3.1 The National Planning Policy Framework (NPPF) requires Local Planning Authorities to identify and update annually a supply of specific deliverable housing sites sufficient to provide five years worth of housing against their housing requirements. An additional buffer of 20% must be added to the requirement in the event of persistent under-delivery.

3.2 As Members are aware, the NPPF states that where a Council cannot demonstrate a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

3.3 The NPPF requires housing needs to be established via an Objective Assessment of housing Need (OAN). The National Planning Practice Guidance (PPG) makes clear that this is the first step towards identifying a housing requirement, with the factoring in of constraints being a clearly distinct and separate second step. This is a fundamental change from the pre-NPPF approach to identifying housing requirements.

3.4 The Council has commissioned an OAN as this was undertaken by independent consultants as part of the Strategic Housing Market

Assessment (SHMA) which was completed in 2015. To accord with the PPG, the Council's OAN should be based on up-to-date information. An update of the OAN was undertaken following the publication of the 2014 household projections and published as an addendum to the SHMA in November 2016.

- 3.5 The updated OAN informed the housing requirement that is stated in the Hartlepool Publication Local Plan. Therefore the housing requirement in the Publication Local Plan has been used as the benchmark against which to determine whether the Council is able to demonstrate a five year supply of deliverable housing sites.

#### **4. PROPOSALS**

- 4.1 The five year supply of deliverable housing sites assessment is attached as **APPENDIX 1**. The assessment was undertaken in November 2016 in order to inform the Publication Local Plan which was published for consultation in December 2016.
- 4.2 The assessment shows that the Council is able to demonstrate 5.04 years worth of deliverable housing sites when assessed against the housing requirement in the Publication Local Plan.
- 4.3 The Council's ability to demonstrate a five year supply of housing sites and the durability of that supply will be important considerations which the Inspector appointed to examine the emerging Local Plan will take into account.
- 4.4 Work has commenced to update the assessment in order that it is up-to-date as possible prior to the Examination-in-Public of the emerging Local Plan. When the updated assessment has been completed it will be reported to the Regeneration Services Committee and to Planning Committee at the earliest opportunity.

#### **5. RISK IMPLICATIONS**

- 5.1 There are no risk implications relating to this report.

#### **6. FINANCIAL CONSIDERATIONS**

- 6.1 There are no financial considerations relating to this report.

#### **7. LEGAL CONSIDERATIONS**

- 7.1 There are no legal considerations relating to this report.



**8. CHILD AND FAMILY POVERTY**

8.1 There are no child and family poverty implications relating to this report.

**9. EQUALITY AND DIVERSITY CONSIDERATIONS**

9.1 There are no equality and diversity considerations relating to this report.

**10. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS**

10.1 There are no Section 17 considerations relating to this report.

**11. STAFF CONSIDERATIONS**

11.1 There are no staff considerations relating to this report.

**12. ASSET MANAGEMENT CONSIDERATIONS**

12.1 There are no asset management considerations relating to this report.

**13. RECOMMENDATIONS**

13.1 That Members note the assessment at **APPENDIX 1**.

**14. REASONS FOR RECOMMENDATIONS**

14.1 The assessment at **APPENDIX 1** forms an important part of the evidence base which has informed the Publication Local Plan.

**15. BACKGROUND PAPERS**

15.1 There are no background papers relating to this report.

**16. CONTACT OFFICER**

Andrew Carter  
Assistant Director (Economic Growth and Regeneration)  
Civic Centre  
Hartlepool Borough Council  
TS24 8AY

Tel: (01429) 523596

E-mail: [andrew.carter@hartlepool.gov.uk](mailto:andrew.carter@hartlepool.gov.uk)

Matthew Clifford  
Senior Planning Policy Officer  
Civic Centre  
Hartlepool Borough Council  
TS24 8AY

Tel: (01429) 284308  
E-mail: [matthew.clifford@hartlepool.gov.uk](mailto:matthew.clifford@hartlepool.gov.uk)



## Interim Assessment - November 2016: Five year supply of deliverable housing sites

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**Demonstrating a 5 Year Land Supply of Deliverable Housing Sites**

- 1.0 The NPPF places great importance in the delivery of a wide choice of high quality homes. NPPF paragraph 47 states:

*“To boost significantly the supply of housing, local planning authorities should:*

- *Use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;*
- *Identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;*
- *Identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;”*

- 1.1 NPPF paragraph 48 states:

