
Enforcement Policy

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Owner: Director of Community Services

INTRODUCTION – AIM

The council's aim is to ensure clear and consistent enforcement which takes account of national guidance and good practice. A summary of national guidance used to inform this policy can be found at Appendix 1. It will be used alongside additional guidance covering specific areas of work. All enforcement decisions will be made in accordance with this Enforcement Policy.

The aim of the council's enforcement role is to protect people at work, the general public and the environment from harm caused by failure to comply with the safeguards provided for in law. The council believes that the vast majority of individuals and businesses wish to comply with legal requirements placed upon them and should be assisted in doing so. However there will be circumstances in which enforcement is necessary and the council will use its powers to ensure legal compliance.

ENFORCEMENT OBJECTIVES

In undertaking its regulatory and enforcement role the council will meet the following objectives

- The council will set clear standards and apply these consistently, be transparent and proportionate in its enforcement activities, and will be helpful and accountable to its residents and communities.
- Where it is necessary enforcement will be undertaken without fear or favour, will be impartial and objective, in accordance with the requirements of the Equality Act 2010, Human Rights Act 1998 and Regulation of Investigatory Powers Act 2000.
- In undertaking enforcement, the council's actions will be proportionate to the scale, seriousness and intentionality of any non-compliance.
- Except in the most serious of cases or where advice/warnings have not been heeded, the level of enforcement taken will be the minimum at which a satisfactory and timely solution is thought to be achievable.
- Wherever possible and appropriate officers will seek to find solutions which are arrived at by agreement and cooperation i.e. a common sense approach.
- Prosecution will normally only be considered where it is in the public interest to do so and in serious or blatant cases, or where other approaches have failed.
- Regard shall be had to the relevant legislation and codes of practice which protect the rights of the individual and guide enforcement action.
- Wherever practicable, the council will ensure that our enforcement actions will:-
 - aim to eliminate any financial gain or benefit from non-compliance;
 - aim to change the behaviour of the offender;
 - provide an opportunity for the person to put things right where possible and appropriate;
 - be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment;

- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; - aim to deter future non-compliance;
- ensure that no improper/undue pressure from any source inside or outside the council affect those decisions; and
- ensure that all relevant information is given to the Defendant and to the Court as appropriate.

ENFORCEMENT PRINCIPLES

The enforcement principles in this section will be followed at all times. These are derived from the Enforcement Concordat to which the council is fully committed.

Procedures

Advice from officers will be clear and simple and will normally be confirmed in writing, explaining why any work or actions may be necessary and stating the timescale for progress and completion. A clear distinction will be made between legal requirements and best or desirable practice.

Before formal action is taken i.e. any enforcement process defined in legislation, the opportunity may be provided to discuss the circumstances of the case and, if possible, resolve points of difference **unless** immediate action is required (for example a serious risk to health and safety or to prevent evidence being destroyed). In circumstances where immediate action is necessary an explanation of why such action was required will be given at the time or, if this is not practical, within **5 working days** whenever practicable. In some cases of immediate action such as the service of a Fixed Penalty Notice or parking ticket a written explanation is not considered necessary.

Where there are rights of appeal against specific actions advice on the mechanism to be followed will be given in writing. Wherever possible this will be included with the enforcement notice or other documentation.

Transparency

Information and advice will be published in plain language concerning the legislation which the council is applying. Officers will be open about the work required, including any financial costs in complying, and consultation will take place as appropriate. Discussion will take place concerning general enforcement issues, specific compliance failures or problems with anyone who is experiencing difficulties. In addition interpretation services can be provided for anyone whose first language is not English if required.

Helpfulness

Officers will provide a courteous and efficient enforcement service and individual officers will identify themselves by name. A contact telephone number and an e-mail address will be provided for on-going discussions. Businesses and individuals will be actively encouraged to seek advice and information relating to the council's enforcement role.

Complaints

If business operators or members of the public indicate that they wish to complain about any aspect of enforcement work officers will ensure that the mechanism for doing so is clearly explained. Our Comment, Compliment and Complaints procedure is published on our website at www.erewash.gov.uk

Proportionality

Costs of compliance are to be minimised to ensure that any actions required by the council are proportional to the risks involved i.e. risk to public health and/or the environment. Where the law allows officers will take account of the circumstances of a case and the offender's attitude when considering the level of enforcement action.

Consistency

Consistency means taking a similar approach in similar circumstances to achieve similar ends. The aim is to achieve consistency in the advice given, the response to incidents and the ways in which statutory powers are used. Consistency does not mean simple uniformity and officers will need to take into account many variables such as the scale of the risk, the attitude and actions of those involved and history of compliance, whether positive or negative.

Decisions on enforcement action are a matter of professional judgement and officers will frequently be required to use discretion in prioritisation and in actions taken. Enforcement priorities may be determined in order to meet local circumstances or to address a specific local need. However the overarching principles in this policy will be followed at all times to maintain a consistent approach. Where necessary, Directorate guidance will be provided. Efforts will continue in order to develop arrangements for promoting consistency including effective arrangements for liaison with neighbouring authorities and other enforcing agencies.

