

Appendix 6 – Barriers for effective enforcement – Edlington and Existing Legal Powers

- 1. Hard to establish ownership-** many properties are registered on land registry at the actual property address rather than the owners' home address. The Council Tax details again often do not list the owners' current address. We have many examples of owners using one of their other rental properties as the Council Tax billing address or only providing an agents address. We also have situations where landlords are using multiple correspondence addresses and changing head office address frequently so that each document we send has to be served on several addresses to ensure it is legally valid. This makes communication with some owners extremely difficult, causing delays and excess work if legal notices have to be served.
- 2. Agents/letting agents used as goalkeepers-** many properties are let through agents. The legislation we enforce sometimes requires us to deal with either owner or occupier of the house. We often find agents reluctant to provide information of property owners and they may withhold it completely. Although some letting agents deal promptly with matters brought to their attention, more often there are substantial delays. In a selective licensing area every property would have a licence holder and contact details would be held by Doncaster Council. This would allow us to contact the licence holder without delays when concerns are raised, making it possible to resolve more issues informally in a timely manner without the need for enforcement action. If property owners choose to use an agent as the licence holder we would also legally be able to deal with this person, rather than having to make double contact with owner and agent all the time.
- 3. Ownership changing rapidly-** we have properties in Edlington where ownership changes frequently with regular transfers, sometimes between family members. This makes enforcement difficult as we may serve a notice, identify a breach of notice, incur costs by doing work in default and then find that ownership was transferred during the notice period making the notice invalid and leaving the authority to cover the cost of works. By having licence holder details, communication should be improved.
- 4. Tenants changing rapidly/house swaps-** in Edlington, the practice of house swapping prevents us from effectively being able to use the legal powers we have to deal with ASB. Documents served on individuals becomes invalid if not served at their current home address. It is possible that the frequent house swaps and rapid tenancy turnaround is the cause of a large proportion of the fly tipping in this area, significantly household items and furniture.

- 5. Overcrowding:** we have carried out overcrowding visits in Edlington and identified that several properties are over occupied. When approaching the landlords, it appears that they rarely enquire with the prospective tenant how many people would live in the property. Tenancy contracts, when present, are often issued to only one occupier and rarely list the other adults or how many children that is intending to live in the property. Selective licensing would require details of all occupants living at an address to be provided.

- 6. Lack of maintenance of effective boundary walls/fences:** Edlington is an area of Doncaster that suffers from fly tipping and a substantial amount of resources is spent by the authority on investigation, enforcement and removal of waste. Most of the fly tipping is found in the back alleys; however the problem has spread to include private land in gardens and rear hard standing areas where fencing and walls are absent or in disrepair. The Council cannot move items from private land and legislation dictates that we give landowners/occupiers 28 days' notice prior to carrying out work in default. Leaving domestic refuse for so long in this area causes a serious health hazard. We have written informal letters to land owners requesting their co-operation by maintaining and protecting their boundary fencing, and this is having some positive results.

EVALUATION OF EXISTING LEGISLATIVE TOOLS TO DEAL WITH ANTI-SOCIAL BEHAVIOUR AND HOUSING CONDITION

There are numerous pieces of legislation available to a local authority and the police in respect to anti-social behaviour and housing condition and a complete list can be seen at the end of this appendix. Many of these powers are designed to take action against the occupier of a property or the perpetrator of ASB, but there are also some situations when enforcement can be taken against property owners. Although most of these powers has been used or attempted to be used in the proposed area, the council and police have in the past found many of these powers either too bureaucratic, too time-consuming to process (with minimum periods for gathering evidence) or the burden of proof is too excessive for the legislation to be effective in the proposed area. Unless enforcement agencies can establish, beyond reasonable doubt, the owner, occupier or perpetrator of an offence, enforcement is not possible under any of the powers available. There is evidence that widespread poor practices in the private rented sector in the proposed area are causing barriers for effective enforcement. This includes:

Barrier	Limitation	Consequence
Establishing ownership of properties	Common practice amongst some owners to register their properties on land registry and council tax without disclosing home address, company address or contact details. Instead they use another rental address as the property address. Many owners also use multiple contact addresses between Council Tax and Companies House and then change these frequently. There are also examples of ownership frequently being transferred between family members.	Enforcement action requires documents to be served correctly on the legal owner at their correct address. Problems establishing owners details causes delays, excess work and sometimes makes enforcement action invalid and prevents court action.
Agents/letting agents used as goalkeepers	Many properties are managed by agents. Whilst some agents are very good, there are examples in this area of agents not taking prompt action, not passing information on to the owner and refusing to provide contact details for property owners to enforcement authorities.	The legislation requires enforcement agencies to deal with either the owner or occupier of the house, not the agent. Information being withheld by some agents causes delays in enforcement as documents maybe served incorrectly. There is often also frustration amongst landlords that agents are not allowed to deal with matters fully.
Tenants changing	The practice of house swapping between tenants is	Frequent changes in occupancy (in some cases as often as weekly)

