



**DRAFT**

**London Borough of Barking & Dagenham  
Regulatory Services  
Enforcement Policy**

**2016 - 2020**

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## 1. Introduction

The London Borough of Barking and Dagenham have agreed a number of priorities for the borough, these are:-

- **Encouraging civic pride**
- **Enabling social responsibility**
- **Growing the borough**

A firm but fair enforcement policy will support these priorities, this document sets out our Policy and how we will implement it.

The Council's Regulatory Services are responsible for several different enforcement functions namely; trading standards, licensing, food safety, food standards, health and safety at work, noise and nuisance, environmental protection, environmental crime, highways, private sector housing, building control, planning enforcement and Anti-Social Behaviour (ASB). Each area uses different legislation to ensure compliance of the law within the borough and each has its own extensive body of regulations, codes of practices and guidance.

- 1.1 Our primary enforcement duty is to protect the safety of the public, their health and safety and the environment. At the same time we are committed to promoting a thriving local economy by carrying out our enforcement functions in an equitable, practical, transparent and consistent way.
- 1.2 This enforcement policy helps to promote efficient and effective approach to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens.
- 1.3 This policy has been developed in accordance with the general principles of the Regulators' Code, the provisions outlined in the Legislative and Regulatory Reforms Act 2006 and the Regulatory and Enforcement Sanctions Act 2008. All relevant stakeholders have been consulted and current government guidance and relevant codes of practices have also been considered.
- 1.4 This policy sets out the core standards of the Council's approach to enforcement; education, compliance and enforcement. These core standards cover all aspects of enforcement, delivered by the council.
- 1.5 The Council is moving towards a more integrated enforcement and regulatory service. The aim is to use all aspects of enforcement and regulation maximise impact for minimum cost, ensuring that community and businesses alike take responsibility for their actions, so Barking and Dagenham is a place that people enjoy living and working in and are proud of. This Enforcement Policy is a key document is achieving consistency and standards across the Council's enforcement services.

- 1.6 It also provides a framework for all Council officers, enabling them to undertake enforcement role. The role will be defined through training, advice and support so that officers recognise that their actions can have a positive effect, improving civic pride.
- 1.7 Finally this Policy will help to ensure that we are fair, impartial, independent and objective and will not be influenced by matters such as ethnicity, origin, gender, religious belief, political views or sexual orientation of suspect or victim or witness or offender.

## 2. Scope of Enforcement Policy

- 2.1 The Council has a wide range of regulatory and enforcement functions. The principle of this policy applies to actions taken by council officers to achieve compliance with legislation and national guidance. It supports existing, specific guidance on enforcement action in the statutory code of practice for regulators, relevant guidance documents and guideline issued by other government departments and other bodies.
- 2.2 In addition, consideration will be given to any other enforcement policy or scheme such as the Home / Primary Authority principle, where relevant. The Regulatory Enforcement and Sanction Act 2008 established the Primary Authority Scheme. We are required to comply with the requirements of the Act when considering taking enforcement action against a business or organisation that has a Primary Authority.

## 3. General Principles of Enforcement

- 3.1 We believe in firm but fair enforcement of all regulatory laws. Prevention is better than cure and our role therefore involves actively working with businesses to advise and assist with compliance. Consideration should also be given to the following principles:
- **Proportionality** – This means ensuring enforcement action corresponds appropriately to the risks arising. This will include any actual or potential harm arising from a breach of the law. We will ensure that our actions are proportional to the potential risk to health, safety, the environment and the benefits arising from the actions taken.
  - **Consistency** - Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar results. Businesses that manage similar risks expect a consistent approach from the Council and other agencies.
  - **Profiling** – This means making sure that action is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled. It also means that any enforcement action is directed against the person or company responsible for the breach. This will be undertaken through an intelligence led approach, using a range of data and information from council services, partner

agencies and the local community.

