



**DEVELOPMENT AND ENVIRONMENT
DEPARTMENT**

ENFORCEMENT POLICY

APRIL 2002

ENFORCEMENT POLICY

Approved by Cabinet - Minute C285(5) 16 April 2002

1 Purpose

- 1.1 To state the policy, including the decision making process, for all enforcement actions taken by properly authorised Officers working in the Department. The enforcement services covered by this policy include:
- Animal Health/ Welfare
 - Building Control
 - Car Parks and Residential Parking
 - Development Control (including listed buildings, tree preservation and advertisements)
 - Dog control
 - Food Safety
 - Housing
 - Health and Safety at Work
 - Highways (including skips, scaffolding and obstructions)
 - Licensing (including issue of permits, registrations and consents)
 - Markets
 - Pest Control
 - Pollution and Nuisance control
 - Rights of Way
 - Trading Standards
- 1.2 To state that the ethos for enforcement in Darlington BC is that individuals and businesses should be assisted, where possible, and educated, where necessary, to achieve compliance. Enforcement action will be the minimum necessary to ensure compliance with the law, to avoid undue burdens on businesses and the community and make best use of this authority's resources.

2 Introduction

- 2.1 The Council is a signatory to the Government's "Enforcement Concordat" and has adopted the principles of consistency, fairness, proportionality, transparency, and objectivity within this policy document. The Council has developed a leaflet for publication "Making Regulation Work" as advice to residents and businesses on its Enforcement Policy. This includes the principles to be followed, to ensure fairness and consistency of enforcement, and the levels of enforcement action available.
- 2.2 For the Enforcement Policy to be effective, all those with an interest must have the opportunity to comment on all or parts of it. The Director wishes to receive comments upon service delivery and is committed to

undertake consultations with stakeholders. The Director will review the Policy annually and incorporate any changes into a revised document.

- 2.3 Written versions of the Policy will be provided on request. The Director will also make it available, at the earliest opportunity, on the Council's website.
- 2.4 Officers will strive to be fair, independent and objective in their enforcement activities. In particular, all officers will serve the community equally and fairly, irrespective of ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or alleged offender.
- 2.5 The identity of witnesses who wish to remain anonymous will be protected during an investigation. Officers will make clear to these witnesses that in providing evidence their identity will become known to the alleged offender only in the event that the Council pursues a prosecution
- 2.6 The range of enforcement options available to authorised Officers of the Council when contraventions of Legislation are found are:
 - No action
 - Informal action - Verbal/Written warning and advice
 - Statutory notice and fixed penalty notice (where legislation allows)
 - Seizure, forfeiture proceedings and Stop Now Orders (where legislation allows this action)
 - Formal caution
 - Grant, refusal to grant, revocation or suspension of a licence, registration or permit
 - Prosecution
 - Injunction

(N.B. not all options are available to all officers)

- 2.7 Officers have to be flexible in the range of enforcement styles they adopt. For routine enforcement there is a choice between inspecting premises/vehicles/land with, or without, prior arrangement. Officers will not adopt a fixed pattern of always giving prior notice or always making unannounced visits - each instance must be assessed on its merits. Entry into buildings or onto land without the owner's consent will only be carried out where the legislation allows.
- 2.8 Some Authorised Officers have been given enforcement powers to seize property. Sometimes this also involves entering private property with a warrant. The Council recognises that depriving individuals or companies of their goods and entering their property can be distressing for those involved. When considering actions of this type, the Officer will carefully consider all suitable guidance and will only act after considering and ruling out all other reasonable alternatives.

