

Item No. 16.	Classification: Open	Date: 14 September 2021	Meeting Name: Cabinet
Report title:		Refresh of the Regulatory Services Enforcement Policy and the Private Sector Housing Enforcement Policy	
Ward(s) or groups affected:		All wards	
Cabinet Member:		Councillor Darren Merrill, Safer, Cleaner Borough	

FOREWORD – COUNCILLOR DARREN MERRILL - CABINET MEMBER FOR A SAFER, CLEANER BOROUGH

Southwark Council is firmly committed to drive up standards via our regulatory services. This paper sets out how enforcement action will be conducted across the services, giving a clear understanding for businesses and residents from what is expected of them and what they can expect from us.

This report also sets out the regulatory framework for private rented sector housing and our enforcement powers. We have a clear responsibility to deal with poor quality housing in Southwark. Our use of enforcement is designed to be fair to responsible landlords, however it should also be capable of dealing with uninformed or rogue landlords to ensure that all homes are in good condition.

RECOMMENDATIONS

1. That Cabinet approve the Regulatory Services Enforcement Policy as set out in Appendix 1.
2. That Cabinet approve the Private Sector Housing Enforcement Policy as set out in Appendix 2.

BACKGROUND INFORMATION

3. The Council have in place a Regulatory Services Enforcement Policy which sets out how enforcement action will be conducted across the following services:
 - Community Wardens, Environmental Enforcement, CCTV and the Divisional Analytical Business Service (DABS)
 - Trading Standards, Health & Safety, Food Safety and Environmental Protection
 - Private Sector Housing Enforcement
 - Noise & Nuisance, Licensing and the Southwark Anti-Social Behaviour Unit

4. Each Business Unit Manager is the officer responsible for their specific service area, which may include the production of service specific enforcement policies that deal with the statutes and requirements in that unit's area of responsibility.
5. The Private Sector Housing Service is one of the areas with a requirement for a service specific policy, and, because it has been reviewed at the same time as the Regulatory Services Enforcement Policy, it has been brought to Cabinet for consideration, at the same time.
6. The Enforcement Policies of the Council are based on the principles of the Regulators' Code. The Code aims to improve consistency in the way regulation is delivered at the front line nationally. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which require that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and should be targeted at cases where formal action is required to provide resolution for the public.
7. These Enforcement Policies should be reviewed and amended as necessary in 5 years as a maximum, or whenever there are substantial changes in policy, statute, or guidance if they occur before the 5 year review date.

KEY ISSUES FOR CONSIDERATION

Regulatory Services Enforcement Policy

8. The Regulatory Services Enforcement Policy, approved by Executive Committee on 13 February 2007, has been reviewed, updated, and expanded to ensure it remains up to date and reflects current policy, statute, and guidance. The changes to the policy are not substantial. The recommendation for how the services enforce legislation has remained the same, whilst there have been updates to the legislation and guidance referred to. The reviewed policy is set out at Appendix 1. The revised Policy now includes sections covering:
 - a. Licences, permits, agreements and the interplay with the Provision of Services Regulations 2009.

This will help understanding of how the Council approaches its duties with regards to its permitting and licensing role, in terms of determination, issuing, refusal or termination. The Provisions of Services Regulations set out where a certain activity would be considered a 'service' and the enforcement requirements that the service has to comply with. The majority of licensing activities are considered 'services' and, as such, have to adhere to these requirements, e.g. how services should be paid for, how tacit consent applies, etc.

The individual services enforcement policies, which sit under the more wide ranging Enforcement Policies provide far greater detail on the specific processes that apply in that instance.

b. The use of Financial Penalty powers.

The use of financial penalties, either as a direct sanction for certain breaches, or as an alternative to prosecution for certain offences, have become far more prevalent. Often the relevant statute will require that the Council to put in place statements, policies etc., which set out the approach to their use and how the value of a penalty is arrived at. Where penalties are part of the tools available to the individual services, their specific enforcement policy provides far greater detail on the relevant processes.

c. Injunctive actions/orders – which also includes the application of these on minors.

