

Thanet District Council Licensing Officers Enforcement Policy

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1. 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.

2. 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
- establishing appropriate policies
- providing advice and guidance
- establishing appropriate licence conditions
- carrying out inspections
- consulting with other agencies
- assessing suitability and fitness
- determining applications for licences
- undertaking monitoring
- responding to complaints
- initiating appropriate disciplinary action
- initiating legal intervention where necessary
- refusing, revoking, suspending or varying licences

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 public nuisance
- protection of children from harm
- ensure public safety
- 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

3. Areas of Responsibility

Many pieces of legislation require the implementation of systems of licensing and the service has responsibilities to determine and enforce many licensing regimes. The licensing authority has the responsibility for determining applications for licences, permits and registrations as detailed in the following table:

- Amusements with prizes (Gaming machines)
- Animal boarding establishments
- Alcohol and entertainments
- Breeding of dogs
- Casinos and Bingo
- Dangerous wild animals
- Ear piercing, tattooing, electrolysis, acupuncture, skin colouring
- Exhibition of animals
- Hackney Carriage & Private Hire drivers
- Hackney Carriage & Private Hire vehicles
- Private Hire Operators
- Hiring of horses
- Home boarding establishments for Animals
- House to house collections
- Late night refreshment
- Lotteries (Raffles)
- Game dealers
- Performing animals
- Scrap metal dealers
- Selling animals as pets
- Sex shops
- Street collections
- Pavement licensing
- Street trading
- Zoos

4. 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

Openness means helping individuals and businesses to understand what we expect of them and what they should expect from us.

It also means making clear why an officer intends to, or has taken enforcement action. This means distinguishing between statutory requirements and good practice. Individuals and organisations need to know what to expect from enforcing authorities and their procedures with regard to regulation. We will ensure that, wherever possible: -

- where action is required, it is clearly explained (in writing, wherever possible) why the action is necessary together with a suitable timescale with distinction being made between good practice and what is legally required
- General issues are discussed on what is required by law before enforcement action is taken, unless urgent action is required to protect service users or prevent evidence being destroyed;
- Where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event

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 coordinated to minimise unnecessary overlaps or time delays.

Complaints About Service

In the first instance, anyone wishing to complain about the service should contact Licensing via email at licensing@thanet.gov.uk or telephone (01843) 577416. If still dissatisfied, the Council has a formal complaints procedure and this can be initiated by contacting the Council via email at customer.feedback@thanet.gov.uk, in writing to Customer Feedback, Thanet District Council, PO Box 9, Cecil Street, Margate, Kent, CT9 1XZ or contact us by telephone:- (01843) 577000.

Alternatively, you can submit a complaint or a compliment at:
<https://www.thanet.gov.uk/services/complaints-compliments/>

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

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Individuals and organisations have the right to expect consistency in the advice given, use of enforcement powers, decisions to prosecute and the use of disciplinary procedures. Officers need to take into account many variables including the scale of impact on public safety, the effect of any non-compliance on others, the attitude and competency of the offender and history of previous incidents. Decisions on enforcement action are a matter of professional judgement and the Licensing Officer must exercise both consistency and discretion, including effective arrangements for liaison with other enforcement authorities. Where any doubt arises, discussions will be held with senior officers to agree the necessary course of action and to ensure a consistent approach. In addition, enforcement activities will be undertaken in accordance with the Council's Equal Opportunities Policy and with due reference to the provisions of the Human Rights Act and European Convention on Human Rights.

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.

5. Methods of Enforcement

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, serve improvement notices and/or prosecution.

The Council has signed and is therefore committed to the Enforcement Concordat.

Decisions taken on the appropriate enforcement action required will be based on the principles set out above. Without 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

5.1 Informal Enforcement

Licensing Officers will seek to help those persons affected by these controls by offering guidance on compliance. Officers are aware that they are the key, and in some instances the only, source of help on how best to comply with licensing rules and therefore will provide appropriate guidance and advice.

The guidance may be verbal, in the form of leaflets or by signposting to where suitable guidance may be readily obtained.

Requirements and observations made will be made either at the time of inspection or/and within 10 working days in writing.

In either instance the officer will clearly identify any breaches, or other failings or defects, and necessary remedial works in a manner that is readily understandable.

All recommendations, made either verbally or in writing, will clearly distinguish whether they are mandatory or best practice advice.

All mandatory requirements will be subject to statutory timescales for completion or given a reasonable timescale for completion where no specific timescale is prescribed by legislation.

5.2 Formal Enforcement

5.2.1 - Improvement Notices

These notices will be issued to ensure compliance with Animal Welfare concerns, a time scale for rectification will be given depending on the severity of the issue.

5.2.2 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 fulfil 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.