- 2.9 Officers will always clearly distinguish between requirements to meet good practice and requirements to meet legal standards. For requirements to meet legal standards, they will provide confirmation in writing using plain English. When the recipient does not have English as a first language, the Officer will:
- (a) use the services of “Language Line” to ensure that key information relating to contraventions are translated and given to the recipient by telephone and
 - (b) take all reasonable measures to ensure that when correspondence in English is sent there is a clear indication, in the recipient’s first language, that the documents are important and that the recipient should make arrangements to have them translated.
- 2.10 On occasions Officers in different Divisions of the Council may at times enforce against the same individual or company in parallel with other Officers within the Council. In these circumstances they will work in close co-operation with the Council’s Solicitor and the other Officers to co-ordinate the Council’s objectives and heighten the effectiveness of the joint enforcement action.
- 2.11 Enforcement can sometimes cover a wide geographical area beyond the District’s boundaries, or involve enforcement by one or more other local authorities or other organisations. These other organisations include Central Government Departments and Agencies (e.g. the Health and Safety Executive, the Environment Agency, Customs and Excise, the Forestry Commission), English Nature, English Heritage, the Fire and Police services and many others. The Council’s Enforcement Officers will, subject to any legal controls, work in close co-operation with these agencies to co-ordinate common enforcement objectives.
- 2.12 Natural justice requires that any case is investigated properly, and that any prospective defendant is kept informed by the case officer and given the opportunity to comment. Officers will work to prevent investigation and decision-making being unduly prolonged or delayed. Witnesses, complainants or other interested parties will also be kept informed of decisions reached.
- 2.13 Statutory rights of appeal against a Council decision will be brought to the attention of relevant persons.
- 2.14 Formal Cautions and Prosecutions are seen generally as a last resort but an essential part of the enforcement role. Once the decision to prosecute is made, a case file containing all relevant details is passed to the Council’s Solicitor, who will advise whether a prosecution is likely to succeed. Officers are provided with detailed notes relating to the legislation being enforced on how to prepare and present this case file.
- 2.15 Officers seeking to prosecute an offender, or issue a Formal Caution, will ensure that the Enforcement Policy, Police and Criminal Evidence Act (PACE), Criminal Procedures and Investigation Act (CPIA), Regulation of Investigatory Powers Act (RIPA), the Home Office Circular

59/1990, the relevant parts of the Code for Crown Prosecutors, and the Human Rights Act are taken into account during the investigative and decision-making procedures. Relevant national Codes of Practice or guidance notes issued by Central Government will also be taken into account.

- 2.16 The Council is a major employer, organiser and landowner. Officers will occasionally receive complaints about the actions of the Council; the partners of the Council; its contractors; Town or Parish Councils; or voluntary groups with whom the Council has a close affinity. Also, Officers may occasionally need to act towards elected Members in their private or business lives. Where the Council has a statutory enforcement duty for the matter complained about, an Officer will act quickly, effectively and without favour towards the Council. Officers have to be aware and recognise that some in the Community may accuse them of treating the Council's activities or interests differently and perhaps more favourably. In these circumstances, the Officer will clearly signal the extent of its enforcement duties to the Director of Development and Environment who will report to the Chief Executive on any instances when there could be a clash of interests or where there is a reasonable chance the public might sense there to be. Officers and Members shall act in accordance with Local Government Code of Conduct.
- 2.17 The Council has a formalised complaint procedure enabling those dissatisfied with any Council service they have received to have a review of the case by the Chief Executive of the Council. Copies of the procedure are available from all Council Offices and on the Council's website at www.darlington.gov.uk

3 Factors taken into account when Officers make decisions on enforcement

- 3.1 Before the Human Rights Act 1998 came into force Officers had to consider:
- Whether the Council has the power to take the relevant action.
 - Whether the procedure being followed, was the correct procedure for the particular decision.
 - Whether the decision being made was so unreasonable that no reasonable person could make that decision.
- 3.2 Following implementation of the Human Rights Act 1998, decision makers now also have to consider:
- Whether the decision affects an individual, group or company's Human Rights as set out in the Convention; and
 - If it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention; and
 - Whether the interference is proportionate to the general purpose.

- 3.3 Officers are expected to consult with the Council's Solicitor if they are unsure in making a decision taking into account the effects of the Convention.