Some activities may require investigations by different sections of the council or other agencies at the same time. In these circumstances activity will be co-ordinated wherever possible to maximise effectiveness in dealing with these issues and reduce legislative burden for business operating in the borough. Also enforcement intelligence and any successful actions will be shared with other enforcing authorities or agencies where appropriate, subject to statutory constraints.

ENFORCEMENT ACTIONS

The council is committed to delivering its statutory enforcement duties consistently. The council also recognises that individual circumstances may modify the action to be taken. Actions will be delivered within the framework outlined below although some discretion may be required dependent on local circumstances. All enforcement officers will receive appropriate training and supervision to support them in their application of this policy.

Assessing Appropriate Action

Informal Action

The council aims to resolve the vast majority of cases informally through negotiation, discussion or advice, providing the breach is a first occurrence, does not result in a serious risk to public health, safety, amenity or the environment and the officer is confident that informal action will be effective.

Informal Action can be of one or more of the following:

- Verbal advice;
- Verbal request for action;
- Written request for action; and/or
- Written warning of formal action, if contraventions are not corrected.

Officers will clearly identify those matters that are contraventions of the law and those that are simply recommendations reflecting good practice. Recipients of informal action will be given the opportunity to discuss the requirements with the investigating officer and agree an appropriate programme of work and a suitable timetable for completion. Regular contact with the investigating officer will be encouraged.

However when informal action is not successful or not appropriate a range of other formal enforcement actions are available. The final action will depend on any modifying or mitigating factors present and account will be taken of any national or local guidance available.

In exceptional circumstances contraventions may not warrant any action for example where the cost of compliance outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade. A decision to take no action will be recorded in writing and will take into account the overall implications of the contravention.

Formal Action

A range of formal actions are available to the council which will normally be instigated where one or more of the following apply:-

- It is prescribed by law as obligatory;
- Informal approaches have failed;
- The matter is of such seriousness or urgency that an informal approach is inappropriate;
- Enforcement is necessary to remedy an unsatisfactory condition relating to health, safety, amenity or the environment;
- There is a need to ensure a decision or policy of the council is enforced.

Formal Action consists of one or more of the following:

- The service of statutory notices and orders;
- The issue of simple cautions;
- Prosecution;
- Application for injunction or anti social behaviour orders (ASBOs);

- Debt recovery work or possession action;
- Council Tax Administrative Penalties;
- Council Tax and NNDR Recovery Processes;
- Issue of licenses, approvals or registrations;
- Issue fixed penalty notices;
- Use of other enforcement powers by officers authorised by specific legislation (e.g. detention of food, sampling of food or substances, seizure of equipment or food, prohibition of processes or activities).

For the purposes of this policy formal action includes written warnings, notices, simple cautions, fixed penalty notices, prosecutions and civil proceedings.

Written Warnings

A written warning will:-

- clearly state the nature of the problem and suggest either specific remedies or a standard to be achieved;
- state the actions which may follow if matters do not improve;
- designate a named officer as point of contact;
- clearly distinguish between a legal requirement and 'desirable standard';
- indicate any follow-up action intended (e.g. a re-visit within a specified period of time); and, where possible point the way to specialist advice or additional information.

Notices

Some legislation allows for the service of a statutory notice to secure compliance. The method of service of a formal notice may be specified in individual legislation and in such cases that method of service will be followed. Notices will be in the required format and contain the information required by law.

Simple Cautions

A 'Simple Caution' is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from Court, and to reduce the likelihood that they will offend again and is a formal mechanism that can be offered as an alternative to prosecution by the council. The caution is offered in writing and if accepted will be administered at a formal interview. If it is not accepted then a prosecution will usually be undertaken. A simple caution is not a criminal conviction, but a record will be kept and it may be used in Court as evidence when making relevant representations to the Court on sentencing for any subsequent prosecution.

The council can/will only issue a Simple Caution if:

- there is evidence an offender is guilty
- the offender is 18 years of age or over
- the offender admits they committed the crime
- the offender agrees to be given a caution – if the offender does not accept the Caution, then a prosecution will generally be undertaken

When deciding whether to offer a Simple Caution, the following factors will be considered:

- The offence is relatively minor and any Court sentence is likely to be minimal
- The loss to public funds is small
- Any alternative penalty appropriate to the alleged offence is considered unsuitable
- Whether the offender has any unspent previous convictions, cautions or administrative penalties
- Relevant guidance issued by the Home Office, the Crown Prosecution Service or other national agencies

Fixed Penalty Notices

Some legislation allows for Fixed Penalty Notices (FPN) to be issued against someone who has committed a specific offence. A FPN offers the individual the opportunity to release themselves from being prosecuted for that offence by payment of a fixed penalty set out in the relevant legislation. No further legal proceedings will be taken by the council for the offence if the individual pays the fixed penalty within the required time period set out in the notice. The individual will be liable to prosecution for the offence if the fixed penalty is not paid within the required time period.

