

CORPORATE ENFORCEMENT POLICY

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Document Review Plans

This document is subject to a scheduled three year review. Updates shall be made in accordance with legislative changes or business requirements and changes and will be with the agreement of the document owner.

Distribution

The document will be available on the Intranet and publicly accessible on the Tamworth Borough Council website

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1. INTRODUCTION

The Legislative and Regulatory Reform Act 2006 requires local authorities to have regard to the principles set out in section 21 of the above Act when exercising a specified regulatory function. The Council fully supports the principles set out in the 2006 Act.

The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare or breach of regulations enforced by the Council.

This policy sets out standards that will be applied across the Council when acting in its role as regulator and enforcement agency, sets out the approach to be followed by authorised Officers when making decisions in respect of the Council's compliance and enforcement activities and what residents, businesses, consumers and workers can expect from Tamworth Borough Council.

This policy has been set in accordance with the Regulator's Compliance Code and the Statutory Code of Practice for Regulators. This means that the Council will be open, helpful, fair and careful to ensure that any action required by the Council is proportionate to the risks. This approach is intended to provide better information to businesses and the community and, by doing so, lend support to the Council's efforts to deliver quality services.

The policy outlines the corporate approach across all council services when considering enforcement action and is an overarching strategy that applies to all the Council's services with enforcement duties.

It is the guidance upon which individual services with more specific legislative powers and regulation manage and develop their own more detailed service enforcement procedures and practices.

1.1 Enforcement Activity

Tamworth Borough carries out a wide range of regulatory and enforcement roles in meeting its many statutory duties relating to:

- Public health and safety
- Quality of life
- Preservation of public and residential amenity
- Maintenance of the environment
- Protection of public funds
- Duties as a Social Landlord

All of these activities will be carried out having regard to the general principles of good enforcement practice outlined in this policy and in accordance with departmental operating processes and procedures

1.2 Delegation of Authority

The Council is committed to ensuring that all authorised officers will act in accordance with this policy and in accordance with the Council's Scheme of Delegation.

There are numerous pieces of legislation which the Council as a local authority either has a duty to enforce or adopts or chooses to enforce. The powers available to officers under these different pieces of legislation vary considerably and it is not the purpose of this document to provide an exhaustive list of those powers.

If officers come across situations where they believe they are being obstructed in carrying out their duties, they will always explain the provisions of the relevant legislation in order to resolve the issue.

The authorised officers of the Council will also comply with the requirements of the particular legislation under which they are acting, and with any associated service policies and/or codes of practice.

It is an offence to obstruct an authorised officer who is conducting an inspection or investigation.

1.3 Objective

The Council seeks to follow the principles of good enforcement contained in the Regulators' Code. These principles help businesses and individuals to comply with regulations and help enforcers to achieve higher levels of voluntary compliance.

Our key approach is summarised as follows:

- Prevention through improved communication.
- Focused enforcement - our enforcement resources will be targeted primarily on activities giving rise to the most serious risks to the environment, health and safety or the public.
- Any enforcement will be fair, accountable, consistent, proportionate, transparent and firm.
- The burden on business will be reduced through improved partnership working and more consistent working as a Council
- The public and businesses will be party to and updated on our enforcement approach and policies.

1.4 Principles of Good Regulation

Although primary responsibility for compliance with the law rests with individuals and businesses, the Council will provide information and advice to help them understand their legal obligations and will seek to raise awareness about the need to comply.

We will exercise our **regulatory** activities in a way which is:

Focussed – we will take account of both national priorities for local government enforcement reflecting local priorities based on evidence or emerging need and where the Council believes its efforts are able to have a greater impact in protecting risk to the public and well-being of the community as stated in the Council's corporate plan.

Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures through our Tell Us process.

Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by other regulators. The Council shall seek to ensure consistency of enforcement; however, the Council realises that consistency is not a simple matter of uniformity. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case and the relevant responsibilities and intervention systems maintained by the Council.

Proportionate – our activities will be justified, reflecting the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.

Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return

1.5 Human Rights Act

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. Due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

1.6 The Code for Crown Prosecutors

When deciding whether to institute **criminal** proceedings the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- **Evidential Test - is there enough evidence against the defendant?**

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "**realistic prospect of conviction**" against each alleged offender. This means that it is more likely than not that the alleged offender will be convicted.

- **Public Interest Test - is it in the public interest for the case to be brought to court?**

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will consider are detailed under the enforcement options available to us

1.7 Civil Proceedings

Many powers upon which the Council act, including but not limited to actions as a Social Landlord, are civil proceedings.

Evidence is gathered and assessed in accordance with the Civil Evidence Act 1995 which can include hearsay and third-party statements

The decision to progress actions will be done: -

- Where proportionate and justified to the offence
- On balance of evidential probabilities
- Following full assessment of risk (including that of the victim)

1.8 Reduction of Burden on Business

We recognise that dealing with regulations has a cost to local businesses and we will seek to ensure that interventions in businesses are kept to a minimum by:

- ensuring that we join up across the authority and with other agencies
- utilising national schemes such as primary authority
- focusing our enforcement as detailed in this policy

We believe that part of our role is to help businesses comply with the law. We will therefore, where possible, provide information and advice in relation to our statutory responsibilities.

1.9 Primary Authority Principle

It is our policy/intention to act as Primary Authority for businesses which have their decision-making base within the Borough, where they so desire. Where businesses have a Primary or Home Authority elsewhere, officers will contact other relevant local authorities at the earliest practicable time.

2. ENFORCEMENT OPTIONS FOR COMPLIANCE

The Council recognises the importance of achieving and maintaining consistency in its approach to enforcement. For many areas of our enforcement activity government guidance already exists and there may also be local or regional codes of practice which have been produced to promote consistency.

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

This can include the following actions

- Formal notification to outline actions to be taken
- Inspection and Intervention Programmes
- Sampling Programme
- Approvals, Consents and Licences
- Enforcement Visits

2.1 Evidence Gathering

The authority will record complaints it receives and the action it takes in response. We will encourage those who provide information to supply their contact details and explain how the information they provide may be used. Generally, the authority will only be able to take enforcement action where it is justified and proportionate and records will be kept in accordance with retention policies.

Any processing of personal data will be in accordance with Part 3 of the Data Protection Act 2018 where it relates to law enforcement.

We may use search engines, internet listings companies, and review publicly shared social media to establish relevant information

Officers will only carry out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. Any officer intending to acquire data covertly will only do so if the evidence or intelligence sought cannot be obtained by any overt other means. All covert surveillance will be undertaken in accordance with the Councils 'Policy and Guidance on the use of RIPA' (Regulation of Investigatory Powers Act 2000 as amended)

2.2 Enforcement in Local Authority Establishments

Officers will carry out enforcement within local authority owned, occupied, or operated premises (e.g., cemeteries, open spaces, and events, fly tipping on Borough Council land) in a manner consistent with any other business. Any serious breaches of law that may be detected in such establishments will be brought to the attention of the responsible Executive Director and Chief Executive without delay.

Contract caterers that operate within Local Authority establishments or for appropriate events will be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.

3. ENFORCEMENT OF NON-COMPLIANCE

In assessing what enforcement action is necessary and proportionate, consideration for compliance failure the Council will consider:

- the seriousness of compliance failure
- the businesses or individual's past performance and current practice
- the risks being controlled
- legal, official, or professional guidance
- the local priorities of the Council.

Where the law has been contravened, there are a range of enforcement options available to seek compliance. Under normal circumstances, a process of escalation will be used, where appropriate, starting with advice and guidance, until compliance is reached. Exceptions to this process of escalation include the following where there is significant risk or harm or actual harm

- public health,
- safety,
- community safety
- the environment (such as fly tipping or air pollution),
- risk to animal health or welfare, and
- where the offences have been committed deliberately or negligently or
- involve deception or where there is significant economic detriment
- continued non-compliance
- Irreversibility (such as knocking down a building).

