



Thanet District Council

Environmental Protection Enforcement Policy

2022-27/V1/Regulatory Services

CONTENTS

- 1. Purpose**
- 2. Introduction and Scope**
- 3. How we Investigate Complaints**
- 4. General Policy**
- 5. Enforcement Action**
- 6. Types of Enforcement Action**
- 7. Complaints & Appeals**
- 8. Summary**
- 9. Approval**
- 10. Access**

1. 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, proportionate and relate to common standards to ensure public health and the environment are adequately protected.

This policy is designed to:

- Ensure consistency of approach and enforcement in respect of environmental protection.
- Provide officers with guidelines to enable them to make reasoned decisions regarding enforcement.
- Inform the public and the proprietors of businesses of the principles by which enforcement action is determined and subsequently taken
- Ensure that, as a signatory to the Government's Enforcement Concordat ⁽¹⁾, the Council has a relevant (and periodically reviewed) policy in place for Environmental Protection Enforcement.

2. INTRODUCTION AND SCOPE

This is an environmental protection legislative based policy that seeks to secure appropriate compliance through a fair and consistent approach. This includes taking into account the Regulator's Code, advice from the Crown Prosecution Service, the Home Office, Codes of Practice and Guidance.

This policy will support the delivery of the Council's Corporate Statement - Priorities for 'Growth, Environment and Communities'. This is an overarching policy and will apply generally, unless alternative levels of enforcement action are specified under separate policies.

Environmental Protection has responsibility for a wide range of functions, including:

- Pest Control
- Insect Identification
- Drainage
- Air Quality
- Industrial Pollution
- Contaminated Land
- Environmental Damage
- Private Water Supplies
- Noise Nuisance
- Odour Nuisance
- Light Nuisance
- Dust Nuisance
- Smoke Nuisance
- Public Health (Control of Disease)
- Filthy and Verminous Premises
- Statutory Planning Consultee
- Responsible Authority for Licensing Consultations / Reviews

The Council's aim in respect of the above functions is to:

- Comply with statutory and regulatory duties in respect of environmental issues and protection of the public
- Improve public health in Thanet
- Protect against harm to human health and damage to the environment in Thanet
- Protect and enhance environmental standards in Thanet
- Protect and improve the quality of life for people in Thanet
- Safeguard and improve the environment for the benefit of future generations
- Make a positive contribution to national and international environmental protection initiatives

The Council has 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.

The policy is 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

This embodies certain principles to help businesses comply with legislation and, at the same time, help enforcers to achieve higher rates of voluntary compliance. Enforcement needs to be fair, but firm and effective. This policy is in keeping with the [Regulator's Code](#) ⁽²⁾ and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

The following principles underpin this approach:

- 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

The Council's Environmental Protection team uses a variety of means to ensure that individuals and organisations meet their responsibilities. These include:

- Advising, guiding and informing
- Educating
- Monitoring
- Inspecting
- Referring to and liaising with other agencies
- Warning
- Issuing Statutory Notices
- Formally cautioning
- Prosecuting
- Carrying out works in default

3. HOW WE INVESTIGATE COMPLAINTS

The Council operates 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 and licensing sub-committee in respect of a premises licence review. All customer data will be processed in accordance with [The Data Protection Act 2018 and General Data Protection Regulation \(GDPR\)](#)

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.

4. GENERAL POLICY

The Council seeks to avoid bureaucracy and unnecessary expense.

- a) This policy relates to enforcement actions by the Council in respect of Environmental Protection matters. Only an officer who is authorised by the Council may undertake enforcement action. Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action.
- b) Environmental Protection Officers will have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their authorisations on demand.
- 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. The case officer's decision will be based upon professional judgement, legal guidelines, statutory codes of practice and relevant guidance. Advice and confirmation can be obtained from colleagues and the Regulatory Services Manager.
- 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 Regulatory Services Manager 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 protection 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) The council operates a zero tolerance policy on abuse and aggression towards its staff and will take all action necessary against offenders who assault our staff.

j) This policy will be reviewed periodically after significant changes in legislation, codes of practice or internal guidance.

