



Babergh and Mid Suffolk District Councils Joint Corporate Enforcement Policy

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1. Introduction

The Legislative and Regulatory Reform Act 2006 (2006 Act) requires Local Authorities to have regard to the Principles of Good Regulation when exercising a specified regulatory function.

A Regulators' Code came into force in April 2014 and Regulators must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. If a regulator concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision but should record that decision and the reasons for it.

The Councils fully support the principles set out in the 2006 Act and the Regulators' Code and has set out within this Enforcement Policy the procedures to be adopted by all services and officers exercising any enforcement functions. The Councils are committed to services which are courteous and helpful and seeks to work with individuals and businesses, wherever possible, to help them comply with the law.

The Councils, nevertheless, acknowledge the need for firm action against those who flout the law and put consumers and others at risk. The Councils expect all officers taking enforcement decisions to take this Policy as a guide when making their decision. Every case must be decided on its own individual facts. Officers must ensure that, if they depart from the Policy when they make their decision, they can provide reasons for doing so.

This document represents the Councils' Corporate Enforcement Policy, and supersedes any previous corporate policy statements on enforcement. It may be supplemented in some cases, by more specific and detailed service policies.

2. Enforcement activity

The Councils have a duty to enforce a wide range of statutes relating to:

- public health and safety,
- quality of life,
- preservation of public and residential amenity,
- maintenance of the environment and
- protection of public funds.

All of these activities will be carried out having regard to the general principles of good enforcement practice outlined in this Policy.

Although primary responsibility for compliance with the law rests with individuals and businesses, the Councils will provide information and advice to help them understand their legal obligations and will seek to raise awareness about the need to comply.

3. Delegation of authority

The Councils' Scheme of Delegations specifies the extent to which enforcement powers are delegated to officers. Whilst delegation is mainly to officers, in some specific circumstances the decision to take enforcement action lies with relevant Council Committees.

4. Objectives

The approach adopted by services when carrying out the Councils' duties to apply or enforce a wide range of legislation is intended to:

- Assist businesses and others in meeting their legal obligations without unnecessary expense
- Focus on prevention rather than cure
- Ensure that we enforce the law in a fair, equitable and consistent manner
- Take firm action when it is necessary and appropriate to do so.
- Carry out enforcement that is risk-based, consistent, proportionate and effective.

5. Principles of enforcement

The Councils believe in the principles of good enforcement, as set out in the 2006 Act, which must be adopted by the Councils' services. The principles covered are:

- Courtesy and Helpfulness
- Openness
- Clear Standards and Practices
- Proportionality
- Consistency
- Training of Staff

The Councils will employ the provisions of the Regulators' Code ('RC'). www.gov.uk/government/publications/regulators-code . We will observe any requirements of national bodies and, where practicable, national good practice guidance. Where appropriate, services will provide enforcement advice and information in accessible formats such as minority languages, large print, Braille and face to face.

We will adhere to the principles of the RC, as follows:

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
- Regulators should base their regulatory activities on risk and target enforcement only at cases in which action is needed
- Regulators should share information about compliance and risk
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Regulators should ensure that their approach to their regulatory activities is transparent and that they are accountable for their approach

6. Enforcement options

The Councils recognise the importance of achieving and maintaining consistency in the approach to enforcement. For many areas of our enforcement activity government guidance already exists in the form of Codes of Practice, Planning Policy Guidance, and Government Circulars etc. There may also be local or regional Codes of Practice such as the Charter and Code of Practice for the collection of debts, which have been produced locally to promote consistency in our enforcement activity. When making enforcement decisions officers must have regard to any relevant national or local guidance as well as the provisions of the Human Rights Act 1998, Equality Act 2010 and this Enforcement Policy.

The enforcement option chosen will also consider the following principles:

- An aim to change the behaviour of the offender;
- An aim to eliminate any financial gain or benefit from non-compliance;
- To be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- To be proportionate to the nature of the offence and the harm caused;
- An aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- An aim to deter future non-compliance.

