

Housing (Private Sector) Policy

The policy was originally written in 2006 and first revised in 2008. This 2012 version is the second revision.

1 Introduction

1.1 The Council's role

1.1.1 The houses and flats in the Cherwell District have enormous value. They are the major financial asset of most of their owners but are essential local and national assets as well. As Housing Authority for its District, Cherwell District Council has a responsibility for the condition of the local housing stock:

"A local housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any provisions ...(of the Act)". (section 3 Housing Act 2004)

1.1.2 Home-owners have a clear first responsibility for the condition of their properties and, in most cases, take appropriate steps to ensure that their houses and flats are properly maintained. Landlords, as owners, usually have a similar incentive to maintain their properties, ensure they are attractive to potential tenants and generate the required rental income.

1.1.3 However, there are significant numbers of unsatisfactory homes in the district. Our last stock-condition survey, in 2009, estimated that there were more than 6,000, or about one in ten homes, with serious health and safety problems. Poor quality homes can have serious consequences; not only can they directly affect occupants health (and sometimes the health and safety of neighbours and visitors as well), but can also have a bearing on employment prospects, educational achievement and relationships. The Council has certain legal duties to deal with housing problems but has other discretionary powers as well. These powers are not generally dependent upon tenure so the Council may be required to take action in connection with both owner-occupied and tenanted property.

1.1.4 More than 71% of houses and flats in the Cherwell District are owner-occupied and approximately 29% rented, of which three-fifths are privately rented. The majority of all houses and flats are in good order but problems can arise for a variety of reasons and affect both owner-occupied and rented property. Some of the poorest conditions are found in privately rented accommodation and, because most tenants do not have direct control over the condition of their home, it is appropriate that the condition of privately rented accommodation has been, and continues to be, a prime focus for both legislation and the Council's attention. However, action in connection with owner-occupied premises can be needed and the Council will take action to deal with those problems where appropriate.

1.2 The purpose of this Policy

1.2.1 The Council reviews the overall condition of houses in its District by carrying out periodic house condition surveys; these have typically taken the form of sample-surveys of at least 1,000 dwellings and have been

undertaken about every five years so that changes can be monitored and acted upon. Survey information is used to help develop the Council's policies and its Housing Strategy.

1.2.2 This Policy (written in the context of the Council's *Housing Strategy 2012-17*) explains the Council's role in delivering satisfactory housing standards. It also sets out the rules, standards and legislation that apply, and how the Council intends to use its powers and responsibilities. The existence of a number of sub-policies is indicated at appropriate points in the text.

1.3 The Housing Act 2004

1.3.1 The *Housing Act 2004* is the principle legislation dealing with the regulation of housing standards. It also requires compulsory licensing of certain houses in multiple-occupation (HMOs) (see 2.2 below for definition).

1.3.2 In addition to setting out the way in which Cherwell District Council will approach its responsibilities for housing conditions, this Policy also explains how the Council will carry out the requirements of the Housing Act 2004 ('the Act') in relation to HMO licensing, the Health and Safety Rating System (HHSRS) and how we intend to use the discretionary powers in the Act.

1.4 Other legislation

1.4.1 A range of other legislation is also available to deal with property condition and property issues. Some of these statutes set mandatory responsibilities and others give discretionary powers. In some cases it may be possible to use more than one set of powers to achieve the required outcome. We are prepared to use the full range of powers available to us and will utilise whichever we consider to be the most appropriate in the circumstances of a particular case.

1.4.2 Legislation we may use includes, but is not restricted to:

- Public Health Act 1936 (*filthy & verminous premises*)
- Building Act 1984 (*defective premises*)
- Environmental Protection Act 1990 (*statutory nuisances*)
- Local Government (Miscellaneous Provisions) Act 1976 (*restoration of water, gas or electricity supplies*)
- Local Government (Miscellaneous Provisions) Act 1982 (*power to board-up*)
- Prevention of Damage by Pests Act 1949 (*rodent issues*)

1.5 Statement of intent

1.5.1 The Council wants all homes in the district to be properly managed and maintained so that they are safe, healthy and can continue to be suitable homes into the future. We are determined to eliminate poor housing conditions. Where necessary we will use the enforcement powers available to us to ensure that appropriate minimum standards are achieved without undue delay. However, we believe that enforcement alone is unlikely to achieve satisfactory or improving standards and so will assist home-owners to improve and maintain their property in accordance

with the Council's *Grant and Assistance Policy*. (See also section 6 below.)

