



Corporate Enforcement Policy

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1. INTRODUCTION

- 1.1 Nuneaton and Bedworth Borough Council (The Council) is responsible for enforcing a wide range of legislation. This document sets out the Council's Enforcement Policy. The policy sets out the framework that will be applied across the regulatory services of the Council, in their various roles of protecting the public, the environment, consumers and those at work. These services include:
- Environmental Health;
 - Building Control;
 - Development Control;
 - Housing and Communities (including enforcement of housing legislation for private sector housing);
 - Houses in Multiple Occupation and Void Properties;
 - Highway and Car Park regulation;
 - Licensing;
 - Council Tax, Benefits and Business Rates; and
 - Environmental Maintenance - Fly tipping, littering, Graffiti and Fly posting
- 1.2 Due to the range of enforcement issues dealt with by the Council, there is no one approach which fits all and therefore when dealing with particular issues, some service areas have separate policies and links to these are included within this policy.
- 1.3 This Council takes breaches of legislation seriously and always carries out investigations where necessary. Enforcement includes any action taken by Officers aimed at ensuring that individuals or businesses comply with the law. The enforcement options will differ where different pieces of legislation are used, but the principles of application should remain constant.
- 1.4 Any reference within this Policy to staff, employees or Officers includes individuals employed to carry out duties on behalf of the Council. These Officers may be contractors, agency workers, partners, and employees of other Councils where there are joint working arrangements in place.
- 1.5 Enforcement includes visits, verbal and written advice on legal requirements and good practice, assistance with licensing compliance, written warnings, the service of statutory and fixed penalty notices including financial penalties, prohibitions, formal cautions, attachment to earnings (including some benefits and allowances), prosecution, seizure and detention, works in default, injunctions and liaison and cooperation with other enforcement authorities where appropriate.

2. PURPOSE OF THE POLICY

- 2.1 The purpose of this Policy is to set out the guiding principles by which legislation will be enforced by the Council to protect public health, safety, and the environment within the

Council's jurisdiction and ensures that the Council will carry out its enforcement functions in an equitable, practical, and consistent manner.

2.2 It provides an enforcement framework in accordance with:

- The Central and Local Government Concordat on Good Enforcement;
- The Legislative and Regulatory Reform Act 2006;
- The Regulators Compliance Code;
- The Crime and Disorder Act 1998; and
- The Regulatory Enforcement and Sanctions Act 2008.

3 PRINCIPLES AND PROCEDURES FOR GOOD ENFORCEMENT

3.1 The Council has adopted the Central and Local Government Concordat on Good Enforcement. The Legislative and Regulatory Reform Act 2006 also places a duty on the Council to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions. Regulation is made up of the 3 E's Engagement, Education and Enforcement.

3.2 The 'Principles of Good Regulation', together with the principles set out in the Concordat, are intended to ensure:

- **Standards:** Provide and publish clear standards setting out the level of service and performance provided by the Council.
- **Openness:** Provision of information and advice in plain language about how we carry out our work, including consultation with stakeholders.
- **Helpfulness:** Provision of advice and assistance on compliance in a courteous efficient and prompt manner.
- **Proportionality:** When making a decision on appropriate enforcement action, Officers will, where discretion is allowed, consider both the circumstances of the case and history of the parties involved and will ensure that the remedial action required is proportionate to the risks and/or disadvantage created by the non-compliance, that it reflects any advice issued by Central Government or other co-ordinating bodies and takes into consideration relevant advice, Policy and the aims of the Council.
- **Consistency:** Duties to be carried out in a fair, equitable and consistent manner and with arrangements in place to promote consistency.
- **Transparency:** Access to information regarding regulatory procedures and decisions to be freely available.
- **Accountability:** The Council will be accountable for the efficiency and effectiveness of its regulatory activities.
- **Targeting:** The Council accepts that its enforcement resources are limited and, where appropriate, they should be focused on those persons or companies whose activities give rise to the risks which are most serious or least well controlled on their own premises or public open space. Enforcement is informed through

intelligence arising from an investigation or complaints, planned projects, special surveys, enforcement initiatives or as a requirement from a Government Department.

- **Confidentiality:** The Council will ensure information provided in confidence is treated accordingly.

4 ENFORCEMENT OPTIONS

4.1 The options available (but not limited to) are:

- Informal action and advice – written or oral;
- A range of Statutory Notices generally requiring some remedy within a specified timescale (or possibly immediately);
- Fixed Penalty and Civil Penalty Notices;
- Letter of warning;
- Simple Caution;
- Financial Penalty;
- Prosecution;
- Prohibition;
- Injunction;
- Injunctive Restraint;
- Seizure of goods, equipment, articles or records (paper or computer);
- Execution of work in default i.e. works required by a Statutory Notice where the recipient has not complied;
- A range of Statutory Orders;
- Compulsory purchase and enforced sale of properties or land;
- Attachment to earnings;
- County Court Enforcement;
- Bankruptcy and Winding-Up Petitions;
- Proceeds of Crime Applications.

