



Broxtowe
Borough
COUNCIL

Corporate Enforcement Policy

Community Safety Committee 20th April 2017

1.0 Introduction

The main purpose of local government enforcement work is to protect the public, the environment, consumers and legitimate businesses by making sure that legal requirements are met and that everyone acts/operates within the law. It does not just mean taking formal action, such as prosecution, but includes a wide range of actions and measures, including giving help or advice to make sure that things are as they should be. The Broxtowe Borough Council (the Council) will generally endeavour to support both businesses and individuals to meet their legal obligations before considering any kind of enforcement action.

The Legislative and Regulatory Reform Act 2006 (2006 Act) requires local authorities to have regard to the Principles of Good Regulation when exercising a specified regulatory function.

A new Regulators' Code (Department for Business Innovation and Skills – April 2014), came into force in April 2014 and regulators must have regard to the Code when developing policies and operational procedures that guide their regulatory activities.

The Council fully supports the principles set out in the 2006 Act and the Regulators' Code and has set out within this Enforcement Policy the procedures to be adopted by all services and officers exercising any enforcement functions. The Council is committed to services which are courteous and helpful and seeks to work with individuals and businesses, wherever possible, to help them comply with the law.

The Council, nevertheless, acknowledges the need for firm action against those who flout the law and put consumers and others at risk. The Council expects all officers taking enforcement decisions to take this Policy as a guide when making their decision. Every case must be decided on its own individual facts. Officers must ensure that if they depart from the Policy when they make their decision, they can provide reasons for doing so.

This document represents the Council's Corporate Enforcement Policy, and supersedes any previous corporate policy statements on enforcement. It may be supplemented in some cases, by more specific and detailed service policies.

2.0 Objective

The Council will endeavour to carry out its enforcement functions in an equitable, effective, efficient, practical and consistent manner.

3.0 Link to Corporate Plan

This policy accords with one of the stated values in the Council's Corporate Plan 2016-20 which is "*Integrity and professional competence*" and the statement in the plan: "*We believe that we should be accountable for our activities and actions and a comprehensive governance system is in place to ensure that the Council is effectively regulated, conforms to good practice in its decision making and that our residents can challenge us and become engaged in democracy.*"

4.0 Areas covered

The relevant legislation and guidance specifies areas of enforcement to which the provisions apply. This does not include all the services provided by the Council. However, the Council will adopt the provisions of this policy in all its enforcement activity. Although not an exhaustive list, the service areas falling within the scope of this policy include:

- Environmental health and private sector housing
- Licensing
- Planning
- Waste and recycling services
- Revenues and benefits
- Tenancy services
- Communities

5.0 Principles of enforcement

5.1 Overview

The Council believes in the principles of good enforcement, as set out in the 2006 Act. Those principles are that regulatory activities should be carried out in a way which is:

- transparent
- accountable
- proportionate
- consistent
- targeted

The Council will observe any requirements of national bodies and, where practicable, national good practice guidance.

Where appropriate, services will provide enforcement advice and information in accessible formats.

The Council will seek to employ the provisions of the Regulators' Code, the main principles of which are detailed in sections 5.2 to 5.7 below.

5.2 Regulators should carry out their activities in a way that supports those they regulate to comply and grow

Effective and well-targeted regulation is essential in promoting fairness and protection from harm. The Council will ensure that enforcement is proportionate and flexible enough to allow and encourage economic progress, and provide help and encouragement to businesses in order that they can meet regulatory requirements more easily.

5.3 Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views

The Council will endeavour to create effective consultation and feedback opportunities to enable continuing cooperative relationships with businesses and other interested parties. The aim will be to ensure that employees provide a

courteous and efficient service to businesses and seek the comments and views of regulated businesses. The Council has established and published a comprehensive complaints procedure which is available to any aggrieved party. This can be accessed on the website at www.broxtowe.gov.uk

In response to non-compliance that is identified, officers will clearly explain what the non – compliant item or activity is, the advice being given and the action required or decision taken, and the reasons for these. Opportunity will be provided to discuss any such actions that need to be taken and any appeal process available.