This is where the Council may, or are required to apply them to the relevant court or tribunal for an injunction or order. An example would be an application to the court for a Criminal Behaviour Order, which if granted, would require an individual (including minors) to cease certain activities considered to be anti-social.

The use of these types of injunctions/orders is, on occasion, available to multiple services, for example an application for a Restraining Order under the Proceeds of Crime Act 2002. This, if granted, would secure assets where there is a risk of them being disposed of or dissipated in advance of the Crown Court agreeing a Confiscation Order (when assets have been obtained via criminal activity). Therefore, the Regulatory Services Policy provides detail on the availability of, and approach to, this type of action. Where an application for an order is service specific, e.g. a Rent Repayment Order, which allows the Council and/or private tenants to apply for the repayment of up to 12 months' rent in certain circumstances, the individual service's enforcement policies provide greater detail on the process that applies in that case.

d. Time Limited, Event Specific Powers.

This section covers temporary powers given to the Council to manage and control certain events, in terms of arrangements, implementation, monitoring and management. An example of this would be the powers used to control coronavirus infection during the COVID-19 pandemic.

e. Byelaws.

This section covers the use of byelaws in Southwark and the process used to adopt them. The specific byelaws utilised are covered in the service specific policies, for example the byelaw preventing the use of power-driven model aircraft in Southwark parks and open spaces.

f. Appealing enforcement decisions & complaints against services.

This section provides information on how the Council will ensure recipients of enforcement action are made fully aware of their rights to appeal and representation (where available). It also clarifies the distinction between making an appeal and complaining about the conduct of an officer or service.

g. How investigations are to be conducted.

This section gives clarity on the Council's approach to investigations and the laws and guidance it will adhere to.

h. Publicising enforcement actions.

It is important to ensure that offenders and potential offenders are dissuaded from either committing an offence or further offences. Therefore, the publication of enforcement activity and its outcomes are especially useful tools that can act as a deterrent to breaking the law.

The Policy provides clarity on the Council's adherence to the relevant statute and guidance, including data protection principles.

i. Maintaining Public Registers.

Certain statutes require the Council to maintain public registers or to add information to public registers kept by others, an example of this would be the register of licensed residential property. The Policy seeks to highlight these responsibilities generally whilst individual service policies will provide greater detail on the processes involved.

j. How Council Officers are authorised to carry out their duties.

It is important to ensure that the public knows how the Council approaches the authorisation of officers, in terms of which roles are authorised to do what enforcement, and how the Council makes sure officers are competent and properly trained for their specific roles. The Policy goes further and also sets out what a member of public can/should expect when an Officer of the Council identifies themselves and explains their authority.

k. Existing Protocols with other enforcement agencies.

In certain circumstances other internal or external partners will be able to utilise the same legislation in the provision of its services, particularly where there are dual enforcement roles, e.g. fire safety requirements. In order to accommodate these activities, the Council may, in partnership, agree protocols that set out how activities will be approached, separated and delegated.

9. If and when approved the Enforcement Policy will be published on the Council's website. The Regulatory Services Enforcement Policy and the service specific policies taken together inform all enforcement activity undertaken by the suite of services delivered by Regulatory Services.