6.1 Prevention

We believe that the first step in enforcement is to promote good practice, ensure policy compliance and prevent contravention of the law by raising awareness and promoting good practice. Methods of achieving this include training courses, seminars, special promotions, the issuing of press releases, newsletters, the Councils' web sites, the production of leaflets and other forms of written guidance and opportunities presented by day to day contact with businesses and other customers.

This approach will be applied when we are not aware of any specific contraventions of the law. We also make a commitment that those regulated by the local authority are able to request advice on non-compliance without directly triggering enforcement action, where they show a willingness to resolve the non-compliance.

6.2 Approvals, Consents and Licences

We provide a range of approvals consents and licences as specified by individual pieces of legislation. Most of these are compulsory, such as planning applications, licensing applications and building regulation approvals, but a few are optional. These are an important part of the preventative aspect of our work.

We will work with applicants to help them to understand what is required to gain or increase the likelihood of approval through pre-application advice, published guidelines, and post application discussion.

Applications may be approved as they are submitted, varied by agreement and then approved, approved subject to conditions, or rejected. Applicants, or their agents, will always be notified, in writing, of the outcome of their application, including the reasons if rejected. Details of any rights of appeal will be provided at the time the decision is notified. Licenses may also be suspended or revoked and similarly applicants will always be notified, in writing, of the reasons for suspension or revocation.

Depending on which service is being provided, the kinds of circumstance in which conditions may be attached include (but are not restricted to):

- Building work is not inherently wrong but plans need to be modified or further plans are required
- Developments would be refused if conditions were not attached
- Conditions are necessary or appropriate to ensure that the purpose of an approval, licence or registration is adhered to (for example animal welfare conditions for a Pet Shop licence or steps to promote licensing objectives for an alcohol or entertainment premises)
- Where a food premises meets all the infrastructure and equipment requirements for approval but does not fully comply with some other requirements

The circumstances in which applications may be refused include (but are not restricted to):

- Where plans do not show compliance with Building Regulations.
- Where a reply to a plan assessment letter is not received, is received too late to allow an adequate response, or is unsatisfactory.
- Where work, at inspection stage, does not meet minimum standards and remedial action is required.
- Where contraventions exist.
- Where an application is against local policy.
- Conditions are necessary or appropriate to ensure that the purpose of an approval, licence or registration is adhered to (for example animal welfare conditions for a Pet Shop licence or steps to promote licensing objectives for an alcohol or entertainment premises) but cannot be achieved.
- Where there is reason to believe that the applicant will not comply with the purpose of a licence or registration or any conditions attached to it (for example where there have been previous infringements).
- Where a food business operator fails to meet all the structural and equipment requirements.

Any rejection notice will inform the applicant, or their agent, of the reasons for refusal and any right of appeal.

6.3 Informal Action

We would prefer to avoid unnecessary costs for the customer, preferring their time and money to be invested in solutions rather than legal procedures. We will therefore use our best efforts to resolve situations where the law may have been broken without issuing formal notices, or taking other kinds of formal action.

Informal action will involve offering advice, mediation where appropriate, requests for action, or warnings, or seeking and monitoring the delivery of undertakings or timetabled schedules of action. General advice will not necessarily be confirmed in writing. Where more than the most minor contravention exists, we will confirm the situation in writing in a clear manner and explain why any recommendations are necessary and over what timescale they should be met. When we write we will make sure that legal requirements are clearly distinguished from recommendations. Informal action will be supported throughout by contact between the customer and Council officers.

This approach may be applied provided that the consequences of noncompliance are considered acceptable. This includes (but is not restricted to) occasions where the time period allowed to seek compliance does not present a significant risk to or impact on health, safety, welfare or the environment, and either:

- The contravention is not serious enough to warrant immediate formal action
- There is no demonstrable harm to the amenity of the area
- The past history (of the individual or business) suggests that informal action will achieve legal compliance in a reasonable timescale
- Standards are generally good, suggesting a high level of awareness of, and compliance with, statutory responsibilities
- The action is being taken on behalf of a customer, who prefers the matter to be handled informally

6.4 Formal Action

Circumstances where formal action will be considered include (but are not restricted to):

- There is a significant contravention of legislation
- The wording of legislation requires the Council to take a specified action
- An informal approach has failed
- There is a history of non-compliance with informal action
- There is a lack of confidence in the successful outcome of an informal approach
- Standards are generally poor, suggesting a low level of awareness of, and compliance with, statutory responsibilities

