

Rushcliffe Borough Council

Works in Default Procedure Note

September 2022 – September 2027

Rushcliffe Borough Council

Works in Default Guidance

1. Introduction

1.1. The Council deals with a wide range of environmental, planning, building, public health and housing matters and enforce numerous different pieces of legislation.

1.1 In most cases, informal action will see the issues resolved. Where formal action is required; the Enforcement Policy for the Council sets out how we will make decisions on the type of enforcement action taken. Where the Council has served a legal notice and then decides to undertake the works required by that notice because the owner or the person on whom the notice was served has failed to do so, this is called 'works in default' (WID). The council may choose to undertake WID for several reasons, including; safeguarding public health, public safety and enhancing the quality of life of residents and businesses. In most circumstances, the cost of the work is recovered from the person on whom the notice was served, this includes the administrative costs and staff costs incurred in organising, supervising and carrying out the works. Often interest is also recoverable on any debts owed to the Council.

1.2 The carrying out of WID is not an automatic decision following the breach of a statutory notice. Each case must be assessed on its own merits and carefully consideration must be given before deciding to proceed.

1.3 This guide sets out the mechanism for undertaking WID and the procedure for recovering / managing any debt that then arises.

2.1 Works in Default Procedure

- 2.1 WID is often possible following a breach of a 'works' Notice or sometimes as a power to take direct action. The primary legislation shall always be referred to for the powers that are available, and any uncertainty should be resolved by referring the matter for legal advice.
- 2.2 WID normally happens when a person on whom the legal notice has been served, fails to comply with some or all of the requirements of that notice. This may not always be the case since we may choose to do WID "with the agreement" of the owner/person responsible where, for example they are vulnerable and/or elderly or do not have the finance available to do the works themselves.
- 2.3 WID are always discretionary, and the council will therefore determine the extent to which the required works are completed, if at all. In most cases, doing only part of the work should not normally be considered, but it may be appropriate in some limited circumstances. In such situations, the council will need to consider the impact of doing only some of the work and the views of the occupants of the property or neighbouring properties (where appropriate). The council should be aware that where there is discretion, any decision is open to judicial review and therefore it is essential that the reasons for doing only part of the work is clearly recorded.
- 2.4 In some cases, prosecution will be a more appropriate option than carrying out costly works in default or it may be appropriate to do both. In either case, such decisions are discretionary, the public interest test should be considered, and reasons should be recorded.
- 2.5 Any decision to carry out WID must be authorised by an appropriate Officer with the correct level of delegation.
- 2.6 The following key procedural elements must be completed and recorded in writing:
- The reasons for carrying out WID and a brief summary of the work required,
 - The approximate cost of carrying out the work – including the quotations for the work, confirmation that the Council's Contract Standing Orders and Financial Regulations has been followed in obtaining a suitable contractor and quote,
 - Confirmation that the legal process has been properly followed from initial investigation, service of notice and all evidence has been retained and tested,
 - How access will be secured, power of entry, warrant etc.
 - Has appropriate Notice been given of the Council's intentions,
 - Photograph's of before and after works & officer notes during the works,
 - How the costs incurred and administrative expenses, where appropriate, have been calculated and where they are to be recovered and from whom.
 - Whether a financial land charge will be secured against the property,
 - Whether prosecution is also an option and if not, why not.

2.7 The recipient of the notice must be informed that the council intend to undertake WID and the likely cost of those WID, when they are likely to take place and also given formal Notice of Entry if required.

3 Quotes

3.1 When obtaining a quote for WID, the Council's policy must be followed - check the information on the [Procurement webpage](#).

3.2 At the time of writing where the estimated cost is less than £10,000, but more than £2,500 three comparable quotations should be obtained with at least one in writing (email is acceptable).

3.3 For amounts below £2,500 only one written quote is required.

3.4 For works above £10,000, at least three comparable quotations must be obtained in writing by the appropriate member of the Executive Management Team or Service Manager. Those quotations can be invited from identified suppliers as advertising is not mandatory.

