

Working for you

Environmental Services

Enforcement Policy

If you would like help with this leaflet or have any questions
please call Mike Poole on (01423) 556656

Purpose

To reflect Harrogate Borough Council's commitment to the Local Government Enforcement Concordat.

To achieve a consistent, fair, balanced and co-ordinated approach to Environmental Services enforcement of offences relating to litter, graffiti and other environmental offences.

Scope

All Authorised Officers shall apply this procedure to the determination of Environmental Services Enforcement matters. The policy integrates with the work done on prevention and education.

Responsibility

The Head of Environment has overall responsibility for this policy. All staff involved in the determination of Environmental Services Enforcement matters shall comply with this procedure.

Relevant Documents

Clean Neighbourhoods and Environment Act 2005, Control of Pollution (Amendment) Act 1989, Anti Social Behaviour Act 2003, DOE Circular18/96, Environmental Protection Act 1990, Police and Criminal Evidence Act 1984, Regulation of Investigatory Powers Act 2000, Human Rights Act 1998, Criminal Procedure and Investigation Act 1996, the Council's Scheme of Delegation, Crown Prosecution Service Guidance and Local Government Enforcement Concordat.

Glossary of Terms

Best Value: A statutory process required of Local Authorities whereby they carry out an audit of their services to assess levels of efficiency, effectiveness and customer satisfaction and also develop an action plan to demonstrate continuous improvement.

Relevant Land: Means all places that are open to the air, including private land and land covered by water.

DOE: Department of Environment, now part of DEFRA, Department of Environment, Food and Rural Affairs.

Enforcing Authority: The authority designated to enforce offences relating to litter, graffiti and other street scene offences under the Clean Neighbourhoods and Environment Act 2005.

Fixed Penalty Notice: Served on any person where an offence is committed, such a notice offers the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

Local Government Enforcement Concordat: An initiative instigated by the 'Better Regulation Unit' within the Cabinet Office of Central Government to improve the standard of enforcement by Statutory Bodies such as Local Authorities and the Police.

Person Responsible: The individual or corporate body with the primary responsibility for meeting the legal requirements.

Portfolio Holder: Elected Member with specific responsibility for the Environment.

Stakeholder: A person or body, both within the community or the organisation in question, who either uses, or is affected by, or has some interest in, the matter in question.

Procedure

1.0 Statement Of Objectives:

- 1.1. It is the Council's policy to protect the public from environmental factors, which may affect their health and well being, to improve the condition of the environment of the district and to fulfil mandatory statutory obligations.
- 1.2. The Council formally adopted the Local Government Enforcement Concordat in March 1999. In accordance with that Concordat and principle of Best Value, the Council will work in partnership with businesses and other stakeholders in order to provide the best possible enforcement service within the Harrogate District.
- 1.3. Authorised Officers will work in consultation, liaison or where relevant, in partnership with other Council Departments within Harrogate and other enforcing agencies to provide a coordinated service.

2.0 Achievement Of Objectives:

- 2.1. Authorised Officers will exercise the principles of transparency, helpfulness, proportionality, consistency and targeting in deciding on the correct enforcement approach.
- 2.2. Transparency and helpfulness mean providing information and advice in plain language and assisting the person responsible to understand what is expected of them, and what they should expect from the Council as an Enforcing Authority. It will be made clear to the person responsible, who within the Council, is dealing with the matter in question. It also means making clear to the person responsible what is required of them. It means distinguishing between statutory requirements and advice or guidance about what is desirable but not a legal requirement.

- 2.3. Proportionality means relating enforcement action to risks. Those whom the law protects and those on whom it places duties expect that action taken by the Council to achieve compliance should be proportionate to any risk to public health and the environment.
- 2.4. Consistency of approach does not mean uniformity, it means taking a similar approach to similar circumstances to achieve similar ends. The Council will carry out its duties in a fair, equitable and consistent manner. Where Authorised Officers are expected to exercise judgement in individual cases, there will be arrangements in place to promote consistency, including effective arrangements for liaison with other Authorities.
- 2.5. Targeting means making sure that monitoring and associated enforcement action is targeted primarily towards those. It also means that action is focused on those who are responsible for the risk and who are best placed to control it.
- 2.6. Authorised Officers will be trained in order to carry out Environmental Services enforcement work.

3.0 Decision Making:

3.1. Delegation to Officers:

The Council has delegated its authority to make decisions about Environmental Services enforcement to Officers of the Council as follows:

(i) Director of Community Services

Appointment of Authorised Officers in accordance with the provisions of the Environmental Protection Act 1990 as amended, the Clean Neighbourhoods and Environment Act 2005 and Anti Social Behaviour Act 2003 upon the recommendations of the Head of Environment and the Environmental Cleansing and Enforcement Manager.

