

LICENSING ENFORCEMENT POLICY



AIMS OF POLICY

- To promote a consistent approach to licensing related enforcement within the district.
- To provide licensing officers with a policy to enable them to make decisions in the field consistent with current nationally accepted standards and the Enforcement Concordat.
- To inform licensees and members of the public of what can be expected from licensing officers carrying out enforcement work.

GENERAL BACKGROUND

- The primary responsibility for ensuring that any necessary licence/permit/registration has been obtained rests with those who carry out the activity in question. They then have a responsibility to comply with the national law relevant to that activity and with any conditions that have been attached to the licence, etc.
- The Council has responsibility for:-
 - ❖ issuing various licences, permits and registrations which are enacted by many different pieces of legislation
 - ❖ enforcing the conditions subject to which the licence, etc. has been granted
 - ❖ taking enforcement action against anyone acting illegally, e.g. without a licence, etc.
- The primary objectives of the licensing regime are to ensure, where appropriate:-
 - ❖ the safety and welfare of anyone who could be affected by the activity, including members of the public, employees, performers, etc.
 - ❖ prevention of fraud
 - ❖ prevention of nuisance to others
 - ❖ the potential for crime and disorder is minimised
 - ❖ by carrying out enforcement functions in an equitable, practical and consistent manner that a thriving local economy is promoted
 - ❖ a fair and safe trading environment is maintained
 - ❖ satisfactory standards of animal welfare are maintained
- The Council has various means at its disposal to achieve these objectives, including:
 - ❖ informal action - such as provision of guidance, advice and warning letters
 - ❖ formal action - such as refusal to grant, renew or transfer licences; suspension, revocation or refusal to renew licences, and prosecution,
- The Council has signed and is therefore committed to the Enforcement Concordat.

THE PRINCIPLES OF ENFORCEMENT

- The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses and individuals want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, whilst taking firm action including prosecution where appropriate against those who flout the law or act irresponsibly.
- The Council has adopted the Concordat on Good Enforcement and accordingly enforcement activity is based on the following basic principles:-

Standards

- In consultation with relevant interested parties we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards (some are already included in this document) and our performance against them. The standards will be made available to businesses and others who are regulated.

Openness

- We will provide information and advise in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about our work consulting businesses, voluntary organisations, charities, consumers and licensees. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

- We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage licensees to seek advice/information from us. Applications for licences, permits and registrations will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps or time delays.

Complaints About Service

- In the first instance anyone wishing to complain about the service should contact the Licensing Manager. If still dissatisfied the Council does have a formal complaints procedure and this can be initiated by contacting the Council (telephone 01843 577000), or email customer.services@thanet.gov.uk.

Proportionality

- We will minimise the costs of compliance for business by ensuring that any action we require proportionate to the risk. As far as the law allows, we will take account of the circumstances of the case and the attitude of the person with whom we are dealing when considering action. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where possible.

Consistency

- We will carry out our duties in a fair, equitable and consistent manner. While licensing officers are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies.

Human Rights Act

- The Human Rights Act 1998 (HRA) makes it unlawful for a public authority to act in a way that is incompatible with the European Convention on Human Rights (ECHR). This policy will be implemented taking into account the legal and procedural implications of both the HRA and ECHR.

METHODS OF ENFORCEMENT

- Decisions taken on the appropriate enforcement action to take will be based on the principles set out above. With prejudice to these principles, further information is given below regarding the range of actions open to the Council's licensing officers and how these are likely be applied in practice.
- The action an officer takes will be decided on the basis of the above principles taking into account
 - ❖ the nature and severity of the failure to comply
 - ❖ the willingness and intention of the person to comply
 - ❖ their knowledge of licensing legislation
 - ❖ the track record of their previous compliance

Informal Enforcement

- Licensing officers will seek to help those persons affected by the controls by giving guidance on compliance. They are aware that they are major, and in some instances the only, source of help on how best to comply with licensing rules and therefore will give guidance and advice.
- The guidance will be verbal, in the form of leaflets or provision of details where suitable guidance may be readily obtained.
- Requirements and observations made in writing will be made either at the time of inspection on special pre-carbonated forms or within 10 working days by letter. In either instance the officer will clearly identify any fault and necessary remedial works in a manner that is readily understandable.
- All requirements made verbally or in writing will clearly distinguish whether they are mandatory or best practice advice.
- All mandatory requirements will be given a reasonable timescale for completion.

Formal Enforcement

Licence Suspension Notices

- These can be quick and effective in that they ensure, subject to the appeals procedure, that the relevant activity ceases without delay.

- Suspension notices will be served where :-
 - ❖ the relevant legislation permits their service, and
 - ❖ the officer had reason to believe that, due to the severity of the risk/hazard brought about by non-compliance, informal action would not be sufficient for the Council to satisfy its regulatory duty or not be successful, or has already failed, and
 - ❖ only the immediate cessation of the Contravention would suffice to enable the Council to fulfill its statutory licensing duties
- At the time of service of a Suspension Notice, information will be given as to the reason for service, the ramifications, what is required before the notice can be withdrawn and the appeal procedure.

