

SOUTH NORFOLK COUNCIL

ENFORCEMENT POLICY FOR GENERAL
PUBLIC HEALTH AND ENVIRONMENTAL
PROTECTION MATTERS

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I INTRODUCTION

- 1.1 The Council has wide ranging powers to deal with issues relating to general public health matters and environmental protection.
- 1.2 It is right and proper that the community as individuals and collectively perhaps as businesses or specific interest groups, are clear about what they can expect from the Council in terms of enforcement action for non-compliance with their statutory obligations.
- 1.3 This policy gives a framework which should assist Officers of the Environmental Health Service in gauging the most appropriate enforcement action that is proportionate to the offence committed and this should help to ensure consistency of approach.
- 1.4 The Council has signed up to the principles of good enforcement detailed in the Enforcement Concordat issued by the Cabinet Office.

2. OBJECTIVES

- 2.1 The Council wants activities within its area to enhance rather than damage the local and global environment and to remove threats to personal health and safety.
- 2.2 It is this Council's policy to strive to ensure that all enforcement action is undertaken fairly, without prejudice and for the good of the community to ensure that the public is adequately protected.

3. STATEMENT OF POLICY

- 3.1 All enforcement action, verbal, informal, formal or prosecutions will be based upon an assessment of risk to public and environmental health.
- 3.2 All enforcement action will be based upon an objective assessment where possible following consideration of all the facts of the matter. Enforcement action will not be based on anecdotal, hearsay evidence.
- 3.3 It will not be normal practice for formal enforcement action to be used as a punitive measure for minor technical contraventions.

- 3.4 All enforcement action shall have regard to relevant legislation, Codes of Practice, and advice periodically issued by the Government, the Chartered Institute of Environmental Health and other relevant bodies.
- 3.5 All Authorised Officers, when making enforcement decisions will abide by this policy. Any departure from this policy must be exceptional, be capable of justification and be fully considered by a Senior or Principal Environmental Health Officer as appropriate and if necessary, the Head of Environmental Health before the decision is taken, unless there would be a significant risk to public health and/or safety by delaying the decision.
- 3.6 All Authorised Officers will be made fully aware of the requirements of this policy and given necessary initial and ongoing training.
- 3.7 This policy will be reviewed by the Head of Environmental Health annually and at more frequent intervals if there are significant changes in the relevant legislation, Codes of Practice or other guidance.
- 3.8 This policy relates to enforcement actions by the Council in respect of general public protection and environmental pollution matters.

4. ENFORCEMENT ACTION

- 4.1 The Council recognises and affirms the importance of achieving consistent, balanced and fair enforcement.
- 4.2 In making any decision on enforcement relating to issues of general public health or environmental protection, this Council and its officers will consider the following criteria:-
- The seriousness of the offence
 - The offender's past history
 - Consequences of non-compliance
 - The effectiveness of the various enforcement options
 - The known or likely public benefit of the chosen enforcement option
 - The willingness of the offender to prevent a recurrence and in the case of a business, the confidence in management
 - The likely ability of any witnesses to give evidence and their willingness to co-operate
 - The Crown Prosecution Service's Code of Practice for Crown Prosecutors
- 4.3 The Council after considering all relevant information and evidence will choose one or more of the following courses of action listed below. Not all the actions listed will necessarily be carried out in respect of any one particular problem. For example there will be cases where the decision will be taken to serve a Statutory Notice without any prior warning:-
- Informal verbal advice
 - informal written advice

- A formal verbal warning
- A formal written warning
- Use of Statutory Notices
- Formal Caution
- Prosecution in the Criminal Courts
- Action through the Civil Courts
- Injunction

The guidance detailed in this document for each option will be followed.

4.3.1 In the case of actions taken under Part III of the Environmental Protection Act 1990, the Council **shall** serve a Statutory Notice when there is evidence that a Statutory Nuisance exists or is likely to arise.

4.4 Where this Council is considering taking enforcement action which it believes may be, or is informed is inconsistent with that adopted by other Authorities or contrary to advice issued by the Government, the CIEH or other national body, it will discuss these matters with those bodies and with the Norfolk Environmental Protection Group and other interested regional or national groups, to ensure consistent enforcement.

5. TYPES OF ENFORCEMENT ACTION

5.1 Authorised Officers of the Council will, when undertaking enforcement action, follow the policy detailed below for the relevant type of action.

5.2 *Informal Action*

5.2.1 Informal action to secure compliance with legislation includes:-

- Offering verbal advice
- Verbal requests for action
- Sending letters of advice or requests for action

5.2.2 The circumstances where it is appropriate to use informal action are:-

- Where the act or omission is trivial or not of a serious nature to put the public at risk and it can be simply remedied.
- Where from the individual/businesses past history it can be reasonably expected that informal action will achieve compliance.
- Where confidence in the individual/businesses management is high
- Where consequences of non-compliance will not pose a significant risk to public or environmental health.
- Where an Authorised Officer has insufficient evidence for formal action at the time (although formal action may subsequently follow at a later date).

