

**WAVERLEY BOROUGH COUNCIL  
ENVIRONMENTAL HEALTH SERVICE  
ENFORCEMENT POLICY**

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## **ENFORCEMENT POLICY - SUMMARY**

Waverley Borough Council is signed up to the Enforcement Concordat, which exemplified best practice. The Hampton Review and Macrory Review requested that Councils review their enforcement policies, with a view to reducing the administrative burden on businesses.

This new enforcement policy has been drafted in line with these principles, and aims to ensure Waverley's enforcement activity:

- A. Is fair, accountable, consistent, proportionate and transparent.
- B. Is an effective use of resources through a risk-based methodology.
- C. Improves protection for the community and businesses.
- D. Reduces the regulatory burden on businesses.
- E. Actively involves both business and community in the creation and review of the enforcement policy and methods.

## **KEY CHANGES**

This policy covers Waverley Borough Council's Environmental Health Service.

This policy will be further reviewed in the light of changes to relevant statute or guidance issued to Local Government and by Central Government, the Local Better Regulation Office and other agencies. We will also look to other Councils for examples of good practice.

We have considered the cost, effectiveness, and likely perception of fairness resulting from this policy. We have also considered the impact our enforcement actions may have on small regulated entities (businesses or voluntary organisations), and will try to ensure that the burdens of our interventions are fair and proportionate.

We will carry out risk assessments to ensure that our regulatory efforts and resources are targeted where they would be most effective. Inspections and other visits will be in accordance with the risk assessment, except where visits are requested, or we are required to investigate.

We will co-ordinate our work where practicable, beneficial and cost-effective with other regulators, when there are planned inspections of the same business. This is to avoid duplication and to minimise burdens on the business.

If you have any views on how this enforcement policy will affect you, please contact Waverley on 01483 523393 or email: [environmentalhealth@waverley.gov.uk](mailto:environmentalhealth@waverley.gov.uk)

An electronic version of this document is available at [www.waverley.gov.uk](http://www.waverley.gov.uk) If you require it in large text, please contact Environmental Health on 01483 523393 or email [environmentalhealth@waverley.gov.uk](mailto:environmentalhealth@waverley.gov.uk)

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## WAVERLEY BOROUGH COUNCIL

### GENERAL ENFORCEMENT POLICY - PRINCIPLES

#### 1. INTRODUCTION

Waverley Borough Council has a responsibility to protect the communities it serves, using the legislative tools delegated by national government. Councils implement, administer and enforce a raft of legislation designed to protect health, local economies and the environment. In doing this, Waverley has flexibility to determine the most appropriate methods for enforcement, to suit local needs and ensure value for money.

As part of Waverley's Corporate Plan, the Council is committed to:

- a. Protecting and enhancing Waverley's unique mix of rural and urban communities.
- b. Improving the quality of life for all, particularly the more vulnerable in our community.
- c. Improving and supporting opportunities for all to take part in sport, recreation and culture.
- d. Working for more subsidised affordable housing to be built, and to manage Council housing well.
- e. Ensuring all our activities are customer-focused and provide good value for money.

Consistent and fair application of our enforcement powers is critical in our delivery of this vision.

This policy and its appendices are based on the following legislation and guidance:

- a. The Statutory Code of Practice for Regulators ('the Code').
- b. The Hampton Review and the Marcrory Review.
- c. Advice from government departments and agencies.
- d. Existing legislation, including the Human Rights Act 1998.
- e. Existing corporate policies, such as the Complaints Policy and Regulation of Investigations Policy.
- f. Best practice and 'The Code for Crown Prosecutors'.

## 2. PRINCIPLES

We aim to ensure our enforcement actions are in accordance with the following principles:

a. Fair and accountable

Officers employed by the Council must comply with the principles set out in this enforcement policy. They are accountable to the public for their actions and decisions.

b. Consistent

The same approach will be adopted to achieve similar ends under similar circumstances.

c. Transparent

The council will help individuals, organisations or businesses to understand what is expected of them and what they should expect from us. We will also ensure that everyone can distinguish advice from legal obligations. Requirements and recommendations will be put in writing if requested.

d. Enforcement will be an effective use of resources through a risk-based methodology

Our resources will be targeted primarily on activities by the individuals, organisations or businesses giving rise to the most serious risks to health and safety, the environment or statutory nuisance to the public.

