

TONBRIDGE & MALLING BOROUGH COUNCIL

Environmental Health and Housing Services

Enforcement Policy

January 2011



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Contents

INTRODUCTION	3
PURPOSE AND METHOD OF ENFORCEMENT	4
PRINCIPLES OF ENFORCEMENT	5
PROSECUTION	7
SIMPLE CAUTIONS	7
APPEALS	8
WORKING WITH OTHER REGULATORS	8
MISCELLANEOUS	8

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INTRODUCTION

1. Our aim is to protect and improve public health, the environment and quality of life for everyone who lives, works or visits Tonbridge and Malling. This document sets out what businesses and individuals can expect from the Council's enforcement officers and the general principles we intend to follow in relation to enforcement. We will monitor its implementation and effectiveness and, where necessary, make changes.
2. Environmental Health and Housing Services are responsible for enforcing legislation relating to aspects of:-

animal welfare	housing standards
environmental protection	pest control
food safety	pollution prevention and control
health and safety at work	public health
housing provision	waste management
3. This policy aims to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes and encourage economic growth without imposing unnecessary burdens on businesses. This accords with the Regulators' Compliance Code, the Enforcement Concordat and the principles of regulatory reform outlined in the Hampton Review. In certain instances we may conclude that a provision in the Code or Concordat is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from either document will be properly reasoned, based on material evidence and documented.
4. We are committed to the promotion of equal opportunities in all of our activities and providing equality of access to all our services. Every effort will be made to ensure that everyone is treated equitably and fairly, regardless of age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
5. The rights and freedoms given under the Human Rights Act, particularly Articles 6 (right to a fair hearing) and 8 (right to respect for private and family life), will be observed, as will the provisions of the Regulation of Investigatory Powers Act, which requires those carrying out authorised surveillance as part of an investigation to follow specific procedures.
6. We recognise that people who contact us about an environmental health or housing problem can sometimes feel vulnerable and uncertain. We will provide appropriate information and support for complainants, victims and witnesses. In our dealings with businesses we are committed to providing simple explanations about statutory requirements and best practice and, where appropriate, will leave written guidance to help businesses or individuals comply with the law. In providing this information, we will be sensitive to the needs of all.

PURPOSE AND METHOD OF ENFORCEMENT

7. The primary concern of officers of the Environmental Health and Housing Service is to prevent harm to human health or damage to the environment and to improve living/working conditions. We recognise that most individuals and organisations are anxious to comply with the law and in these cases the officers' role will often be to educate, guide and support. We regard prevention as better than cure. We offer information and advice to those we regulate and seek to secure co-operation while avoiding bureaucracy or excessive costs.
8. The purpose of enforcement is to protect the public, employees and the environment and ensure that those responsible for breaches of their statutory duties take action to comply with the law.
9. The Council has a range of enforcement tools at its disposal and while informal action, such as providing guidance and education, will usually be undertaken in the first instance, it may not always be appropriate to adopt an informal approach. For example, there may be a risk to human health from a hazard the nature of which requires prompt formal enforcement action or there may be evidence of previous non-compliance with statutory obligations imposed under legislation relating to environmental health and housing.
10. If enforcement officers find evidence that the law is being broken they can respond in various ways. Having considered all relevant information and evidence, our options are:-
 - to take no action;
 - to take informal action – this includes
 - offering advice
 - verbal warnings and requests for action
 - sending a letter
 - issuing an inspection report;
 - to use statutory notices – which require improvements to be made to secure legal compliance or prohibit the use of equipment, tasks or activities that pose imminent risk of harm to people or the environment;
 - to issue fixed penalty notices;
 - to close premises or seize goods;
 - to use simple cautions and
 - to prosecute.

PRINCIPLES OF ENFORCEMENT

11. We believe in firm but fair regulation. Underlying this are the principles of: *proportionality* in the application of the law and in securing compliance; *consistency* of approach, *transparency* about how we operate and what those regulated may expect from us and *targeting* of enforcement action.

Proportionality

12. The concept of proportionality is included in much of the regulatory system through the balance of action to protect the public and the environment against risks and costs. Some incidents or breaches of regulatory requirements cause or have the potential to cause serious harm to health or environmental damage. Others may interfere with people's enjoyment or rights. The enforcement action taken will be proportionate to the risks posed to health or the environment and to the seriousness of any breach of the law.
13. Informal action is normally appropriate when:
- the act or omission is not serious enough to warrant formal action;
 - from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance;
 - confidence in the individual's/enterprise's management involvement is high;
 - the consequences of non-compliance will not pose a significant risk to public health or the environment, and,
 - even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach – for example, voluntary organisations.

Consistency

14. Consistency means taking a similar approach in similar circumstances to achieve similar ends. We aim to achieve consistency in the advice we give, our response to complaints or incidents and the use of our legal powers and decisions on whether to prosecute. However, we recognise that consistency does not mean simple uniformity. Officers need to take account of many variables:
- the risk to health;
 - the scale of environmental impact;
 - the attitude and actions of management;
 - the confidence we have in management;
 - the likely effectiveness of the various enforcement options, and
 - the history of previous incidents or breaches.
15. Decisions on enforcement action are a matter of professional judgement and the exercise of discretion. We will ensure consistency of enforcement standards by:-
- ensuring officers are aware of this policy and have adequate training and competency in all relevant aspects of enforcement
 - having regard to national and local co-ordination arrangements, for example:

statutory Codes of Practice/Guidance
guidance from the Local Better Regulation Office
Health and Safety Executive guidance
Local Government Regulation (LGR) guidance
Chartered Institute of Environmental Health/Chartered Institute of Housing
– Professional Practice Notes
Kent Environmental Health Managers Groups – guidance/practice notes
Kent and Medway Health and Safety Enforcement Policy
Locally adopted standards, for example, the Council’s standards relating to
Houses in Multiple Occupancy and the Private Sector Housing
Enforcement Policy

- liaison with “Lead”, “Home” and “Primary” Authorities, where appointed
- publication and dissemination of our standards and policies
- a commitment to work with colleagues in Kent to develop consistency in our approach to enforcement procedures and practices.