5. 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 more appropriate enforcing authority, i.e. where a matter may overlap or where there is a shared or complementary enforcement role with other departments or agencies, e.g. Planning, Licensing, Police, Environment Agency, Highways Agency, UK Health Security Agency, Social Services, Housing Management & Associations and liaise with that agency. In certain circumstances, other agencies may be the most appropriate enforcement authority particularly where this achieves compliance and is in accordance with corporate priorities. Where there are unacceptable adverse effects e.g. regular sleep deprivation/awakening and shared enforcement may not lead to a timely resolution, a statutory notice may be the most appropriate enforcement mechanism.

Police assistance may also be requested in circumstances where an offender fails to give their details, there is a suspicion an offender has given false details or there is a concern that an offender may become abusive or physically aggressive. Further action can be taken against an offender for failure to provide their details.

c) After considering all relevant information one or more of the following courses of action shall be taken:-

- No Action
- Informal Action (written or verbal)
- Statutory Notice
- Seizure
- Revocation of Permit / Enforcement Notice
- Simple Caution
- Community Protection Notice (Nuisance)
- Fixed Penalty Notice
- Works in default
- Prosecution
- Criminal Behaviour Order
- Proceeds of Crime Actions
- Injunction
- Publicity

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.

6. TYPES OF ENFORCEMENT ACTION

a) No action – where no or low level adverse effects 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) Statutory Notice

To be issued where all of the following applies:

- there is enough evidence to prove an offence in court
- the business has failed to demonstrate a Best Practicable Means Defence
- informal action has failed
- where shared enforcement has been or is likely to be unsuccessful at achieving compliance
- 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

Please note that Statutory Nuisance notices specifically exclude the following:

- Military premises occupied by the Ministry of Defence
- Premises occupied by or for the purposes of a visiting force
- Noise caused by aircraft other than model aircraft

The following penalties apply for non compliance with an abatement notice:

- It is a criminal offence to breach, or fail to comply with, any requirement or prohibition imposed by an abatement notice.
- Offenders are liable on summary conviction to a fine (amount is set by the court) with a further fine for each day on which the offence continues after the conviction.

Except:

- Where a person commits such an offence on industrial, trade or business premises they shall be liable on summary conviction to an unlimited fine
- Where appropriate, seizure is the first action following breach of an abatement notice due to the comparative speed and effectiveness of resolving the nuisance compared to prosecution. Irrespective, prosecution also remains an option.

To ensure the investigation process is fully open & transparent and that customers are not disadvantaged by excessively long and drawn out investigations, the investigation period will be limited to 4 weeks, with the possibility of a 4 week extension at the discretion of the investigating officer.

Unless there has been a significant worsening in circumstances, service requests of a similar nature will not be re-investigated for a **period of 12 months** where Environmental Protection officers have 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. Where significant expenditure is required to comply with a notice or there are significant impacts on a business in compliance the notice shall be suspended pending appeal, provided there are not risks to public health in doing so.

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.

Notices may be withdrawn under certain circumstances (e.g. a technical fault is discovered in a notice or further scrutiny of the investigation indicates decisions were made based on fatally flawed evidence) in consultation with the Regulatory Services Manager and/or Legal Department. Officers will seek to keep relevant parties informed of any changes to the enforcement approach that any such withdrawal may cause.

Except where a prosecution has taken place, after a period of three years from the service of an abatement notice Environmental Protection will not seek to enforce an abatement notice without a contemporary investigation being conducted.

d) Seizure of Noise Making 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 the severity, other action would not be sufficient for the Council to satisfy its duty.

e) Vehicles/Machinery/Equipment in the Street

Where a nuisance exists officers may also serve an Abatement Notice on the person responsible for causing noise in the street. If the vehicle, machinery or equipment (VME) is unattended then the officer may affix the notice directly to the VME. The officer must then try to take reasonable steps to trace the person responsible to serve a copy of the notice on them.