*“Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.”*

- 1.2 Bearing in mind paragraphs 47 and 48 the Council has a requirement to identify a supply of deliverable sites sufficient to provide five years worth of housing against their housing requirements.
- 1.3 The Council is currently preparing a new Local Plan to replace the 2006 Local Plan. The Publication Local Plan is due to be consulted on over the period 9<sup>th</sup> December 2016 to 4<sup>th</sup> February 2017. A major component of the robust and up to date evidence base is the Objectively Assessed Housing Need (OAHN). The Hartlepool Strategic Housing Market Assessment (SHMA) was published in 2015 and considers the Housing Market Area of Hartlepool, and the Objectively Assessed Housing Need. Arc4, the consultants who undertook the SHMA, engaged with key stakeholders during its preparation including planning and housing representatives from other Tees Valley authorities and the Registered Provider sector.
- 1.4 Since the SHMA was published, the Office for National Statistics have released 2014-based population projections and these have been used to prepare 2014-based household projections. At the Preferred Options there were also a range of comments received which related to the various scenarios which had been considered within the original SHMA. As such, and to ensure the Local Plan was

based on the most up to date and sound evidence an addendum to the SHMA has subsequently been produced. The purpose of the SHMA Addendum 2016 is to update the evidence base relating to Objectively Assessed Housing Need.

- 1.5 The SHMA states that an appropriate housing target would be approximately 290 net additional dwellings going forward over the next 15 years. Taking the SHMA housing target as a starting point the following issues need to be taken into consideration when looking at meeting future housing need, as set out in Table 1.

**Table 1: Housing Target Breakdown**

<b>Housing target breakdown</b>	<b>Annual dwellings</b>	<b>Total dwellings over 15 years</b>
SHMA Housing Requirement	240	3600
Historical backlog from 2006 Local Plan	47	705
OAN Total Requirement	287	4305
Replacement of demolitions (assuming 50% on site windfall replacement)	65	975
20% buffer and affordable housing allowance	57	860
Proposed Annual Housing Target	409	6135

- 1.6 The proposed annual housing target in the emerging Local Plan has been rounded up to 410 dwellings. This incorporates the previous under-delivery of 705 dwellings averaged out over the period covered by the emerging Local Plan (2016 - 2031). As the Council has not achieved the housing target (at the time) consistently over the last 10 years, in accordance with NPPF paragraph 47 the Council accepts that there has been a record of persistent under delivery of housing. As a result there is a requirement to increase the provision over the first 5 years by an additional 20% (moved forward from later in the plan period). This essentially means that the Council needs to demonstrate a 6 year supply instead of a 5 year supply over the same period. Table 2 illustrates the housing delivery scenario over the next 15 years bearing in mind the 20% buffer allowance.
- 1.7 In identifying sites that contribute towards meeting a 1<sup>st</sup> 5 year supply the Council has only included deliverable (meeting the definition in NPPF footnote 11) housing sites in the borough; which are drawn from the following sources:
- (a) Sites with planning permission,
  - (b) Site identified in the SHLAA and included in the Local Plan Publication Document as allocations.
- 1.8 In accordance with NPPF footnote 11, in judging the deliverability of housing sites an assessment has been carried out looking at whether the housing delivery site has any issues with regard to:
- Site availability,
  - Site location,
  - Viability constraints,
  - Infrastructure constraints,
  - Planning policy constraints,
  - Market demand constraints,