The London Borough of Southwark's Private Sector Housing Enforcement Policy

10. The Private Sector Housing Enforcement Policy is a new policy. It builds on the Regulatory Services Enforcement Policy, also included in this report, where it relates to the Council's enforcement functions for Private Sector Housing.
11. The policy is created in line with the specific service policies for; Civil Penalties (under the Housing and Planning Act 2016) and prosecutions for offences under the Housing Act 2004 (approved at Cabinet on 22 January 2019) as well as, fixed penalty notices under the Smoke and Carbon Monoxide Detector Regulations 2015 (approved at Cabinet on 1 February 2019). It brings in changes and updates that reflect the current regulatory environment for private sector housing, including further references to the Housing and Planning Act 2016 which enables the Council to apply for Banning Orders against rogue landlords operating in the borough.
12. In particular, the proposed new policy is essential for the following:
- To underpin enforcement activity to address serious or significant fire hazards in high and medium rise residential buildings in relation to cladding systems (as set out in the addendum to the Housing Health & Safety Rating System (HHSRS) under the Housing Act 2004).
 - Provide the regulatory scaffolding required for successful property licensing. Proposals to introduce property licensing in a variety of forms (additional HMO and Selective Licensing schemes) across the Borough are underway.
13. The policy is set out at Appendix 2. The main areas covered are:
- a. How enforcement information is shared, in particular covering the and [the national database of rogue landlords and property agents](#)
 - b. The duty to maintain public registers, register of licensed property, register of temporary exemptions, and register of management orders.
 - c. How and why enforcement action can be targeted.
 - d. The management and enforcement of property licensing, covering:
 - Mandatory and discretionary licensing regimes.
 - The licensing process including, the fit and proper person assessment, licensing conditions, rental standards, and the duration of licences.
 - Licensing fees and other charges.
 - How tacit consent will be applied.
 - Variations and revocations of licences.
 - Licence renewals.
 - Where applicable, how licences from previous schemes will be transferred to any new and future approved schemes.

- e. The application of management regulations in Houses in Multiple Occupation (HMOs).
- f. Where and when Management Orders might be employed.
- g. How a property that is overcrowded will be assessed and enforced.
- h. The service role in tackling anti-social behaviour.
- i. How the Service uses the [Housing, Health and Safety Rating System \(HHSRS\)](#) to assess housing standards in residential property. Where the assessment results in a Category one hazard (a severe hazard affecting health and/or safety) the Council has a duty to intervene. Where the assessment results in a Category two hazard (a serious hazard affecting health and/or safety) the Council has a power to intervene. The Policy therefore sets out the criteria the Service uses to determine where it will intervene when a Category two hazard is assessed.
- j. The types of enforcement action available to the Service, either in general, e.g. prosecution, simple cautions, etc. or specific to housing standards, e.g. emergency powers to intervene where there is an imminent risk to health and/or safety, etc.
- k. How the use of certain enforcement action can help prevent retaliatory evictions and the process that has to be followed.
- l. How the Service will intervene where the rental property is owned/managed by a Registered Provider (housing association) and why the service deals with this differently.
- m. The use of powers to do works in default, which is where the Council can do the works they have required where the recipient of a formal legal notice has failed to comply.
- n. Where the Service will use Rent Repayment Orders (RROs) and how they will assist private paying tenants to apply for an RRO. This is an order that can be applied for to have up to a year's rent paid back where the landlord has committed certain housing offences.
- o. The Policy sets out the Service's approach to the use of financial penalties in relation to certain housing related offences and the breach of specific regulations, i.e. regulations dealing with smoke and carbon monoxide detectors and electrical installation safety.
- p. The Policy sets out the relationship it has with the Fire and Rescue Authority in tackling fire safety standards where there is a dual enforcement role.
- q. The Policy also reflects the other roles of the service in terms of the public health activities relating to:
 - Private drainage and sewerage issues, e.g. blocked and broken sewers.
 - Nuisance issues between properties, e.g. damp ingress from a neighbouring property.
 - Pest and pest harbourage problems, e.g. infestations and accumulations that may attract pests.
 - Filthy and/or verminous premises, e.g. a home that has build-up of items that may present a risk to health.
 - Officers will oversee exhumations to ensure public health and the dignity of human remains are protected.
 - Securing premises to prevent entry/use to protect public health.

14. If approved, the Policy will be published on the Council's website. Along with the Regulatory Services Enforcement Policy. It will inform all enforcement activity undertaken by the Private Sector Housing Unit.