Revocation or Refusal to Grant or Renew a Licence

- If the Licensing Manager, having regard to any legal or nationally recognised standards; local guidelines; observations from the Police, Fire Authority or other Council officer, is of the opinion that an existing licence should be revoked or not renewed or that an application for a new licence should not be granted he will refer the matter to the Council's Licensing Board. Only the Board, which is made up of elected Councillors has the power to take such action.
- In a case where such action is proposed the licensee or licence applicant will be advised verbally and in writing of: -
 - ❖ the reason for the proposed action
 - ❖ the date, time and place of the Board meeting and the content of the written report sent to the Board in advance of the meeting
 - ❖ their right to appear before the Board, to be heard and, if they so wish to be legally represented.
 - ❖ the procedure followed by the Board
- If the Board decides to revoke or refuse to grant or renew a licence the licensee/applicant will be informed so verbally at the meeting by the Chairman of the Board. This will be confirmed in writing by the Licensing Manager within 5 working days and information provided about any right of appeal.

Prosecution

- Discretion will be used in deciding whether to initiate a prosecution. While prosecution can draw attention to the need for compliance with the law, the other approaches referred to above can often be a more effective way of securing compliance. However, prosecution is an essential part of enforcement and where the circumstances warrant it and there is adequate evidence to support a case, prosecutions will be taken without prior warning or recourse to alternative sanctions.
- The decision to prosecute will be made by the Licensing Manager, taking into account the criteria set out in the Code for Crown Prosecutors - in particular the evidential test and the public interest criteria. The Code is a public document and is available from the CPS, Rose Court, 2 Southwark Bridge, London SE1 9HS or on their website: www.cps.gov.uk. Subject to these two tests being satisfied, in deciding whether to prosecute the following will be taken into account:-
 - ❖ the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm

- ❖ the general record and approach of the offender
- ❖ if there has been reckless disregard of licensing legislation
- ❖ if there have been repeated breaches or persistent poor compliance
- ❖ if there has been a failure to comply with a written warning or suspension notice
- ❖ officers have been intentionally obstructed in the lawful course of their duties. Where officers are assaulted the Council will seek prosecution of offenders
- ❖ false information has been wilfully supplied or there has been an intent to deceive or obtain an unfair pecuniary advantage
- ❖ it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law. And conviction may deter others from similar failures to comply with the law

Formal Enforcement - Various Other Powers

- In carrying out their functions, duly authorised licensing officers have a range of powers including the right :-
 - ❖ of entry to premises and places, and
 - ❖ to examine premises, places, vehicles and registers, and
 - ❖ to seize licence plates
- Prior to using such powers, the officers will have decided that informal action in that particular instance would not be appropriate, or would be inadequate for the Council to satisfy its duty, or would not be successful, or had already failed.

Shared Enforcement Role

- The Council's Licensing Department liaises closely with other statutory bodies who have a direct interest and involvement in licensing matters, including the Police, Fire Authority, Gambling Commission, RSPCA and others. This liaison ranges from discussion at a strategic level about licensing matters to joint inspections inside and outside usual office hours.
- In all cases considered by the Licensing Board the Police are requested to make observations on the crime and disorder implications and a Police officer is present at the meeting of the Board to answer any questions Board members, applicants and any objectors may have.
- If during the course of licensing work evidence of a crime is discovered this will be reported to the relevant agency.
- Licence application forms contain the following statement: 'This authority is under a duty to protect the public funds it administers and to this end may use the information you have provided on this form within this authority for the prevention and detection of fraud. It may also share this information with other bodies administering public funds solely for these purposes'.
- Any covert surveillance which is conducted as part of any investigation of any case which falls within this policy will comply with the Regulation of Investigatory Powers Act 2000 (RIPA), in that covert surveillance falling within RIPA will be authorised and conducted in accordance with the statutory framework and any Code of Codes made thereunder.

INTERESTS OF CONSUMERS

The Council recognises that many businesses are seasonal and operate out of normal office hours and will need inspection and advice during those trading hours.

- The Council will also operate a system whereby an officer can be contacted out of normal office hours to investigate a fatal or major accident
- The Council also recognises that English may not be the first language of persons with whom it has to deal and care will therefore be taken to ensure that its enforcement actions are clearly understood by providing documents and arranging for interpreters in an appropriate language wherever possible.

COMPETENCE OF LICENSING ENFORCEMENT OFFICERS

No officer will carry out licensing enforcement duties unless suitably trained, experienced and authorised in writing by the Chief Executive to do so.

- Training will be provided for all enforcement officers as required to take account of changes in legislation and enforcement procedures.

REVIEW OF POLICY

- This policy will be kept under constant review to take account of changes in legislation or amendments found necessary as a result of internal monitoring.