



ENVIRONMENTAL ENFORCEMENT POLICY

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PURPOSE

This policy provides a framework to assist Environmental Protection Officers in deciding what form of enforcement action is the most appropriate. The guidelines are intended to ensure that enforcement decisions are always consistent, balanced, fair, transparent, proportional and relate to common standards to ensure public health and the environment are adequately protected.

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1. INTRODUCTION

The Environmental Enforcement Policy seeks to secure appropriate compliance through a fair and consistent approach. This includes taking into account the Enforcement Concordat, advice from the Crown Prosecution Service, the Home Office, Codes of Practice and Guidance.

This policy will support the delivery of the Council's priorities identified in the Corporate Plan – Theme 4 'Safer Place to Live'. This is an overarching policy and will apply generally, unless alternative levels of enforcement action are specified under separate policies.

Environmental Enforcement is a wide field and covers areas such as:

- Pest Control
- Odour
- Drainage
- Noise
- Air Pollution
- Contaminated Land
- Private Water Supplies
- Light
- Dust
- Smoke
- Control of Disease
- High Hedges
- Filthy and Verminous Premises
- Accumulations on Private Land
- Fly-tipping
- Littering
- Graffiti
- Dogs

The Council have wide ranging powers to aid in dealing with these issues. However, it is vital that the community we serve is clear on what they can expect from the Council, in terms of active and reactive enforcement action in these areas. Thanet District Council has signed up to The Enforcement Concordat, confirming its commitment to the principles of good enforcement.

The Enforcement Concordat, which Thanet District Council has adopted, was published by the Government's Cabinet Office in 1998 and was based on the premise that businesses should

- receive clear explanations, from enforcers, of what they need to do and by when;
- have opportunities to resolve differences before enforcement action is taken – unless immediate action is needed;
- receive an explanation of their rights of appeal

The Concordat embodies certain principles to help businesses comply with legislation and, at the same time, help enforcers to achieve higher rates of voluntary compliance. The principles are

- drawing up clear standards
- setting out the level of service and performance the public and business can expect to receive
- dealing with the public and the business in an open and honest way
- providing a courteous, efficient and helpful service
- responding promptly and positively to complaints about the service
- ensuring that enforcement action is proportionate to the risk to the public
- carrying out duties in a fair, equitable and consistent manner

Further details on the Enforcement Concordat can be obtained from the [Department for Business, Innovation & Skills](#).

The BIS website also gives detail on the [Regulators Code of Compliance](#), which was issued as part of the Government's better regulation agenda. The code, based on recommendations made in the [Hampton Report](#) in 2005, expands on the Enforcement Concordat and details specific obligations for regulators.

2. HOW WE INVESTIGATE COMPLAINTS

The Council operate a complaints based service. Anonymous complaints will not normally be investigated, unless there are serious breaches of environmental legislation. The identity of complainants will therefore be treated as confidential during the course of investigations, although complainants may be called upon to give evidence in matters brought before the courts. All customer data will be stored in accordance with the Data Protection Act 1998.

Decisions on whether to take action will be made at the earliest possible opportunity following conclusion of officer investigations in accordance with the criteria laid down in this policy. It will however be necessary for investigations to be prioritised taking account of staff and financial resources. Therefore, **High Priority** will be given to the Council's statutory obligations and cases presenting a significant risk of harm to health or pollution of the environment. **Low Priority** will be assigned to non-statutory obligations or those cases where there is no imminent risk to public health.

3. GENERAL POLICY

- a) This policy relates to enforcement actions by the Council in respect of environmental enforcement matters.
- b) All officers will be made aware of the requirements of this policy and given training where necessary.
- c) All enforcement action will be based upon an assessment of risk to public health and the environment.
- d) All enforcement decisions will be based on objective evidence and assessment, taking all aspects of the case into account.
- e) All enforcement decisions and actions will take into account the provisions of:
 - [The Human Rights Act 1998](#)
 - [The Crime and Disorder Act 1998](#)
 - [Police and Criminal Evidence Act 1984](#)
 - [Criminal Procedure and Investigations Act 1996](#)
 - [Regulation of Investigatory Powers Act 2000](#)
 - Equal rights and anti-discrimination legislation and any advice issued by the Government, the [Chartered Institute of Environmental Health](#) and other relevant bodies.
- f) All officers will abide by this policy. Any departure from the policy must be discussed with the Environmental Health Manager or relevant Team Leader before the decision is taken, unless there would be a significant risk to public health by delaying the decision.
- g) All officers will comply with relevant Health & Safety legislation and will have due regard to their own personal safety when undertaking duties.
- h) All Staff and contractors involved in environmental enforcement will be made aware of their responsibilities under the [Public Sector Equality Duty](#) and [TDC's Equality Policy](#). They will be expected to treat people equally at all times and have regard to the needs of vulnerable people and protected groups where appropriate.