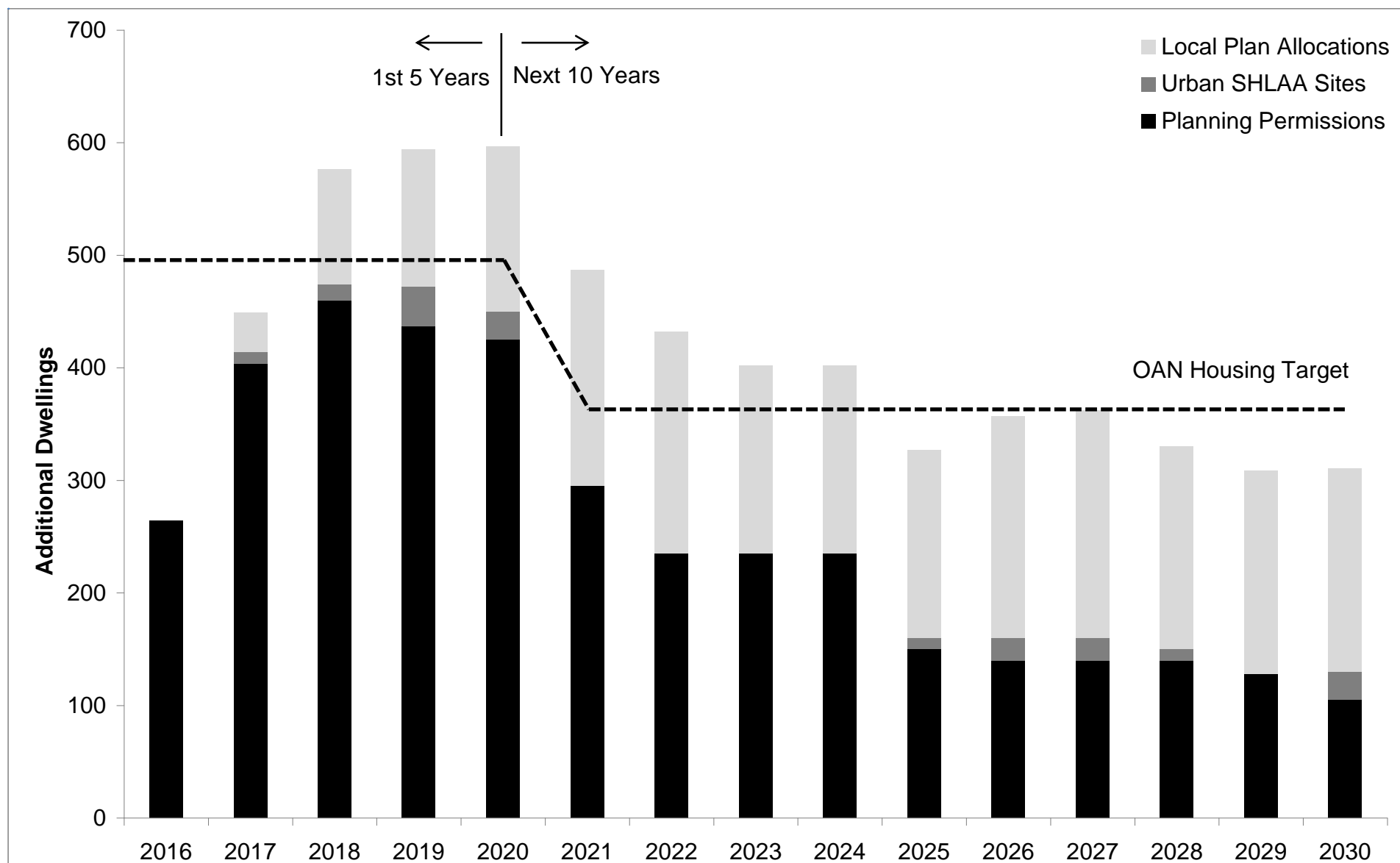
- Other constraints.

- 1.9 The development phasing of the sites has also been taken into account. For instance if a site was granted planning permission in outline in 2016, it may take 12 months to submit and approved Reserved matters, a further 12 months to assemble the site and start building units; as a result completions would not start occurring until year 2/3 (i.e. 2018/2019) of the development lifespan.
- 1.10 For information, the assessment is set out in *Appendix A*. Where there are identified issues relating to the deliverability of the housing site they have subsequently not been included in the 1<sup>st</sup> 5 years as they have specific delivery problems. Where sites have not be included in the 1<sup>st</sup> 5 years they have been discounted (i.e. beyond the 15 year period) or identified for development in the 2<sup>nd</sup> and 3<sup>rd</sup> 5 year periods, when it is more likely that development could occur.
- 1.11 Table 2 and graph 1 summarise all of the sites which contribute towards the 5 year supply; the details can be observed in *Appendix A*.
- 1.12 For information a number of sites that have extant planning permissions for flatted development at the Marina are included in *Appendix A* but have not had any delivery scheduled over the 15 year period covered by the Local Plan. This is because market conditions for this type of development are no longer as favourable as was previously the case and the rate of delivery has slowed considerably as a result. The Council is therefore cautious about projecting a delivery for the permissions for flatted development at the Marina. This will be kept under review. The planning permission for 100 dwellings at the site of the former Cresot Works has also not had any delivery scheduled over the period covered by the Local Plan. This is because there are concerns regarding contamination on the site. The costs of environmental remediation could be significant and could potentially make the site economically unviable to develop.

