

# No access policy

**Department:** Housing and environment (asset management)

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## 1. Scope

Ealing Council is responsible for ensuring effective and legal access to properties when it is necessary to undertake safety related works to meet its emergency, statutory and regulatory requirements.

This policy has been developed to ensure that the council is fully compliant with these statutory and regulatory obligations.

This policy also applies where we need immediate or emergency access or access to carry out works (for example, pest control work) but the tenant, leaseholder or other occupier won't let us in.

It sets out the approach to gaining access for essential works, particularly those relating to the health and safety of tenants, leaseholders, and other members of the public. As part of this, it also aims to prevent damage to buildings while ensuring a lawful and proportionate response when reasonable access requests are denied or ignored.

This policy does not apply to those activities that relate to a breach of tenancy and other occupancy agreements for antisocial behaviour or failure to pay rent where other avenues of resolution exist.

## **2. Aims and objectives**

We are committed to the provision of safe housing for our tenants, leaseholders and other occupiers. It is the council's legal duty to comply with all statutory and regulatory provisions and to have a relevant policy that comprehensively deals with the subject of no access to properties to undertake essential works. "No access" means that a tenant, leaseholder, or occupant has either ignored multiple requests to schedule an appointment or refused to let staff enter the property when they arrived.

We will adjust our approach to access and may work in partnership with external support and advocacy agencies where tenants / leaseholders / occupiers are known to be vulnerable in any way or where there are barriers to communication.

This policy outlines how emergency access requirements will be followed where there is an immediate health and safety risk to the occupants or the building.

## **3. Legislative and regulatory context**

This policy takes account of all of the council's statutory requirements as at the date of implementation including:

- Health and Safety at Work etc. Act 1974 (particularly section 3: General duties of employers and self-employed persons other than their employees)
- The Management of Health and Safety at Work Regulations 1999 (as amended)
- Social Housing (Regulation) Act 2023
- The Regulatory Reform (Fire Safety) Order 2005
- Housing Act 2004
- Building Regulations 2019: Part B: Fire Safety
- The Gas Safety (Installation and Use) Regulations 1998
- Electrical Equipment (Safety) Regulations 1994
- The Furniture and Furnishings (Fire) (Safety) Regulations 1998
- The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022
- Fire Safety Act 2021
- The Fire Safety (England) Regulations 2022
- Building Safety Act 2022
- The Control of Asbestos Regulations 2012
- Public Health Act 1936
- Homes (Fitness for Human Habitation) Act 2018
- Data Protection Act 2018
- UK General Data Protection Regulations (UK GDPR) 2018
- Equality Act 2010
- Landlord and Tenant Act 1985
- Environmental Protection Act 1990
- Prevention of Damage by Pests Act 1949

## **4. Planned access to properties**

### **4.1 planned access**

Ealing Council is responsible for designing a process that allows effective and legal access to be gained to properties when safety related work is required to meet its statutory and regulatory requirements. This also includes works that are essential for maintaining the integrity of the building and ensuring tenants, leaseholders and other occupiers can enjoy their homes without disruption.

The main reasons the council might need to schedule access are as follows:

- servicing to heating systems, gas appliances, flues, chimneys, smoke alarms, carbon monoxide alarms
- any other landlord duties to undertake checks or services as set out in the legislation above. This would include any tenant/leaseholder installed systems the council have responsibility for
- inspection or stock condition survey
- remedy and post inspection of damp, mould and condensation treatment work
- remedy and post inspection of insect or animal infestation treatment
- removal and or inspection of known hazards, such as asbestos
- inspection of health and safety breaches
- repair or improvement works that are essential to the integrity of the building
- any improvement work or upgrade needed to meet new safety or energy efficiency legislation, regulations and standards

The council must fulfil its duties as a landlord in terms of the safety of tenants, neighbours, and communities. This may include electrical rewiring, upgrades to smoke alarms and carbon monoxide alarms, as well as energy efficiency measures such as insulation, heating system upgrades, carrying out Energy Performance Certificate (EPC) surveys and asbestos surveys.

- new build council housing - each new council house has a one-year defects period to identify and/or address any issues. The terms of construction contracts also require each contractor to

fulfil their obligations in terms of addressing any defects within a set timescale. These include value for money and a set specification for standards

- property inspections - the council has the right to access any of its properties to view the condition of the property so long as they have given the tenant 24 hours' notice in writing

This list is not exhaustive and will apply to any situation where the council need access to a property to inspect or carry out work, particularly that which is required to meet any legal and regulatory standard or contractual obligation. Each scenario will be assessed in accordance with the relevant legislation in relation to it at the time.

### **4.2 Reasonable adjustments**

We recognise that discretion should be used, and reasonable adjustments made where there may be underlying issues that contribute to access problems. These may relate to household vulnerability (such as disability, frailty or domestic abuse), concern for welfare, a support need, language, or a specific tenancy (or occupancy) management problem.

We will use information provided by tenants and held in our systems to assist in identifying underlying issues that contribute to access challenges.

We ask our tenants if there are any issues that need to be considered to help us make appropriate decisions. In cases where abuse is identified or suspected, a safeguarding notification will be made.

In all attempts to gain access we will endeavour to use preferred communication methods where these are known (e.g. where English is not spoken as a first language) and keep records of all attempts made.