5.3 *Formal Action*

5.3.1 Formal action to secure compliance with legislation includes:-

- Giving a verbal warning (confirmed in writing)
- Giving a written warning that the Council is minded to serve a Statutory Notice and/or institute legal proceedings.
- Issuing Statutory Notices

5.3.2 The circumstances where it is appropriate to use formal action include:-

- There are significant contraventions of legislation
- There is a lack of confidence in the individual/business to respond to an informal approach.
- There is a history of non-compliance with informal action
- The consequences of non-compliance could be potentially serious to public or environmental health and/or safety.
- Immediate or swift action is necessarily required to remedy a serious threat to public or environmental health.

5.3.3 Authorised Officers issuing verbal warnings shall specify clearly the reason for the warning, the relevant statutory provision being (or likely to be) breached, the works or actions required if any, and the time limit in which to carry out any works. In the main verbal warnings will be issued for matters requiring action in the immediate or very short term. Verbal warnings should be confirmed in writing at the earliest opportunity.

5.3.4 Formal written warnings or request for works or actions to be carried out shall specify the reasons, the relevant statutory provisions being, or likely to be breached, the works or actions required and the time limit in which the individual/businesses should comply. The recipient of the letter shall be advised that failure to comply may lead to the issue of a Statutory Notice by the Council.

5.4 Statutory Notices

5.4.1 The circumstances where Officers will consider the issue of a Statutory Notice will include the following:-

- Where a statutory nuisance is confirmed under the provisions of Part III of the Environmental Protection Act 1990.
- Authorised Officers have little confidence in individual/businesses to resolve the matter unless a Statutory Notice is served.
- The service of a Statutory Notice and subsequent enforcement, for example by way of works in default or prosecution, is the only realistic option to abate a statutory nuisance or secure compliance.
- Informal and/or other formal action has failed to resolve the issue in question.

- The offence(s) is(are) so serious as to warrant the immediate service of a Statutory Notice.
- Where a Company holding an Authorisation issued under Part I of the Environmental Protection Act 1990 fails to comply or in the opinion of the Case Officer is likely to fail to comply with a condition attached to its Authorisation.

- 5.4.2 In general, Statutory Notices will not be used for minor technical contraventions.
- 5.4.3 Statutory Notices will only be signed by those Officers authorised by the South Norfolk Council.
- 5.4.4 Authorised Officers shall only sign Statutory Notices where they are satisfied that sufficient evidence has been presented to them that service of a Notice is the most appropriate way forward.
- 5.4.5 When drafting Notices, realistic time limits shall be imposed and the Case Officer shall, where possible or appropriate, discuss these with the recipient. Taking into account the urgency of the matter and should time allow, Case Officers shall also discuss with the recipient, where appropriate the works that will be specified and that there will be the opportunity to fully consider any alternatives put forward by the recipient and the availability of solutions.
- 5.4.6 Generally, failure to comply with Statutory Notices will result in the Council instituting legal proceedings and/or carrying out the works specified in the Notice in default.

5.5 *Environmental Protection Act 1990 Section 14 Prohibition Notices*

- 5.5.1 If, on production of sufficient evidence, the Authorised Officer is satisfied that the carrying on of a prescribed process involves an imminent risk of serious pollution of the environment the Council shall take action and serve a Prohibition Notice.

6. PROSECUTION AND ACTION THROUGH THE COURTS

- 6.1 The Council will consider it appropriate to initiate action through the Courts where one or more of the following criteria are met:-
- 6.1.1 There is a history of similar offences and/or written warnings have been ignored, for example:-
- The alleged offender when required to obtain an Authorisation under Part I of the Environmental Protection Act 1990 has not done so in spite of a formal written warning.

- Emissions of dark smoke from either chimneys or trade or industrial premises are so severe and prolonged that the provisions of the Clean Air Act 1993 are breached.

6.1.2 The offence involves failure to comply in full or part with the requirements of a Statutory Notice.

6.1.3 The use of a formal caution is deemed inappropriate.

6.1.4 The public or environmental health or safety is put at an unacceptable level of risk.

7. COMPLAINTS AND APPEALS

7.1 It is important that those affected by enforcement decisions have an opportunity to complain or appeal against these decisions.

7.2 Where the enforcement action taken is formal, then the legislation usually provides an appeal process.

7.3 Where there is no prescribed appeals mechanism, or the action taken is informal, the Council's Complaint Procedure can be used for appeals.

8. SUMMARY

8.1 Those who are the recipients of enforcement action by Environmental Health Team can reasonably expect:-

- The Enforcement Officer will identify his/herself and will produce identity and authorisation if required together with information about how the officers identity may be checked.
- A clear distinction will be made between recommendations which are advising of good practice and requirements to meet legal obligations.
- An explanation will be given for requirements.
- Enforcement officers are competent, qualified and trained for the purpose.
- Action taken will be consistent with the Enforcement Policy.

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The Norfolk Environmental Protection Group consists of Officers from:-

North Norfolk District Council

South Norfolk Council

Breckland Council

Broadland District Council

Norwich City Council

King's Lynn and West Norfolk Borough Council

Great Yarmouth Borough Council