The sanctions or penalties that are used will: -

- aim to change the behaviour of the offender
- aim to eliminate any financial gain or benefit from non-compliance.
- be responsive and consider what is appropriate for the case and the particular regulatory issue (this can include punishment and the public stigma that should be associated with a criminal conviction)
- be proportionate to the nature of the offence and the harm caused
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to improve non-compliance and deter future non-compliance

In certain circumstances there may be specific guidance/instruction issued by central government which direct the Council to act in a specific way.

Examples of enforcement actions that the Council may consider include (but are not limited to) the following: -

- No Action where is proportionate
- Informal Action and Advice (to include emails and advisory letters)
- Formal Actions
- Simple Cautions
- Warning notices
- Fixed Penalty Notices
- Penalty Charge Notices
- Civil Penalties
- Voluntary Closure, prohibition, surrender or undertaking
- Formal/Statutory Notices
- Works in Default
- Forfeiture Proceedings
- Seizure
- Powers of Entry
- Injunctive Actions
- Social Landlord Sanctions relating to the Council duties
- Administrative Penalty (Revenues and Benefits)
- Bailiff actions for debt recovery
- Refusal, Revocation or Suspension of a Licence
- Prosecution

All actions will be considered on a case-by-case basis and in accordance with legislation and relevant departmental policies.

The Council recognises that the decision to prosecute is significant and would (in most cases) be a last resort and could have far reaching consequence for the offender.

Enforcement action may result in **either civil or criminal** proceedings being instituted by the Council. The process that will be followed by officers in the investigation of alleged breaches of the law will depend on which branch of law the investigation is being conducted under. As the enforcing authority in any proceedings it instigates, the burden of proof falls to the Council.

Investigations will be carried out in compliance with relevant legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Tamworth Borough Council

A prosecution will normally (but not exclusively) be instigated where the individual or organisation meets one or more of the following criteria:

- Disregarding or pretending to be unaware of, or deliberately, or persistently breaching legal obligations,
- Used an element of deception, theft or fraud
- Failure to pay a fixed penalty notice
- Made significant gain or caused significant loss
- Deliberately or persistently ignoring written advice or formal notices.
- Endangering, to a significant degree, the health, safety or wellbeing of people, animals or the environment.
- Assaulting or obstructed an Officer in the course of their duties.
- Criminal Prosecution meets the required standards and public interest test as identified in the Crown Prosecution Code of practice

The decision to undertake a prosecution would normally be taken by the relevant senior officer as outlined in department processes and with legal advice and support where required.

Where possible and if it is deemed to be in the wider community interest we will publish the outcomes of court decisions taken where prosecutions have been undertaken by the Council

3.1 Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for the confiscation of assets. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

The Crown Court must consider making a confiscation order against a defendant under Part 2 Proceeds Of Crime Act if:

- a) the defendant is convicted of an offence or offences in the Crown Court, or has been committed to the Crown Court for sentence or to be considered for a confiscation order; and
- b) the prosecutor requests that the court consider making a confiscation order, or the court believes that it is appropriate to consider making a confiscation order

Part 5 of POCA provides a scheme to reclaim the proceeds of crime through civil proceedings. It permits the recovery of criminal assets where no conviction has been possible, for example because individuals avoided conviction by remaining remote from the commission of the crimes from which they benefited or because they have fled abroad.

Proceedings are conducted according to the civil standard of proof.

Applications are made after a conviction has been secured. Any proceeds received from the proceeds of crime act action will be used in line with relevant guidelines

4. Shared Regulatory Roles

4.1 Statutory Notifications

Where the Council has a complementary regulatory role or is required to inform an outside agency or occurrence it will do so.

Where appropriate we will report incidents and enforcement actions to relevant bodies, such as the Department of Trade and Industry, Health and Safety Executive, HM Revenues and Customs, the Home Office, Food Standards Agency, Environment Agency, DEFRA, DVLA, DWP, Trading Standards, Staffordshire County Council, Staffordshire Police, Staffordshire Fire and Rescue, Office of Fair Trading and any other statutory bodies, and respond appropriately to notifications, such as Health and Safety alerts and alerts from the Food Standards Agency. Information will be shared with other regulators where it is appropriate to do so.

Officers will attempt to co-ordinate visits and actions with other agencies to achieve the most efficient and effective outcomes.