Prosecution

Where statutory powers to prosecute exist the decision to do so is not taken lightly. Each case is unique and will be processed according to its own merits. There is no suggestion that prosecution will automatically follow the discovery of an alleged offence. The decision as to whether to prosecute or not will be constantly reviewed and, if necessary, changed up until such time as an alternative irrevocable step is taken e.g. accepting a Simple Caution.

The other formal actions detailed above may be taken in addition to or as an alternative to prosecution if considered to be an appropriate sanction.

Before a decision to prosecute is taken the case must satisfy the evidential test and then, if this is satisfied, the public interest test in accordance with the Code for Crown Prosecutors.

Officers undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group. When determining the public interest test the consequences for those affected by the offence, of the decision whether or not and how to take enforcement action and any views expressed by those affected will be considered.

In dealing with minors (less than 18 years of age) officers will consider the age of the offender in deciding whether it is in the public interest to prosecute. However prosecution will not be avoided simply because of the defendant's age. The seriousness of the offence or examination of past behaviour is equally important.

Cases involving minors are usually only referred for prosecution if the young person has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate or he/she does not admit committing the offence. Reprimands and final warnings are intended to prevent re-offending. Further offences indicate that attempts to keep the young person out of the court system have proven ineffective. In such cases the public interest test may require prosecution.

The Code for Crown Prosecutors will also be followed for:-

- Accepting guilty pleas; and,
- Re-starting a prosecution.

Civil Proceedings

Civil proceedings cover a variety of actions including applications for Injunctions, or ASBOs, debt recovery or possession actions or Council Tax enforcement. In deciding to begin civil proceedings the council will consider the evidence available and the range of enforcement options that are available to us in each case.

The council must be satisfied there is enough usable evidence for the case to succeed on the civil standard of proof (namely on the balance of probabilities). Once this point has been satisfied and there is sufficient evidence for a case to proceed consideration of the options available will be considered that is:

- the possibilities for the matter to be remedied without further action;
- the likelihood of the Defendant having the means to meet the claim, e.g. a debtor having the means to pay;
- the length of time between the events giving rise to the case and the decision to take legal action;
- the nature of the Defendant (their age, health, etc); and
- the consequences of the matter for the council (e.g. the size of the debt).

Having considered the above and having decided to proceed with some form of formal action, the council will consider what civil remedy to use.

MONITORING

The council is committed to making sure its Enforcement Policy is effective. The council welcomes information from businesses, regulated bodies and residents should they believe that officers have not acted in accordance with the Policy and its supporting standards.

Comments, Compliments or Complaints

If you are unhappy with the outcome of enforcement proceedings taken against you by the council, you must seek immediate independent legal advice. If your concern is with the way in which the council has handled your case, then the council has a formal complaints procedure, which can be used.

If you require this publication in an alternative format and/or language please contact the council to discuss your needs. Information on the council's services including a language translation option can be found on our website www.erewash.gov.uk or email your request to enquiries@erewash.gov.uk, or call 0115 907 2244.

APPENDIX 1 – BACKGROUND DOCUMENTS

This Enforcement Policy has been guided by and reflects the principles of:

- The Enforcement Concordat
- The Code for Crown Prosecutors, and
- The Regulators' Code

The Enforcement Concordat

The Concordat is a Code of Practice between Government and local councils. It sets out what businesses and others being regulated can expect from the council's enforcement services. In signing the Concordat Erewash Borough Council commits to good enforcement practices and procedures. All Directorates of the council fully support the principles of the Concordat and work within it when carrying out enforcement activities.

The council supports the aims of the Enforcement Concordat namely:

- Standards: setting clear standards
- Openness: being clear and open in the provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved
- Consistency: ensuring consistent enforcement practice

The Code for Crown Prosecutors

The Code for Crown Prosecutors sets out general principles to be applied when making decisions about prosecutions. As a regulatory body the council also follows the principles of the guide when considering enforcement action.

Regulators' Code

The Regulators' Code (the Code) is made under the Legislative and Regulatory Reform Act 2006. The code sets out that Regulators must have regard to the provisions of the Code when determining general policies or principles or when setting standards or giving general guidance about the exercise of general functions. It does not apply to the work of individual inspectors.

The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (specifically part 3) sets out those regulatory functions exercisable by local authorities to which the Code applies.

In relation to Erewash Borough Council these are predominantly, but not exclusively:

- Food Health and Safety
- Environmental Protection and Housing Renewal
- Licensing
- Community Safety

This Enforcement Policy has included those aspects of the Code which are relevant to our activities. The intention of the council is to help to promote an efficient and effective approach to inspection and enforcement, which improves regulatory outcomes without imposing unnecessary burdens.