POLICY FRAMEWORK IMPLICATIONS

Southwark's Fairer Future Commitments

15. The content of the Enforcement Policies support a number of the themes that form Southwark's Fairer Future Commitments:

Theme 1 - COVID-19 response

All services within Regulatory Services have roles in the Council's response to the COVID-19 pandemic, some more than others. The enforcement policies used within this suite of services underpin the approaches and powers available minimising any ambiguity around how statutory roles and powers will be used, especially the temporary powers available to enforce COVID-19 restrictions.

Unit Managers have and will review their work in relation to the effects of this pandemic. An example of this is within the work of the PSH Service, where a new condition attached to licences requires the licence holder to respond appropriately to infectious outbreaks within HMOs, be that in response to an outbreak in the home, locally, nationally, or internationally.

Theme 2 - Southwark Stands Together

The work of the services within the umbrella Regulatory Services are, at their heart, based on the protection of communities, residents, and visitors, protecting the various environments within the borough, and supporting businesses. The enforcement policies help minimise the possibility of discrimination as they set out the basis on which enforcement action will be taken and how action will be targeted. The Regulators Code underpins these policies and reinforces the concept that enforcement must and will be reasonable and proportionate. This acts as a guide and as a set of principles that Council enforcers must adhere to and, as they are published, will be transparently available to the public.

Theme 3 - A green and inclusive economy

Another underpinning principle of the services within the umbrella Regulatory Services is to support businesses. Robust and consistent enforcement of standards in business operations scaffolds this support by providing a level playing field for all business operators and the commitment to drive out rogue and criminal business operators.

Theme 4 - Climate Emergency

Unit Managers have and will review their work in relation to the declaration of the 'climate emergency'. Wherever possible responding positively to the climate emergency will underscore the work of the

services within the umbrella of Regulatory Services. An example of this is minimising the effects of fuel poverty when enforcing standards in the private housing sector.

Theme 5 - Tackling health inequalities

The work of the services within the umbrella Regulatory Services are, at their heart, based on the protection of communities, residents, and visitors, protecting the various environments within the borough, and supporting businesses. There are a number of roles within Regulatory Services that have a direct impact on reducing health inequalities, such as enforcing housing standards to make homes safe, minimising ASB and noise nuisance, improving health, providing healthy homes, maintaining healthy outside environments and safe play spaces, etc.

Theme 6 - Homes for all

There are a number of roles within Regulatory Services that impact this agenda, such as enforcing housing standards to make homes safe, minimise ASB and noise nuisance, improve health and provides healthy homes. These roles deter and minimise the impact of rogue, ASB and criminal activity.

Theme 7 - A great start in life

Human brains are designed to develop a danger bias. A child growing up in safety, rather than stress and danger, assists the creation of brains that expect safety. This provides them with the mental capacity to grow and thrive in an environment conducive to good educational and social development and to value cooperative working. Enforcing standards and dealing with unacceptable behaviours by Regulatory Services significantly contribute to this theme. A healthy home, safe and nutritious food, living without fear in your community, having safe outside spaces and play spaces, safe places to work, etc. all help maximise the opportunities to give individuals a great start in life.

Theme 8 - Thriving neighbourhoods

Promoting and enforcing acceptable behaviours, making sure standards are maintained, outside spaces are safe and free of hazards and business activity is regulated, all contribute to creating and supporting communities and neighbourhoods that are safe, prosperous, and inclusive.

Community impact statement

16. The policies as proposed will have a positive impact on the wider community, as it is recognised that an increase in compliant activity across the suite of services sitting under the umbrella of Regulatory Services, be that environmental, neighbourhoods, residential or commercial are all linked to improved communities, tackling climate change, reducing crime, improved educational attainment, better health and increased safety.