- i) This policy will be reviewed every 3 years. Reviews may also take place after significant changes in legislation, Codes of Practice or internal guidance.

4. ENFORCEMENT ACTION

- a) In making any decision on enforcement officers will consider the following criteria:-
- the seriousness of the offence
 - the offender's past history
 - consequences of non-compliance
 - the known or likely public benefit of the chosen enforcement option
 - the willingness of the offender to prevent a recurrence and in the case of a business, the confidence in management
 - the likely ability of any witnesses to give evidence and their willingness to co-operate
 - the Crown Prosecution Service's [Code of Practice for Crown Prosecutors](#)
- b) Shared Enforcement Role:-
- Before proceeding with any action officers shall consider if there is a shared or complementary enforcement role with other departments or agencies, e.g. Planning, Licensing, Police, Environment Agency, Highways Agency, and liaise with that agency.
- c) After considering all relevant information one or more of the following courses of action shall be taken:-
- no action
 - informal action (verbal or written)
 - fixed penalty notice
 - statutory notice
 - seizure
 - revocation of authorisation/enforcement notice/prohibition notice
 - simple caution
 - prosecution
 - works in default
 - injunction
- Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.
- d) Private Action:-
- Where statutory action undertaken by the Council has not been upheld or there is insufficient evidence to proceed, advice may be given on provisions within existing legislation for complainants to pursue their own action.

5. TYPES OF ENFORCEMENT ACTION

- a) **No action** – where no problems are witnessed and there is insufficient evidence to proceed.
- b) **Informal Action.**
Informal action includes:-
- Verbal advice. To be given where the offender shows an understanding and willingness to remedy contraventions of a minor nature.
 - Written advice. To be used where there is no imminent risk to health and the officer believes the offender will co-operate in remedying the offence. Written advice may also be given where it is felt necessary for the offender to consider their liabilities under law.

Informal action is appropriate where;

- the act or omission is of a trivial nature and it can be simply remedied.
- confidence in the individual/businesses management is high.
- consequences of non-compliance will not pose a significant risk to health.
- there is insufficient evidence for formal action at the time (although formal action may follow at a later date).

c) Fixed penalty notice (FPN)

This option can only be used for certain offences, e.g. littering and failing to remove faeces after a dog has fouled. This option gives the offender the opportunity to discharge liability for the offence by payment of a specified amount. FPNs must only be issued where there is sufficient evidence to prosecute. If the FPN is not paid within a specified time the case should proceed to prosecution.

For further information on Payments and Appeals of Fixed Penalty Notices see [Thanet Council Dog Fouling Notice and Littering](#)

d) Statutory notice

To be issued where

- there is enough evidence to prove an offence in court
- informal action has failed
- the officer has low expectations of the individual/business remedying the problem
- the service of a notice and subsequent enforcement, e.g. works in default, is the only realistic option to abate a nuisance or secure compliance.
- there is a risk to public health

To ensure the investigation process is fully open & transparent and that customers are not disadvantaged by excessively long and drawn out investigations, service requests of a similar nature will not re-investigated for 6 months if the team has been unable to gather any evidence of the existence of a statutory nuisance.

When drafting notices, realistic time limits shall be imposed and the case officer shall, where possible or appropriate, discuss these with the recipient. Where practicable officers shall also discuss with the recipient any works specified. The recipient should be advised that alternative methods of compliance should be put in writing along with requests for extension of time limits.

Failure to comply with statutory notices will lead to legal proceedings and/or carrying out the works specified in the notice in the recipients default. Only officers with the appropriate delegated authority will sign formal notices (**insert Delegated Authority link**).

e) Seizure

Noise equipment

Where a noise abatement notice served under the Environmental Protection Act 1990 is persistently breached, officers may enter a property to seize noise making equipment under [Section 81\(3\) of the Environmental Protection Act 1990](#) as extended by the [Noise Act 1996](#) and seize noise making equipment to abate the nuisance and/or prevent further recurrence. The seizure of equipment may pose serious health and safety risks for officers and at no time will be attempted without the full support of the Police. Officers will only seize equipment if they have reason to believe that, due to severity, other action would not be sufficient for the Council to satisfy its duty.

Vehicles

Where a person is convicted for fly-tipping under [Section 33 of the Environmental Protection Act 1990](#) the court can order the seizure of any vehicles involved in the offence. The court can also make an order depriving the owner of rights in any vehicle used in the commission of the offence and vesting these in the Environment Agency or a waste collection authority.