**Table 2: Summary of Demonstrating a 5 Year Supply of Deliverable Housing Sites**

Housing Delivery Source	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Total
(a) Planning Permissions	264	404	460	437	425	295	235	235	235	150	140	140	140	128	105	<b>3793</b>
(b) Urban Local Plan Sites	0	10	14	35	25	0	0	0	0	10	20	20	10	0	25	<b>169</b>
(c) Rural Local Plan Sites	0	35	102	122	147	192	197	167	167	167	197	202	180	181	181	<b>2237</b>
Total Housing Delivery Trajectory	264	449	576	594	597	487	432	402	402	327	357	362	330	309	311	<b>6199</b>
Baseline Housing Target	410	410	410	410	410	410	410	410	410	410	410	410	410	410	410	<b>6150</b>
20% NPPF Para 47 Buffer Target	492	492	492	492	492	369	369	369	369	369	369	369	369	369	369	<b>6150</b>
Housing Target Accordance	-228	-43	84	102	105	118	63	33	33	-42	-12	-7	-39	-60	-58	49
<b>5 Year Land Supply Accordance (Dwellings)</b>	<b>+20</b>					<b>+205</b>					<b>-176</b>					49
<b>5 Year Land Supply Accordance (Years)</b>	<b>5.04</b>					<b>5.56</b>					<b>4.52</b>					15.12

Graph 1: Current Housing Trajectory





- 1.13 Table 2 and graph 1 reveals a situation where the Council is able to demonstrate a five year supply of deliverable housing sites to meet the housing requirement (including the NPPF 20% buffer) over the next 5 years when considering the projected housing delivery in the borough. It is anticipated that a large proportion of the new housing in the first five years will be delivered through existing planning permissions, and sites allocated through the Local Plan will begin to deliver towards the end of the five year period. Currently there is a surplus of 20 dwellings which equates to a 5.04 year supply of deliverable housing sites. NPPF paragraph 49 states:

*“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”*

- 1.14 The previous inability of the Council to demonstrate a 5 year supply of deliverable housing sites meant that, in accordance with NPPF paragraph 49, any saved policies included in the 2006 Local Plan regarding the supply of housing were not considered up-to-date. As the Council is now able to demonstrate a 5 year supply of deliverable housing sites, policies in the 2006 Local Plan which deal with the supply of housing need to be assessed in the context of NPPF paragraph 215.

**Appendix A: Demonstrating a 5 Year Land Supply of Deliverable Housing Sites****(a) Sites With Planning Permission**

Site Ref	Site Name	Completed	Remaining	1st 5 Years						2nd 5 Years					3rd 5 Years					Site deliverability justification						
				2016/17 Completed	2016/17 Remaining	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
H075	Block 17 Marina	0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H076	Block 18 Marina	0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H077	Block 19 Marina	0	60	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H078	Block 20 Marina	0	18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H079	Block 24 Marina	0	19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H080	Block 25 Marina	0	48	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H081	Block 26 Marina	0	20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H082	Block 28 Marina	0	20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H083	Block 29 Marina	0	48	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H084	Block 31 Marina	0	24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H085	Block 32 Marina	0	36	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	No	No	Yes	No
H086	Mixed Use Maritime	0	54	0	0	0	10	12	12	20	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No

## 7.1 APPENDIX 1

Site Ref	Site Name	Completed	Remaining	1st 5 Years						2nd 5 Years					3rd 5 Years					Site deliverability justification						
				2016/17 Completed	2016/17 Remaining	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
	Avenue																									
H087	South of Maritime Avenue	0	400	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	Yes	No	Yes	Yes
H007	Land adjacent to the manor house	4	3	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H091	Union House	4	3	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H023	Jesmond Road / Heather Grove	0	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H148	Park House	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H145	2-4 Whitby Street	0	4	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H158	Manor House Farm	0	4	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H154	Lambs House Farm	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H161	Mayfair	150	111	22	11	20	20	20	20	20	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H166	Perth Street Regeneration Scheme	78	1	6	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H172	Overlands Plot A	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H177	37 York Road	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H179	Close Farm Cottage	0	3	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H181	Middle	125	55	31	15	20	20	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No

## 7.1 APPENDIX 1

Site Ref	Site Name	Completed	Remaining	1st 5 Years						2nd 5 Years					3rd 5 Years					Site deliverability justification						
				2016/17 Completed	2016/17 Remaining	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
	Warren Area 9 Phase 15																									
H187	Brierton Farm	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H188	Land at Tanfield Road	44	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H189	Wynyard Park (The Meadows)	87	81	28	12	30	30	9	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H191	FORMER HENRY SMITH SCHOOL SITE	45	72	7	12	15	15	15	15	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H197	Havelock Centre	4	9	0	0	9	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H198	FORMER BRIERTON SCHOOL SITE	0	107	0	0	0	35	35	37	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H185	Former Mas Agraa Palace	0	9	0	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H209	120 Alma Steet	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H211	Southbrooke	0	8	0	0	8	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H215	Land North of the A689/North Pentagon	0	200	0	0	25	25	25	25	25	25	25	25	0	0	0	0	0	0	No	No	No	No	No	No	No
H212	20 Owton Manor Lane	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H220	Creosote	0	108	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	Yes	Yes	No	Yes	Yes