2 HMOs and HMO Licensing

- 2.1 The aim of HMO licensing is to ensure that specified categories of property (some of which suffer from very poor conditions) meet appropriate legal standards and are properly managed. This is to be achieved by requiring that all higher-risk HMOs (as defined in Regulations made under section 55 of the Act) are licensed and meet appropriate licence conditions. (This means that most HMOs are not subject to mandatory licensing.)
- 2.2 The definition of HMO is quite complex but, put in the simplest terms, an HMO is a building occupied by more than one household. This includes houses containing bedsits, shared houses, hostels and some houses divided into flats. The Housing Act 2004 defines the term household in terms of family relationships (which are all specified in the Act). This definition means that shared houses and those occupied by unrelated people will always be HMOs (unless they fall within one of the specific exemptions set out in Schedule 14 of the Act.)
- 2.3 HMOs of 3 or more storeys which have 5 or more occupiers (forming 2 or more households) will need to be licensed. Social housing and domestic premises owned by the police, health authorities, universities and some other listed organisations are exempt from licensing, as are buildings wholly converted into self-contained flats.

Licence requirements and conditions

- 2.4 A licence will be granted where the Council is satisfied that specified requirements are met; these include the suitability of those involved with running the premises and the adequacy of management arrangements. In addition, the premises must be reasonably suitable for the intended number of occupants. The Council's *HMO Licence Policy* explains both the requirements and how the Council will reach relevant decisions.
- 2.5 Licences will usually be valid for 5 years, will specify the maximum number of occupiers or households and will include conditions. Certain conditions have to be included in all licenses but the Council is able to add others if it considers that necessary or appropriate. The application of licence conditions is dealt with in the *HMO Licence Policy*.
- 2.6 The Council will charge licence fees in accordance with its *HMO Licence Policy*.
- 2.7 HMOs will usually be subject to an inspection and assessment under the Housing Health and Safety Rating System (HHSRS, see section 4 below) undertaken in parallel with the licensing process. If that is not possible, the premises will be inspected for HHSRS purposes at a later date set on the basis of an assessment of priority.

- 2.8 It is an offence not to licence a qualifying HMO and that failure is punishable, on conviction, by a fine of up to £20,000. Any decision to prosecute will be taken in line with the Council's *House Condition Enforcement Policy*.
- 2.9 The Council intends to undertake re-inspections of licensed premises at intervals of no more than 5 years but will re-inspect more frequently where possible.

Temporary exemption from licensing

- 2.10 The Council may serve a Temporary Exemption Notice (TEN) where a landlord states to the Council that he or she is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A TEN will be served where an owner of a licensable HMO states in writing that he/she is taking steps to make that HMO non-licensable and states that the HMO will not be licensable within three months. The Council does not wish these notices to be used routinely and so a second notice will only be acceptable in exceptional and unforeseen circumstances. Any exception to this Policy will be agreed by the Head of Regeneration and Housing.

Rent repayment

- 2.10 Where an HMO is required to be licensed but is not licensed, the Council can apply to the Residential Property Tribunal (RPT) for a Rent Repayment Order (RRO). The RPT has the power to require that rent which has been paid in the form of Housing Benefit is repaid to the Council. (Tenants can also apply to the RPT for repayment of any rents they have paid.) (*Note: the RPT replaced the Courts for the purposes of judging appeals under the Housing Act 2004.*) The Council may seek Rent Repayment Orders in exceptional cases and these will be determined by the Head of Regeneration and Housing.

Interim and Final Management Orders

- 2.11 Where there is no reasonable prospect of an HMO which requires a licence being licensed, the Act requires that the Council must use its powers to make an Interim Management Order (IMO). These enable the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In certain circumstances this can be extended to 5 years by means of a Final Management Order (FMO), with the Council also having the power to grant tenancies.

2.12 The Council also has a discretionary power to use Interim Management Orders for other HMOs (ie those to which licensing provisions do not apply) if, on application by the Council, a Residential Property Tribunal (RTP) is satisfied that course of action is necessary to protect the health and safety of the occupants. If an IMO is made it can be followed by a Final Management Order (as above) if the Council judges it appropriate.

- 2.13 Decisions in relation to the making of (or application for) Interim Management Orders, and the making of Final Management Orders will be made by the Head of Regeneration and Housing, taking into account all the circumstances of the case.

Application of Management Regulations and HHSRS to all HMOs

2.14 Most HMOs in the Cherwell District will not require a license under the mandatory scheme. These include houses comprising only self-contained flats, 2-storey premises (regardless of the number of occupants) and 3-storey HMOs with fewer than 5 occupants. However, all HMOs are subject to HMO management regulations (made under section 234 of the Act) and must also be free from serious hazards (as assessed using the Housing Health and Safety Rating System (HHSRS) which is explained in more detail below.) The Council will apply the HHSRS in accordance with its *HHSRS Policy*. Enforcement in relation to the HMO Management Regulations will be undertaken in accordance with the Council's *House Condition Enforcement Policy*.

2.15 In order to ensure that appropriate standards are being achieved in HMOs the Council will investigate complaints but will also take steps including planned inspections to identify HMOs, and will undertake re-inspections at intervals we consider appropriate. We shall also use our powers under the HMO management regulations to require landlords to provide us with copies of gas appliance and electrical installation test certificates.

Additional HMO licensing

2.16 The Council has the power to introduce additional HMO licensing schemes which would require further categories of HMO to be licensed in all, or in parts, of the District. We have no plans to use this discretionary power at present.

