



Corporate Enforcement Policy

2011

SUMMARY

To be effective as leader and shaper of its community, the Council must be in a position to enforce compliance with its policies and the law. This Policy sets out the Council's corporate approach to that enforcement. It seeks to support the 4 key priorities and objectives of the Council to:

- Promote a thriving local economy
- Enhance our quality of life and the environment we live in
- Support communities to develop their potential
- Drive services through being businesslike, efficient and customer aware

In undertaking its enforcement activities the Council will seek to protect residents, visitors, workers, consumers, businesses, the Council's financial position and the environment of the area.

Where possible the Council will resolve problems by advice or informal means and more formal action will only be taken where there is a significant risk of harm or damage, where there is a flagrant or deliberate breach of the law, where there is non-payment of local taxes and charges, where the risk requires urgent or emergency action or where there is some other justifiable reason for enforcement.

As well as seeking to be fair, reasonable, open and helpful, the Council intends to be consistent in applying the policies relevant to each type of enforcement. From time to time, supplementary policies for enforcement action may be developed. To assist enforcement officers in each service to make decisions which match both this Corporate Enforcement Policy and the requirements of the legislation they are enforcing, a matrix may be used to guide and document how and why a particular enforcement decision was reached.

The Council will co-ordinate its enforcement actions internally and will endeavour, where appropriate, to co-ordinate with other enforcement agencies and partner organisations. It has in place procedures for complaints and appeals to fulfil the Council's equalities objectives, human rights legislation and to meet other statutory requirements as necessary.

When adopted by the Council this policy will supersede all earlier enforcement policies including those developed in partnership with the former Norfolk Better Regulation Partnership.

CORPORATE ENFORCEMENT POLICY 2011

1. The relevance of enforcement

- 1.1 South Norfolk Council has a range of duties and some wide-ranging powers to make plans, decide whether to give permissions and licences, set standards and regulate aspects of the quality of life in the District and collect revenues and charges. Most of this is achieved through encouragement and education. But if it is to be effective, the Council must also be in a position to enforce compliance with the law. This Policy sets out the Council's corporate approach to that enforcement.
- 1.2 In the event of continued non-compliance, the Council has to decide whether or not to take legal action against an individual or company. Prosecution is an integral part of enforcement and is discussed in more detail towards the end of the policy.

2. National guidance

- 2.1 South Norfolk Council fully supports the approach to good enforcement practice that is outlined in the Regulators' Compliance Code and subsequent guidance from the various branches of Central Government including "Lightening the Load" published in November 2010.
- 2.2 This enforcement policy explains how the Council will implement the Regulators' Compliance Code and what individuals, households, businesses and other agencies can expect from our enforcement activities.
- 2.3 This Enforcement Policy commits us to:
 - Protecting residents, visitors, workers, consumers, businesses, the Council's financial position and the environment of the area
 - Equitable and consistent enforcement actions
 - Fostering an environment which encourages economic progress in our district
 - Helping businesses and others to understand and meet their legal obligations
 - Reducing unnecessary burdens on businesses and individuals
 - Responding proportionately to the seriousness of regulatory breaches
 - Taking firm action, including legal action where appropriate, against those who fail to pay local taxes and charges, persistently flout the law or act negligently or irresponsibly
- 2.4 By delivering these commitments, we believe we shall help to maintain a fair and safe living and trading environment to promote the local economy and social cohesion.

2.5 The Council recognises that most people and businesses want to comply with the law and it is our commitment that we shall help and encourage them to do this.

2.6 The following list indicates some of the many different enforcement activities undertaken by South Norfolk.

Car park excess charge notices

Commons and open spaces management.

Housing standards

Licensing of taxis, entertainment, gaming lotteries, charitable collections and theatres.

Pollution control, environmental protection, health & safety, food safety, smoke-free, animal welfare, pest control, dog control, waste management, street cleaning, fly tipping, abandoned vehicles and graffiti.

Planning, building control, listed buildings, tree preservation orders, high hedges, private housing and harassment.

Revenue collection, housing and council tax benefit and fraud.

3. Principles of Enforcement

3.1 The Council believes in firm but fair regulation. Underlying the policy are the five principles of good regulation referred to in the Regulators' Compliance Code, which states that regulation should be transparent, accountable, proportionate, targeted only at cases for which action is necessary and consistent

I. Transparency

3.1.1 Being transparent is important in maintaining public confidence in the Council's ability to regulate. It means helping all customers to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to or has taken enforcement action. To achieve these objectives, we will

- Clearly explain (in writing if requested) why the action is necessary and when it must be carried out;
- Clearly distinguish between legal requirements and best practice advice given to help raise standards;
- Provide an opportunity to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect the environment, to prevent evidence being destroyed or in the course of an investigation into fraud that may lead to prosecution. If urgent action is required, a written explanation of the reason will be provided if requested, as soon as practicable after the event;
- Provide a written explanation of any rights of appeal against formal enforcement action at the time the action is taken;
- Provide information and advice in plain language;
- Confirm advice in writing if requested;
- Be open about how we set about our work and any charges that we set;
- Actively seek feedback from businesses, voluntary organisations and members of the public who are affected by our regulatory activities.

