

# Environmental Enforcement Policy

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# 1. Introduction

- 1.1 Thanet District Council has signed up to the Enforcement Concordat on confirming its commitment to the principles of good enforcement. Thanet District Council is a public authority for the purposes of the Human Rights Act 1998. Enforcement staff apply the principles of the European Convention of Human Rights, in accordance with the Act.
- 1.2 The purpose of the enforcement policy is to ensure that enforcement decisions are always consistent, balanced, fair, transparent, proportional and relate to common standards to ensure the public is adequately protected. This is not an exclusive enforcement policy as some specialist or priority areas require separate policies to comply with legislation or to alter the level of enforcement from that found in this overarching policy.
- 1.3 Each case is unique and must be considered on its own merits. There are, however, general principles that apply in the way each situation must be approached. This policy sets out the factors to be taken into account when considering the type of enforcement action to be taken. The policy must be followed except in exceptional circumstances.
- 1.4 Officers will be authorised by the Council to take action on behalf of the Council, and are required to follow the policy outlined below.
- 1.5 The possible outcomes of an inspection or investigation carried out to fulfil statutory undertakings are:
  - (a) issue a statutory notice
  - (b) issue a fixed penalty notice
  - (c) prosecute
  - (d) carry out work in default
  - (e) refusal/revocation of licence/approval/authorisation
  - (f) seek injunction
  - (g) take formal action
  - (h) take no action

It may be that one or more of these outcomes are appropriate in any given case.

## 2. Shared Enforcement Role

- 2.1 Before proceeding with any action officers shall consider if there is a shared or complementary enforcement role with other agencies, e.g. Police, Environment Agency, Highways Agency etc. and liaise with that agency.

## 3. The Regulation of Investigatory Powers Act 2000

- 3.1 If applicable, the requirements of this legislation shall be taken into account during investigations. The Act works in conjunction with existing legislation, e.g. Human Rights Act 1998.

## 4. The Code for Crown Prosecutors

4.1 The Code for Crown Prosecutors (Prosecutors employed by the Crown Prosecution Service) is referred to by Local Authority solicitors in ensuring that fair and consistent decisions about prosecutions are made. Officers shall refer to this code when considering the merits of pursuing a prosecution.

4.2 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

- ◆ Essentially, 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.

## 5. Policy

### 5.1 Statutory Notices, etc

5.1.1 Notices shall be served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where circumstances relating to health, safety or environmental damage demand. In other circumstances, the time allowed will be reasonable, but will also take into account the health, safety or environmental damage implications of the contravention.

### 5.2 Fixed Penalty Notices

5.2.1 Fixed Penalty Notices will be issued under specified legislation. If a fixed penalty is not paid within the prescribed period, legal proceedings shall be considered, together with using other methods to recover the civil debt.

5.2.2 The following areas of enforcement have been agreed for immediate issuing of an FPN:-

- (i) Failure to clean up after a dog has fouled.

- (ii) Litter dropped in the street.
- (iii) Fly-posting and graffiti.
- (iv) Nuisance and abandoned vehicles.
- (v) Unauthorised distribution of advertising material.
- (vi) Stray dogs.

5.2.3. The leaving of waste in the wrong place, or at the wrong time or in the wrong receptacle will result in one warning and then an FPN or alternative notice. Such action will depend on the severity and frequency of the problem.

## 5.3 Prosecution

The decision to recommend the institution of proceedings will in general be in respect of those persons or organisations that:

- ◆ visually or materially damage the environment
- ◆ blatantly disregard the law
- ◆ refuse to achieve even the basic legal standards (often following previous contact with the Services)
- ◆ put the public at risk.

The investigating officer, when deciding on the appropriateness for legal proceedings, shall also take the following criteria into account:

### 5.3.1 Community Benefit

Legal action shall be taken on the first occasion that certain events are witnessed because of the extreme improbability that the person once seen committing an offence would be seen on a subsequent occasion. Community benefit of a prosecution would also be indicated by the importance of the case, for example, whether it might establish a legal precedent.

### 5.3.2 Flagrant Breach of Law

For example, whether there is an apparent blatant breach of law, such that public health, safety or wellbeing, animal health or welfare or the local environment is or has been put at risk, it would be appropriate to take legal action.

### 5.3.3. Failure to Comply with a Statutory Notice

Prosecution or works in default shall be taken in cases of failure to comply with improvement and prohibition notices or other notices requiring or prohibiting action.

### 5.3.4 Failure to Comply with Lawful Requirements

If a person or business fails to comply with lawful requirements, having been advised on previous occasions, proceedings shall be taken.

