Maldon District Council

Environment Services Enforcement Policy

| Ref: | Version: 1 | Issued: May 2008 | Review Date: |

1. Aim

1.1 This Enforcement Policy sets out how Environment Services will carry out its enforcement role and what businesses, residents and others in the community can expect from the services. It commits the Council to ensuring that enforcement is taken in an appropriate, proportionate, fair, consistent and transparent manner.

1.2 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This enforcement policy has regard to the Regulators’ Compliance Code (“the Code”). The Council in undertaking its enforcement responsibilities will also have regard to other relevant guidance and best practice, including the Enforcement Concordat, where it remains in force and the Code for Crown Prosecutors.

1.3 In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

1.4 The policy applies to the following services:

(a) Food Safety and Communicable Disease Control
(b) Health and Safety
(c) Environmental Protection
(d) Private Sector Housing
(e) Waste and Community Services
(f) Licensing
2. Objectives

2.1 In carrying out its duties, Environment Services will;
(a) Act in accordance with its statutory duties in respect of reactive work e.g. statutory nuisance investigation.
(b) Follow all relevant procedures, consistent with current statutory guidance and professional guidance.
(c) Base inspection and enforcement action on the risk presented and ensure action is in accordance with nationally recognised risk assessment schemes and techniques, where these are available and appropriate for use in the District.
(d) Promote good communication between parties.
(e) Provide good timely advice, information and help to promote compliance with requirements.
(f) Clearly distinguish between works that are a legal requirement and works that are recommended.
(g) Follow up formal enforcement action and ensure that when any notices are served, the appeals process is explained to the recipient.
(h) Adopt a fair approach taking into account information provided.
(i) Ensure that we only ask for information to be provided that is necessary for the enforcement activity.
(j) Work with other enforcement agencies as necessary to promote understanding and compliance with requirements and to coordinate interventions with regulated entities and join up enforcement activity where appropriate.
(k) When dealing with multi site organisations, refer to Home Authority/Lead Authority/Large Organisation Partnership Pilot Schemes to help ensure a consistent approach.
(l) Provide information on complaints procedures (which include referral to the independent Local Government Ombudsman) and examine and respond to any complaints made regarding services provided.
(m) Make use of the Proceeds of Crime Act 2002, which allows confiscation proceedings against criminals who have profited from crime, where appropriate.
(n) Make information available on our performance.
(o) Share good practice where possible through our communication channels, within our county/regional/specialist groups, and where relevant, with other regulated entities.
(p) Undertake customer surveys to assess the views of regulated entities in respect of the Council’s regulatory activities, and use this feedback to improve services.
3. Implementation

3.1 Services will be provided, where reasonable and practicable, in order to meet the needs of local customers and arrangements will include;
   (a) Daytime services based on normal office opening hours.
   (b) Planned out of hours services to deal with inspections and complaints and monitoring relating to businesses’ operating and activities occurring out-of-hours.
   (c) Out of hours response to environmental health emergencies, as part of the Council’s Emergency Planning arrangements.
   (d) Provision for the use of interpreters and other sources of expertise to address language and cultural issues.

3.2 Enforcement will be carried out by appropriately qualified and competent officers who have been given suitable delegation and authorisation appropriate to their job. Appointments will be made in accordance with the Council’s Scheme of Delegation, and authorisation procedures.

3.3 Expert advice on technical issues will be sought from other statutory agencies and bodies as appropriate.

3.4 All officers will perform their duties in accordance with this Enforcement Policy. Any departure from this policy must be exceptional, capable of justification and will be decided by the Environmental Health Manager (in the case of Environmental Health Services), or the Waste & Community Team Leader (in the case of Waste and Community Services), in consultation with the Head of Environment Services.

3.5 Copies of this Enforcement Policy will be made available to officers and customers.

3.6 The Council through its published fees and charges will set out what services it charges for, and the extent of these charges. Policies and procedures in respect of charging for services will be developed having regard to the implications on particular groups of regulated entities.

4. Roles and Responsibilities under the Enforcement Policy

4.1 The Head of Environment Services will;
   • Seek and obtain approval of the policy.
   • Secure any necessary delegated authority.
   • Appoint and authorise officers and contractors, in accordance with statutory standards and schemes.
• Authorise the taking of prosecutions and administration of formal cautions when appropriate.

4.2 The Environmental Health Manager (Commercial) Environmental Protection and Waste Management will;
• Oversee training requirements and provision for officers.
• Scrutinise and make recommendations for formal prosecutions and cautions to the Head of Service for formal approval.
• Ensure that arrangements are in place in services for the monitoring of services provided.
• Review this policy as required.
• Give professional guidance on enforcement matters.
• Give professional guidance on work techniques and decision making.
• Undertake monitoring of service in accordance with procedures place.

4.3 Enforcement Officers will
• Adhere to all Codes of Practice, statutory guidance and service policies and procedures when carrying out their day to day duties.
• Undertake training and development identified.
• Ensure that customers are kept informed and helped as far as is reasonable and practicable.
• Seek guidance from the Senior Environmental Health Officers and Environmental Health Manager/Waste Management Team Leader/Head of Environment Services if necessary on the appropriate course of action in individual cases.

5. Enforcement Options

5.1 Action following an officer visit/inspection will be one or more of the following in individual cases. Accurate and proper records will be kept of all visits/inspections made and action taken.