2. *Accountability*

3.1.2 We will actively work with businesses and the public to advise and to assist with compliance and complaints.

- Our staff will show their identification (and authority if requested) at the outset of every visit and explain the reason for the visit, unless the nature of the investigation requires otherwise.
- Contact points and telephone numbers will be provided for business and public use.
- The whole range of enforcement activities will be dealt with as promptly and efficiently as possible in order to minimise time delays.
- If businesses or members of the public wish to complain about any aspect of enforcement work, officers will ensure that the mechanism for doing so is clearly explained
- The Council will monitor complaints against services and report on the results
- We ask for feedback to gather and act upon information about the service we provide.
- A service is provided to receive complaints and notifications of incidents that are of an immediate and high risk to business or public safety
- Visits, monitoring and inspections may be made by officers at times other than normal office hours if considered necessary .

3. *Proportionality*

3.1.3 To reduce unnecessary costs for compliance we will ensure that all enforcement action is proportionate to the seriousness of the breach and the risk to health, safety or the environment. Where possible the Council will resolve problems by advice or informal means. More formal action will only be taken where there is a significant risk of harm or damage, where there is a flagrant or deliberate breach of the law, where there is non-payment of local taxes and charges, where the risk requires urgent or emergency action or where there is some other justifiable reason for enforcement.

4. *Targeted*

3.1.4 All enforcement action will be targeted primarily towards those situations that give rise to the most serious risks, where the risks are least well controlled or against deliberate or organised crime or non-payment of local taxes and charges. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it. The Council has systems for prioritising regulatory effort. They include:

the response to complaints from the public about regulated activities;
the assessment of the risks posed by the activities which are causing concern;
the gathering of and acting on intelligence about illegal activity.

5. Consistency

3.1.5 Enforcement will be done in a consistent and fair way taking into account guidance from any central government or professional guidance notes or codes of practice. To achieve this:

- All staff undertaking enforcement duties will be suitably trained, qualified and authorised so as to ensure that they are fully competent to undertake their enforcement duties.
- In accordance with the Council's scheme of delegation, specified officers are trained and made responsible for the management of investigations conducted under the provisions of the Regulation of Investigatory Powers Act 2000.
- Depending on legislative requirements, an enforcement risk assessment matrix may be used to assist the process of enforcement decision taking to ensure that similar issues will be dealt with in the same way in similar circumstances.
- There are arrangements in place to ensure discussion and comparison of enforcement decisions by officers.

3.1.6 As well as seeking to be fair, reasonable, open and helpful, the Council intends to be consistent when dealing with cases of the same type. From time to time, supplementary policies for particular types of cases may be developed.

4. South Norfolk Council's Decision Criteria

4.1 The specific types of enforcement action that are available in any particular case will depend on its nature and the legislation with which it is concerned. Usually the range will include options for informal action and formal action.

4.2 Whilst the principles in section 3 above outline how the regulatory function is performed, the following criteria will guide decisions on the action to be taken. Enforcement decisions must be consistent, balanced, and fair and relate to common standards that ensure the public or the environment is adequately protected. The criteria to be considered will include:

- The seriousness of the matter;
- The vulnerability of the individuals concerned
- The history of the activity;
- Confidence in achieving compliance;
- Consequences of non-compliance;
- Likely effectiveness of the various enforcement options;
- The urgency with which corrective action is necessary;
- Whether there is a deliberate or flagrant breach of the law;
- Non-payment of local taxes and charges.
- All relevant national guidance.

4.3 The criteria are not exclusive and those which apply will depend on the particular circumstances of each case. This does not mean that all factors must support enforcement action before it can proceed.

Informal Action

4.4 Informal enforcement action option will be considered when:

- The act or omission is not serious enough to warrant formal action
- From the individual's or business's past history it can be reasonably expected that informal action will achieve compliance
- The confidence in an individual or business proprietor is high
- The consequences of non-compliance will not pose a significant risk to public health and well-being, public safety or the environment.

4.5 When an informal approach is used to secure compliance with regulations, usually the requirement will be confirmed in writing. Such correspondence will:

- Clearly differentiate between legal requirements and recommendations of good practice
- Identify the regulations contravened and the measures that will enable compliance.

Formal Action

4.6 A wide variety of possible formal actions may be appropriate. These include cautions, administrative penalties, statutory notices, seizing or removing, the revoking of licences or permissions and, as a last resort, prosecution. Use of these mechanisms will depend on the specific legislation and the application of the decision criteria.