5.4 Regulators should base their regulatory activities on risk

Risk assessment will underpin our approach to planned regulatory activity (comprising inspections, data collection, advice and support, and enforcement and sanctions). Efforts and resources will be targeted where they will be most effective and risks will be rated to regulatory outcomes. Risk assessment will be based on all available and good-quality data and consider the combined effect of:

- the potential impact of non-compliance on regulatory outcomes; and
- the likelihood of non-compliance (where we will take into account past compliance and potential future risks and willingness to comply)

5.5 Regulators should share information about compliance and risk

To help target resources and activities and minimise duplication, information will be shared with other enforcement agencies wherever possible

5.6 Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

The aim will be to ensure that businesses are provided with, or signposted to, clear and accessible information on legal requirements relating to their operations. Targeted and practical information will be provided through a variety of means including on-site visits, telephone advice and online guidance (both national and local guidance). Officers will endeavour to distinguish between legal requirements and advice or guidance which seeks to improve the basic level of practice. The response to a request for advice will normally be to provide such advice and to help secure compliance rather than directly triggering enforcement action.

5.7 Regulators should ensure that their approach to their regulatory activities is transparent

Standards of performance within individual service areas will be reported on regularly. The choice of enforcement action will be justified to relevant interested parties, and that enforcement action will be undertaken in a transparent, fair and consistent manner.

6.0 Enforcement options

The Council recognises the importance of achieving and maintaining consistency in its approach to enforcement. For many areas of its enforcement activity, government guidance already exists in the form of Codes of Practice, Planning Policy Guidance, and Government Circulars etc. There may also be local or regional Codes of Practice which have been produced to promote consistency in enforcement activity. When making enforcement decisions officers must have regard to any relevant national or local guidance as well as the provisions of the Human Rights Act 1998, Equalities Act 2010, and this Enforcement Policy.

6.1 Prevention

The Council believes that the first step in enforcement is to promote good practice, ensure policy compliance and prevent contravention of the law by raising awareness and promoting good practice. Methods of achieving this include training courses, seminars, special promotions, the issuing of press releases, newsletters, the Council's web site, the production of leaflets and other forms of written guidance and opportunities presented by day to day contact with businesses and other customers.

This approach will be applied when officers are unaware of any specific contraventions of the law.

6.2 Informal action and advice

For minor breaches of the law verbal or written advice may be given. In such cases any contraventions of the law will be clearly identified and advice on how to put them right given. This advice will include a timeframe for compliance. Offenders will also be advised of any relevant 'good practice'. Where good practice advice is issued, any actions required to remedy any breach of law and what is advice only will be clearly defined. Offenders will be made aware that failure to comply with any information, action or advice given could result in an escalation of enforcement action.

Informal action will be taken when;

- the act or omission is not serious enough to warrant formal action
- from the individual's or business's past history we can reasonably expect that informal action will achieve compliance
- the officer has high confidence in an individual or business proprietor
- the consequences of non-compliance will not pose a significant risk to public health, public safety or the environment.

6.3 Formal action

Circumstances where formal action will be considered include (but are not restricted to) situations where:

- There is a significant contravention of legislation
- The wording of legislation requires the Council to take a specified action
- An informal approach has failed
- There is a history of non-compliance with informal action
- There is a lack of confidence in the successful outcome of an informal approach

- Standards are generally poor, suggesting a low level of awareness of, and compliance with, statutory responsibilities
- The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate
- Effective action needs to be taken quickly in order to remedy conditions which are deteriorating
- Formal action is expected to achieve the desired outcome without incurring expense or inconvenience that is disproportionate to the risks
- Legal requirements, relevant formal guidance, or other Council policies or strategies require formal action to be taken
- A charge applied by a Fixed Penalty Notice has not been paid

In most situations before formal action is taken, the Council will provide an opportunity to discuss matters and, hopefully, resolve points of difference. The extent of this will depend on the seriousness of the contravention, and may not be possible where immediate action is considered necessary, e.g. where there is an immediate risk to health, safety or the environment, or where the formal action takes the form of a fixed penalty notice.

Only officers who have reached a sufficient level of competence will be given the delegated authority to take formal action. Formal action can take any form that the Council is empowered by legislation to take. The following list details some of those used but is not exclusive.

6.3.1 Statutory notices

Many of the various pieces of legislation that the Council enforces provide for the service of 'statutory notices' on individuals, businesses and other organisations requiring them to meet specific legal obligations. Where a 'statutory notice' is served, the method of appealing against the notice and the timescale for doing so will be provided in writing at the same time. A contact name at the Council will also be given. The notice will explain what is wrong, what is required to put things right and what the likely consequences are if the notice is not complied with. In some cases a 'statutory notice' can be served to prevent the occurrence or recurrence of a problem e.g. a noise nuisance. In most cases, failure to comply with a 'statutory notice' will result in more severe formal action being taken. In some cases there will be a charge made as a result of serving the notice.

