



ENFORCEMENT POLICY FOR ENVIRONMENTAL ENFORCEMENT

APPROVED BY: Director of Change and Environmental Services VERSION: V1.
& Cabinet Member for the Environment.

DATE: 1st May 2010 VERSION REVISED BY: MRJ.

1. AIMS OF POLICY

- 1.1 To ensure that enforcement decisions are always consistent, balanced, fair, transparent, proportional and relate to common standards to ensure the public are adequately protected.
- 1.2 To provide officers authorised by the Council with guidelines to enable them to make consistent enforcement actions in the field in line with this policy, the Code for Crown Prosecutors and the Regulatory Reform Act 2006.
- 1.3 To empower officers to deliver on the Environmental Enforcement Team's objectives to:
 - To protect those subjected to Statutory Nuisance offences and Public Health risks
 - To deliver a high profile service that protects against actively discourages environmental crime and promotes a "Healthy Environment"
 - To enforce against enviro-crime through proactive and intelligence driven enforcement efforts
 - To actively reduce the fear and perception of crime and empower the victims of environmental crimes
 - To actively discourage the younger generation from committing environmental crimes
- 1.4 To set out the factors to be taken into account when considering enforcement action.
- 1.5 To inform the public, businesses and the community at large of the principles by which enforcement action is taken.

2. GENERAL BACKGROUND & INTRODUCTION

- 2.1 The Council has a direct duty or authority to enforce relevant environmental legislation.
- 2.2 Maidstone Borough Council has signed up to the Enforcement Concordat confirming its commitment to the principles of good enforcement.
 - 2.2.1 Each case is unique and must be considered on its own merits. There are however outlines and general principles that apply the way each situation must be approached. This policy sets out 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.
- 2.3 The possible outcomes of an inspection or investigation carried out are:
 - a) statutory notice
 - b) fixed penalty
 - c) seizure of equipment
 - d) prosecution
 - e) formal caution
 - f) carry out work in default
 - g) refusal/revocation of license/approval/authorisation
 - h) seek injunction
 - i) take informal action
 - j) take no action

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

- 2.4 The Human Rights Act 1998 makes it unlawful for a public authority to act in a way that is incompatible with the European Convention on Human Rights. This policy will be implemented taking into account the legal and procedural implications of both The Human Rights Act and European Convention on Human Rights.
- 2.5 The Council recognises that many of the activities which this policy seeks to control go on out of office hours. Within the Council's resources, arrangements will be made for some enforcement activity to take place out of usual office hours including monitoring, enquiries, etc.
- 2.6 The Council also recognises there is diversity within the community and care will therefore be taken to ensure its enforcement actions are clearly understood by providing documents in an appropriate language wherever possible. The Council may also arrange for an interpreter in appropriate cases.

3. SHARED ENFORCEMENT ROLE

- 3.1 Before proceeding with any action officers shall consider if there is a shared or complimentary enforcement role with internal and external partners, some of which are listed below and liaise with them.
- 3.2 Internal partners include (This is not an exhaustive list)
 - a) Community Safety
 - b) Licensing
 - c) Development control

3.3 External partners include (This is not an exhaustive list)

- a) Kent Police – including Restorative Justice.
- b) Environment Agency
- c) Maidstone Mediation Service
- d) Local Housing Trusts
- e) Highways Agency
- f) Border Agency

4. **THE REGULATION OF INVESTIGATORY POWERS ACT 2000**

4.1. 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.

5. **THE CODE FOR CROWN PROSECUTORS AND LEGISLATIVE AND REGULATORY REFORM ACT 2006.**

5.1 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. The Code is a public document and is available from the CPS Communications Branch, 50 Ludgate Hill, London, EC4M 4EX or in their website: www.cps.gov.uk

5.2 The principles laid down by the CPS 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**

- It has never been the rule in this country that suspected criminal offences must automatically be the subject of prosecution. The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction.
- Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect.
- 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.

- 5.3 Environmental Enforcement has also has adopted and developed policies, procedures and practices in accordance with The Code Of Practice made under Section 22 of the Legislative and Regulatory Reform Act 2006.