- **Transparency** - Transparency means being clear with businesses about how we operate and enforce. This also means helping individuals, organisations and businesses to understand what is expected of them in order to comply with legal requirements. We will also provide a clear distinction as to what are statutory requirements and advice or guidance about what is desirable but not compulsory.
- **Accountability** - We are accountable to the public for our actions. This means that we undertake enforcement on behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate be taken into account when making enforcement decision.

3.2 Whilst the general principle outlined above will apply in all cases, it must be recognised that each individual case will vary and each must be considered on its own merits before a decision is reached.

3.3 Where offending causes a cost to the council we will seek to recover the costs of dealing with that offending from those that are responsible.

#### 4. Business Engagement Processes

The Council will engage with businesses in a variety of ways including:

- Undertake a programme of routine and planned inspections of trade premises based on risk assessment
- Offer advice on compliance to businesses within the whole borough
- Work with businesses and other agencies to achieve our objectives
- Conduct enforcement visit to premises to deal with complaints, accidents and investigate allegation of non compliance.
- Provide response to business enquires within the set working standards and written response if requested within the set standards period

#### 5. Decisions on Enforcement Actions

5.1 We will ensure that our enforcement actions are consistent and aim to:

- Protect the public and businesses from harm as well as change the behaviour of the offender
- To deter future non-compliance and reassure the community
- Eliminate any financial gain or benefit from non-compliance
- Be proportionate to the nature of the offence and the harm caused and
- Be responsive and consider what is appropriate for a particular offender and regulatory issue, which can include sanction and public stigma that should be associated with criminal conviction

5.2 Enforcement decisions and actions will be made with due regard to the provisions of:

- The Human Rights Act
- The Crime and Disorder Act
- Equal rights and anti-discrimination legislation
- Service-specific legislation
- All other relevant legislation applicable from time to time
- Internal procedures and processes as applicable

5.3 We will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5.4 Information concerning non-compliance may be shared with other enforcement agencies. Any such action will only be undertaken in the public interest and in compliance with the Data Protection Act 1998.

5.5 Any decision on enforcement action will be taken on the merits of each case, objectivity and impartial. This will not be influenced by reason of race, disability, sexual orientation, age, religious beliefs or the employment status of the victim or witness. However, where a victim has been targeted by the offender by virtue of class or status such as vulnerable or young, consideration will be given when deciding on any course of action. Cases are assessed in accordance with the Code of Practice for Crown Prosecutors to justify enforcement actions.

5.6 We will ensure that any decision to depart from the Code or any other of the general principles will be properly reasoned, based on material evidence and documented.

## 6. Enforcement Actions / Sanctions

6.1 Where appropriate, we will seek to achieve compliance through early engagement, mediation, education and advice. In cases, where this is not deemed possible by officers as the appropriate route, these decisions will be recorded and considered as justified.

6.2 There are a number of potential enforcement options available to the service to achieve compliance. The types of actions that can be considered are as follows:

- **Informal Action** – For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
- **Fixed Penalty Notice (FPN) / Penalty Charge Notice (PCN)** – Certain offences are subject to fixed penalty notices where prescribed by legislation. They are recognised as an enforcement tool and avoid a criminal record for the defendant. We may choose to issue an FPN or

PCN on a first occasion without issuing a warning. Unpaid PCN's will result in the offender being pursued in the County Court for non payment of debt. Unpaid FPNS will be prosecuted where it is possible to do so.

