

Tamworth Borough Council

Environment, Health and Regulatory Service

Enforcement Strategy

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ENFORCEMENT STRATEGY(TIER 1)

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Document Location

This document is held by Tamworth Borough Council, and the document owner is Steve Lewis, Head of Environmental Health.

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Revision History

Revision Date	Version Control	Summary of changes
17/02/16	1.01.03	Updated to reflect organisational changes
28/08/09	1.01.02	Review of all documentation
23/06/04	1.01.01	Document created

Approvals

Name	Title	Approved
Andrew Barratt	Director, Growth Assets and Environment	Yes
Steve Lewis	Head of Environmental Health	Yes
Jo Sands	Head of Community Safety	Yes

Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner. This Strategy document was approved by Cabinet on 23 September 2009.

Distribution

The document will be available on the Intranet and access by authorised users.

Security Classification

This document is classified as SEC1 Routine with access restricted to Tamworth Borough Council Staff and business partners.

1. Introduction

- 1.1. This Enforcement Policy is in accordance with the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.
- 1.2. It sets out the general principles and approach which the Borough Council is expected to follow and places a duty on regulators to have regard to five Principles of Good Regulation¹.
- 1.3. This enforcement policy accords with the principles of the Human Rights Act 1998, the European Convention on Human Rights, The Freedom of Information Act 2000 and Regulation of Investigatory Powers Act 2000.
- 1.4. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures.

This enforcement policy reiterates the basic principles of enforcement activity.

¹ Transparency, accountability, proportionality, consistency and targeted action.

2. Enforcement Activity

- 2.1 For the purpose of this document 'enforcement' includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action, such as prosecution or issue of notices, and includes the inspection of premises, including dwellings, to check compliance with legal requirements and the provision of advice to aid compliance.
- 2.2 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 2.3 In certain instances the regulator may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The regulator will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

2.4 Formal Action

2.4.1 Whilst recognising that most businesses² want to comply with the law the regulator also recognises that some elements of business and individuals will operate outside the law (both intentionally and unintentionally).

2.4.2 The Council will consider taking formal action for serious breaches, which may include any of the following circumstances:

- Where there is a risk to people, property, the community or the environment;
- For matters where there has been recklessness or negligence.
- A deliberate or persistent failure to comply with advice, warnings or legal requirements.
- Any act likely to affect animal health or welfare, disease prevention measures, or the integrity of the food chain.
- Obstruction or assault (including verbal assault) of an officer in the execution of their duties. (This list is not exhaustive)

2.4.3 For the purposes of this document 'formal action' means:

- Advice or Warning
- Written or Verbal Instruction
- Works in Default
- Service of Notices
- Revocation/Suspension of a licence or permit, registration or approval,
- Seizure
- Suspension
- Forfeiture
- Issue of Penalty Notices
- Compulsory Purchase Order
- Empty Dwelling Management Order
- Simple Caution
- Prosecution
- or any other criminal or civil proceedings, applied either separately or in any appropriate combination.

² The term "business" seeks to encompass all organisations, including the voluntary sector and private sector landlords, individuals and corporate organisations, etc.

3 Principles of Good Regulation

3.1 The five principles of good regulation are:

- a) Transparency;
- b) Accountability;
- c) Proportionality;
- d) Consistency; and
- e) Targeted only at cases for which action is needed or where it is expedient to take action.

3.2 Transparency

3.2.1 We will communicate in plain English or in the appropriate language or method

3.2.2 In most circumstances we will ensure that people affected by formal action are informed of what is planned, and allow for discussion and time to respond before the action is taken. We will also give them a named officer's contact details. These arrangements must have regard to legal constraints and requirements.

3.2.3 When a notice is served it will say what needs to be done, why, and by when, and that in the officers opinion a breach of the law has been committed and why the notice is necessary

3.2.4 We will make a clear distinction between legal requirements and recommended works.

3.2.5 As part of our commitment to equality we will use the following:

- Where businesses or the public do not have English as a first language we may offer translations of correspondence.
- Documents can be emailed

3.3 Accountability

- 3.3.1 Officers will actively work with businesses and the public to advise and to assist with compliance and complaints.
- 3.3.2 Out of hours contact for services will be provided for complaints or requests of an immediate high risk public health impact such as food poisoning outbreaks; serious pollution incidents; serious accidents; animal disease outbreaks; irreversible harm to the environment and unauthorised works and damage to listed buildings and protected trees.
- 3.3.3 We will carry out evening visits and inspections when businesses are open during these times.
- 3.3.4 Officers will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of the investigation requires otherwise.
- 3.3.5 Contact points and telephone numbers will be provided for business and public use.
- 3.3.6 The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- 3.3.7 The Council has a complaint procedure (Tell Us) for use by businesses, the public, employees and consumer groups. This is available on request by telephone and from reception desks.
- 3.3.8 Feedback questionnaires will be routinely used to gather and act upon information about the services we provide.
- 3.3.9 We will include information to highlight new legal requirements, with letters or emails sent, after an inspection or visit; information on the internet and direct mailing to help keep businesses up to date.