3. Fire, Amenity and Space Standards in HMOs that do not require a licence

3.1 In determining appropriate requirements for HMOs which are not subject to HMO licensing (and which are not subject to an Interim or Final Management Order), the Council will rely upon the Housing Health & Safety Rating System (HHSRS) (see below), Government guidance, national guidance produced by relevant organisations (such as LACORS) and such other local standards as the Council is empowered and may see fit to introduce (see the Council's HMO Standards).

3.2 The Council will enforce minimum space standards for letting rooms having regard to its adopted space standards, the Housing Health & Safety Rating System (HHSRS) (see below), Government guidance, national guidance produced by relevant organisations (such as LACORS) and such other local standards as the Council is empowered and may see fit to introduce.

3.3 Enforcement action will be taken in line with the Council's *House Condition Enforcement Policy*.

4. Housing Health and Safety Rating System (HHSRS) and Enforcement Regime

- 4.1 The Housing Act 2004 replaced the old test of fitness (s604 of the Housing Act 1985) with the Housing Health & Safety Rating System (HHSRS). This uses risk-assessment to calculate the effect of housing conditions on the health of occupiers and others. The HHSRS is a rather more complex but comprehensive approach to dealing with house-condition problems. It involves assessment of up to 29 potential hazards and scoring of their severity as the basis for determining the need for action. If any of the more serious Category-1 hazards are found, the Council has a duty to take action. If less serious Category-2 hazards are found, the Council has discretionary power to require action.
- 4.2 The Council will use its powers under the Housing Act 2004 to carry out inspections to establish the existence of hazards. We will do so in response to complaints, or if we believe a hazard may exist. The Council's *HHSRS Policy* sets out how we will judge which of the available powers to use and in which circumstances.

5. Enforcement

- 5.1 The Council is committed to carrying out its duties in a fair and consistent manner and will follow its *House Condition Enforcement Policy* in the regulation of housing conditions.
- 5.3 The Council expects owner-occupiers to take all appropriate steps to ensure that their homes are kept in satisfactory order and to remedy hazards, problems of disrepair or nuisance. (In the case of long-leaseholders this may also necessitate invoking the terms of their leases.)
- 5.4 The Council expects landlords to take all appropriate steps to ensure that property they rent out is kept in satisfactory order and to remedy significant hazards, problems of disrepair or nuisance promptly. (In the case of long-leaseholders this may also necessitate invoking the terms of their leases.)
- 5.5 The Council expects landlords of houses in multiple-occupation (HMOs) to comply at all times with their responsibilities under the HMO management regulations (*the Management of Houses in Multiple Occupation (England) Regulations 2006*).
- 5.6 We expect tenants to treat their homes in an appropriate manner and to comply with the terms of their tenancy agreements. We also expect them to have informed their landlord of any disrepair or other problems and to have allowed sufficient time for remedial action to be taken before contacting the Council for assistance.

6. Financial and other assistance

- 6.1 We shall provide advice concerning applicable standards upon request. Other forms of assistance will be provided in accordance with the Council's *Private Sector Housing Grant & Assistance Policy*.

7 Other matters

7.1 Empty property

7.1.1 We intend to base our involvement with empty homes on the following principles:

- The Council wants empty homes to be used
- The Council will encourage and facilitate their re-use (eg by providing advice, grants and loans)
- The Council will take action to resolve specific issues caused by empty homes (where powers permit)
- The Council will take action to secure re-use of empty homes where a business case exists.

7.1.2 Grants and Loans which may be available to assist with bringing empty homes into productive use will be made in accordance with our *Private Sector Housing Grant & Assistance Policy*.

7.1.2 As stated in the principles above, we will take appropriate enforcement action where relevant standards are not being met. Hazards in empty property can be addressed by using the HHSRS and the Council also has powers to board-up empty premises and deal with statutory nuisance. In addition, the Housing Act 2004 provides the Council with the power to apply for an Empty Dwelling Management Order (EDMO), enabling it to take control of an empty property in order to bring it back into use, and the Council retains the power to make Compulsory Purchase Orders to acquire property for housing purposes. These powers will be used in cases where the Head of Regeneration and Housing, in consultation with the Lead Member for Housing, considers them appropriate.

7.2 Bed and Breakfast Hotels

The Council has the power to specifically declare certain premises to be HMOs. The Council considers that where accommodation is used as a main residence, HMO standards should apply and will use its powers in the case of bed and breakfast hotels if they are housing any persons who use the hotel as their main residence for more than 30 consecutive days or more than 30 days in any 12-month period.

7.3 Selective licensing

The Council has the power to require selective licensing of houses other than HMOs in all, or parts, of its District in certain specified circumstances and subject to government approval, but does not at present intend to utilise this discretionary power.

7.4 Appeals

The opportunity to appeal against certain decisions or actions taken by the Council is provided by a number of Acts of Parliament and is explained in the Notices and Orders the Council uses. The Housing Act 2004 makes the Residential Property Tribunal (rather than the County Court) responsible for hearing appeals under this particular Act.