If they cannot be traced then the officer may take action to abate the nuisance including gaining entry into a vehicle, and towing away if necessary utilising a suitable local vehicle recovery company.

f) Revocation/suspension/enforcement of an Environmental Permit

Environmental Permits are issued under the Pollution, Prevention and Control Act 1999 and will only be refunded or revoked following appropriate procedures and consideration of all relevant evidence.

In particular, in order to warrant revocation of a 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 well-being of people or the environment.

Specific legislation can be found under the Environmental Permitting Regulations 2016:-

- Revocation. Regulation 22 – EPR 2016. 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 2016. 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 2016 – 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 Regulatory Services Manager in conjunction with legal services.

h) Community Protection Notices (Nuisance Behaviour)

Section 43 of the [Anti-Social Behaviour, Crime and Policing Act 2014](#) provides that a Community Protection Warning/Notice (CPW/N) can be issued by authorised officers if the conduct of the individual or body (ie. business, organisation, etc...) is having a detrimental effect on the quality of life of those in the locality, that the conduct is persistent and continuing and that the conduct is unreasonable.

Officers will:

- Inspect/monitor reports.
- Issue a warning, which is a requirement of the Act, before a CPN is issued.
- Issue a Community Protection Notice specifying the conduct to be stopped or action to be taken.
- Monitor the behaviour of the offender after the CPN is served.
- Issue a Fixed Penalty Notice (FPN) for a breach of of a CPN.
- Consider remedial action under section 47 of the Act.
- If the FPN is not paid, and/or the conduct is repeated then officers will consider a prosecution. Breach of a CPN carries a fine in the magistrates court at level 4 for an individual or an unlimited fine for a body.

i) Fixed Penalty Notice

This option can only be used for certain offences, e.g. failing to comply with the requirements of a Community Protection Notice. 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.

j) Works in default

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. These include but are not limited to; Notices served under the Public Health Acts, Prevention of Damage By Pests Act. Works in default may be carried out where:

- a notice has not been complied with within the specified time
- it is in the public interest to carry out the work
- 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.

k) 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 or business

Any cases where it is felt a prosecution is warranted must be discussed with the Regulatory Services Manager in conjunction with Legal Services.

l) Criminal Behaviour Order (CBO)

CBOs replaced Anti-Social Behaviour Orders (ASBOs) under the Anti-Social Behaviour, Crime and Policing Act 2014. A CBO can prohibit an offender from doing certain things and/or require them to do certain things. e.g. prohibition from certain locations or curfews.

The Council will consider making an application to the court for a CBO on conviction where the offender's behaviour has caused, or was likely to cause, harassment, alarm or distress to any person. The court can make an order where satisfied beyond reasonable doubt that the offender has engaged in such behaviour and, by making the order will help prevent the offender from engaging in such behaviour.

m) Proceeds of Crime Actions (POCA)

The purpose of proceeds of crime action is to recover the financial benefit that the offender has obtained from his or her criminal conduct.

Applications may be made under the Proceeds of Crime Act for confiscation of assets in relevant cases. Proceedings are conducted according to the civil standard of proof and applications are made after a conviction has been secured.

We will apply for POCA if, given the circumstances and relevant guidance, we believe it is appropriate to do so. We will review our use of sanctions under the [Regulatory Enforcement and Sanctions Act 2008](#).

n) 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 Regulatory Services Manager relevant Team leader in conjunction with legal services

o) Publicity

We will draw media attention to factual information about convictions using the Thanet District Council Communications Team. Simple Cautions and FPNs may serve to broadcast the requirement to comply with environmental law.

7. 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 Complaints Procedure](#) may be used for appeals.

8. 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 Protection Enforcement Policy.

9. APPROVAL AND MONITORING

The Policy will be kept under 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.

10. ACCESS TO THE POLICY

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

Footnotes

- (1) Government's Enforcement Concordat - A guidance document drawn up in collaboration with businesses, local and national regulators which sets out principles of good enforcement. Department of Trade and Industry 1998
- (2) Regulators' Code - Seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate. Department for Business Innovation and Skills, April 2014.