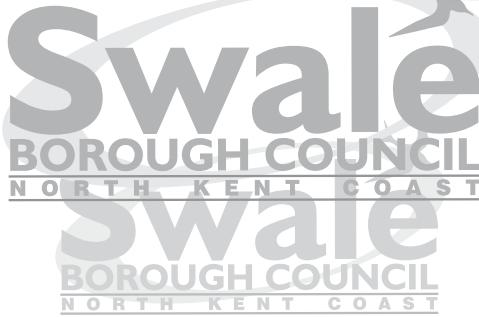


ENFORCEMENT POLICY



Swale
BOROUGH COUNCIL
NORTH KENT COAST

HOUSING & ENVIRONMENTAL SERVICES

Environmental & Housing Services Enforcement Policy

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I. Introduction

- 1.1 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of the Swale Borough. Even in a small case a decision about enforcement action has serious implications for all involved; the general public, businesses, victims, witnesses and defendants. Environmental and Housing Services will apply this policy so that it can make fair and consistent decisions about enforcement.
- 1.2 The Policy is also designed to make sure that everyone knows the principles that are applied when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly but effectively.

2. Approval

- 2.1 This Policy was approved by the Executive on 26th June 2002

3. Scope

- 3.1 This policy applies to the enforcement activities under the legislation enforced by Environmental and Housing Services.
- 3.2 Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, and includes, for example, the inspection of premises for the purpose of checking compliance with acts and regulations, and the provision of advice to aid compliance.

4. Access to the Policy

- 4.1 This policy is available in hardcopy at the Council's offices. It can be ordered by telephoning 01795 424341, or writing to Swale Borough Council Environmental Services, Swale House, East St, Sittingbourne, Kent ME10 3HT. The Enforcement Concordat is made available through the same channels.

5. General Principles

- 5.1 Each case is unique and must be considered on its own merits. There are however, general principles that apply in the way each case must be approached. These are laid out in this policy and in the Enforcement Concordat to which the Council has signed up. This commits the Council to **proportionality** (relating enforcement action to the risks), **targeting** (primarily at those whose activities give rise to the most serious risks), **consistency** (taking a similar approach in similar circumstances to achieve similar ends), **transparency** (being open & clear about what is expected of people) and **accountability** (having standards & policies against which we can be judged).
- 5.2 Environmental and Housing Services staff must be fair, independent and objective. They must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.
- 5.3 The Council is a public authority for the purposes of the Human Rights Act 1998. Environmental and Housing Services staff must apply the principles of the European Convention on Human Rights in accordance with the Act.

6. Service Requests

- 6.1 Service requests which may result in enforcement action against a business or individual will be notified to that business or individual as soon as is practicable, except in the circumstances described in 6.2 below. During the progression of enforcement action that business or individual will be further notified of progress and any new information.
- 6.2 In circumstances where notification could impede enforcement action, notification will not take place until those circumstances no longer exist.

7. Deciding the action to take

- 7.1 There are two issues to determine. The first is the level of enforcement action to take. The second is the viability and appropriateness of that action.

What level of enforcement action to take

This can be one, or a number, of the following:

- | | |
|---|--|
| <ul style="list-style-type: none">● Prosecution● Revocation of license● Injunction● Seizure● Formal Caution | <ul style="list-style-type: none">● Formal Notice● Written warning and advice● Verbal warning and advice● Revisit to premises● No action |
|---|--|

Prosecution

- 7.2 In order to take forward prosecution, the individual or organisation must meet one or more of the following criteria:
 - Deliberately or persistently breached legal obligations,
 - 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,
 - Obstructed an officer during the undertaking of his or her duties.

Revocation of licence

- 7.3 Similarly, In order to warrant revocation of a licence, the individual or organisation must meet one or more of the above criteria.

Injunction

- 7.4 In the case of immediate risk to health and safety or where legal advice indicates that an injunction is a more appropriate course of enforcement action than any other, then injunctions will be used as an enforcement measure to remedy contraventions or dangerous circumstances.

Seizure

- 7.5 We have powers under various pieces of legislation to seize faulty, dangerous, unwholesome or contaminated goods, food, or equipment responsible for causing harm, or to prevent them causing nuisance or harm to consumers, employees, other businesses or residents. When we seize goods we will give the person from whom the goods are taken an appropriate receipt. If we seize unfit food, we will produce it before a Magistrate as soon as possible for them to confirm the seizure and consider the food unfit. If the Magistrate does not condemn the food, we will return it to the owner who will be entitled to compensation for any loss suffered. We always give full details of our actions to the offender when we exercise this power.

Formal Caution

- 7.6 This procedure is used as a final warning. It derives from advice issued by the Home Office. For a formal caution to be issued a number of criteria must be satisfied:
- (i) Sufficient evidence must be available to prove the case;
 - (ii) The offender must admit the offence;
 - (iii) The offender must agree to be cautioned;
 - (iv) The offence must not have been committed by the offender before.