6.3.2 Prohibition / stop notices and injunctions

Where an offender is required to take immediate action, it may be necessary for a statutory notice to be served. These include Prohibition Notices, Planning Enforcement Notices, Closing Orders, Stop Notices or Injunctions, and can be issued in one or more of the following circumstances;

- there is an imminent risk of injury to health or safety;
- there is serious hazard to residential premises;
- there is an imminent risk of serious environmental pollution;
- the consequences of not taking immediate and decisive action, to protect the public, would be unacceptable;
- where an unauthorised development is unacceptable and is causing serious harm to public amenity near to the site, or where there has been breach of a condition notice;

- where unauthorised development is unacceptable, and continuing work is or may cause irreversible damage, and remedial action is not a satisfactory option;
- the guidance criteria on when prohibition may be appropriate are met;
- the Council has no confidence in the integrity of an unprompted offer by a proprietor to close premises voluntarily, or stop using any equipment, process or treatment associated with the imminent risk;
- a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition;
- where it would be the most effective remedy available.

Offenders will be made aware of any right of appeal they may have against any action taken. The act of serving a prohibition/stop notice or injunction does not prevent the Council from deciding to prosecute depending on the seriousness of the circumstances that led to the serving of that notice.

6.3.3 Work In default

In general, it is the responsibility of others to achieve compliance with the law. In certain cases the Council may undertake work to achieve compliance on behalf of others, and may seek a warrant to gain entry to land or premises to do so. This may occur if the responsible person fails to comply, cannot comply by virtue of genuine hardship, or is unable to comply by virtue of being absent. In these cases the Council's costs will be recovered from the responsible person. If the costs cannot be recovered, they will usually be placed as a charge against the property, if the relevant legislation allows, to be recovered at a later date.

This kind of formal action will be considered (but is not restricted to) occasions where:

- A 'statutory notice' requiring work to be undertaken has not been complied with
- Immediate work is required and it is not practicable to contact the responsible person, or they are not willing to respond immediately
- There is no responsible person e.g. burial or cremation of a deceased person with no next-of-kin

6.3.4 Fixed penalty notices

These are notices that apply a fixed penalty for specific offences, such as littering. The notice will describe the method of payment and the options and timescales for doing so. Failure to make a payment will result in prosecution for the original offence, unless there are exceptional circumstances.

6.3.5 Cautions

A simple caution (previously known as a formal caution) may be issued as an alternative to a prosecution and will be considered during any decision to prosecute. Cautions will be issued to:

- deal quickly and simply with less serious offences
- divert less serious offences away from the courts, or
- reduce the chances of repeat offences.

To safeguard the suspected offender's interests, the following conditions will be fulfilled before a caution is administered:

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction; and
- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a caution and give an informed consent to being cautioned.

A caution is a serious matter which will influence any future decision should the company or individual offend again. It can be referred to in any subsequent court proceedings, but this will not apply if the caution was issued more than three years before. Where the offer of a caution is refused, a prosecution will generally be pursued.

No pressure will be applied to a person to accept a caution.

The Council maintains a central register of cautions administered.

6.3.6 Compulsory purchase

The Housing Act 1985 allows the local authority to acquire under-used or ineffectively used property for residential purposes if there is a general housing need in the area. In addition, the Town and Country Planning Act 1990 (as amended) allows Local Authorities to acquire land or buildings if acquisition will allow improvements or redevelopment to take place.

Compulsory purchase may be used as the enforcement route of last resort for returning empty homes to use.

6.3.7 Management orders

In certain circumstances, the Council has the power to take over the management of residential properties.

6.3.8 Demand for payment

The Council will ensure early contact is made to minimise large debts accumulating and ensure the debtor does not suffer from unnecessary hardship. However, the Council will consider the use of Enforcement Agents where demands for payment are outstanding.

6.3.9 Licensing and registration – breach of conditions

The Council issues licences and approvals for a variety of activities including hackney carriages, caravan sites, food premises, selling alcohol and providing entertainment, horse riding, animal boarding kennels and catteries, houses in multiple occupation. There are usually specific conditions which control how facilities at the premises are managed and provided, or how the business is operated.