We will target our resources to those who deliberately, or persistently, breach the law.

e. Reduce the regulatory burden on businesses

Risk assessments and joint working will reduce the inspection burden on compliant businesses.

f. Proportionate

The enforcement action will relate to the risks to health and safety, the environment or the extent of nuisance to the public. Enforcement actions will be proportional to any risks, or to the seriousness of any breach. Care will be taken to ensure that no unnecessary costs are incurred.

g. Improve protection for the community and businesses by involving them in any future reviews of this policy

### 3. SCOPE

This policy applies to Waverley's services carrying out enforcement activities prescribed in the Regulators Code:

We will adhere to the principles set out above, not only when carrying out the enforcement activity itself, but also when setting policies, principles, and standards, and providing guidance. We will, therefore, combine these principles into both the processes and culture of our enforcement. This will be achieved through:

- a. The induction and ongoing training and coaching of staff.
- b. Ensuring staff are appropriately qualified, possess suitable experience, and are authorised to take the relevant action.
- c. Monitoring and reviewing performance.
- d. Accounting and reporting on enforcement.
- e. The regular involvement of the community and business sector in the review and improvement of our enforcement.

This policy is robust, due to the monitoring, management and review processes. However, in some cases, we may decide that a provision of this policy is irrelevant, or outweighed by another provision. We will ensure any decision to depart from this policy will be properly reasoned, based on material evidence, and documented. In these situations, the Head of Service must approve the enforcement action in consultation with the Legal Services Manager.

### 4. METHODOLOGY

We always strive to use advice and persuasion as the main methods to ensure businesses and the wider community comply with legal requirements. We will disseminate this policy by making it available on the Waverley website. We also offer free advice on a wide range of subjects via telephone, and during personal visits and inspections where appropriate.

If you need to contact us about our services, we aim to acknowledge your request within 3 working days of receipt, and aim to give you a more detailed response within 10 working days. If there is a delay, for example where the matter is more complicated, we will send you a progress report and say when we expect to be able to respond.

You can expect Waverley employees to:

- a. Be courteous and helpful.
- b. Identify them-selves by name and provide a contact point for further dealings.
- c. Give clear and simple advice.

- d. Confirm in writing, if requested, explaining what you must do to comply with the law, and the recommended best practice.
- e. Minimise the cost of compliance wherever possible.
- f. Give you a reasonable time to comply, unless immediate action is necessary in the interest of health, safety, the environment, or to prevent evidence being lost.
- g. Maintain confidentiality, except where we have a legal obligation to disclose information.

Our aim is to ensure that any necessary enforcement action is in line with the recent findings of the Macrory Review of Regulatory Penalties. These enforcement actions will be taken in order to:

- a. Change the behaviour of the offender.
- b. Eliminate, where possible, any financial gain or benefit from a non-compliance.
- c. Be responsive, and consider what is appropriate for the particular offender and regulatory issue.
- d. Be proportionate to the nature of the offence and the harm caused.
- e. Restore, where appropriate, the harm caused by regulatory non-compliance.
- f. Deter future non-compliance.

In doing so, we will measure improvements, restoration of harm, and the number of enforcement actions taken. Following the initial publication of the enforcement policy, we will produce an annual report outlining the enforcement outcomes.

To ensure we take proportionate action and targeted at cases requiring action, the following factors will be taken into consideration:

- a. The seriousness of any alleged offence.
- b. Risks to public health.
- c. Risks to the safety of individuals or groups.
- d. Risks to the environment, animals and their habitats, air and water and land contamination.
- e. The previous history of the individual, group or business, and where relevant, confidence in management.
- f. Any action taken by the responsible person/organisation, to resolve the situation.
- g. The courses of action that will best serve the community, and protect them or the environment.

## **5. BUSINESS AND COMMUNITY INVOLVEMENT**

This policy aims to improve protection for the community and businesses. It is, therefore, important to actively involve them and methods. We will do this by consulting:

- a. Through the Waverley Business Forum.
- b. Via the Waverley website.

- c. Current users via postal survey and through the process of monitoring for customer satisfaction (previously known as National Indicator NI182).

### 6. REVIEW

To ensure this policy continues to be suitable for business and community of Waverley, it will be necessary to review its effectiveness periodically.

It is essential to gain feedback from those who have been subject to enforcement action and where appropriate, the business or community affected by an infringement. Ongoing feedback shall be used and complaints data will be collated.

Feedback will be sought from the wider community, and from businesses through the Waverley Business Forum. Awareness of the policy, within the business community, will be assessed as part of this feedback process.