The Control of Pollution (Amendment) Act 1989 makes it a criminal offence for a person who is not a registered carrier to transport controlled waste to or from any place in Great Britain. It also provides under, The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 for the seizure and disposal of vehicles used for illegal waste disposal.

f) Revocation/suspension/enforcement of license/approval/permit

Licences, Approvals and Permits are issued under specific legislation and will only be refunded or revoked following appropriate procedures and consideration of all relevant evidence.

In particular, in order to warrant refusal/revocation of a Licence, Approval or Permit, the individual or organisation must meet one or more of the following criteria:

- Engage in fraudulent activity
- deliberately or persistently breach legal obligations
- deliberately or persistently ignore written warnings or formal notices
- endanger to a serious degree the health, safety or wellbeing of people or the environment.

Specific legislation can be found under the Environmental Permitting Regulations 2010:-

- Revocation. Regulation 22 – EPR 2010. Where there is reason to believe that an authorised prescribed process has not been carried on, or not for a period of twelve months, the authorisation will be revoked by giving written notice to the permit holder.
- Enforcement notice. Regulation 36 - EPR 2010. To be used where it is believed the person carrying on a prescribed process is contravening any condition of the authorisation, or is likely to contravene any such condition.
- Suspension notice. Regulation 37 - EPR 2010 – To be used where the carrying on of a prescribed process or the continuing to carry it on in a particular manner, involves an imminent risk of serious pollution of the environment. The notice shall be served on the person carrying on the process

g) Simple Caution

See guidance issued under the Ministry of Justice document – [Simple Cautions for Adult Offenders](#).

Cautions should only be issued when

- there is enough evidence to prosecute
- the offender admits the offence
- the offender understands the significance of, and is willing to accept, the caution

If the offender refuses a simple caution then the case should proceed to prosecution.

Any cases where it is felt a simple caution is warranted, must be discussed with the Environmental Health Manager or relevant Team leader in conjunction with legal services

h) Works in default

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- a notice has not been complied with within the specified time
- there is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- speedy abatement is required, e.g. a malfunctioning intruder alarm
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution

- the problem persists after prosecution.

i) Prosecution

When considering prosecution officers must follow the guidance in the [Code of Practice for Crown Prosecutors](#)

The decision to prosecute will be made by Legal Services taking account of these criteria.

The principles laid down by the Crown Prosecution Service Code of Practice require two tests to govern the decision-making process:-

(a) The Evidential Test

- The Prosecutor shall be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. The defence case must be considered and how this is likely to affect the prosecution case.
- The Prosecutor must consider whether the evidence can be used and is reliable.

(b) The Public Interest Test

- Once the evidential test has been passed, the prosecution will usually proceed unless there are public interest factors against prosecution that clearly outweigh those in favour. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be more appropriate.
- Considering the public interest in prosecution is not simply a matter of adding up the number of factors in each side. The officer must decide how important each factor is in the circumstances of each case and proceed to make an overall assessment.

Prosecution shall be initiated when one or more of the following are met:-

- there is a history of similar offences and/or written warnings have been ignored
- non-compliance with a statutory notice
- failure to pay a fixed penalty notice
- refusal to accept a simple caution
- serious breach of the law leading to a risk to the health of residents and/or the environment
- there is enough admissible and reliable evidence to show an offence has been committed by an identifiable individual/business

Any cases where it is felt a prosecution is warranted must be discussed with the Environmental Health Manager or relevant Team leader in conjunction with Legal Services.

j) Injunction

On rare occasions action under the relevant legislation may be considered ineffective, e.g. where previous prosecution has not resulted in improvement or continued wilful breaches of legislation. Any cases where it is felt an injunction is warranted must be discussed with the Environmental Health Manager or relevant Team leader in conjunction with legal services

6. COMPLAINTS AND APPEALS

It is important that those affected by enforcement decisions have an opportunity to complain or appeal against these decisions.

Where the enforcement action taken is formal, then the legislation usually provides an appeal process.

Where there is no prescribed appeals mechanism, or the action taken is informal, the [Council's Complaint Procedure](#) may be used for appeals.

7. SUMMARY

Recipients of enforcement action are entitled to expect:

- a) Officers to produce identity and authorisation if required along with information on how the identity may be checked.
- b) a clear distinction to be made between recommendations advising of good practice and requirements to meet legal obligations.
- c) officers are competent, qualified and trained for the purpose.
- d) action taken will be consistent with the Environmental Enforcement Policy.

8. APPROVAL AND MONITORING

This Policy was xxxxxx by Cabinet on xxxxx April 2014.

The Policy will be kept under constant review to take account of government guidance, changes in legislation or amendments found necessary as a result of internal monitoring through the Council's performance and service planning process.

9. ACCESS TO THE POLICY

- The policy is available on the Thanet District Council website.
- On request, this policy will be made available on paper.