3.4 Proportionality

- 3.4.1 Any action required will be proportionate to the seriousness of the breach and the risk to people, property, the community or the environment.
- 3.4.2 The most serious formal action, including prosecution, will be for serious breaches of the law where there is a significant risk to people, public health, safety, amenity or the environment, or where there has been a flagrant disregard for the requirements of the law.

3.5 Consistency

- 3.5.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 3.5.2 There are arrangements in place to ensure discussion and comparison of enforcement decisions by the Officers.
- 3.5.3 All Officers undertaking enforcement duties will be suitably trained, qualified and authorised to ensure that they are fully competent to undertake their enforcement duties.

3.6 Targeted

- 3.6.1 All enforcement action will be primarily targeted towards those situations that give rise to the most serious risks, where the risks are least well controlled and against deliberate or organised crime. Other factors also determine priorities for enforcement activity, including Government targets and priorities, new legislation, national campaigns and public concerns.
- 3.6.2 Any enforcement action will be directed against duty holders, landowner or other legally interested parties responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with this policy.

4 Intelligence and Risk Led Enforcement

- 4.1 By having a coherent and robust intelligence system, effective strategies can be formed to enable and co-ordinate solutions to particular problems. This enables the identification of new, current and emerging issues, allowing provision of strategic and tactical direction on how the issues can best be tackled. Activities are targeted based on general or specific risks identified via trends, history or specific incidents. Enforcement Agencies exchange information as part of their partnership work in reducing crime and disorder.

5 Enforcement Action

- 5.1 The Regulatory Officers will have regard to the guidance documents, which exist both generally, for example, the Code for Crown Prosecutors produced by the Crown Prosecution Service (CPS), as well as other guidance relevant to the individual regulator.
- 5.2 In determining the nature of enforcement action to be taken, the Regulators should ensure that any sanction or penalty should:
- Aim to change the behaviour of the offender;
 - Aim to eliminate financial gain or benefit from non-compliance;
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - Be proportionate to the nature of the offence and the harm caused;
 - Aim to restore the harm caused by the regulatory non-compliance where appropriate;
 - Aim to deter future non-compliance.
- 5.3 A person who it is believed may have committed an offence may be formally interviewed during an investigation. These interviews will be conducted under the rules of the Police and Criminal Evidence Act 1984.

6 Conflict of Interest in Enforcement Matters

- 6.1 Where a breach is detected where the enforcing authority is itself is the responsible operator, then except where the health and safety of an individual or the community is at risk and immediate action is required, the following protocol will be followed:-
- Where the breach is sufficiently serious to warrant more than the provision of advice, information, assistance or a written warning, an Officer from a neighbouring authority may assist in the decision making process as to the action required to be taken. The Chief Executive will be informed of serious breaches without delay.
 - The additional Officer's role is to assist and challenge the decision making process to ensure that appropriate, proportionate and consistent action is to be taken to remedy the breach, prevent re-occurrence and to minimise the risk of 'conflict of interest' for the enforcing authority. A record of the additional Officer's involvement will be kept such that it is auditable.

7 Prosecution

7.1 Regulatory Officers will follow The Code for Crown Prosecutors 2010 (CPS) guidance which requires two main tests to be considered in relation to instigating a prosecution:

The Evidential Sufficiency Test:

- Is there admissible, substantial and reliable evidence that an offence has been committed? i.e. Can it be used in court? Is there enough evidence? Is the evidence sound and factual? (This may include an expert opinion).
- Has the Police and Criminal Evidence Act 1984 been complied with to ensure fair and open gathering of the evidence?