### 7. APPEALS

You can appeal against our action, for certain forms of enforcement, such as statutory notice and prosecution. We will advise you, if you can appeal and the timescale in which you must make it.

### 8. COMPLAINTS

If you are concerned that any enforcement action taken by us is not in accordance with this policy, you can complain. It will be dealt with in line with the Council's Complaints Policy/Procedure. **Waverley's Complaints Procedure should not be used as an alternative to, or be confused with any legal right you may have to appeal against specified forms of enforcement action. We will advise you about these legal rights to appeal where appropriate.**

If you wish to complain, in the first instance it is usually best to speak with someone in the responsible department who may be able to resolve the problem, if not immediately, then within a very short time. If you are not happy with the outcome of your first approach to the Council, you can:

- a. Contact the Council for a leaflet about how to make a complaint. This leaflet contains a form you may use.
- b. Write to the Head of the Service who manages the service you are complaining about. In the case of Environmental Health, this is Robert Anderton - email [robert.anderton@waverley.gov.uk](mailto:robert.anderton@waverley.gov.uk)
- c. Email Waverley at [complaints@waverley.gov.uk](mailto:complaints@waverley.gov.uk)



If you are not satisfied with the response from the Head of Service, you can ask to have your complaint reviewed by Waverley's Chief Executive. This is the final stage of Waverley's complaints procedure.

If you are still unhappy with our final response, you can contact:

The Local Government Ombudsman  
The Oaks No 2, Westwood Way  
Westwood Business Park  
Coventry  
CV8 8JB  
Telephone 02476 820000  
e-mail: [enquiries.coventry@lgo.org.uk](mailto:enquiries.coventry@lgo.org.uk)

A copy of the Complaints Policy/Procedure is available at [www.waverley.gov.uk](http://www.waverley.gov.uk), or you can contact Sue Petzold, Customer Relations Officer on 01483 523202.

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## **TYPES OF ENVIRONMENTAL HEALTH ENFORCEMENT AVAILABLE**

It is outside the scope of this enforcement policy to discuss in detail, specific legislation relating to the various regulatory sanctions available to the Council. For guidance, the following is a brief explanation of the regulatory sanctions.

### **1. Verbal and Written Warnings**

These include offering advice verbally or in writing, or requests for action, and the findings of any inspection or investigation. These informal actions would be used if it is considered they will achieve compliance. This would be based on past history/confidence in management, or where the consequences of non-compliance will not pose a significant risk to public health or, are of a minor technical nature.

### **2. Statutory Notices**

Various statutory notices are available which can be used when:

- a. There is, or may be, a significant risk to public health or the Environment.
- b. A statutory nuisance is occurring, or is likely to occur or recur
- c. The consequences of not taking immediate and decisive action to abate, or prohibit, the activity giving rise to the significant risk to public health, or statutory nuisance, would be unacceptable.

### **3. Fixed Penalty Notices**

This sanction is only available under certain legislation for example dog-fouling. The decision to issue a fixed penalty notice, rather than adopt other forms of enforcement action is likely to be chosen as a more efficient and effective way of dealing with the offence.

### **4. Suspension or Revocation of a Licence or the Refusal to Grant or Vary a Licence or Imposition of Conditions to a Licence**

These actions will be proportionate to the risk to public health or safety, animal welfare or the environment and will be applied when:

- a. There is a record of non-compliance with breaches of licence conditions.
- b. Confidence in the person responsible is low.
- c. The applicant or licence holder has failed to meet statutory requirements.

### **5. Work in Default**

This is a generic term for work carried out, usually as a result of failure to comply with a statutory notice. The following circumstances may apply:

- a. There has been no appeal against the notice, or an appeal has been quashed.
- b. It is considered more appropriate/effective than prosecution or a successful prosecution has been taken and the problem remains.
- c. The problem may be so serious that it requires quick remediation through work in default at the same time as prosecution.
- d. The recipient of the notice has requested this and given an undertaking in writing to pay.

When deciding whether to carry out works in default, the following will be considered:

- a. The seriousness of the defect and the urgency of the need to remedy the situation.
- b. The ability of the Council to reclaim the cost of undertaking the works, including an administration charge if the recipient appeals against the costs.
- c. The recipient comments on the notice.

In commissioning any works to enable work in default, the Council's financial standing orders or procurement rules may apply. This includes the provisions requiring works in emergency situations.