rapidly/house swaps	prevalent in the proposed selective licensing area and it is alleged that some landlords encourage this practice.	prevents enforcement agencies from effectively being able to use the legal powers available to deal with ASB, as it makes it harder to identify individuals and legal documents served on individuals become invalid if not served at their current home address.
Insufficient tenancy checks and contracts	Some landlords in the area take no references prior to agreeing a tenancy, resulting in tenants with past ASB convictions being able to find a new tenancy in the area even after eviction. Written tenancy contracts are often not present and when they exist are often issued to only the main occupier and rarely list other adults or how many children are intended to live in the property.	This prevents enforcement agencies from effectively being able to use the legal powers available to deal with ASB, as it makes it harder to identify individuals and occupiers. Overcrowding inspections in Edlington and Hexthorpe have identified that many properties are seriously over occupied and when discussing this with affected landlords it is clear that in some of these cases the owners had not asked the prospective tenant how many people would live in the property or set any conditions in the tenancy on maximum occupancy.
Lack of pre tenancy checks of property conditions	Properties have been let/ transferred between tenants when the garden is already full of waste from previous tenants or the property is in a poor condition of repair.	Edlington suffers greatly from a widespread problem with waste being left to accumulate in gardens. Legislation dictates we address such issues with the current occupier of the property. If waste was left by the previous occupier or by the owner, enforcement or legal action to enable the removal of the waste is hampered.
Landlords delaying action as long as possible and/or taking minimal action to avoid enforcement	In cases of ASB by tenants, there are currently no obligations on landlords to do anything other than 'work' with the enforcing agencies.	Courts may accept minimal effort from landlords, at the very last moment, as 'working' with enforcement agencies. The worst landlords know this and take the path of least effort, such as simply moving troublesome tenants at the end of a torturous process just before court, for example when trying to issue Interim or Final Management Orders, preventing court action without fully resolving the problem.

Selective licensing is a specific piece of legislation that places obligations on the landlords to act. Indeed, one of the general conditions that must apply before introducing selective licensing is:

“that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take.”

We do not expect landlords to suddenly become responsible for the behaviour of their tenants but be more responsible as landlords by taking more “action to combat the problem that it would be appropriate for them to take”. Selective licensing would also require all landlords to declare ownership/ license holder details; tenants details on request; carry out pre-tenancy checks and utilise written tenancy agreements. This should make a more stable privately rented sector in the area that would allow enforcement agencies to effectively utilise the legal powers already in existence to deal with perpetrators of anti-social behaviour.

EXISTING LEGISLATIVE TOOLS TO DEAL WITH ANTI-SOCIAL BEHAVIOUR AND HOUSING CONDITION – DMBC POWERS

- Anti-social Behaviour, Crime and Policing Act 2014, Part 1 – Civil Injunctions – against a person who has engaged or threatens to engage in ASB.
- Anti-social Behaviour, Crime and Policing Act 2014, Part 2 – Criminal Behaviour Order – following the conviction of a person who has engaged in behaviour that caused or was likely to cause harassment, alarm, or distress to any person.
- Anti-social Behaviour, Crime and Policing Act 2014, Part 4 – Community Protection Notices – to address conduct having a detrimental effect, of a persistent or continuing nature, on the quality of life to those in the locality.
- Anti-social Behaviour, Crime and Policing Act 2014, Part 4 – Public Space Protection Orders – to address activities carried on in a public place that have a detrimental effect on the quality of life of those in the locality.
- Environmental Protection Act 1990, s46 – Notice requiring the occupier of a property to place waster for collection.
- Environmental Protection Act 1990, s80 - Abatement Notices – premises in such a state as to be a prejudicial to health or a nuisance, any accumulation or deposit prejudicial to health or a nuisance, noise emitted from a premises so as to be prejudicial to health or a nuisance, noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in the street.
- Environmental Protection Act 1990, s87 – offence for littering.
- Housing Act 2004 – Housing Health & Safety Rating System (HHSRS) – powers to take enforcement action to address disrepair.
- Housing Act 2004, Part 4 – Interim, Final & Special Management Orders – to address properties that require a license and do not have one or for the purpose of protecting the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

- Housing Act 2004, Part 4 – Interim & Final Empty Dwelling Management Orders – to take steps for the purpose of securing that a dwelling becomes and continues to be occupied.
- Noise Act 1996 – Power to seize noise making equipment.
- Refuse Disposal Amenity Act 1978 Section 2 and 3 – power to deal with abandoned vehicles.
- Prevention of Damage by Pests Act 1949 – power to require action to keep land free from rats and mice.
- Town & Country Planning Act 1990, s215 - Notice requiring proper maintenance of land.