### 5.3.5 History of Non-compliance

If there is a history of non-compliance with law by a person or business, then legal action shall be taken, even if the matters identified are not flagrant breaches of law.

### 5.3.6 Obstruction

Legal proceedings shall be taken in cases of deliberate obstruction by an officer.

## 5.4 Formal Cautions

5.4.1 Where there is a criminal offence but the public interest does not require a prosecution, a formal caution may be an appropriate course of action. Home Office Circular 18/1994 states that the purpose of a formal caution is:

- ◆ To deal quickly and simply with less serious offenders.
- ◆ To divert them from unnecessary appearances in the criminal course; and
- ◆ To reduce the chances of them re-offending.

5.4.2 The use of formal cautions will be in accordance with the Home Office Circular and official guidance. The following conditions must be fulfilled before a caution is administered:

- ◆ There must be evidence of the suspected offender's guilt, sufficient to give a realistic prospect of conviction;
- ◆ The suspected offender must admit the offence, and
- ◆ The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

## 5.5 Carry out Work in Default

5.5.1 Work required in the interests of public health, safety or the environment may be undertaken by the Authority in default, and the costs recovered in accordance with specific legislation. This may be appropriate when:

- ◆ It is necessary to carry out the work in the public interest and/or the costs are not prohibitive;
- ◆ There is a failure to carry out work covered by a statutory notice;
- ◆ Immediate action is required.
- ◆ It is unlikely that the work will be carried out unless done in default.

## 5.6 Refusal/Revocation of Licence/Approval/Authorisation

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

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

- (a) engage in fraudulent activity;
- (b) deliberately or persistently breach legal obligations;
- (c) deliberately or persistently ignore written warnings or formal notices;

- (d) endanger to a serious degree the health, safety or wellbeing of people, animals or the environment.

## 5.7 Injunctions

- 5.7.1 In exceptional cases, where action under the relevant legislation is deemed likely to be ineffective, where there is serious imminent risk to public health or the environment, and immediate action is considered necessary, injunctive proceedings may be instituted.

## 5.8 Informal Action

- 5.8.1 Informal action to secure compliance with the legislation includes offering advice, issuing warnings and requests for action.

- 5.8.2 In the following circumstances it may be appropriate to use informal action. This is not an exhaustive list and each case must be looked at on its merits.

- (a) The act or omission is not serious enough to warrant formal action.
- (b) From the individual/organisation's past history it can be reasonably expected that informal action will achieve compliance.
- (c) Where the original approach is from person(s) seeking advice or assistance (however, if serious breaches are found, then formal action will be necessary).

- 5.8.3 When an informal approach is used to secure compliance, this may be verbal or written. However, it is important that any written documentation issued or sent to individuals/businesses:-

- (a) contains all the information necessary to understand what work is required and why it is necessary;
- (b) indicates the statute or regulations contravened and measures which will enable compliance to be achieved;
- (c) clearly differentiates between legal requirements and recommendations of good practice.

## 5.9 Take No Action

- 5.9.1 The only circumstance where no action can be taken is when compliance with legislation has been achieved.

# 6. Authorisation

- 6.1 Individuals authorised to sign and serve various documents on behalf of the Local Authority shall, in general, have the level of competence and ability as required by the authority in their job descriptions and specifications. Individuals authorised will carry identification and will have evidence of their authorisation.

- 6.2 Council officers authorised for such enforcement shall be trained and experienced to demonstrate the competence required to take such action.

## 7. Application of this Policy

- 7.1 The principles contained within this policy shall be applied to the enforcement of law relating to street related environmental issues.
- 7.2 This policy provides the overarching principles applied by Thanet District Council when enforcing the law. It will be augmented by supporting documents, from time to time, which identify in detail how enforcement activity will be applied in specific circumstances in order to achieve the stated aims of the Corporate Plan.
- Supplementary documents will also identify the date and delegation of the approval, and will be available for inspection.
- 7.3 The preparation of this policy and any supplementary supporting documents will involve, where appropriate, such consultations with other bodies and organisations as believed appropriate. Consulted parties will be identified in the documents.

## 8. Approval

- 8.1 This policy was approved by Cabinet on 15<sup>th</sup> June 2006.

## 9. Access to the Policy

- 9.1 The policy is available on the Thanet District Council website and at the Cecil Street Offices. The Case Officer will be able to provide copies of this policy given suitable notice.
- 9.2 On request, this policy will be made available on tape, in Braille, large type or in a language other than English.