



ENVIRONMENT AND PUBLIC PROTECTION

ENFORCEMENT POLICY 2012

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EXECUTIVE SUMMARY

This Enforcement Policy provides guidance in relation to the approach to be taken in respect to the application of the legislative provisions enforced by Bracknell Forest Council's Environment and Public Protection Division.

The Council's primary objective is to achieve regulatory compliance. We recognise that prevention is better than cure. However, where circumstances warrant, formal action will be taken. There is a wide range of options available to us but we will look to enforce legislation in a way that is relevant and proportionate to the offence.

The Policy is linear and is built around a process of escalation. In cases where the contraventions are severe, e.g. there is a risk to public health or serious personal injury, the Policy allows discretion to depart from this linear process. Enforcement leading to prosecutions will normally be related to proven risk, statutory nuisance or other similar situations affecting any individual or the environment and not be used as a punitive response to minor breaches.

The Policy sets out the options available which range from no action to prosecution. The Policy explains the approach adopted when carrying out the duty to enforce a wide range of legislation. It is written in general terms as it is intended to be applied to a wide range of responsibilities falling to the Division.

The Policy is designed to give clarity as to the Council's objectives and the methods for achieving compliance. It also clarifies the criteria that will be considered when deciding what the most appropriate response is to a potential breach of legislation.

The Policy seeks to ensure that there is a decision making process that has due regard to current Statutory Guidance and Codes of Practice, particularly the Regulators' Compliance Code, the Code for Crown Prosecutors and the Human Rights Act.

The Council's Scheme of Delegation sets out the powers of the Director of Environment, Culture and Communities. Where appropriate these are sub delegated to the Chief Officer: Environment and Public Protection. Officers are authorised by the Chief Officer for the purposes of enforcing specific legislation conferred on the Council having due regard to their qualifications and experience.

1 INTRODUCTION

1.1 Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. The Policy is applied to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent.
- Officers apply current Government guidance and relevant Codes of Practice.
- Everyone understands the principles that are applied when enforcement action is considered.
- To make best use of resources enforcement is shared where there is complimentary role within the Council and with other agencies e.g. Planning, Police, Health and Safety Executive and the Office of Fair Trading.
- The Policy addresses the need to have statutory enforcement plans e.g. the Food Law Enforcement Plan and Health and Safety Law Enforcement Plan.

2 LEGAL STATUS OF THE ENFORCEMENT POLICY

2.1 The Executive approved this policy on (to be determined).

2.2 This Policy is intended to provide general guidance for officers, businesses, consumers and the public as regards the approach that will normally be taken in relation to the enforcement of the relevant statutory provisions. It does not fetter the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

3 SCOPE AND MEANING OF 'ENFORCEMENT'

3.1 This Policy applies to all the legislation enforced by Officers of the Environment and Public Protection Division.

3.2 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement action such as prosecution.

3.3 Officers will seek to raise awareness and increase compliance levels by making public details of evidence of unlawful practice and any legal action taken where in their opinion it is appropriate to do so.

4 GENERAL PRINCIPLES

4.1 Prevention is better than cure and the regulatory role includes working with businesses to advise on and promote opportunities to effect compliance as appropriate.

4.2 Where formal action is considered necessary each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Regulators Compliance Code.

For more information about the Regulators Compliance Code visit:

<http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>

4.3 Every effort will be made to ensure that enforcement decisions will be taken in a fair, independent and objective way. They will not be influenced by issues such as ethnicity,

national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will also not be affected by improper or undue pressure from any source.