5.2.3 Revocation or Refusal to Grant or Renew a Licence

Please refer to the Statement of Licensing Policy for matters related to the Licensing Act 2003. This will be dealt with by the Licensing Sub Committee.

If the Senior Licensing Officer or Regulatory Services 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 they will refer the matter to the Council's Licensing Board.

Only the Licensing 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 verbally at the meeting by the Legal Officer present at Board Hearings. This will be confirmed in writing by the Senior Licensing Officer within 5 working days, alongside information provided about any right of appeal.

5.2.4 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 Senior Licensing Officer, in conjunction with the Regulatory Services Manager and Legal Services, 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 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

5.2.4 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,
- to seize any identifying Thanet District Council plates
- to seize Animals
- to seize evidence

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.

5.2.5 Tattooing, semi-permanent skin-colouring, cosmetic piercing, electrolysis and acupuncture

Under Local Government (Miscellaneous Provisions) Act 1976 it is a criminal offence to trade without registration (licensing) or to be in breach of the relevant local authority byelaws. Licensing Officers would determine whether it would be in the public interest to proceed with a prosecution in consultation with the Legal Team and Regulatory Services Manager. See 5.2.4.

5.2.6 Animal Licensing

If a dispute is raised with regards to star rating given as not reflecting the animal welfare standard and risk level of a business, the applicant should first make contact with the Licensing Officer to discuss this matter.

If the applicant is still not satisfied with the officer's explanation, the applicant has the option to formally appeal. The appeal must be made in writing and submit it within 21 days of the grading being issued. This can be by letter, addressed to Licensing, Thanet District Council, P.O. Box 9, Margate, Kent CT9 1XZ or by email to licensing@thanet.gov.uk.

An appeal will be considered by the head of the department that issued the licence or another senior officer who has not been directly involved in the inspection on which the grade is based. The council must consider the appeal and provide a decision to the business within 21 days of the written appeal request being received.

The costs of any additional inspections related to the appeal will be borne by the applicant unless it results in a higher rating being awarded. This will depend on the nature of the dispute and whether a decision can or cannot be made on the basis of the paperwork.

If the applicant then disagrees with the outcome of the appeal they can challenge the decision through judicial review, they can also contact the Local Government Ombudsman if they consider that the Council have not properly followed the regulations and any statutory guidance.

A licence may also be refused or suspended, if the officer ascertains:

- the applicant is not capable or meeting their licence conditions
- that granting a licence might negatively affect the welfare, health or safety of the animals involved in the activity
- Consider the accommodation, staffing or management are inadequate for the animals' well being or for the activity or establishment to be run properly. The relevant guidance documents for the activity will explain in detail the requirements and conditions that must be met.
- that the applicant has been disqualified from holding a licence as per Schedule 8 of the Regulations.

The Licence Holder / Applicant may appeal to a First-tier Tribunal if they do not agree with the decision made. This must be done within 28 days of the decision.

5.2.7 Shared Enforcement Role

The Council's Licensing Officer's liaise 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 cases considered by the Licensing Board, the Police are requested to make observations

on the crime and disorder implications and a Police officer may be 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 Codes made thereunder.

6. 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 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.

7. Competence of Licensing Officers

No Licensing Officer will carry out licensing enforcement duties unless suitably trained, experienced and authorised in accordance with the constitution.

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

8. 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.

9. Disclosure and Data Protection

It is Thanet District Council's policy that disclosures will be made on receipt of a written application under the Freedom of Information Act 2000.

We process personal data in accordance with the UK General Data Protection Regulation and the Data Protection Act 2018 in order to undertake our duties.

Further Information

How is your information used?

We may use information to: process applications, investigate and prosecute relevant illegal activities, investigate and prosecute Corporate Fraud; send communications that have been requested or that may be of interest; ask agencies, government departments or other public bodies to give us information they have about you; check information you have provided, or information about you that someone else has provided, with other information we hold; get information about you from certain third parties, or give information to them to check the accuracy of information, prevent or detect fraud or protect public funds. These third parties include Government Departments, other Local Authorities and private sector companies, as allowed by law.

Who has access to your information?

We may share information with:

Other Council Departments – to ensure we meet our statutory duties; or to collect debt, and prevent fraud and the misuse of public funds.

External organisations, for example, HM Revenues & Customs, the Department of Work and Pensions, the Police, the Audit Commission and other enforcement agencies and third parties, for other purposes allowed by law, including, to prevent fraud and the misuse of public funds.

For further information about how your personal information will be used, visit www.thanet.gov.uk where you can see a full copy of our TDC privacy notice.

Alternatively you can request a hard copy from - dataprotection@thanet.gov.uk

10. Contact Details

Licensing Officers can be contacted at:

Thanet District Council
P O Box 9
Cecil Street
Margate
Kent
CT9 1XZ

Telephone: 01843 577000
E-mail: licensing.enforcement@thanet.gov.uk