(ii) Solicitor to the Council

To institute proceedings and prosecute on behalf of the Council in respect of any offence against any legislation including relevant byelaws which are in force and for which the Council is the Enforcing Authority, in consultation with the relevant Portfolio Holder.

(iii) Authorised Officers

Individual Officers authorised according to their qualifications, training, experience and relevant competencies the exercise of the power of Authorised Officers contained in the Environmental Protection Act 1990 as amended, the Clean Neighbourhoods and Environment Act 2005 and Anti Social Behaviour Act 2003.

- 3.2. All Authorised Officers who make enforcement decisions must comply by this policy. Any departure from this policy must be exceptional, capable of justification.

4.0 Enforcement Options:

4.1. The relevant options are as follows:

- (i) to take no further action;
- (ii) to take informal action;
- (iii) to use Fixed Penalty Notices;
- (iv) to take legal proceedings.

4.2. In deciding which of the above options will be followed, the advice within DOE Circular 18/96 will be considered.

5.0 Informal Action:

5.1. Informal action includes verbal warnings or requests for action and may involve the use of written correspondence.

5.2. Informal action will be considered where:

- (i) circumstances do not warrant formal action;
- (ii) it is expected that informal action will achieve compliance.

5.3. Where verbal advice is given, it will if requested be confirmed in writing.

6.0 Fixed Penalty Notices:

6.1. Fixed Penalty Notices will be considered where: -

- (i) A person throws down, drops or otherwise deposits in, into or from any relevant land and leaves anything whatsoever in such circumstances as to cause or contribute to or tend to lead to, the defacement by litter of any relevant land.
- (ii) A person distributes or causes another person to distribute, any free printed matter without the consent of the Council on any land designated under Schedule 3 of the Clean Neighbourhoods and Environment Act 2005.
- (iii) A person displays advertising material on buildings and street furniture without the consent of the owner.
- (iv) A person deliberately or recklessly destroys or damages someone else's property by graffiti.
- (v) A person fails to comply with a 'Street Litter Control Notice' or a 'Litter Clearing Notice'.
- (vi) A person fails to produce authority to transport waste (Waste Carriers Licence)
- (vii) A person fails to produce Waste Transfer Notes after being given notice by an authorised officer.
- (viii) A person fails to comply with Notices issued in relation to receptacles for household, commercial and industrial waste.

6.2. Fixed Penalty Notices will only be issued by an appropriately trained Authorised Officer.

6.3. Any person failing to pay a Fixed Penalty Notice within the specified time limit will be considered for legal proceedings.

7.0 Legal Proceedings:

7.1. Prosecution will be considered:-

- ❖ for failure to pay a Fixed Penalty Notice
- ❖ for persistent offenders;
- ❖ where there is public benefit to prosecution and the Council has given prior notification of its intention to consider pursuing a prosecution

7.2. The decision to refer matters to the Solicitor to the Council for prosecution will be taken by the Environmental Cleansing and Enforcement Manager who will consider all relevant evidence and information where necessary in consultation with the Head of Environment, and in particular have regard to the following: -

- (i) the seriousness of the alleged offence;
- (ii) the general record and approach of the offender;
- (iii) the ability of any important witnesses and their willingness to co-operate;
- (iv) the willingness of the alleged offender to prevent a recurrence;
- (v) the probable public benefit of prosecution and the importance of the case;
- (vi) whether the evidence provides a realistic prospect of conviction with respect to the Crown Prosecution Service Guidance;

7.3. The Solicitor to the Council will consider whether to institute legal proceedings. Where a prosecution is appropriate it will be pursued in accordance with the Crown Prosecution Service Guidance in consultation with the relevant Portfolio Holder.

7.4. The decision to prosecute does not preclude the issue of Fixed Penalty Notices where appropriate.

8.0 Complaints And Appeals

8.1. The Council provides a well-publicised, effective and timely complaints procedure, which is accessible to businesses, the public, employees and consumer groups. This complaints procedure is contained within the "Help Us to Help You" Policy of Harrogate Borough Council which should be followed in the event of an enforcement related complaint. All contact with relevant stakeholders will be in accordance with this policy.

8.2. Where the defendant makes an appeal against a conviction, or Harrogate Borough Council is considering an appeal against the decision of the Court, advice will be taken from the Solicitor to the Council or appointed Barrister and a decision as to further action made on the weight of that advice.

8.3. The actual level of service and standard at which it be provided is contained in other service specific leaflets.

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