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Site Ref	Site Name	Completed	Remaining	1st 5 Years						2nd 5 Years					3rd 5 Years					Site deliverability justification						
				2016/17 Completed	2016/17 Remaining	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
	Works																									
H104	Hartlepool Hospital	0	100	0	0	20	20	20	20	20	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H218	FRIARAGE	0	38	0	0	0	0	38	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H219	Raby Arms/The Darlings	9	14	9	4	10	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H222	Priory Farm	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H225	Britmag Ltd/Former Magnesium Works	12	468	12	25	35	35	35	35	35	35	35	35	35	35	35	35	23	0	No	No	No	No	No	No	No
H227	45-49 Raby Road	0	4	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H226	Land to the rear of 51 The Front	0	4	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H217	THE WOODCUTTER PUBLIC HOUSE	0	14	0	0	7	7	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H233	Quarry Farm	0	81	0	21	30	30	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H231	18 Lowthian Road	0	4	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H230	Pawton Hill Farm	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H234	Ashfield Farm	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H203	Upper Warren	0	500	0	0	35	35	70	70	70	70	70	70	10	0	0	0	0	0	No	No	No	No	No	No	No
H238	Tunstall Farm	0	110	0	0	20	30	30	30	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No

## 7.1 APPENDIX 1

Site Ref	Site Name	Completed	Remaining	1st 5 Years						2nd 5 Years					3rd 5 Years					Site deliverability justification						
				2016/17 Completed	2016/17 Remaining	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
H244	Seaton Lane (Lot 1)	0	20	0	0	7	7	6	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H245	Seaton Lane (Lot 2)	0	22	0	0	11	11	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H246	Seaton Lane (Lot 3)	0	11	0	0	0	11	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H243	Greatham (Land off Station Road)	0	29	0	0	0	14	15	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H247	138 Elwick Road	0	2	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H236	Priory Farm	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H237	Worset Lane	0	7	0	0	4	3	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H242	Meadowcroft	0	14	0	14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H253	Land to the South of Hartdale	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H251	South West Extension	0	1260	0	0	25	40	40	105	105	105	105	105	105	105	105	105	105	105	No	No	No	No	No	No	No
H249	Rear of 138 Elwick Road	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H250	21 Seaton Lane	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H240	Manorside Phase 1	0	15	0	5	5	5	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H258	Adjacent to 1 Burns Close	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H257	Land at 9 The	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No

## 7.1 APPENDIX 1

Site Ref	Site Name	Completed	Remaining	1st 5 Years						2nd 5 Years					3rd 5 Years					Site deliverability justification						
				2016/17 Completed	2016/17 Remaining	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
	Grove																									
H255	Elwick Hall	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H216	WYNYARD WOODS WEST	0	64	0	0	10	10	20	24	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H123	North Farm	0	14	0	7	7	0	0	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H248	Manorside Phase 2	0	12	0	0	5	5	2	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H259	149 York Road	0	2	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H241	Coniscliffe Road	0	39	0	0	15	15	9	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H002	Gainford House	0	6	0	0	0	0	6	0	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H260	Wynyard Site B	0	30	0	0	0	10	10	10	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No
H261	Nelson Farm	0	50	0	0	0	15	15	20	0	0	0	0	0	0	0	0	0	0	No	No	No	No	No	No	No

**(b) Urban Sites Identified in the SHLAA**

Housing Source	Remaining	2016/17 Com	2016/17 Rem	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
South of John Howe Gardens	25																25	No	No	No	No	No	No	No
Carr & Hopps	70			10	10	25	25											No	No	No	No	No	No	No
Coronation Drive	60											10	20	20	10			No	No	No	No	No	No	No
Briarfields	14				4	10												No	No	No	No	No	No	No



**(c) Sites Allocated in the 2016 Local Plan.**

Local Plan Policy Ref	Housing Source	Remaining	2016/17 Com	2016/17 Rem	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	Site availability issues?	Suitable location issues?	Viability constraints?	Infrastructure constraints?	Policy constraints?	Market demand constraints?	Other constraints?
HSG5	High Tunstall	1200				35	55	60	90	90	90	90	90	120	120	120	120	120	No	No	No	No	No	No	No
HSG5a	Quarry Farm	220				22	22	22	22	22	22	22	22	22	22				No	No	No	No	No	No	No
HSG6	Wynyard Park	732			35	35	35	55	55	55	55	55	55	55	60	60	61	61	No	No	No	No	No	No	No
HSG7	Elwick Village	35							15	20									No	No	No	No	No	No	No
HSG8	Hart Village	50				10	10	10	10	10															