5 ENFORCEMENT ACTION

5.1 All enforcement action, whether formal or informal, will be carried out in accordance with the principles set out in this Policy.

5.2 In deciding to take formal action and, if so, what type of action to take, Officers will consider the following:

- Any individual Enforcement Policy relevant to their practice area (see links below);
- The seriousness of the breach or contravention;

- The consequences of non-compliance in terms of risk to people, property, the community or the environment;
- The individual's or company's past history in terms of compliance;
- Confidence in management, level of awareness of statutory responsibilities and willingness to prevent a recurrence;
- The likely effectiveness of the various alternative enforcement options;
- The public interest, protecting public health, public expectation and the importance of the case in setting a precedent;
- The application of any national or local guidance to the matter in question;
- The aims and priorities of the Council;
- Information received following liaison with other external enforcing agencies;
- Relevant case law and guidance;
- The likelihood of the contravener being able to establish a defence;
- The information received following liaison with other authorities;
- The reliability of witnesses.

5.3 The most efficient and effective action will be taken to achieve the desired compliance with the law. The decision will be taken in an objective and fair way in accordance with the principles set out in this Policy.

6 PROSECUTION

6.1 The Council will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can sometimes promote compliance with legislation more effectively. However, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

6.2 Each case will be treated as unique and considered on its own facts and merits with due consideration to the Equalities Act 2010 and the Human Rights Act 1998. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

6.3 The prosecution of offenders will be used judiciously but, without hesitation, against those businesses or individuals where the law is broken and the health, safety, well-being or amenity of the public, employees and consumers are subject to serious risk.

6.4 Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. The Council will have due regard to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

6.5 The decision to prosecute will consider the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service. Both stages of the 'Full Code Test' as set out in the Code for Crown prosecutors will be applied as set out below:

The Evidential Test

- 6.6 There must be sufficient evidence to provide a realistic prospect of conviction and the evidence must be admissible and reliable.
- 6.7 In determining the sufficiency of evidence, consideration should be given to the following factors:
- Availability of essential evidence;
 - Credibility of witnesses – are they likely to be seen as credible witnesses and whether they are likely to be consistent and fail under cross-examination? – are they willing to attend as witnesses? – could they be ‘hostile’ witnesses?
 - Where the case depends in part on admissions or confessions, regard should be had to their admissibility;
 - Where two or more defendants are summonsed together, the sufficiency and admissibility of evidence available against each defendant, in the event that separate trials are ordered.
- 6.8 In determining the admissibility of evidence, regard should be given to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996 and associated Codes of Practice.

The Public Interest Test

- 6.9 When satisfied that sufficient evidence is available, consideration must be given to whether the public interest requires a prosecution.
- 6.10 The following considerations should apply:
- Seriousness of the offence – the degree of detriment or potential detriment to consumers, employees, or the environment. Current public attitudes to the particular breach of law should be considered.
 - The age of the offence – less regard will be paid to this if the length of time could be attributable to the defendant themselves, the complexity of the case or the characteristics of the offence that have contributed to the delay in its coming to light.
 - The age, circumstances, or mental state of the offender – less regard to this is given if there is a real possibility of repetition or the offence is of a serious nature. Whether the defendant is likely to be fit enough to attend Court should also be considered.
 - The willingness of the offender to prevent a recurrence of the problem. If the circumstances that give rise to the offence have subsequently been rectified and there is little likelihood of a recurrence, then the case may be dealt with more appropriately by other means.

- The 'newness' of the legislation transgressed may be a consideration, especially where the offence is of a technical nature, and future compliance may be obtained by less formal means.
- Important but uncertain legal points that may have to be tested by way of prosecution.

7 SIMPLE CAUTIONS

- 7.1 A Simple Caution may be used as an alternative to prosecution. The aim of a Simple Caution is to deal quickly and simply with offences, save Court time and reduce the likelihood of re-offending.
- 7.2 A decision to offer a Simple Caution must be made having regard to:
- Home Office circular 30/2005 Cautioning of Offenders.
 - Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions.
 - LACORS Guidance on Cautioning of Offenders.
- 7.3 Following the offer of a Simple Caution, the individual or company concerned will be required to confirm acceptance within 14 days.
- 7.4 When considering whether to offer a Simple Caution, the following will be taken into account:
- Whether a Simple Caution is appropriate to the offence and the offender;
 - Whether a Simple Caution is likely to be effective;
 - Public interest considerations;
 - The views of the victim and the nature of any harm or loss;
 - Whether the offender has made any form of reparation or paid any compensation;
 - Any known records of previous convictions or Simple Cautions relating to the offender.
- 7.5 A Simple Caution cannot be given where the offence is indictable only or where the offender is under 18 years of age. It may only be offered where the offence has been fully admitted by the offender.
- 7.6 The person administering the Caution will be an appropriate Senior Manager employed within the Council.
- 7.7 If the offender fails to admit the offence or does not agree to the Simple Caution, the case will be considered for prosecution.