The Public Interest Test:

- Is it in the public interest to prosecute?
- 7.2 The CPS guidance gives a number of factors that may lead to a decision not to prosecute which the Council may take into consideration, as well as other local factors, and includes the following:
- a) The Court is likely to impose a nominal penalty;
 - b) The offence was committed as a result of a genuine mistake or misunderstanding;
 - c) If the loss or harm caused can be described as minor and was the result of a single incident;
 - d) There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious;
 - The delay has been caused in part by the defendant;
 - The offence has only recently come to light; or
 - The complexity of the offence has meant that there has been a long investigation;
 - e) A prosecution is likely to have a bad effect on the victim's physical or mental health;
 - f) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;

- g) The defendant has put right any loss or harm; or
- h) Details may be made public that could harm sources of information, international relations or national security.
- 7.3 The Officers will also consider whether or not a prosecution is appropriate by consideration of the factors contained in paragraph 2.4.2 of this policy.
- 7.4 When considering formal enforcement action, the Officer will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding the best approach.
- 7.5 The Council will have an internal procedure for the authorisation of any investigations that may result in prosecution. All such cases will be regularly reviewed.
- 7.6 If formal action is taken, the Council is likely to seek to recover the costs of the investigation. The Court determines the level of fine imposed and costs awarded.

7.7 Simple Cautions

- 7.7.1 A simple caution in certain cases may be offered as an alternative to a prosecution. The purpose of a simple caution is to deal quickly with less serious offences, to divert less serious offences away from the Courts, and to reduce the chances of repeat offences.
- 7.7.2 The regulators will comply with the provisions of the Home Office Circular 016/2008. The following conditions must be fulfilled before a caution is administered:
- The offender has made a clear and reliable admission (either verbally or in writing);
 - There is a strong realistic prospect of a conviction;
 - It is in the public interest to offer a simple caution; and
 - The offender is 18 years or more at the time that the caution is to be administered
- 7.7.3 If a person/Company declines the offer of a simple caution, the regulator will normally pursue the prosecution action.

8 Forfeiture

- 8.1 Where an accused has not agreed to voluntarily surrender any infringing goods then, on successful conclusion of legal proceedings, forfeiture may be applied for. This does not preclude a regulator taking forfeiture proceedings in their own right in appropriate circumstances.

9 Proceeds of Crime

- 9.1 Where appropriate, working in partnership as necessary, the regulatory authority will seek to recover the assets of convicted offenders under the Proceeds of Crime Act 2002 (as amended).

10 Directors

- 10.1 On the conviction of a Director connected with the management of a company the prosecutor will, in appropriate cases, draw to the Court's attention their powers to make a Disqualification Order under the Company Directors Disqualification Act 1986.

11 Civil Claims

- 11.1 Any enforcement action is completely separate and distinct from civil claims made by individuals for compensation or other remedy. Enforcement is not undertaken in all circumstances where civil claims may be pursued, nor is it undertaken to assist such claims.
- 11.2 The Council may, upon request, provide a factual report which details its' investigation and involvement in the case to individuals, or their solicitors, pursuing a civil claim. There may be a charge for this report.
- 11.3 Where the civil claim results in an Officer being formally subpoenaed to Court to give evidence, the Council reserves the right to recover in full any costs incurred

12 Working with external agencies and enforcement bodies

- 12.1 If a business has a Primary Authority (also, if appropriate, a Lead or Home Authority scheme or informal Lead or Home Authority scheme), the regulator will contact the Primary Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment.

12.2 The Council will liaise with the other partner regulators to ensure that any proceedings instituted are for the most appropriate offence.

13 Publicity

13.1 Regulatory authorities have a responsibility to protect the public from detrimental trading and environmental practices. Regulators undertake a range of activities to achieve this. These include actions that are taken after the detection of an offence, as well as measures to prevent and deter their commission.

13.2 One such measure is the publication of convictions and information concerning significant detrimental trading or other behaviour. The publicity generated by prosecutions and other enforcement action acts as a deterrent to others. It also reassures the general public that Regulators take a serious view of such detrimental behaviour.

13.3 The Director for the service area may therefore consider publishing the name and address of each person convicted of an offence together with details of the issues involved.

13.4 To reach decision as to whether to publish such information, the Director will consider the following factors:

- The specific details of the offence committed or detrimental activity.
- The public interest in disclosing personal information e.g. the deterrent effect of the publication.
- Whether the publication would be proportionate.
- The personal circumstances of the offender.

This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.

GENERAL

Please advise if the this policy is required in any other format e.g. on tape, in Braille, large type, or in another language.

The policy will be reviewed regularly.

Detailed policies exist for some areas of work and should be read in conjunction with this strategy.

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