- 4.4 In making decisions we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss. Those views may influence the decision as to the form of action to take. The Council will always be mindful of any concerns.
- 4.5 In accordance with the Regulator's Compliance Code this Policy is intended to help promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.
- 4.6 In certain instances it may be concluded that a provision in the Code is either not relevant or is outweighed by another provision. We will seek to ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

5 NOTIFYING ALLEGED OFFENDERS

- 5.1 Where information is received (for example from a complainant) that may lead to enforcement action against a business or individual, we will notify that business or individual as soon as is practicable of any intended enforcement action. The exception to this is where it is considered that doing so could impede an investigation or pose a safety risk to those concerned or the general public.
- 5.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality of witnesses will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

6 DECIDING WHAT LEVEL OF ENFORCEMENT ACTION IS APPROPRIATE

A number of factors are considered when determining what enforcement action to take:

6.1 Levels of enforcement action:

- 6.1.1 There are a number of potential enforcement options. The level of the action taken can vary from no action through to proceedings in Court. Examples of main types of action that can be considered are shown below:

- No action
- Informal Action and Advice
- Fixed Penalty Notices
- Penalty Charge Notices
- Formal Notice
- Forfeiture Proceedings
- Seizure of Goods/Equipment
- Injunctive Actions
- Refusal, revocation or suspension of a licence
- Simple Caution
- Prosecution
- Statutory Orders

- Restorative Approach
- Emergency Remedial Action

6.1.2 In assessing what form of enforcement action is appropriate consideration will be given to:

- The seriousness of compliance failure
- The business's past performance and its current practice
- The risks being controlled
- Legal, official or professional guidance
- Local priorities of the Council

6.1.3 Under normal circumstances, a process of escalation will be used with a view to achieving compliance. Exceptions would include where there is a serious risk to public safety or the environment; the offences have been committed deliberately, negligently or involve deception or where there is significant economic detriment.

6.2 **No Action**

6.2.1 In some circumstances, contraventions of the law may not justify any action. Examples include where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of *no action* may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing. Such decisions will take into account the public interest principle and in such cases we will advise the offender and any 'victim' of the reasons for taking no action.

6.3 **Informal Action and Advice**

6.3.1 For minor breaches we may only give verbal or written advice. We will clearly identify any contraventions and give advice on how to put them right. We will include a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

6.3.2 Where appropriate we will also advise offenders about 'good practice'. In doing so we will clearly distinguish between what they must do to comply with the law and what is advice only.

6.4 **Fixed Penalty Notices**

6.4.1 Certain offences are subject to fixed penalty notices (FPNs). A FPN can be offered as an alternative to going to Court. They are available for some low level offences and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of an FPN, we may choose to administer an FPN on a first occasion without issuing a warning.

6.5 **Penalty Charge Notices**

6.5.1 Penalty Charge Notices (PCNs) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

6.6 **Formal Notice**

6.6.1 Certain legislation allows notices to be served requiring a person or business to take specific actions, provide information or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

6.6.2 All Notices issued will include details of any applicable Appeals Procedures.

6.6.3 Certain types of Notice allow works to be carried out at default. This means that if a notice is not complied with we have the power to carry out any necessary works to satisfy the requirements of the Notice ourselves. Where the law allows, we may then charge the person/business served with the notice for all costs we have reasonably incurred in carrying out the work. The Council will normally seek to recover all of its costs.

6.7 **Seizure**

6.7.1 Some legislation enables authorised officers to seize goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate Goods Seized Notice.

6.8 **Forfeiture Proceedings**

6.8.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the magistrates' courts or seek from the defendant a voluntary forfeiture.

6.9 **Injunctive Actions**

6.9.1 Such injunctive action may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

6.9.2 Proceedings may be brought under the Enterprise Act 2002 where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- Informal undertakings
- Formal undertakings
- Interim orders
- Court orders
- Contempt proceedings

6.9.3 Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, where appropriate, an ASBO or CRASBO will be sought to stop the activity.