16. For example we comply with DEFRA guidance relating to the service of Fixed Penalty Notices as contained in the document 'Local Environmental Enforcement-- Guidance on the use of Fixed Penalty Notices'. In particular we have special regard to advice in the guidance relating to enforcement against young people and the need for an appropriate appeals procedure.'

Transparency

17. Transparency is important in maintaining public confidence in our ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from us. It also means making clear why an officer intends to, or has taken, enforcement action.

18. Transparency is an integral part of our role. We will ensure that:-

- where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out: a distinction will be made between best practice advice and legal requirements
- an opportunity is provided to discuss with the enforcement officer or his/her manager what is required to comply with the law before formal enforcement action is taken, *unless* urgent action is required, for example, to protect health, the environment or to prevent evidence being destroyed
- where urgent action is required, a written explanation of the reasons for taking the action is provided as soon as practicable after the event
- a written explanation is given on any rights of appeal against formal enforcement action at the time the action is taken.

19. We will use Plain English in all our written communications. We will provide a translation of any written communication into an alternative language and provide a translator for face to face discussions on enforcement issues if requested or in the officer’s opinion is thought necessary. Documents are available in alternative formats for the visually impaired and assistance will be provided to those hard of hearing, when necessary.

Targeting

20. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the greatest risks. We will use nationally and locally agreed risk assessment guidance to assist in targeting our efforts.
21. We have systems for prioritising regulatory effort. They include the response to complaints from the public, the assessments of the risk posed by different types of activity and the gathering and acting on intelligence about illegal activity.
22. With regard to littering and dog fouling we have adopted a zero tolerance approach, which has been endorsed by our elected Members.

PROSECUTION

23. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish serious wrongdoing, to avoid recurrence and to act as a deterrent to others. It may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring an operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
24. However, we recognise that prosecution is a serious matter that can have far reaching consequences for the offender. The decision to prosecute should only be made after full consideration by the Council's Head of Legal Service of all the implications and consequences and that both the evidential and public interest tests are met in all cases, in accordance with the Code for Crown Prosecutors.
25. In general, failure to comply with statutory notices will result in prosecution, where appropriate, even though officers may have controlled any risks through measures such as initiating works in default or detention/seizure of equipment.
26. All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the Police and Criminal Evidence Act (PACE), the Criminal Proceedings and Investigations Act (CPIA) and the Human Rights Act. As part of the investigation process, persons suspected of breaching legal requirements will, where ever possible:
 - be formally interviewed in accordance with PACE,
 - be given the opportunity to establish a statutory defence,
 - have the opportunity to give an explanation or make any additional comments about the alleged offence.

SIMPLE CAUTIONS

27. A Simple Caution is a non-statutory disposal for adult offenders and may be issued as an alternative to a prosecution to deal quickly and simply with less serious, first

time offences; divert less serious offences away from the courts; and reduce the chances of repeat offences.

28. The following factors will be considered when deciding whether a Caution is appropriate:
 - evidence of the suspect's guilt;
 - a clear and reliable admission of the offence has been made, either verbally or in writing; and
 - consideration of the guidance in the Code for Crown Prosecutors on whether the use of a Caution is the appropriate means of disposal when taking into account the public interest principles.
29. The suspected offender must understand the significance of a Simple Caution and give an informed consent to being cautioned. No pressure will be applied to a person to accept a Simple Caution.
30. The 'cautioning officer' will be the most appropriate officer from the Council's Legal Service. The cautioning officer will not have taken an active part in investigating the case.
31. Should a person decline the offer of a Simple Caution we will prosecute.

APPEALS

32. If any person is unhappy with the action taken, or information or advice given, they will be given the opportunity of discussing the matter with the relevant manager. This does not affect the right of any aggrieved person to exercise their rights under formal or informal appeal processes.
33. Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with corporate procedures and guidance.
34. Dissatisfaction with any actions or decisions can be taken up with the Director of Environmental Health and Housing Services through the Council's formal complaints procedure which is explained in the leaflet "*Solving your problems: How to make a complaint about the Council*".

WORKING WITH OTHER REGULATIONS

35. Where the Council and other enforcement organisations both have enforcement responsibilities, we will liaise with them to ensure effective co-ordination and to avoid inconsistencies. Such organisations include the Health and Safety Executive, Clean Kent Teams, and the Environment Agency.

MISCELLANEOUS

36. Where the legislation allows we will normally seek to recover the full costs, including administrative costs, for the serving of notices or when we carry out works in default, from those responsible for the breach of legislation.
37. An Equalities Impact Assessment was completed on the previous version of this policy and the issues identified have been addressed in this document.
38. This Policy will be reviewed every three years or in response to legislative or operational changes.

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