Equality impact statement

17. These enforcement policies set out the how services will intervene to ensure standards are maintained and health and safety protected. They provide a transparent template of intervention which, will give people a set of policies to point to when choosing a home and confidence in approaching their landlord for improvements to their existing home regardless of age, disability, gender, race, sexuality etc. This will lead to greater community stability, better homes and better business.
18. Equally, laying out in policy how the Services will approach enforcement, helps ensure those subject to intervention are treated reasonably, proportionally, fairly and without discrimination in relation to their age, disability, gender, race, sexuality etc.
19. Where perceived impacts on specific groups have been identified, these are addressed within the policies and within the working practices of the services provided.
20. The Equalities Impact Assessment for the policies is set out at Appendices 3 & 4.

Health Impact Statement

21. The overriding aim of the Regulatory Services division is to 'protect and enhance the safety, health and economic welfare of Southwark's communities through effective strategic planning, prevention, early intervention, enforcement and reassurance'. Enforcement policies provide the framework for actioning the aims and support the key objectives of a range of services that have an overwhelmingly positive impact on public health. These objectives are to:
 - Keep consumers safe
 - Control noisy neighbours and anti-social individuals to improve the quality of life for residents
 - Address environmental crime and strategically protect the local environment
 - Ensure local businesses, both on our high streets and on line, operate within the law and are safe places for residents to work, shop, eat and spend their leisure time
 - Regulate private landlords and respond to planning applications to ensure residents live in safe and healthy accommodation
 - Manage highway networks, parking and street and market traders.
22. All of the activities and services listed above impact positively on public health and wellbeing.

Climate Change Implications

23. Not all of Regulatory Services investigative work streams and remedial enforcement actions relate to climate change directly, however, several work

streams are strongly linked to controlling atmospheric emissions and the energy efficiency of buildings. These include:

- Statutory control of nuisance emissions of smoke, odour, dust and fume (Noise & Nuisance)
 - Local air quality management and the improvement of air quality (Environmental Protection working with other service areas across the council through the air quality improvement strategy and action plan)
 - Development control conditions to mitigate emissions to air from new builds (Environmental Protection)
 - Construction emissions (Environmental Protection)
 - Contaminated and gassing land – methane (Environmental Protection)
 - Emissions from commerce, industry, commercial kitchens and road tunnels (Environmental Protection, Food Safety & Network Management)
 - Parking controls (Parking)
 - Highways changes, traffic controls, cycle lanes, low traffic neighbourhoods, school streets, street greening, etc. (Network Management, Parking & Environmental Protection – working with Highways and Transport Planning)
 - Home insulation standards (Private Rented Sector Housing Enforcement)
 - Construction materials standards (Trading Standards)
 - Commercial waste disposal control (Environmental Enforcement)
24. Rigorous and up to date Regulatory Services enforcement policies are, therefore required to enable the above legislative controls to be used to reduce emissions, protect local air quality and contribute positively to reducing the risks from climate change regionally, nationally and internationally. As with all enforcement actions any action undertaken by Regulatory Services, relating to Climate Change are monitored and reported on.

Financial Implications

25. There are no other financial implications, other than Officer time, to effect the recommendations which will be contained within existing departmental revenue budgets.
26. The Policies set out a robust framework by which the Council will carry out its enforcement action. These therefore underpin the variety of enforcement work that can lead to revenue generation, such as the imposition of financial penalties, the collection of permit and licensing fees and a variety of other charges the Council can make. Some of these revenue streams are relatively minor whilst others are substantial and significant.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS **Head of Procurement**