6. METHODS OF ENFORCEMENT

The term "enforcement" has a wide meaning and applies to all dealings between the Council and those on whom the law places a duty. The range of actions available to the authority are:-

6.1 Statutory Notices etc

- 6.1.1 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 account the health, safety, or environmental damage implications of the contraventions.
- 6.1.2 Section 86 of Clean Neighbourhoods and Environment Act 2005 affords the authority a 7 day deferral of their duty to serve an abatement notice in relation to an offence under section 79 of the Environmental Protection Act 1990 to allow those responsible for the Statutory Nuisance to take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

6.2 Fixed Penalties Notices

- 6.2.1 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.
- 6.2.2 The use of fixed penalty notices provides the opportunity for an offender to discharge their liability for prosecution by accepting and paying a fixed penalty notice.

6.3 Prosecution

- 6.3.1 The authority to prosecute will be given by the Assistant Director Environment and Regulatory Services or the Director of Change, Planning and the Environment having received a recommendation from the Environmental Operations Enforcement Manager. The decision to prosecute will be made by the Head of Legal Services in consultation with the aforementioned officers.
- 6.3.2 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)
 - who put the public at risk

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

6.3.3.1 Community Benefit

Legal action shall be taken on the first occasion ("zero tolerance") 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 legal precedence.

6.3.3.2 Flagrant Breach of Law

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

6.3.3.3 Failure to comply with a Statutory Notice

Prosecution, seizure of equipment or works in default shall be taken, where appropriate, in cases of failure to comply with improvement or prohibition notices or other notices requiring or prohibiting action.

6.3.3.4 Failure to comply with Lawful Requirements

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

6.3.3.5 History of Non-compliance

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

6.3.3.6 Obstruction

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

6.4 Formal Cautions

6.4.1 The decision to issue a formal caution will be made by the Assistant Director Environmental Services, having received a recommendation from the Environmental Enforcement Operations Manager

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

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

6.4.3 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 suspect 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.

6.5 Carry out works in Default.

6.5.1 Work required in the interest of public health, safety or the environment may be undertaken by Maidstone Borough Council in default, and the costs recovered in accordance with specific legislation. This may be appropriate when:

- It is necessary to carry out 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 work will be carried out unless done in default.

6.6 Refusal/Revocation of licence/ Approval/ Authorisation

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

6.6.2 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 warning and formal notices
- d) endanger to a serious degree the health, safety or well being of people, animals or the environment.

6.7 Injunctions

6.7.1 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.

6.8 Informal Action

- 6.8.1 Informal action to secure compliance with the legislation includes offering advice, issuing warnings and requests for action.
- 6.8.2 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 merit:
- 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)
- 6.8.3 When an informal approach is used to secure compliance, this may be verbal or written. However it is important that any written documentation is issued or sent to individuals or businesses:-
- a) Contains all the information necessary to understand what work is required and why it is necessary.
 - b) Indicates that statute or regulations contravened and measures which enable compliance to be achieved.
 - c) Clearly differentiates between legal requirements and recommendations of good practice.

6.9 Take No Action

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

7. Authorisation

- 7.1. No officer will carry out enforcement work unless suitably trained, experienced and authorised in writing.
- 7.2. Individuals authorised to sign and serve various documents on behalf of Maidstone Borough Council 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.

8. APPLICATION OF THIS POLICY.

- 8.1. The principles contained within this policy shall be applied to the enforcement of law relating to environmental issues through Operational Enforcement Policies (OEP's).
- 8.2. This policy provides the over arching principles applied by Maidstone Borough 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 Maidstone Borough Council and its corporate vision. Supplementary documents will also identify the date and delegation of the approval and will be available for inspection.
- 8.3. The preparation of this policy and any supplementary supporting documents will involve, where appropriate, consultation of affected parties.

9. **APPROVAL**

9.1. This policy has been approved by David Edwards.....Date.
Ben Sherreard.....Date.

10. **ACCESS TO THE POLICY**

10.1. The policy is available on the Maidstone Borough Council website and at the Maidstone Borough Council offices. The case officer will be able to provide copies of this policy given suitable notice. On request, this policy will be made available on tape, in Braille, large type, or in a language other than English.

11. **REVIEW OF POLICY**

11.1. The Policy and its Annexes will be kept under review to take account of changes in legislation and amendments found necessary as a result of internal monitoring.