4 Option - Taking No Further Action

- 4.1 When deciding on enforcement actions, the service has the power not to begin proceedings and indeed to take no further enforcement action. In exceptional circumstances, a contravention may not warrant any action. This can arise when the cost of compliance to the offender is wholly disproportionate to the damaging impact of the contravention on the community. It can also arise when the cost of the enforcement action to the Council outweighs the harmful impact of the contravention on the community. No action may be decided where, after considering the circumstances, an Officer decides formal enforcement is inappropriate. Examples of this include a business permanently stopping trading, or the offender being elderly and frail and where formal action would seriously damage their health.
- 4.2 When investigating complaints, an Officer may find that there is insufficient evidence to justify any further action. In these cases the complainant will be notified in writing and then the file on the investigation closed. The investigating officer will only re-open the investigation if the circumstances of the case change sufficiently to warrant further action.

5 Option - Taking Informal Action

- 5.1 Generally informal action should be considered where:
- issue of a fixed penalty notice is not an option and/or
 - the case is not serious and/or
 - the previous history is good and/or
 - the company or individual is willing to prevent recurrence and/or
 - there is little public benefit in prosecution.
- 5.2 Informal action shall always be considered where:
- there is a good likelihood of a statutory defence (e.g. "due diligence" or "best practicable means") being upheld;
 - witnesses are unable or unwilling to support formal action.
 - the matter can be successfully resolved without further action.
- 5.3 Officers have the discretion to deal with minor breaches of the law that are trivial, or due to minor lapses, by issuing verbal warnings when they judge the circumstances to be suitable. The offender will be clearly advised of the contravention and how to put it right within a specified time. By definition, an Officer does not make a written record of an informal verbal warning. Its effectiveness is therefore limited and other Officers may not be aware that one has been issued. For these reasons,

informal verbal warnings are of limited effectiveness and Officers often follow them up with a written warning. Officers give informal verbal warnings when:

- in the Officer's judgement, the offence is unlikely to be repeated;
- the offenders admits the error;
- no other offences are apparent;
- there is no previous similar offence.

5.4 Officers will use written warnings for minor offences or when it has been decided not to continue formal action. Written warnings can range from a confirmation of a verbal warning to a strong warning telling the offender he has narrowly avoided a formal caution or prosecution. The written warning will differentiate between contraventions and advice. Failure to comply with this informal action may lead to formal action. The courts do not usually allow past written warnings as admissible evidence. The service will therefore only use written warnings:

- in circumstances when a formal caution is a disproportionate response; and
- when a further offence is unlikely or when a formal caution could cause unwarranted distress.

5.5 The Officer will also take into account the likely response of the offender to a warning.

5.6 Following a written warning or verbal warning an Officer may revisit to check the offence has been corrected depending upon the health, safety, environmental damage or nuisance implications of the contravention.

6 Option - Serving Enforcement Notices

(a) Fixed Penalty Notices

6.1 A Fixed Penalty Notice is a formal document served on an alleged offender giving him details of the offence, the penalty due and the time period for payment.

6.2 The Council believes using Fixed Penalty Notices, where the legislation allows, provides a quick and effective way of dealing with a wide variety of enforcement problems. It has the benefit of providing precise written confirmation of the offence and gives the recipient the choice of paying the penalty or challenging the Council's actions through an independent appeals mechanism.

6.3 An Officer will always provide written details of the method of appealing against the requirements of the Notice at the time of service.

6.4 An Officer will always consider prosecution for non-payment of a fixed penalty notice as an early option. Generally, prosecution will be

considered as the norm unless other, significant facts indicate another line of action.

(b) Statutory Notices

6.5 In some circumstances the Council must by law serve a Notice requiring action to prevent an offence continuing, for instance, when it becomes aware of a Nuisance. The Notice is a formal document served on an alleged offender giving details of the action needed to correct a defect or procedure.

