

February 2020



# Draft Corporate Enforcement Strategy



# **Eastleigh Borough Council**

## **Draft Corporate Enforcement Strategy**

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### **1 INTRODUCTION**

- 1.1 Eastleigh Borough Council (the Council) has duties and responsibilities delegated to it by Central Government. Some of the duties involve regulation and enforcement of various laws designed to protect the health and well being of the residents, consumers and workers of the Borough, to support activities, and to protect the environment in which people work and live.
- 1.2 Aside from statutory duties, enforcement activity supports the achievement of the Council's vision and a number of objectives in the Corporate Plan 2015-2025:

*"To lead and support Eastleigh Borough and its communities: developing a strong and sustainable economy that supports improved standards of living for residents; promoting thriving and healthy communities; and maintaining an attractive and sustainable environment that residents value."*

- 1.3 Relevant Corporate Plan objectives include the objective of Tackling Deprivation; the Council will give due consideration to this objective in

carrying out its enforcement activity.

- 1.4 The Council recognises the need for effective and timely enforcement of legislation and also recognises the effects of enforcement action on individuals and businesses.
- 1.5 This document has been prepared with regard to the current principal legislation and statutory guidance.
- 1.6 This Strategy sets out the Council's overarching approach to enforcement which seeks a balanced approach to minimise harms, promote wellbeing and prosperity and prevent breaches where possible.
- 1.7 Specific enforcement policies for each service area will set out legislative and procedural details for Council staff to follow and provide guidance as appropriate for individuals and businesses being regulated. These policies will be published on our website as appropriate.
- 1.8 By this document and relevant specific enforcement policies the Council intends to enable enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently.
- 1.9 The Council undertakes enforcement activity in accordance with our statutory responsibilities on behalf of the public at large and not in the interests of any particular individual, business or group.

#### **1.10 Commercialism**

- 1.11 The Council will seek to recover any costs it can through enforcement.
- 1.12 The Council will consider carefully options to outsource enforcement activity to a commercial partner at this time. Where the Council uses outside agencies the Council will retain control and accountability for the way the service is delivered.

## **2 SCOPE AND MEANING OF 'ENFORCEMENT'**

- 2.1 This Strategy applies to all the legislation enforced by officers of all regulatory and enforcement services of Eastleigh Borough Council.
- 2.2 'Enforcement' includes any criminal or civil action taken by officers aimed at ensuring that individuals or businesses comply with the law. The Council will ensure that its own enforcement officers interpret and apply their legal requirements and enforcement policies consistently and fairly.

## **3 UNDERLYING PRINCIPLES**

- 3.1 Our principles are informed by [The Regulators' Code](#) which took effect on

6 April 2014, [the Enforcement Concordat](#), and the Guidance of the Better Regulation Delivery Office (BRDO) (now part of the Office for Product Safety and Standards) as to how to apply these documents.

## **4 DECISION MAKING**

- 4.1 In all cases the Council will strive to ensure that enforcement decisions are always fair and consistent, and in compliance with statutory requirements and legal guidance.
- 4.2 The decision to take formal enforcement action will be made by officers in accordance with the Council's Constitution.

## **5 NOTIFYING ALLEGED OFFENDERS**

- 5.1 If we receive information, for example from a complainant, that may lead to formal enforcement action we will notify the alleged offender as soon as is practicable of the position, unless this could impede an investigation or pose a safety risk to those concerned or the general public or where notification would defeat the purpose of the enforcement action.
- 5.2 Personal data will only be used in accordance with the relevant data protection legislation. Our Privacy Notices detailing how we use personal data may be found at <https://www.eastleigh.gov.uk/privacy>.

## **6 ENFORCEMENT OPTIONS**

- 6.1 The Council prefers to secure compliance with legislation by a process of education and encouragement and will, wherever appropriate and possible, informally work with the resident or business to rectify breaches of legislation. However, it will sometimes be necessary for more formal action to be taken.
- 6.2 The main enforcement areas are listed at Appendix A with further detail given at Appendix B of this policy.
- 6.3 **Business operating in more than one local authority area**
- 6.4 Where a business operates in more than one Local Authority area and has chosen to have a registered Primary Authority Partnership under The Regulatory Enforcement and Sanctions (RES) Act the Council will, where required, comply with the agreement provisions for enforcement.
- 6.5 **Liaison and Partnership with other regulatory bodies and enforcement agencies**
- 6.6 The Council will, where appropriate, cooperate and coordinate with any relevant regulatory body and/or enforcement agencies that have a joint or complementary enforcement role to maximise the effectiveness of any enforcement and to ensure a consistent and coordinated approach.
- 6.7 We will share intelligence with other enforcement agencies in accordance with relevant data protection legislation. These bodies include -

- Government Agencies.
- Police Forces.
- Fire Authorities.
- Health agencies in the public sector
- Statutory undertakers.
- Other Local Authorities.