6.10 Refusal, Suspension and Revocation of Licence/Permits

- 6.10.1 Where there is a requirement for a business or person to be licensed by the local authority, the licence will be determined in accordance with Council procedures including receipt of representations or objections to that application. Where representations or objections are received and in accordance with the relevant legislation or Council procedure members of the Licensing Committee, may hear the case and decide to grant, grant with conditions, or refuse the licence application.
- 6.10.2 The grounds for Refusal, Suspension or Revocation of a Hackney Carriage or Private Hire Licence (Local Government (Miscellaneous Provisions Act 1976) are set out in the Guidance Notes and Conditions for Hackney Carriage and Private Hire Vehicle Owners, Operators and Drivers.
- 6.10.3 Under the Licensing Act 2003, where a Review of a Premises Licence is sought under Section 51 of the Act, the options available to members of the Licensing Committee are:
- To modify the conditions of the Licence
 - To exclude a licensable activity from the scope of the Licence
 - To remove the Designated Premises Supervisor
 - Suspend the Licence for a period not exceeding three months
 - Revoke the Licence
 - Issue a warning letter
 - No action
- 6.10.4 Under the Gambling Act 2005, where a Review of a Premises Licence is sought under Section 202 of the Act, the options available to members of the Licensing Committee are:
- Revocation of the Licence.
 - Suspend the Licence for a specified period not exceeding three months.
 - Exclude a mandatory condition attached to the Licence, remove or amend exclusion.
 - Add, remove or amend a condition.
- 6.10.5 Under the Housing Act 2004 there is no provision for the council to receive objections relating to HMO applications. Where an HMO licence is refused or revoked the applicant or licence holder has the right of appeal to a Residential Property Tribunal (RPT).
- 6.10.6 Under the Environmental Protection Act the Council has powers to revoke, suspend and prosecute for non-compliance with Environment Permits (EPs). These powers can be used for incidences of serious pollution and none payment of fees.

6.11 Simple Caution

- 6.11.1 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For more information about a Simple Caution visit:

http://www.cps.gov.uk/legal/a_to_c/cautioning_and_diversion/

- 6.11.2 For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case.

- The offender must admit the offence.
- It must be in the public interest to use a Simple Caution.
- The offender must be 18 years or over.

6.11.3 Officers will not offer a Caution where the offender has received one already for a similar offence within the last 2 years.

6.11.4 A record of the Caution will be sent to the Office of Fair Trading and the Local Authority Co-ordinating Body for Regulatory Services (Local Government Regulation) if appropriate, and will be kept on file for 2 years. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

6.11.5 Details of all cautions issued are a matter of public record.

6.12 **Prosecution**

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberately, recklessly, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
- An attempt to make financial gain at the expense of others.
- Assaulted or obstructed an Officer in the course of his/her duties.

6.13 **Proceeds of Crime Applications**

Applications may be made under the Proceeds of Crime Act for confiscation of assets in appropriate cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. The Council will seek to recover proceeds of crime in appropriate circumstances.

6.14 **Prohibition**

This power will be used where there are valid grounds (e.g. there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved. This course of action is usually associated with food and health and safety enforcement, but there will be other occasions, for example prohibiting the sale of unsafe goods, or part of a dwelling under housing legislation.

6.15 **Statutory Orders**

A range of Statutory Orders are available under the Housing Act 2004. In addition to Prohibition Orders the Council may make an Interim or Final Management Order on a licensed house in multiple occupation, which allows it to take over the running of a property. Powers to take over the management of empty premises are contained in the Empty Dwelling Management Orders. The Council can take emergency remedial action to remove a Category 1 hazard where there is an imminent risk of serious harm to the health or safety of the occupiers. If such works are undertaken action will be taken to

recover the costs incurred. Rights of Appeal exist in relation to these powers and compensation provisions also arise in some cases.

6.16 Compulsory Purchase Orders

The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. The use of such powers will be on a case by case basis. The consent of the Secretary of State is required and compensation provisions for the owner apply.

6.17 Restorative Approach

6.17.1 This approach is available where the victim, the person harmed, and the offender agree to meet. The purpose of this meeting is to provide the opportunity for the offender to acknowledge and accept responsibility for the harm caused and for the victim to have their say on the harm caused. If appropriate and required, suitable restorative actions and/or compensation may be agreed and the process may influence future behaviour and compliance.