Where there has been a breach of the law leading to a work-related death, the Council will liaise with the police, coroner and the Crown Prosecution Service (CPS) and if there is evidence of manslaughter, we will pass the case to the Police or where appropriate to the CPS or Health and Safety Executive (HSE).

4.2 Shared Objectives

The authority will work alongside partner agencies under its duties outlined in Section 17 of the Crime and Disorder Act 1998 to address the community safety priorities as outlined the Tamworth Community Safety Partnership plan, Place Based Approach, Building Resilient Families program and other partnership approaches.

Wherever possible, in situations where there is a shared enforcement role, the most appropriate authority will, by mutual agreement carry out enforcement action. This will be led by the Assistant Director Partnerships in conjunction with relevant Corporate Management Team colleagues.

Officers do not have the power of arrest; however joint working is undertaken with the Police and other agencies. Instances may arise where the Police or other agencies consider that an arrest should be made in connection with an authorised officer's investigation.

Exchange of information with partner agencies will take place wherever applicable in accordance with the One Staffordshire Protocol or appropriate local data sharing

agreement and all Council enforcement teams. Liaison will also take place between relevant services and Portfolio Holders to avoid potential conflict of interest.

In some cases powers of seizure are used for safety and evidence gathering purposes. Where articles are removed for any of these purposes a receipt or notice will be given at the time of the inspection or as soon as is practicably possible afterwards.

Appropriately trained officers will carry out formal interviews in line with this policy and the Police and Criminal Evidence Act 1984.

In respect of legislation in England that contains criminal offences, there are strict time limits beyond which the law prevents proceedings being instituted. These time limits vary and are stated in the relevant legislation.

In cases where either criminal or civil proceedings are intended to be brought by the Council a report will be prepared containing all evidence that has been gathered during an investigation. This report must be completed with due regard to any summary time limits for review by the appropriate senior manager, in line with departmental policy, and by the relevant Assistant Director prior to obtaining legal advice before any proceedings are instigated.

5. Customer Focus

As part of the Council's commitment to delivering high quality services, we continuously seek to understand the needs of those who live, work invest in or visit the Borough and respond to those needs appropriately in either a proactive or reactive way.

The Council will undertake enforcement with due regard to the following:-

- Equalities Act 2010
- Disability Discrimination Act 1995
- Data Protection Act 2018 and General Data Protection Regulations 2018

Officers carrying out investigations will keep alleged offenders and a witness informed about the progress of any investigation as far as their involvement in the process is concerned.

We will respect confidentiality subject to any legal requirements to disclose information (eg disclosure to support prosecution)

The Council will provide a timely explanation in writing of any rights to representation or appeal and information on the process involved.

Delegated officers will be trained and qualified (as necessary) to ensure they are fully competent to undertake enforcement activities

Officers will carry an identity card and provide proof of delegation where necessary

We will ensure that before deciding to take enforcement action the case will be subject to independent review by a senior officer

When revising current or setting new policies or controls we ensure that our proposals are based on sound evidence.

Where we reasonably can, we make provision for the particular needs, interests of consumers, business owners, employers and the general public

6. Comments, Compliments and Complaints

The Borough Council provides a wide range of services for people who live and work in Tamworth and for visitors to the town.

We welcome comments from businesses, residents and the public regarding the Councils approach to enforcement. We believe that they have valuable insight that we should take into account when deciding the approach we take. We therefore welcome feedback on the work that we do and comments on our enforcement policy and service standards.

Our Tell Us Scheme details how to make a comment, compliment or complaint and helps us to learn from your views and improve our services. However, for more serious matters you may wish to make a formal complaint.

To ensure we receive customer feedback, either positive or negative, please use our on-line form that can be found here: <http://www.tamworth.gov.uk/making-complaint> or call us on our mainline number: 01827 709709 email: enquiries@tamworth.gov.uk

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation in the first instance.

7. Monitoring and Review of this Policy

We will review this policy every 3 years or in line with changes in relevant legislation, or Regulators Code.

We will consult with service users, staff, internal and external partners in the review.

Any major changes to policy will be subject to Cabinet approval