The Council will work with applicants to help them to understand what is required to gain approval through pre-application advice, published guidelines, and post-application discussion. Applications may be approved as they are submitted, varied by agreement and then approved, approved subject to conditions, or rejected. Applicants, or their agents, will always be notified, in writing, of the outcome of their application, including the reasons if rejected. Details of any rights of appeal will be provided at the time the decision is notified.

After issue of a licence, permission, or registration, if there has been a relatively minor incident where conditions have not been met and the duty holder is willing to take the necessary action to put things right, a verbal or written warning will usually be issued first. If there are serious failures to meet the conditions or if the informal approach failed to make the necessary improvements, consideration will be given as to whether or not a licence will be granted, renewed or withdrawn. The duty holder will be entitled to make a statement to support their case.

If there is a serious incident where licensing or registration conditions have not been met, the Council will consider the matter in line with the conditions relating to prosecutions and if appropriate, start legal proceedings. In some cases, there may be a need to suspend a licence or approval until the relevant Committee or panel can consider the matter.

There are a number of separate Policies relating to Licensing, for example, Gambling Act Statement of Principles, Hackney Carriage and Private Hire Licensing Policy, etc.

6.3.10 Imposition of an administrative penalty

Where an allegation of benefit fraud has been investigated and officers are satisfied an offence has been committed but the offender does not admit to committing an offence it may, dependent upon the severity of the offence and other factors of the case, be considered appropriate to offer the offender the opportunity to pay an Administrative Penalty rather than prosecute. The Council will pursue full repayment of any benefit overpaid and recoverable in addition to any administrative penalty.

6.3.11 Prosecution

The Council recognises that the decision to prosecute is significant and would be a last resort and could have far reaching consequences on the offender.

The decision to undertake a prosecution will normally be taken by the relevant Director/Head of Service in consultation with the Council's Solicitor.

All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made. The Council will have regard to the Attorney General's Code for Crown Prosecutors, which means that the following criteria will be considered:

- Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction
- Whether the prosecution is in the public interest;

The public interest test will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. The Council will consider whether there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances to divert the person from prosecution.

To determine the public interest test the following questions should be considered:

a) How serious is the offence committed?

The more serious the offence, the more likely it is that a prosecution is required. When deciding the level of seriousness we will include amongst the factors for consideration the suspect's culpability and the harm to the victim

b) What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required. Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was planned and whether there are previous convictions.

c) What are the circumstances of and the harm caused to the victim?

The greater the vulnerability of the victim the more likely it is that a prosecution is required. A prosecution is also more likely if the offence has been committed against a victim who was a person serving the public. We will take into account the views of the victim and the impact it would have on the victim and families.

d) Was the suspect under the age of 18 at the time of the offence?

The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending.

e) What is the impact on the community?

The greater the impact of the offending on the community the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how "community" is an inclusive term and is not restricted to communities defined by location

f) Is prosecution a proportionate response?

Consideration will be given as to whether prosecution is proportionate to the likely outcome, and in doing so the following may be relevant to the case:

- The cost to the Council, especially where it could be regarded as excessive when weighed against any likely penalty.
- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management

g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information. It is essential that such cases are kept under review.

In deciding on the public interest the Council will make an overall assessment based on the circumstances of each case.

Where there has been a breach of the law leading to a work-related death, the Council will liaise with the police, Coroner and the Crown Prosecution Service (CPS) and, if there is evidence of manslaughter, will pass the case to the police or, where appropriate, to the CPS and /or the Health and Safety Executive (HSE)

6.3.12 Other considerations in respect of formal action

The Council will consider the desirability of using formal enforcement in the case of a person who is elderly or is, or was at the relevant time, suffering from significant mental or physical ill health. It will balance this with the need to safeguard others, taking into account the public interest.

The Council is committed to safeguarding and promoting the welfare of children, young people and vulnerable adults. As such, consideration will be given to the Safeguarding Children Policy and Safeguarding Adults Policy when considering what enforcement action to take.

The Council will have regard to the Crown Prosecution Service Public Policy Statements on dealing with cases which involve victims and witnesses who have a learning disability and victims and witnesses who have mental health issues.

The Council's approach to the collection of Local Taxes (Council Tax and Business Rates) and in the recovery of overpaid Housing and Council Tax Support is one which seeks to strike a balance between the need to maximise income to the Council and the desire not to cause further hardship to the poorest within the community

7.0 Delegation of authority

The Council's Scheme of Delegation specifies the extent to which enforcement powers are delegated to officers. Whilst delegation is mainly to officers, in some specific circumstances the decision to take enforcement action lies with the relevant Council Committee.