## **7 EQUALITY AND DIVERSITY ISSUES AND PROTECTION OF HUMAN RIGHTS**

- 7.1 The Council has a duty to eliminate discrimination, promote equality of opportunity and promote good relations between different people and groups. The Council will give appropriate consideration to these duties in the way it carries out enforcement activity.
- 7.2 The Council will give due consideration to issues of incapacity or vulnerability, and seek appropriate solutions. Each case is dependent upon its own particular facts. Where there is no substantiated evidence of vulnerability or incapacity, the Council will pursue enforcement action in the usual way.
- 7.3 The Council's enforcement role and duties apply inclusively across all community groups and geographic neighbourhoods.
- 7.4 The Council will identify patterns of demand and impact and consider whether collective, community-based measures may be appropriate in order to prevent incidents and their impact on certain groups.
- 7.5 Equality and Diversity issues will differ between different types of enforcement. Policies and Business Plans for specific enforcement areas will address possible specific equality impacts.

## **8 PUBLICITY AND COMMUNICATIONS**

- 8.1 Whilst not a direct form of enforcement, officers may seek to raise awareness and increase compliance levels by publicising details of evidence of unlawful practice and any action taken.
- 8.2 The Council encourages residents to play a role in solving problems in the community and residents should feel reassured that the Council will take the appropriate action if they make the effort to refer a problem. The Council will publicise its enforcement activity from time to time as a way of informing and reassuring residents, and demonstrating value for money.
- 8.3 Where appropriate, services will communicate with parties that have made an enforcement service request or submitted a complaint, to feedback on action taken to resolve the enforcement issue.
- 8.4 Many communities and stakeholders care about and identify with their local area (village, town, local centre) and many enforcement issues have a strong local community dimension. Services will liaise with Local Area

Managers and Parish/Town Councils to help inform the local significance of enforcement issues, agree appropriate local communications and funding, where appropriate.

## **9 STATUS OF THIS STRATEGY**

- 9.1 This Strategy is intended to provide guidance for enforcement officers, businesses, consumers and the public. Each case will be considered on its own merits and circumstances having regard to this Strategy and local service policies and procedures.
- 9.2 This Strategy will be the subject of consultation with other Hampshire local authorities, statutory external agencies such as the Police and Fire and Rescue Service, local business organisations and representatives as well as public consultation on the Council website.
- 9.3 This Strategy will be reviewed annually by relevant Lead Specialists. It is proposed that the Corporate Director for Strategy be authorised to reapprove the Strategy annually and make minor amendments to the adopted Strategy as required.

## **APPENDIX A            AREAS OF ENFORCEMENT ACTIVITY LIST**

### **Environment**

- Fly-tipping and enviro-crime (e.g. litter, flyposting, graffiti)
- Untidy land
- Noise and other statutory nuisance
- Dog fouling/Dangerous Dogs/Stray dogs
- Animal welfare and Tethered horses
- Parking – on-street and off-street
- Licensing
- Abandoned vehicles
- Air and water pollution
- Pest control/public health
- Waste carrier licences and waste transfer notes
- High hedges

### **Health and Wellbeing**

- Private rented sector housing
- Houses in multiple occupation (HMO) licencing
- Empty dwellings
- Caravan site licensing
- Community safety/Anti-Social Behaviour
- Smoking in public places
- Public urination
- 

### **Housing and Development**

- Planning enforcement including Tree Preservation Orders
- Building control

### **Economy**

- Food hygiene
- Health and safety at work
- Council Tax and Business Rates collection
- Licensing
- Unauthorised leaflet distribution

This list is not an exhaustive list.