5.2 Verbal Advice (Informal Action)
To be followed where there are either no or very minor contraventions of legal requirements, where good practices/standards are found, and where there is little or no risk to public safety and health. A record of verbal advice given will be kept.

5.3 Inspection Report and Hazard Awareness Notices (Informal Action)
To be issued for some inspections and on a standard form. It will draw attention to areas where improvements and action are needed in order to secure compliance. It will distinguish between legal requirements and officer
recommendations. It will detail any further action the Council proposes to take.

5.4 **Advisory Letter (Informal Action)**
   To be sent as follows:-
   (a) In response to an individual query, request or complaint.
   (b) Where detailed information is required to enable understanding of what work is required and why it is necessary.
   (c) Letters will clearly distinguish between legal requirements and recommendations, and will contain officer contact information.

5.5 **Statutory Notices, Fixed Penalty Notices and Orders (Formal Action)**
   Formal Notices and Orders will be issued where one or more of the following exist:-
   (a) Informal action has not achieved the desired effect.
   (b) There is a lack of confidence in the person/company responsible for the business or activity to respond to an informal approach.
   (c) There is a history of non-compliance with informal action.
   (d) Standards are generally poor with little management or individual awareness of statutory requirements.
   (e) Where service of a Notice is required by statute.
   (f) The consequence of non-compliance could be potentially serious to the safety and health of the public.
   (g) Environmental crime which has a detrimental effect on the local environment and which could appropriately be dealt with by way of a Fixed Penalty Notice.

   Officers will discuss the works specified with individuals/company representatives and will consider the suitability of alternative solutions put forward. Information on the right and process of appeal against the Notice will be provided.

5.6 **Works in Default (Formal Action)**
   Works in Default will be taken where;
   (a) The requirements of a Statutory Notice or Order have not been complied with.
   (b) There is an imminent risk to safety and health, the consequences of which would be unacceptable.

5.7 **Formal Caution (Formal Action)**
   Formal Caution will be taken as an alternative to prosecution where;
   (a) There is a first offence, or a less serious technical offence, or where it is considered that formal action needs to be taken and
(b) Where it is considered that formal action needs to be taken but a prosecution would be inappropriate or unproductive and
(c) Where the nature and extent of the harm or loss which resulted or could have resulted from the alleged offence is too great to dismiss the case completely.

5.8 In all instances there must be enough evidence to enable a prosecution. The suspected offender must be willing to admit the offence and must understand the significance of a caution and give informed consent to being cautioned.

5.9 Formal cautions will be administered in accordance with the guidance in the relevant Home Office Circular.

5.10 The case officer will draw up a formal report. The case will be assessed for suitability by the Environmental Health Manager/Waste Management Team Leader, with a final decision by the Head of Environment Services, as advised by the Council’s solicitor.

5.11 Prosecution (Formal Action)
Prosecution will be taken in cases where there is or has been;
(a) A flagrant breach of the law such that public health, safety or wellbeing is or has been put at risk or irreversible damage has resulted.
(b) Reckless disregards for the environment.
(c) Deception which may or may not result in a loss or potential loss of public funds.
(d) The integrity of the Licensing framework is threatened.
(e) Failure by suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply.
(f) Failure to comply in full or in part with a Statutory Notice or Order.
(g) A past history of non-compliance and/or similar offences.
(h) Cause for public alarm and desirable to reassure the public and deter other offenders.
(i) Prosecution is in the public interest, and there is a reasonable prospect of conviction and sufficient evidence to support proceedings.
(j) Refusal to accept a Formal Caution.
(k) Non payment of a Fixed Penalty Notice.

5.12 In order to prosecute there must be a realistic prospect of conviction, with sufficient evidence collected in accordance with official guidance and work procedures. The following areas must be investigated;
(a) The likelihood of a due diligence offence by the suspected offender.
(b) The witness’s willingness to co-operate or give evidence.
(c) The public benefit that would gained from a prosecution.
(d) Whether any other action would be more appropriate.
(e) The individual’s/company’s explanation of the suspected offence and willingness to co-operate and remedy defects.

5.13 The prosecution of an individual or company is a serious step and officers must have due regard when making the decision to the Code for Crown Prosecution. The case officer will draw up a formal report. The case will be assessed by the Environmental Health Manager, with a final decision by the Head of Environment Services, as advised by the Council’s solicitor.

5.14 Formal action (Formal Caution or Prosecution) may also be taken where an officer has been obstructed in the course of his/her duties.

6. Conduct of Enforcement Activities

6.1 Officers will adopt a courteous, positive, helpful and open approach and in particular will;
   (a) Follow any relevant statutory guidance and service procedures.
   (b) Explain the need for enforcement.
   (c) Distinguish between recommendations and legal requirements.
   (d) Consider alternative ways of achieving the same objective.
   (e) Avoid any unnecessary and inconvenience.
   (f) Explain the purpose of the visit/inspection.
   (g) Provide post inspection reports if appropriate.
   (h) Use plain English.
   (i) Explain the appeals route and complaints procedure if required.
   (j) Progress investigations without undue delay.
   (k) Encourage constructive feedback.

The Council will seek to engage with relevant trade, association and community bodies in order to achieve the aims and objectives of this policy.