8.0 Officers' powers of entry and obstruction

Enforcement officers have a wide variety of duties and have to act as investigators. This is supported by strong powers of entry, seizure and inspection contained in various statutes. If individuals or businesses obstruct officers or refuse to provide information, they could be subject to criminal sanctions. Officers use these powers at their discretion with the support of the Council who will uphold them.

Officers will use their powers of entry only when necessary, but usually to carry out an inspection of premises or in the process of an investigation. The Council will always support officers who act in good faith. This includes consideration of prosecuting those individuals who obstruct or assault officers during investigations or inspections.

If the legislation allows, officers may examine premises and articles, remove articles, label samples, request information, issue enforcement notices and may in some instances be accompanied by other persons. In appropriate cases a warrant from a Magistrate may be obtained to obtain entry to premises.

9.0 Training and appointment of officers

All officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities. The Council supports the principle of continuing professional development and will ensure that all officers are given relevant additional in-post training to maintain up to date knowledge and skills. This will be highlighted through their learning and development plan as part of their performance review. Officers will carry an identity card and their authorisation with them at all times.

10.0 Shared regulatory roles

Where the Council has a complementary regulatory role or is required to inform an outside regulatory agency of an incident or occurrence it will do so.

Such external agencies include (but are not restricted to):

- Police
- Fire Authority
- Health and Safety Executive
- Environment Agency
- County Council services
- Other Council services
- Utility providers
- Other councils

Officers will attempt to co-ordinate visits and actions with other agencies to achieve the most efficient and effective outcomes and to minimise inconvenience for those who are being visited, inspected, or subject to other enforcement action.

Wherever possible, in situations where there is a shared enforcement role, the most appropriate authority will, by mutual agreement, carry out the enforcement. Other agencies may also be authorised to act on behalf of the Council in some cases.

Exchange of information with other enforcement teams within the Council will take place wherever applicable. Liaison will also take place between relevant services and Members within the Council to avoid potential conflicts of interest.

11.0 Responsibilities

Effective implementation of this policy is the responsibility of the relevant Head of Service.

Team managers will be responsible for its implementation on a day to day basis. Each officer within these teams will be responsible for applying it in relation to specific cases.

12.0 How to complain

Any person dissatisfied with the service they have received, should let the Council know.

The Council is committed to providing quality services and any suggestions and criticism about any aspect of the service will assist in the process of continuous improvement. Most problems can be resolved in the first instance with the Council employee who has been dealing with the matter, or their supervisor.

Confidentiality will be respected subject to any requirement to disclose information (for example if it is necessary to do so in order to investigate the complaint, or to provide information to the Local Government Ombudsman).

However, the Council will not normally investigate anonymous service complaints.

If this fails to resolve the situation, a formal complaint can be made using the Council's Complaints Procedure. This can be done by phone, fax, letter, e-mail or in person. Once a formal complaint is received, the Council will acknowledge receipt, in writing within three working days. A manager will investigate the complaint and will normally reply to in writing, within 15 working days, either giving a full answer or an indication of the likely time scale for the provision of a full answer. Advice of what further action can be taken if the complainant remains dissatisfied will also be included. The Complaints Procedure can be viewed on the Council's web site at:

www.broxtowe.gov.uk

13.0 How to contact the Council

By telephone

A contact telephone number is given on any correspondence sent out. Alternatively, telephone 0115 917 7777.

In person

At the Council Offices, Foster Avenue, Beeston, Nottingham NG9 1AB

In writing

Write to the following address: Broxtowe Borough Council, Council Offices, Foster Avenue, Beeston, Nottingham NG9 1AB

By e-mail

Environmental health and private sector housing

health@broxtowe.gov.uk

Licensing

licensing@broxtowe.gov.uk

Legal and Planning

legalmail@broxtowe.gov.uk

Waste and recycling services

Refuse@broxtowe.gov.uk

Council tax
Billing@broxtowe.gov.uk

Benefits
benefits@broxtowe.gov.uk

Communities
spc@broxtowe.gov.uk

Tenancy services
hps@broxtowe.gov.uk

14.0 Review of policy

This policy document will be reviewed every three years or sooner should legislation or guidance change. Minor changes will be approved by the Head of Public Protection in consultation with the Chairman of the Community Safety Committee. More substantial changes will require committee approval.

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