6.17.2 Officers will consider if a Restorative Approach is appropriate and will listen to requests from both victims and offenders for such an approach to be adopted. Where a victim and offender are in agreement the Council, sometimes together with other enforcement partners, will consider facilitating a Restorative Approach to assist in the reduction of harm and/or the resolution of conflict. A Restorative Approach may be utilised separately or in conjunction with other enforcement approaches.

7 DETERMINING WHETHER A PROSECUTION OR SIMPLE CAUTION IS VIABLE AND APPROPRIATE

7.1 Two 'tests' will be applied to determine whether a Prosecution or Caution is viable and appropriate. The officers will follow guidance set by the Crown Prosecution Service when applying the tests.

For more information about the 'Code for Crown Prosecutors' visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

7.2 A Simple Caution or Prosecution will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

7.3 The Evidential Test

We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

7.4 The Public Interest Test

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the propensity to prosecute but others may

suggest that another course of action is more appropriate to the circumstances of the case.

8 WHO DECIDES WHAT ENFORCEMENT ACTION IS TAKEN

8.1 The Council's constitution sets out the Council's Scheme of Delegation. Delegated authority has been given to authorised officers to act in varying capacity according to their professional background and seniority. Delegated authority is exercised within a decision making process that is managed to ensure that the most appropriate enforcement action is taken, based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

8.2 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating officer(s)
- Heads of Service
- Chief Officer: Environment and Public Protection
- Council solicitor(s)

9 LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

9.1 Where there is a wider regulatory interest, enforcement activities with Environment and Public Protection will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

9.2 Where an enforcement matter affects a wider geographical area beyond the Council boundaries, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

9.3 If you are a business operating in more than one local authority and you have chosen to have a registered Primary Authority Partnership under the Regulatory Reform Act 2006, we will, where required, comply with the agreement provisions for enforcement and notify your Primary Authority of the enforcement action we propose to take. We may under the Act also refer the matter to the relevant enforcement body if appropriate.

9.4 The Division will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

10 CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

10.1 Regulatory Services undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when

making an enforcement decision.

10.2 Complaints about the service

10.2.1 If anyone wishes to complain about enforcement action they may do so initially by contacting the relevant Team Manager through the Council's Customer Service Centre on 01344 352000 between 8.30am to 5.00pm Monday to Friday, or by writing to them at Bracknell Forest Council, Time Square, Market Street, Bracknell, Berkshire, RG12 1JD. If a complainant is dissatisfied with the result of their complaint to the Team Manager, the formal complaints procedure is on the Council's website: <http://www.bracknell-forest.gov.uk/your-Council/yc-complaints/yc-Council-complaints-procedure.htm>

10.3 Publicity

Where appropriate the Division will publicise details of any convictions including simple cautions which could serve to draw attention to the need to comply with the law or deter others. Where relevant the media will also be provided with factual information about charges that have been laid before the courts.

11 PROTECTION OF HUMAN RIGHTS

11.1 This Policy and all associated enforcement decisions take account the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial
- Right to respect for private and family life, home and correspondence

12 REGULATION AND INVESTIGATORY POWERS ACT 2000

12.1 This Act provides a statutory framework for use of investigatory techniques including surveillance and gathering information on the use of covert operatives. For the purposes of this Policy the Chief Officer: Environment and Public Protection and the Head of Regulatory Services are authorisation officers.

13 REVIEW OF THE ENFORCEMENT POLICY

13.1 This Policy will be reviewed in the light of experience on an ongoing basis and normally not less than annually by the Chief Officer: Environment and Public Protection. Where changes are required these will be referred through the appropriate management process.

14 AVAILABILITY AND COMMENTS

This Policy will be made freely available and comments are welcomed at any time in writing to:

Chief Officer: Environment and Public Protection
Bracknell Forest Council
Time Square
Market Street
Bracknell
RG12 1JD