Individual Service Areas will be producing bespoke enforcement policies to reflect their individual enforcement roles and responsibilities

## **APPENDIX B            TYPES OF ENFORCEMENT ACTIVITY DETAIL**

### **Prevention**

The first step in enforcement is to promote good practice, ensure policy compliance and prevent contravention of the law by raising awareness and promoting good practice.

This approach will be applied when we are not aware of any specific contraventions of the law.

### **Approvals, Consents and Licences**

We provide a range of approvals consents and licences as specified by individual pieces of legislation. Most of these are compulsory, but a few are optional. These are an important part of the preventative aspect of our work.

We will work with applicants to help them to understand what is required to gain approval through pre-application advice, published guidelines, and post- application discussion.

Applicants, or their agents, will always be notified, in writing, of the outcome of their application, including the reasons if rejected. Details of any rights of appeal will be provided at the time the decision is notified.

### **Informal Action**

If appropriate, we will endeavour to resolve situations without resorting to formal enforcement action.

Informal action may involve offering advice, mediation where appropriate, requests for action, or warnings, or seeking and monitoring the delivery of undertakings or timetabled schedules of action. General advice will not necessarily be confirmed in writing. Where more than the most minor contravention exists, we will confirm the situation in writing in a clear manner and explain why any recommendations are necessary and over what timescale they should be met. When we write we will make sure that legal requirements are clearly distinguished from recommendations. Informal action will be supported throughout by contact between the customer and Council officers.

This approach may be applied provided that the consequences of non-compliance are considered acceptable.

### **Formal Action**

Circumstances where formal action will be considered include (but are not restricted to):

- There is a significant contravention of legislation
- The wording of legislation requires the Council to take a specified action
- An informal approach has failed
- The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate
- Effective action needs to be taken quickly in order to remedy conditions which are deteriorating
- Formal action is necessary to achieve the desired outcome without incurring expense or inconvenience that is disproportionate to the risks
- A charge applied by a Fixed Penalty Notice has not been paid

### **Statutory Notices**

Many of the various pieces of legislation that we enforce provide for the service of “statutory notices” on individuals, businesses and other organisations requiring them to meet specific legal obligations.

Where a “statutory notice” is served, the method of appealing against the notice and the timescale for doing so will be provided in writing at the same time. In most cases, failure to comply with a “statutory notice” will result in more severe formal action being taken.

### **Fixed Penalty Notices and Penalty Charge Notices (Civil & Criminal)**

These are notices that apply a penalty for specific matters.

In general a penalty notice will only be issued when:

- there is sufficient evidence that an offence has been committed
- an FPN is a proportionate response allowed for by the relevant legislation

A penalty notice will not be issued if:

- there is no offence committed
- enforcement action is inappropriate or would be disproportionate
- prosecution is more suitable

### **Work In Default**

In general, it is the responsibility of others to achieve compliance with the law. In certain cases the Council may undertake work to achieve compliance on behalf of others, and may seek a warrant to gain entry to land or premises to do so.

In these cases the Council's costs will be recovered from the responsible person. If the costs cannot be recovered, they will usually be placed as a charge against the property, to be recovered at a later date.

### **Cautions**

A simple caution may be issued as an alternative to a prosecution. Cautions may be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts; or
- reduce the chances of repeat offences.

To safeguard the suspected offender's interests the following conditions will be fulfilled before a caution is administered:

- there must be sufficient evidence to give a realistic prospect of conviction; and
- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a caution and give an informed consent to being cautioned.

Where the offer of a caution is refused, a prosecution will generally be pursued.

A central register of cautions administered will be maintained.

### **Prosecution**

The Council recognises that the decision to prosecute is significant with potentially far reaching consequences on the individual or organisation concerned. The decision to prosecute is taken by the Borough's Head of Legal Services.

All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made. The Council will have regard to the Code for Crown Prosecutors, and will consider whether:

- ✓ there is sufficient standard evidence for there to be a realistic prospect of conviction; and
- ✓ the prosecution is in the public interest;

In deciding whether to prosecute, the Council will make an overall assessment based on the individual circumstances of each case.

Where there has been a breach of the law leading to a work-related death, the Council will liaise with the Police, Coroner, Health and Safety Executive and the Crown Prosecution Service, as appropriate

## **Proceeds of Crime**

Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002. The Proceeds of Crime Act allows Local Authorities to recover assets that have been accrued through criminal activity.