- **Refusal, Revocation or Suspension of Licence or Permit** – where there is a requirement for business or individual to be licensed by the local authority, the licence may be granted in accordance with the Council's Scheme of delegation. For relevant matters where representations or objections are received to an application the Licensing Regulatory Board / Committee will hear the case and determine the matter in line with the provisions of the relevant legislation.
  - **Licence Review** - Responsible Authorities and 'Other Persons' have the power under the Licensing Act 2003 to apply to have a Premises Licence reviewed by the Licensing Committee where activities at the premises appear to be undermining one or more of the four Licensing Objectives (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm).
  - **Statutory Notices** – Certain legislation allows notices to be served requiring offenders to take specific actions, provide certain information, or cease certain activities. Notices may require activities to stop or cease immediately where the circumstances relating to serious threat to health, safety, the environment or to amenity and situation deteriorate, if a breach is not remedied quickly. Unless prescribed in law the time allowed in other circumstances will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. In some circumstances we will charge for notices served.
- 6.3. Where an enforcement intervention has a formal appeal route we will include details of this with the notice that we serve.
- 6.4 Certain types of enforcement interventions allow works to be carried out by the enforcing authority and reasonable costs recovered. See **Work in Default** below.
- **Enforcement Undertaking / Injunctive Proceedings** - this may be sought from businesses that breach legislative requirements specified for the purpose of part 8 of the Enterprise Act 2002. Injunctive orders may be sought in the County Court in relation to businesses who breach legislative requirements specified for the purposes of Part 8 of the Enterprise Act 2002. In most cases an order will be sought from the court in circumstances where a business has been given an undertaking which it has subsequently breached.
  - **Seizure** – in some situations, Council officers have powers to seize goods, equipment and documents, either to prevent the occurrence of an incident, to ensure that an activity ceases, or to ensure that it does not recur. The seized goods may be required as evidence for possible future court proceedings. When we seize goods, equipment and documents we will

explain at the time the powers we are exercising and the reason why they are being exercised. Also provide an appropriate receipt to the person from whom the goods were seized.

- **Confiscation / Forfeiture Proceedings** – this procedure may be used in conjunction with seizure and/ or prosecution where there is a need to dispose of goods and equipment in order to prevent them re-entering the market place or being used to cause any further problem. In appropriate circumstances, we will make application for forfeiture to the Courts.
- **Simple Cautions** – these will be issued where there is clear evidence and acceptance of an offence by the offender. A simple caution is an admission of guilt, but is not a form of sentence nor is it a criminal conviction. The purpose will be to deal quickly and simply with less serious offences; to reduce chances of re-offending and to avoid unnecessary appearance in criminal courts. A record of the caution is kept on file and may be cited in a Court if further offending occurs. Where a person accepts a caution they will also be expected to pay the reasonable costs involved in investigation of the offence.
- **Prosecution** – A prosecution will normally be considered where the individual or organisation meets one or more of the following criteria:
  - Deliberately, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others,
  - Deliberately or persistently ignored written warnings or formal notices,
  - Endangered, to a serious degree, the health, safety or well being of people, animals or the environment,
  - Assaulted or obstructed an officer in the course of their duties
  - Where a prosecution would be in the public's interest.
- **Proceeds of Crime Application** – this application will be made under the Proceed of Crime Act 2002 for confiscation of assets in serious cases. The purpose of this is to recover the financial benefit that the offender has obtained from their criminal conduct.
- **Work Related Death** – where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) to agree the appropriate Authority to take legal proceedings under the health and safety law.
- **Work in Default** – Where we have served a notice requiring works such as improvement, prohibition or to otherwise remediate a non compliance notice and the person receiving the notice does not comply with it, we will exercise powers available to arrange for the work to be carried out and the full costs recovered. This is known as 'work in default' or 'direct action' and we will always seek to recover our full cost from the person receiving



the original notice.

- **Directed Surveillance Using The Regulatory of Investigatory Powers Act 2000 (RIPA)** – The Council is a public authority for the purpose of the Human Rights Act 1998. Where investigation into prevention of disorder or detection of crime is necessary, officers will carry out the investigation using overt methods, unless the only means of investigation is by way of covert directed surveillance. Any directed surveillance shall be carried out in accordance with the Council procedures under the Regulatory of Investigatory Powers Act 2000 (RIPA) and the Protection of Freedom Act 2012. Authorisation for this type of pre-planned investigation must be in writing by formally appointed officer within the Council and formally authorised by a Justice of the Peace.