6.6 By meeting the requirements of the Notice within the time limits, the offender has corrected the offence and will not have a criminal record. The Council believes using Notices often provides a quick and effective way of dealing with a wide variety of enforcement problems. It has the benefit of providing precise written confirmation of the defect and often gives the recipient the choice of satisfying the Notice by other, equally acceptable means. Importantly too, the Notice always provides alleged offenders an independent means to challenge the Council's actions by the appeals mechanisms. For these reasons Officers will:

- consider at an early stage the service of a Notice when that choice exists in law;
- try to agree the contents of a Notice and the time allowed for compliance;
- in cases where the parties cannot agree, the service will seek to give alternative ways of achieving the same outcome;
- give a reasonable time period for compliance balancing the needs of the complainant.

(N.B. Officers may refer the decision to serve a notice under planning legislation to the Planning Applications Committee)

6.7 An Officer will always provide written details of the method of appealing against the requirements of the Notice.

6.8 The most common reasons for failing to meet the requirements of a Notice are:

- The work is not done.
- The works is done only in part, or done only to a poor and unacceptable standard.
- The work is not done in the time specified.
- Steps to control a problem, for instance to prevent a noise nuisance, are started but then relaxed and the problem returns.

6.9 In these circumstances, a decision to prosecute, offer a formal caution, or take another form of action then arises. The factors that contribute to a decision on this case are different from other decisions not involving a

Notice. The main differences are:

- The service of a Notice already means that an offence is being committed.
- Most recipients of a Notice are advised in advance that one may be served on them and what it is likely to require.
- A Notice sets out in detail the work, or action required, and gives time for compliance.
- All Notices have an independent appeals mechanism and the recipient has been advised how this works.
- The Officer negotiated in advance about the wording of a Notice and the time allowed.
- Many Notices allow for a formal approach to the Council to extend the time allowed or to offer a different way doing the work.

6.10 An Officer will always consider prosecution for non-compliance with a Notice as an early option. Generally, prosecution will be considered as the norm; unless other significant facts indicate another line of action; or the Crown Prosecution Guidelines suggest otherwise.

6.11 Work in default is a formal legal procedure, allowing the Council to put right a defect in place of the person more usually responsible. Work in default is not a form of punishment but is to ensure completion of essential works when all other means have failed. Works in default will be undertaken as needed by the proper legal provision for the case. The Council will try to recover all reasonable costs incurred including any supervisory or administrative costs. The Council will recover these costs by placing a charge on a property whenever it cannot recover them by other means.

(c) Stop Now Orders

6.12 Officers will use a Stop Now Order to stop rogue traders from infringing or threatening to infringe specific Consumer Protection legislation. Initially the Officer will consult with the Director General of Fair Trading and the offending trader, in order to try and achieve the cessation of the infringement. If the infringement is not stopped within two weeks of the consultation proceedings can be taken without further delay. Proceedings will include either the signing of a formal legal document by the trader in which he agrees to cease the infringement or to apply to the County Court/High Court for a “ Stop Now Order”, which requires the trader to cease the infringement. Failure to comply with a Stop Now Order will be viewed as contempt of court.

(d) Planning Stop Notices

6.13 The effect of the Stop Notice is to prevent specified activities from taking place that arise as a result of the breach of control which is the subject

of the enforcement action; and where demonstrable public interest reasons exist. The activities specified in the Stop Notice must cease within a shorter period than that specified in the enforcement notice, the normal minimum period being 3 days. Where a shorter period than this is required the special reasons for so doing will be explained in the Stop Notice. Normally, the decision to serve a Stop Notice shall be taken at the same time as a decision to serve an enforcement notice. It may, in some cases, become necessary to serve a Stop Notice after the initial decision to serve an enforcement notice, and in such circumstances the decision shall be separately recorded.