3.5 In the case of WID, including urgent or emergency work, the Council procurement policy and procedural rules should always be followed. Where officers can demonstrate that this is going to cause an unacceptable delay in getting the works completed, then guidance on possible options should be discussed and agreed with the relevant Service Manager.

4. Financial and Legal Implications

- 4.1 Once WID are complete, the full cost of the work will be recovered (along with all of the reasonable administrative and staff costs in most cases) by means of a sundry debt against all those on whom the original notice was served. Depending on the legislation used, a demand notice may need to be served before expenses can be recovered. If one recipient pays the demand in full, that extinguishes the debt for all other persons.
- 4.2 For each particular type of legal notice, the Officer will need to review the specific procedure and legislation, including the power of entry, use of warrants and obstruction offences to ensure the particular procedural steps have been accurately followed. **Failure to do so will put at risk our ability to recover the costs and could result in a formal complaint, appeal or judicial review and failure to recover part or all of the costs outstanding.**

4.3 VAT and Works in Default

- 4.3.1 In circumstances where the Council is entitled to do "Work in Default" and then recharge the cost, the Authorities re-charge costs will be **outside the scope of VAT** as it is a non-business activity being implemented under statute. This VAT treatment should not be confused with the activity being classed as an exempt activity.
- 4.3.2 There is an exception to this treatment. If the recipient of the legal notice engages with the Council and makes a request for us to do the work (as opposed to any other contractor they could approach), then the work is then no longer deemed WID and becomes a business supply by the Council to the homeowner. In this instance VAT is due on the charge made to avoid anti-competitive behaviour.

4.4 Cost / Debt Recovery

- 4.4.1 Where an invoice is raised as a sundry debt, the recovery procedure is as per the Council Policy.
- 4.4.2 There may be exceptional cases where it is inappropriate to pursue a sundry debt and only the land charge should be registered against the premises. Such circumstances may include the financial situation of the person against whom the enforcement action is being taken. Any decision to do so must be discussed and agreed with a Senior Officer and details recorded along with the reasons why.
- 4.4.3 Where the Council's standard recovery procedure has been exhausted or there is no realistic option of recovery, and where the statute allows, an unpaid debt should be registered as a local land charge immediately. Finance will flag to the Principal Officer who will lead on registering the Land Charge and save supporting documentation. Invoices will remain on the Debtor account within the finance system but will be placed on hold with the dispute code for local land charge being allocated against it.
- 4.4.5 Once a Land Charge has been registered, interest on the outstanding debt may be applicable depending upon the primary statute used. The rate is set as 8% simple interest rate from the date of registration. Any request to waiver the right to apply interest must be authorised by a Principal Officer.
- 4.4.6 To calculate this, use the steps below.
- Step 1 - Work out the yearly interest: take the amount owed and multiply it by 0.08 (which is 8%).
- Step 2 - Work out the daily interest: divide your yearly interest from step 1 by 365 (the number of days in a year).
- Step 3 - Work out the total amount of interest: multiply the daily interest from step 2 by the number of days the debt has been overdue.
- 4.4.7 Example, If the outstand financial land charge was £1,000:
 The annual interest would be £80 ($£1000 \times 0.08 = £80$)
 Divide £80 by 365 to get the daily interest: ($80 / 365 = £0.22$)
 After 50 days this would be £11 ($50 \times £0.22 = £11$)
- 4.4.8 Where a Land Charge is raised but no Sundry Debtor invoice has been issued. the originating department shall keep a log containing the notice reference, debtor, date of works, date of charge, amount of charge. This log shall be managed and reviewed from time to time to ensure debts are managed, secured and repaid appropriately.
- 4.4.9 Where a debt remains unpaid, the Council reserves the right to recover the debt through enforced sale or other appropriate means.

4.4.10 The effect of the Limitations Act 1980, Section 20 on an unpaid local land charge is to require its discharge if it remains unpaid after 12 years of being registered. This requirement is waived when a debtor has paid something towards the debt owed, even if that something is small.

4.4.11 At the time of a Land Charge being registered a reminder needs to be diarised for 11.5 years' time to renew the Land Charge should the invoice remain unpaid.