4.7 Formal action will typically be taken when:

- There is a statutory duty to do so;
- There are significant contraventions of legislation;
- Where there is a lack of confidence in the individual, proprietor or enterprise to respond to an informal approach;
- There is a history of non-compliance;
- The consequences of non-compliance could be potentially serious to public health or well-being, cause public nuisance, or be irreversible;
- Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating or where the service of a notice is needed to support a prosecution;
- There is non-payment of local taxes and charges, or evidence of significant fraud;
- Where an individual has assaulted, abused or made threats against a Council employee.

4.8 Failure to comply with a statutory notice will in general result in further enforcement action such as work in default and/or a prosecution.

4.9 In the event of a prosecution being taken, the Council will seek to recover the costs of investigation and legal expenses.

5. Considering the views of those affected by “offences”

- 5.1 Officers undertake enforcement on behalf of the public at large and not just in the interests of a particular individual or group. The consequences for those affected by the offence are taken into consideration as part of the public interest test when deciding whether or not the Council should take enforcement action. Those people affected by the offence will be informed about any enforcement decision that concerns them.
- 5.2 Where it is appropriate and felt that it could be beneficial to people who have been affected by an offence, the Council can offer the services of qualified Restorative Justice Practitioners. Restorative justice brings victims, offenders and communities together to decide on a response to a particular crime. It is about putting victims' needs at the centre of the criminal justice system and finding positive solutions to crime by encouraging offenders to face up to their actions.

6. Complaints and Appeals

- 6.1 Enforcement action often raises complaints, objections and appeals. If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant officer. This is without prejudice to any formal appeals mechanism or to the Council's complaints procedure. Complaints can be made electronically at any time by accessing the Council's web site: - www.south-norfolk.gov.uk
- 6.2 Most formal statutory enforcement actions including planning and licensing, have legal rights of appeal to an inspector, a court or tribunal etc. An explanation of the rights of appeal will be given in writing when any formal action is taken.

7. Delegation of Authority

- 7.1 The Council's scheme of delegation specifies the levels of authority given to officers. Broadly speaking Directors and service managers are authorised to take appropriate enforcement action. In the main, Directors use their delegated powers to make non-controversial enforcement decisions. Directors will consult with the appropriate Cabinet member before making potentially controversial decisions or they may report any matter to Cabinet. Unless the scheme of delegation says otherwise (as it does in the case of Planning Enforcement which is done under the direction of the Planning Committee) they should always consult the Chief Executive and an appropriate cabinet member before initiating a prosecution.

8. Appointment and Training of Officers

- 8.1 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. Enforcement officers will be formally authorised by the Council or by the Service Director to exercise specified powers under relevant statutes. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisation will be in writing and in a form which can be shown on request.
- 8.2 The Council supports the principle of continuing professional development and will ensure that all officers involved in enforcement are given additional in-post training to maintain up to date knowledge and skills.
- 8.3 The competence of Enforcement staff will be reviewed not less than once per year through the Council's Corporate Appraisal System. The consistency of its enforcement practice will be reviewed by each service on a regular basis.
- 8.4 The Services will maintain systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach. Where local or national coordinating guidelines exist, the Council will ensure that wherever possible its enforcement practices are consistent with best practice.

9. Prosecution policy

- 9.1 The decision to prosecute will normally be taken by the relevant Director (or, in the case of Town & Country Planning, by Planning Committee) after taking into consideration the advice of the Solicitor to the Council as to the satisfactory nature of the evidence.
- 9.2 There are certain specific exceptions to this principle. For instance, officers authorised under the Health and Safety at Work etc Act 1974 have the authority to take a decision to commence legal proceedings for offences committed under that Act or under any subordinate legislation. However they will need to seek the approval of the Director regarding any expenditure involved.
- 9.3 If there are significant financial or policy implications the Director will consult the Chief Executive and the relevant portfolio holder.
- 9.4 All available, relevant evidence and information will be considered before deciding to commence a prosecution in order to enable a consistent, fair and objective decision to be made. decision will be made as to whether there is sufficient evidence to prove that a criminal offence has been committed by identifying whether the evidence is admissible, substantial and reliable.
- 9.6 When the evidential test has been satisfied and there are grounds for instigating a prosecution, consideration will be given as to whether it would be in the public interest to do so. A number of factors will be taken into account to determine this and regard will be had to Human Rights legislation and the guidance in the Code for Crown Prosecutors.

- 9.7 In each prosecution case the Council will normally apply for an order that the Defendant pays the Council's costs (or a contribution towards them) in respect of the investigation of the case and the costs in bringing the case to court.

10. Review of the Policy

- 10.1 The Council will review this policy document at least once every three years. When adopted by the Council this policy will supersede all earlier enforcement policies including those developed in partnership with the former Norfolk Better Regulation Partnership.

Appendix

Sources of guidance taken into account in preparing this Policy

BERR – Regulators' Compliance Code – December 2007

DWP – Tackling Fraud and Error in the Benefit and Tax Systems October 2010

LACORS - Best Practice Framework for the Review of Licensing Policy Statements April 2010. which in turn reflects Secretary of State Guidance issued 30.03.10.

BRE – Lightening the Load November 2011