### **6. Seizure of Equipment and Other Items**

The above considerations also apply to this form of enforcement activity. Under various legislation it may be necessary to seize equipment or other items including faulty, dangerous items, unwholesome or contaminated or food, equipment responsible for causing a noise nuisance. This is to prevent them causing harm or a nuisance.

### **7. Simple/Formal Caution**

A simple caution can be offered as an alternative to prosecution, but only in cases where the evidential criteria for prosecution are satisfied. Its purpose is to:

- a. Deal quickly and simply with less serious offences
- b. Divert less serious offences away from the courts
- c. Reduce the chances of repeat offences

It is appropriate when:

- a. The interests of justice will not be served by court action.
- b. Offences of a minor nature are not actioned following service of a Statutory Notice and there is no risk to health/safety.
- c. A 'technical' offence has been committed that must be formally recorded.

The investigating officer must compile a prosecution file before the Simple/Formal Caution is offered to the alleged guilty party. The person receiving the simple caution must be given sufficient information to understand its significance.

The person receiving the caution will be asked to agree to the facts of the case, including those leading to the caution being made public by means of the Council's website and media releases. In the event that this is not agreed, the Council may reconsider whether a caution should be issued and instead issue proceedings.

If the Simple/Formal Caution is refused after being offered it, the Council will pursue the offence through a prosecution, except in exceptional circumstances, as authorised by the appropriate Head of Service in consultation with the Legal Services Manager.

### **8. Prosecution**

The following circumstances may warrant prosecution:

- a. Failure to comply, in part or full, with a statutory notice.
- b. The consequences of not taking immediate and decisive action would give rise to the significant risk to public health, or continuing statutory nuisance, that would be unacceptable, particularly for financial or other reward.
- c. A blatant disregard for the law, particularly where previous warnings or notices have been issued.

The perceived public benefit of a prosecution may be considered when its outcome impacts on a section of the community whose protection, health, safety, wellbeing, legal rights or the environment as a whole, was placed at risk of being affected or was adversely affected.

The importance of a prosecution may be considered to establish an important precedent or to draw public attention to national or local campaigns or issues may be considered. Guidance contained in The Code for Crown Prosecutors Code for Prosecutors will be followed when making a decision on whether to prosecute.

### **9. Injunction**

The Council may apply to take injunctive action in exceptional circumstances, where there is an immediate risk to public health or extraordinary statutory nuisance as provided for in the relevant legislation.

### **10. Anti-social Behaviour Order (ASBO)**

These orders should usually be considered when other methods of dealing with the behaviour are inappropriate or have failed. However, Home Office guidance makes it clear that 'whilst ASBOs should be seen in this wider context there is no requirement to demonstrate that every other remedy has been exhausted before applying for an ASBO'. An ASBO should only be used where it is the most appropriate remedy.

## The Enforcement Concordat

### Background

In March 1998 the Cabinet Office, in partnership with the Local Government Association (and other principal local authority associations), business and consumer groups, published the central and local government Concordat on Good Enforcement (the Enforcement Concordat).

Since then a significant number of local authorities, government departments and government agencies have signed up to the Enforcement Concordat. Waverley's Environmental Health Service signed-up in 1998 and has since conformed to its six Principles of Good Enforcement:

- Standards: setting clear standards
- Openness: clear and open provision of information
- Helpfulness: helping business by advising on and assisting with compliance
- Complaints about service: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved
- Consistency: ensuring consistent enforcement practice.

Implementing the Principles of Good Enforcement has brought significant benefits to the Environmental Health Service and the business community. By facilitating compliance, we have been able to achieve higher compliance rates and reduce the number of costly prosecutions. This has, and will continue to allow us to target those who flout the law or act irresponsibly. Business, in particular small to medium enterprises, will find it easier to get compliance right first time, which in turn will contribute to the safety of consumers and employees.

By enabling the Environmental Health Service and businesses to work together, without undermining our duty to take formal action where necessary, the Concordat creates a level playing field for competition between law-abiding businesses, which helps to enhance economic vitality.

### The Principles of Good Enforcement: Policy and Procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. Additional statements of enforcement policy may supplement it.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, aim help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the Concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

### **Principles of Good Enforcement: Policy**

#### **Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

#### **Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives.

We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

#### **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our employees will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us.

Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly.

We will ensure that, wherever practicable, our enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays.

#### **Complaints about service**

We will provide well-publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

### Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

### Consistency

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies.

### **Principles of Good Enforcement: Procedures**

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).