27. N/a

Director of Law and Democracy

28. When considering the recommendations of this report, due regard must be given to the public sector equality duty in section 149 of the Equality Act 2010. This requires the Council to consider all individuals when carrying out its functions.
29. Importantly, the Council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct. Cabinet members are referred to the community impact statement in the report.
30. The Legislative and Regulatory Reform Act 2006 ('the Act') provides that regulatory activities should be carried out in a manner which is transparent, accountable, proportionate and consistent and that they should be targeted only at cases in which action is deemed necessary. The Council as a Regulator must have regard to the Regulator's Code when determining any general policy or principles by which it exercises its regulatory functions and the Enforcement Policy must comply with the Code.
31. Enforcement decisions are made on a case by case basis by the enforcement officer and ultimately with the Director of Law and Governance in respect of prosecutions on the basis of the relevant evidence, the public interest and any other factors applicable at the time and taking into account the Code and the Code for Crown Prosecutors.
32. Adopting the Enforcement Policies will be considered best working practice and will assist the Council to demonstrate that it has regard to the Code. If the Council fails to prepare and publish such a policy the Council will be open to criticism, in particular from those parties whom the Council seeks regulatory compliance. Further, the Council will face greater difficulty in justifying regulatory action and responding to challenges about the way it has reached regulatory decisions which could lead to a failure to achieve compliance, complaints to the Local Government and Social Care Ombudsman, judicial review and an increased risk of legal challenge to any civil and/or criminal proceedings instituted by the Council as well as reputational damage.
33. By preparing and publishing these policies, the Council demonstrates that it takes its regulator role seriously and that it will work with businesses and the community to secure compliance. It creates transparency for all stakeholders providing the manner in which the Council intends to operate through promoting consistency and proportionality in all aspects of regulation. It further

provides the Council with a basis for a robust defence to any challenges that may be encountered.

Strategic Director of Finance & Governance

34. The strategic director of finance and governance notes the recommendations to Cabinet to approve the Regulatory Services Enforcement Policy as set out in Appendix 1.
35. The strategic director of finance and governance also notes the recommendations to approve the Private Sector Housing Enforcement Policy as set out in appendix 2.
36. It is noted that there are no other financial implications other than Officer time to affect the recommendations, which will be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Housing Act 2004		
Link: Housing Act 2004 (legislation.gov.uk)		
Housing and Planning Act 2016		
Link: Housing and Planning Act 2016 (legislation.gov.uk)		
Housing Act 2004		
Link: Housing Act 2004 (legislation.gov.uk)		
Housing Act 2004		
Link: Housing Act 2004 (legislation.gov.uk)		
Housing Strategy (London Borough of Southwark – 2020 to 2043)		
Link (copy and paste into browser): http://moderngov.southwark.gov.uk/documents/s92380/Appendix%20A%20-%20Southwark%20Housing%20Strategy%202020.pdf		
London Borough of Southwark - Council Plan 2018 – 2022		
Link: Southwark's Borough Plan - Southwark Council		
Provision of Services Regulations 2009		
Link: The Provision of Services Regulations 2009 (legislation.gov.uk)		
Regulators Code		
Link: Regulators' Code - GOV.UK (www.gov.uk)		
Human Rights Act 1998		
Link: Human Rights Act 1998 (legislation.gov.uk)		
The Code for Crown Prosecutors		
Link: The Code for Crown Prosecutors The Crown Prosecution Service (cps.gov.uk)		

APPENDICES

No.	Title
Appendix 1	The London Borough of Southwark Regulatory Services Enforcement Policy
Appendix 2	The London Borough of Southwark Private Sector Housing Enforcement Policy
Appendix 3	Equalities Impact Assessment – Regulatory Services Enforcement Policy
Appendix 4	Equalities Impact Assessment – Private Sector Housing Enforcement Policy

AUDIT TRAIL

Cabinet Member	Councillor Darren Merrill, A Safer, Cleaner Borough	
Lead Officer	Caroline Bruce, Strategic Director - Environment and Leisure	
Report Author	Sarah Newman – Commercial Compliance Services Manager & Emma Trott – Private Sector Housing Enforcement Manager, Regulatory Services	
Version	Final	
Dated	3 September 2021	
Key Decision	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		3 September 2021