## 7. Determining Formal Actions

- 7.1 When a decision whether or not to prosecute is being made, we follow the principle criteria from the guidance contained in the Code for Crown Prosecutors which requires the two main tests:
1. Whether the standard of evidence is sufficient for a realistic prospect of conviction (Evidential Test).
  2. Whether a prosecution is in the public interest (Public Interest Test)
- 7.2 **The Evidential Test** – we must be satisfied that there is sufficient evidence against the offender on each charge. A realistic prospect of conviction is an objective test that means a jury or bench of magistrates, properly directed in accordance with the law is more likely to convict the offender of the alleged charge than not to.
- 7.3 **The Public Interest Test** – the public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. The public interest factors that may affect the decision to prosecute will depend on the following:
- The seriousness of the offence
  - The likelihood of the offender re-offending
  - Whether there has been negligence and the possibility of avoiding the offences
  - The views of anyone aggrieved by the offence
  - The length of time since the offence took place
  - The local/national context of the offence
- 7.4 Some factors may increase the need to prosecute but others may suggest that another course of action would be appropriate and proportionate.

## **8. Consideration Factors**

8.1 In making the decision to take formal action, the service will have particular regards to the following criteria:

- Whether the breach was pre-mediated or committed deliberately or reckless, or without due diligence;
- Whether there are any prior complaints and convictions or other information relevant to the individual, family, business or trader history;
- Effect of the breach on the victim or affected person, in particular vulnerable or the infringement resulted in death or serious injury
- The prevalence of the type of breach and whether a particular enforcement action could act as a deterrent and encourage compliance generally; and
- Inadequate mitigation or explanation given by individual, business or trader. Also the attitude of the individual, business or trader as to whether they were obstructive, co-operative and took action to mitigate the cost or impact of their offending.

## **9. Authorisation**

9.1 The Council will ensure that officers who carry out enforcement duties are appropriately qualified and trained. The officers will carry authorisation in the form of a card and we will ensure that the extent of authorisation is reviewed from time to time in the light of their qualification and experience and changes in legislation.

## **10. Working with Partners**

10.1 Where appropriate, enforcement activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement. We will share intelligence relating to wider regulatory matters with other regulatory enforcement agencies. This includes government agencies, departments, other local authorities, Police forces and Fire authorities.

## **11. Equal Opportunities and Diversity**

11.1 The Council recognises the diversity of our community and enforcement activities will have due regard to the Equality Act 2010

## **12. Review of Policy**

12.1 We will review this policy and update it to reflect changes in its source documents and controlling bodies every two years. We will also review its effectiveness in supporting the Council's and the Community's priorities.

12.2 We will consult with stakeholders before and after making any changes to this policy.

### **13. Monitoring Arrangement**

- 13.1 The Council Planning Authority will publish a local enforcement plan to manage enforcement proactively in a way that is appropriate to the local area. This will set out how we will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

### **14. Publicity**

- 14.1 Following adoption of this policy, it will be made available to all interested parties including individuals, organisations, businesses etc. It will also be published on the Council's website

## Appendix A

### Reference Sources

The Code for Crown Prosecutors –

The Cautioning of offenders, Home office

Reducing Administrative Burden –

Regulatory Enforcement and Sanctions Act 2008

Regulators' Code

Legislative and Regulatory Reform Act 2006

Regulation of Investigatory Powers Act 2000 and Code of Practice on the Act

Criminal Justice and Police Act 2001

Criminal Procedure and Investigations Act 1996

HSE Enforcement Policy Statement

Police and Criminal Evidence Act 1984 and associated Codes of Practice

Food Law Code of Practice (England) 2012)

Human Rights Act 1998

Data Protection Act 1998

Hampton Report,

Enforcement Concordat

National Planning Policy Framework