(d) Seizure of Goods

6.14 Officers may act, where legislation specifically allows, to seize contravening goods; unwholesome or contaminated food; items causing an obstruction of the highway; equipment responsible for causing a noise nuisance; and records or documents required as evidence. Officers will issue a receipt when seizing any items to take away. *N.B. A Magistrates Court is required to condemn food as unfit. If the court does not issue a certificate the food will be returned to the owner who will be entitled to claim compensation for any loss suffered.*

7 Option - Issuing Formal Cautions

7.1 Formal cautions will only be considered:

- where there is adequate evidence to support a prosecution; and
- the offender admits the offence and is willing to accept the caution.

7.2 Formal cautions may be considered where the seriousness of the case warrants prosecution but:

- the previous history is good and/or
- the company is willing to prevent recurrence and/or
- there is little public benefit in prosecution and
- the defendant admits the offence.

7.3 The decision to issue a formal caution will be made by a section manager in conjunction with the case officer using the guidance contained within Home Office Circular 18/1994 – Formal Cautions.

7.4 Every effort will be made to ensure that defendants are aware that records of formal cautions are kept and will influence legal proceedings taken in the future. Defendants will be advised to seek legal advice.

7.5 A letter must be sent by Recorded Delivery post or by hand to the defendant inviting him/her to accept a formal caution by completing a declaration and returning the Caution form(s) to the section manager within 14 days.

- 7.6 Receipt of the completed Formal Caution forms will be acknowledged in writing by the case officer.
- 7.7 Where a Formal Caution is not accepted within the time limit, the defendants should be sent a further letter to ensure they understand the implications.
- 7.8 A further 14 days to accept the caution may be offered where there is a problem preventing the defendants from dealing with the matter, or where they are seeking advice.
- 7.9 Where a formal caution has not been accepted within the time limit or has been refused, the Council's Solicitor will be instructed to issue a summons.

8 Option - Prosecution

- 8.1 The decision to recommend prosecution is a serious step for this Authority, and for the defendant(s), and will be made by a Section Manager in conjunction with the case officer applying the Code for Crown Prosecutors. There are two stages in the decision to prosecute. The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test the public interest test is then applied. The Council's Solicitor will recommend against a prosecution when the case has not passed both tests.
- 8.2 Evidence Test - There must be enough evidence to provide a realistic prospect of conviction.

Possible factors against prosecution

- The evidence that seems relevant will be excluded by the court because of the way in which it was gathered or because of the rule against using hearsay as evidence.
- The reliability of evidence affected by factors such as the defendant's age, intelligence or level of understanding
- The Court will find the defendant's explanation credible in the light of the evidence as a whole (an innocent explanation).
- The evidence about the identity of the defendant is not strong and likely to be questioned.
- A key witness's background, motive, attitude, or a relevant previous conviction, is likely to weaken the prosecution case.
- Concerns over the accuracy or credibility of a witness - further evidence that may support or detract from the account of the witness should be looked for.

- 8.3 Public Interest Test -

Common public interest factors for prosecution

- A conviction is likely to result in a significant sentence.

- The offence, although not serious in itself, is widespread in the area where it was committed.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.
- The offence was committed against a person serving the public.
- Evidence shows defendant was organiser of the offence.
- The offence was premeditated.
- The victim of the offence was vulnerable.
- The defendant's previous convictions, or cautions, are relevant to the present offence.

Common public interest factors against prosecution

- Court is likely to impose a nominal penalty.
- Defendant has already been made subject to a sentence and further conviction unlikely to result in an additional sentence.
- Offence was the result of genuine mistake or misunderstanding.
- Long delay between the offence taking place and the date of the trial (unless the offence is serious, the delay caused by defendant, the offence only recently came to light, or the complexity of the offence meant a long investigation).
- The defendant is a youth

8.4 For each defendant Officers will try to select offences that:

- Reflect seriousness of offending.
- Give the court adequate sentencing powers.
- Are made to the appropriate court.
- Enable the cases to be presented in a clear and simple way.