8 ENFORCEMENT TOOLS AND REMEDIES

- 8.1 In the vast majority of cases the Council will try to resolve matters informally through negotiation and discussion. In some cases, informal resolution cannot be achieved, or the matter being enforced is so serious that the informal stage would be inadequate. In these cases, the Council has a wide range of alternative powers available. Certain breaches of legislation will require urgent and immediate attention, either because the time period for action is limited or because the effect of the activity causes significant harm to the public interest.
- 8.2 The Council has the power to issue a Requisition for Information under section 16 of the Local Government (Miscellaneous Provisions) Act 1976, section 330 of the Town and Country Planning Act 1990 and section 85 of the Private Water Supply Regulations 2016. This notice requires the recipient to provide information in respect of land/property in which they are suspected to have an interest. Not returning the form duly completed is an offence which can be prosecuted in the Magistrates' Court and lead to a fine of up to £5,000. For breaches of planning control, the Council also has the power to issue a Planning Contravention Notice which carries a similar penalty for failing to comply.
- 8.3 The Council can use civil remedies to recover any property or debts and any costs incurred, but the Council also has the power to prosecute a wide range of offences under section 223 of the Local Government Act 1972. Where there is enforcement action in a criminal court the Council can use Proceeds of Crime Act 2002 legislation to recover money.
- 8.4 There are three areas under the Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016 that must be considered by a Local Authority when conducting investigations. These are:
- Directed Surveillance.
 - Covert Human Intelligence Sources (CHIS).
 - Acquisition of Communications Data.
- 8.5 The Council has separate Policies and Procedural Guides relating to the use of RIPA and any Officer considering the use of it should follow these.
- 8.6 Where the Council uses CCTV, it does so in line with the appropriate regulatory guidance and legislation. The Council has a separate Policy which Officers must adhere to.

9 EVIDENCE GATHERING

- 9.1 There are numerous sources of evidence available to investigating officers, the following are examples of what can be used but the list is not exhaustive:
- Photographs;
 - Computer Records and open-source investigations including information from social media websites;
 - Communications data;
 - CCTV images including body camera footage;
 - Paper Records;
 - Samples (food, water, environmental, counterfeit goods);

- Plans or sketches made at the scene;
- Noise recording records;
- Invoices;
- Witness Statements;
- Expert reports;
- Forensics (including forensic examination of electronic devices);
- Information from other agencies such as the Police, Department for Work and Pensions, The Department for Environment, Food and Rural Affairs, The Environment Agency, other Councils etc.

10 POWERS OF OFFICERS

- 10.1 Officers have a range of delegated powers set out within legislation to assist them in undertaking their duties. These can include the power to require answers to questions and the power to enter premises.
- 10.2 Officers have powers delegated to them, under the relevant schemes of delegation, to undertake duties relating to the Council.
- 10.3 Officers will always carry an identity badge and their authorisation card (warrant) with them, where they hold one. Where Officers do not have an authorisation card, delegation documentation can be supplied. In the event of any doubt regarding an Officers' powers, confirmation can be obtained by contacting the Officer's Line Manager who can provide any Statutory Notice describing their powers. It is an offence to obstruct an Authorised Officer who is conducting an inspection or investigation which could lead to prosecution.

11 FAIRNESS AND EQUALITY

- 11.1 All enforcement action and investigations will be carried out in a manner which complies with the requirements of legislation and codes of practice governing the collection of evidence and investigatory powers.
- 11.2 Officers will take care not to take any action which contravenes human rights and anti-discrimination legislation unless it is necessary and proportionate to do so.

12 TRAINING

- 12.1 The Council will ensure that all employees who are likely to deal with enforcement action are proficient and will receive regular and appropriate training to maintain competence in their enforcement field and in the various legal requirements associated with enforcement duties.

Links to other related policies

- *Private Sector Housing*
- *Council Tax, Housing Benefit and Council Tax Support Penalty and Prosecution Policy*
- *Tenancy Fraud Policy*
- *RIPA Policy*
- *Environmental Health Enforcement Policy*
- *Revenue and Benefits Enforcement Policy*
- *CCTV*
- *Planning and Development Control Enforcement Policy*
- *Corporate Debt Policy*