In most cases planned appointments usually result in access being secured, however, there are occasions where we may be required to take tenancy, lease or occupancy enforcement action to secure access. This may include:

- applying for injunctions from the courts to enforce the landlords 'right of access'
- serving 'notices of seeking possession' for breach of tenancy and applying to the courts to bring the tenancy to an end

We will only pursue the above and other legal remedies for gaining access to properties when all other reasonable attempts at contact and access by agreement have been exhausted.

We will address any property that is suspected of being abandoned in line with our abandoned property procedure.

The council will always take a proportionate approach to resolving access issues relying on legal action as a last resort. Council policies and procedures governing the provision of social, mental, and environmental health support services to tenants, leaseholders and other occupiers will be utilised with relevant safety compliance and other processes to ensure a sensitive and balanced approach is adopted for those tenants, leaseholders' other occupiers and their household members with identified vulnerabilities.

The council will always work collaboratively across housing & environment (for example by working in conjunction with staff delivering housing management services) and its departments to support tenants, leaseholders and other occupiers whilst complying with its legal duties.

Where there is a likelihood of a breach of legal compliance in a property the building safety manager will be informed within 48 hours. A review of the information provided will be undertaken, in liaison with the neighbourhood housing officer to resolve the issue and, where possible, avoid legal action.

As a last resort, should any tenant, leaseholder or other occupier refuse access to carry out essential inspection or remedial works, we will use the legal remedies available within the terms of the tenancy, lease and other occupancy agreements.

In addition, it will comply with section 97 of the Building Safety Act 2022 with regard to no access issues in higher risk buildings.

Every effort will be made to arrange a convenient time and date for access to complete the works. When it has not been possible to gain access, despite reasonable attempts to contact the tenant, leaseholder or other occupier appropriate action will be taken in the courts to gain access.

We will maintain contemporaneous notes and up to date records of all actions taken throughout the process and record these in our OPEN Housing Management System.

## **5. Immediate and emergency access**

In certain circumstances, we may be required to gain immediate access to properties where there is a reasonable assumption that there is a threat to the health and safety of individuals or failure to act may result in property damage.

We will only ever attempt immediate access in extreme circumstances when it is safe to do so. Non-exhaustive examples include where there is a flood, gas escape or suspected medical emergency.

Where we are required to gain access in this way we will:

- use our discretion and make reasonable adjustments, taking account of household vulnerabilities, that are appropriate to the context within which immediate access needs to be gained
- ensure follow up attempts are made to trace the property occupants to inform them of the actions undertaken

- ensure the property is left safe and secure, this may on occasion involve carrying out a lock change. Where this is required, we will endeavor to leave messages or notification with the tenant, leaseholder or other occupier as to how they can obtain replacement keys.
- take photographic evidence of the property by means of an inventory and/or as evidence for legal action that may follow

If we are required to gain access in emergency situations to remedy a fault that is found to be of the tenants', leaseholders' or other occupants' making, we reserve the right to recharge for all works undertaken, e.g. where taps have been left running causing flood damage.

## **6. Escalation process to gain entry**

Where the council has been unsuccessful in gaining access, whether that is due to the occupant failing to engage or provide access, it will follow its supporting escalation procedures.

## **7. Governance**

Ealing Council's cabinet has overall responsibility for ensuring that this policy is implemented to enable compliance with the law.

In practical terms the chief executive reports to cabinet to demonstrate accountability for corporate health and safety across the council. The chief executive will also ensure that property health and safety compliance management duties in the council's landlord function are properly assigned and managed.

The day-to-day responsibility for gaining access to properties in the council's housing stock has been delegated via the chief executive to the strategic director of housing & environment.

The strategic director of housing & environment has assigned their powers under Part 7 – Officer Delegated Powers Para 2 and to head of service officers. This assignment will be regularly reviewed and no later than on an annual basis.



## **8. Contractors**

Contractors, and others working on council property are required to demonstrate that their representatives understand how the work they undertake may impact on the safety of the building.

Contractors are required to immediately report any risks or concerns to their client officer and stop ongoing works if the concern is significant or warrants immediate action.

Contractors are required to support the council's actions to gain access, particularly to achieve health and safety compliance.

## **9. Tenant's, leaseholders & other occupier's responsibility**

Tenants, leaseholders and other occupiers have a responsibility to respond to correspondence and allow access to council appointed contractors to undertake maintenance and inspections in accordance with relevant legislation.

## **10. Complaints**

Any tenant, leaseholder or other occupier who is not satisfied with the way the council has dealt with any aspect of the no access process should refer to the council's corporate complaints policy. The complaints policy and explanatory information are available on the council's website.

## **11. Monitoring, compliance and review**

This policy will be reviewed annually or sooner if there are changes to legislation, best practice or internal arrangements which mean it may no longer be valid, or in the event of a relevant major incident.

General performance and use of this policy and overall risk is monitored through operational progress meetings and key performance indicators for housing & environment, which are reviewed monthly.

## **12. Diversity and inclusion**

Ealing Council will ensure that all information about access to properties for inspection and maintenance purposes is shared with tenants' leaseholders and other occupiers in a form that is easily understood.

## **13. Implementation**

This policy will be implemented in conjunction with the policies that relate to the safety of tenants' leaseholders and other occupiers. The policies include:

- asbestos
- electrical safety
- fire safety
- gas safety
- lifts
- water safety
- damp, mould and condensation
- disrepair
- aids and adaptations

Operational parameters for compliance monitoring for each area are provided in the associated procedure and process map.