8.5 The documentation and investigation should be completed as soon as possible. (Target: within 40 working days of (i) the initial inspection or (ii) report of Public Analyst/Food Examiner or (iii) expiry of Statutory Notice or Fixed Penalty Notice.) The Section Manager shall then consider the case file and case officer recommendation (Target: 5 working days for report consideration). The case file shall be prepared in accordance with the detailed service procedure notes issued.

8.6 Once the decision to proceed with the prosecution has been agreed by the Section Manager the defendant will be informed in writing.

8.7 The Council's Solicitor will take responsibility for prosecuting the case and issuing the summons before the deadline for laying information.

8.8 The Council will seek to recover as much as possible of the total costs involved in its enforcement work whenever the legal opportunities exist to do so.

8.9 An Officer will use Forfeiture Proceedings with a prosecution where there is a need to dispose of goods to prevent them re-entering the marketplace. If it is unlikely the defendant will agree to sign over the

goods to the service for correct disposal, then the Council will apply for forfeiture in court following a successful prosecution.

9 Withdrawing Prosecutions

- 9.1 Generally prosecutions will not be withdrawn once the summons have been served to prevent a situation arising where proprietors refuse to act until court action is threatened.
- 9.2 Where a defendant did not have a statutory defence (e.g. “due diligence” or “best practicable means”), but then introduced suitable systems after the offence occurred, Officers may consider whether a formal caution is more appropriate having regard to the other factors involved.
- 9.3 Similarly, where work has been carried out once the decision to prosecute has been made, a formal caution may in exceptional circumstances be considered. A recommendation to withdraw a prosecution must be confirmed by a Section Manager and recorded on the prosecution file.
- 9.4 A Section Manager considering a withdrawal of a prosecution must seek to recover all costs from the defendant and/or a written agreement from the alleged offender not to seek to recover their costs from the Council.

10 Option - Court Injunction

10.1 An Officer will consider the use of an injunction when:

- the law allows it; and
- there is immediate risk to health and safety; or
- there is gross nuisance to a large section of the population and the event would finish before the service can launch a normal prosecution; and/ or
- the offender has made it clear he sees the benefits of continuing to offend as outweighing any penalty against him resulting from a normal prosecution; and/or
- the offender has a record of similar offences and does not regard the penalties from a normal prosecution as a deterrent.

11 Relevant Documents

- Code B Home Office Circular 59/1990 – PACE.
- Home Office Circular 18/1994 – Formal Cautions.
- Enforcement Concordat
- Code for Crown Prosecutors
- Enforcement Policy of Darlington Borough Council – “Making Regulation Work”
- Criminal Procedures and Investigation Act 1996 – Code of Practice
- Human Rights Act 1998

- Regulation of Investigatory Powers Act 2000
- Stop Now Orders (EC Directive) Regulations 2001
- Planning Policy Guidance Note 18 – Enforcing Planning Control
- The Enforcement of Planning Control – Darlington Borough Council
Planning Guidance Note 9
- Enforcing Planning Control: Good Practice Guide – DTLGR
- Enforcing Planning Control: Legislative Provisions and Procedural Requirements.

Minute C285(5)/APRIL/2002

Enforcement Policy – Development and Environment Department – The

Director of Development and Environment submitted a report (previously circulated*) requesting that consideration be given to the adoption of an Enforcement Policy to be used by authorised Officers to enforce legislation on behalf of the Council and to the document 'Making Regulation Work' (both also previously circulated).

RESOLVED – (a) That the Enforcement Policy, as appended to the submitted report, be adopted for use by authorised Officers working to enforce legislation on behalf of this Council in the Service areas listed.

(b) That the document 'Making Regulation Work', as appended to the submitted report, be adopted and then used to promote, to the general public and businesses, the principles of enforcement practice followed by its officers.

REASONS – (a) It would promote consistent enforcement practice by all enforcement officers working within the same Department.

(b) Darlington businesses and residents would be able identify with the transparency of the decision-making process associated with enforcement activities.

(c) Enable compliance with the requirements of BVPI 166 for the Council to have an enforcement policy for all of the environmental health and trading standards services.