A record of the Caution will be sent to the Office of Fair Trading and the Local Authority Co-ordinating Body for Regulatory Standards (LACORS) if appropriate, and will be kept on file for 3 years. If the offender commits a further offence, the Formal Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Formal Notice

- 7.7 Notices are 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 the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

Written warning and advice

- 7.8 For some contraventions we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

Verbal warning and advice

- 7.9 For minor breaches of the law we verbally advise the offender clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

Revisit to premises

- 7.10 Following a formal notice, written or verbal warning, we will revisit the premises to check compliance has been achieved. For very minor contraventions we may advise that a revisit may be carried out after the agreed deadline. Officers will then decide whether to actually make a revisit depending upon the health, safety, environmental damage or nuisance implications of the contravention, and the perceived likely responding action of the offender to the verbal advice.

Works in default

- 7.11 Discretionary powers exist under certain legislation for Councils to carry out works in default where the requirements of a formal notice have not been met within the time specified or where reasonable progress has not been made. In deciding whether to take this action the Council will endeavour to first request an explanation from the owner as to the reason the work has not been carried out and will consider this whilst taking into account the health, safety and nuisance implications of the contravention.

No action

- 7.12 In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council 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, or the offender is elderly and frail and formal action would seriously damage their well being. A decision to take no action must be recorded in writing and must take into account the health, safety, environmental damage or nuisance implications of the contravention.

Determining whether formal enforcement action is viable and appropriate

- 7.13 There are two stages in the decision to take formal enforcement action. The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, senior managers and Legal Services must decide the second stage - if formal enforcement action is needed in the public interest.
- 7.14 Environmental services will only start, and continue, with formal enforcement action when the case has passed both tests. Paragraphs 7.15 to 7.20 below, detail how this policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

The Evidential Test

- 7.15 Environmental Services or Housing Service Managers in conjunction with Legal Services must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied of a defendant's guilt beyond reasonable doubt.
- 7.16 When deciding whether there is enough evidence to prosecute, Environmental Services or Housing Service Managers in conjunction with Legal Services must consider whether the evidence can be used and is reliable.

The Public Interest Test

- 7.17 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour.

7.18 Environmental Services or Housing Service Managers in conjunction with Legal Services must balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, but are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution.

7.19 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- There is evidence that the offence was premeditated;
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal damage or disturbance;
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- The defendant's previous convictions or cautions are relevant to the present offence;
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct;

Some common public interest factors against prosecution

7.20 A prosecution is less likely to be needed if:

- The court is likely to impose a nominal penalty;
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious;
 - The delay has been caused in part by the defendant;
 - The offence has only recently come to light; or
 - The complexity of the offence has meant that there has been a long investigation;
- A prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.

7.21 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Environmental or Housing Services Managers and Legal services must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

8. Liaison

- 8.1 Environmental Services and Housing Services will co-ordinate their enforcement activity to maximise the effective enforcement of any matters that are related to more than one of the services.
- 8.2 Where an enforcement matter affects a wide geographical area beyond the District's boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

9. Offences

- 9.1 Environmental Services and Housing Service Managers in conjunction with Legal Services, should select offences which:
- reflect the seriousness of the offending,
 - give the court adequate sentencing powers,
 - are made to the appropriate court,
 - enable the case to be presented in a clear and simple way.

10. Accepting Guilty Pleas

- 10.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. Environmental Services and Housing Service Managers in conjunction with Legal Services, should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offence. A guilty plea must never be accepted because it is convenient.

11. Considering the views of those affected by offences

- 11.1 Environmental Services and Housing Services undertake enforcement on behalf of the public at large and not just in the interests of any particular individual or group, unless it relates to a housing issue. However, when considering the public interest test (see section 7.17 above) 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 taken into account.
- 11.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved.

12. The interests of the District's stakeholders

- 12.1 Where particular local circumstances dictate, enforcement activity will, where practicable, take account of those circumstances to minimise any adverse effects of enforcement activity on legitimate businesses and individuals.

13 Re-starting a prosecution

- 13.1 People should be able to rely on enforcement decisions taken by Environmental Services or Housing Service managers. Normally, if a suspect or defendant is advised that there will not be a prosecution, or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:
- Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand,
 - Cases that are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the defendant will be told that the enforcement action may well start again,
 - Cases that are stopped because of a lack of evidence but where more significant evidence is discovered later.

14. Code for Crown Prosecutors

- 14.1 This policy takes account of all the relevant parts of the Code for Crown Prosecutors.

15. Enforcement Policy implementation

- 15.1 Monitoring of Internal procedures will be undertaken to ensure that all enforcement activity is carried out in accordance with this policy.
- 15.2 Instances of non-compliance with this policy will be recorded and reported to the Environmental or Housing Services Manager, who will instigate appropriate action.