- The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate
- There is demonstrable harm to the amenity of the area
- Effective action needs to be taken quickly in order to remedy conditions which are deteriorating
- Formal action is expected to achieve the desired outcome without incurring expense or inconvenience that is disproportionate to the risks
- Legal requirements, relevant formal guidance, or other Council policies or strategies require formal action to be taken
- A charge applied by a Fixed Penalty Notice has not been paid

In most situations before formal action is taken, we will provide an opportunity to discuss matters and, hopefully, resolve points of difference. The extent of this will depend on the seriousness of the contravention, and may not be possible where immediate action is considered necessary, e.g. where there is an immediate risk to health, safety or the environment, or where the formal action takes the form of a fixed penalty notice.

Only officers who have reached a sufficient level of competence will be given the delegated authority to take formal action. Formal action can take any form that the Council is empowered by legislation to take. The following will be the most commonly used.

- Statutory Notices
- Fixed Penalty Notices
- Work In Default
- Simple Cautions
- Prosecution
- Restorative Justice
- Recovery of the Proceeds of Crime

7. Training and appointment of officers

All officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities.

Officers will be mentored and shadowed to ensure that there is a consistent approach to enforcement.

The Councils support the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills. This will be highlighted through their learning and development plan as part of their performance review.

Officers may have a variety of delegated powers to assist them in carrying out investigations. For example, this can include the power to require answers to questions and the power to enter premises, usually during reasonable hours e.g.

normal opening times. Officers will carry an identity card and their authorisation with them at all times. We will not insist on entry into a person's home without giving 24 hours' notice or producing a Court Order. In the event of any doubt as to an officer's powers, confirmation can be obtained from any Council notice describing their powers, or by contacting their manager at the Council. It is an offence to obstruct an authorised officer who is conducting an inspection or investigation. Obstruction may lead to prosecution.

8. Shared Regulatory Roles

Where the Council has a complementary regulatory role or is required to inform an outside regulatory agency of an incident or occurrence it will do so.

Such external agencies include (but are not restricted to):

- Police
- Fire Authority
- Health and Safety Executive
- Environment Agency
- County Council services
- Other Council services
- Utility Providers
- Other Councils including primary authorities

Officers will attempt to co-ordinate visits and actions with other agencies to achieve the most efficient and effective outcomes and to minimise inconvenience for those who are being visited, inspected, or subject to other enforcement action.

Wherever possible, in situations where there is a shared enforcement role, the most appropriate authority will, by mutual agreement, carry out the enforcement action.

Exchange of information with other enforcement teams within the Council will take place wherever applicable. Liaison will also take place where it is appropriate between relevant services and Members within the Councils to avoid potential conflicts of interest.

9. What You Can Expect From Us

- We will be objective to ensure that our decisions are not influenced by gender, ethnic origin, religious or political beliefs, disability, age or sexual orientation
- We will enter into discussion and offer advice to anyone to try to ensure that they do not unnecessarily expose themselves to the possibility of formal action through a lack of understanding or information
- We will be consistent in our approach by following the criteria and guidance set down in relevant legislation, codes of practice, and our own written procedures and work instructions

- We will ensure that before deciding to offer a caution, or take a prosecution, the case will be subject to independent review by a senior manager
- We will provide a courteous and efficient service and our staff will identify themselves by name when they visit you, or speak to you on the telephone
- We will respect confidentiality subject to any legal requirements to disclose information (for example disclosure to support a prosecution)

10. Review of Enforcement Policy

This policy document, agreed in December 2016, will be reviewed every 3 years or sooner should legislation change.

With a review due at the beginning of 2020, the coronavirus pandemic interrupted business as usual and a light touch review was therefore carried out in September 2020, by the Corporate Manager – Public Protection, with an intention that a fuller review would be carried over to 2021. This light touch review established that the fundamental building blocks of the policy had not changed and that the policy was still fully fit for purpose.

Further reading: [Joint-Corporate-Enforcement-Policy-2020-Appendices-A-B-and-C](#)