

## **BRECKLAND COUNCIL CORPORATE ENFORCEMENT POLICY**

### **Introduction**

Breckland Council has signed up to the Government's Enforcement Concordat. The principles set out in the Enforcement Concordat are intended to ensure:-

- Openness about how we carry out our work;
- Helpfulness in terms of providing advice and assistance;
- Proportionality in taking enforcement action at a level appropriate to harm;
- Consistency in terms of carrying out our duties in a fair and consistent manner.

This document covers all enforcement activities carried out by the Council except for those relating to Council tax or benefits, acting through its officers through delegated powers. These activities include:-

- The service of statutory notices and orders;
- The issue of formal cautions;
- Legal proceedings; and
- All other informal means of action such as written and verbal warnings or advice.

The purpose of the policy is to provide an enforcement framework that respects the principles of the Enforcement Concordat and guidance published by the government and the relevant professional bodies. This policy also takes into account and reflects the Code for Crown Prosecutors, the Human Rights Act 1998 and the Data Protection Act 1994.

Enforcement plays an important role in enabling the Council to achieve its priorities which are:

- A safe and healthy environment;
- A well planned place to live which encourages vibrant communities;
- A prosperous place to live and work.

All individuals and businesses are stakeholders under the policy and will benefit from a consistent, fair and published policy that seeks to ensure that the above principles are met. The policy will be properly published by the Council and made its available in leaflet form and through its website. Staff will receive training to ensure consistent delivery of this policy.

This policy will be reviewed regularly to take account of any changes in the law or relevant guidance, operational experience and feedback from individuals and businesses.

### **General Principles**

Each case is unique and will be considered on its own facts and merits.

In arriving at a decision to recommend formal action officers will be fair, independent and objective and will act promptly without prejudice or bias. Officers will provide enforcement services to all sectors of the community and act promptly to respond to complaints about the way services are provided. They will not be affected by improper or undue influence from any source.

The case officer in any enforcement matter will:-

- Take appropriate legal advice to ensure that the law is properly applied and that enforcement action is directed towards the right person or company;
- Consult with other relevant authorities where applicable to ensure that where there is a shared enforcement role the most appropriate body carries out the enforcement action,
- Endeavour to meet any special needs of those involved by for example providing an out of hours contact facility or translation services.

All officers carrying out enforcement activities on behalf of the Council will:-

- Communicate with all those involved in a fair, clear and courteous manner;
- Provide clear advice and information on how to comply with relevant legislation, Code of Practice or Guidance;
- Advise individuals and businesses of a named officer responsible for dealing with their case;
- Comply with any performance standards set by individual departments of the Council for dealing with enforcement matters.

The Council will expect full voluntary compliance with Statutory Notices and legislative requirements but will not hesitate to use enforcement powers, where necessary or appropriate. This may include the seizure of equipment and the instigation of legal proceedings.

The Council aims to provide an efficient and fair enforcement service. However, in the event that a person or business is not satisfied with the way in which an enforcement matter has been handled the Council has a formal complaint's procedure which can be used. Details of this are available from the Council's website ([www.breckland.gov.uk](http://www.breckland.gov.uk)) or from the Council's office at Elizabeth House Walpole Loke Dereham Norfolk NR19 1EE.

### **Enforcement Action**

Enforcement action will either be informal or formal, and will be carried out in accordance with the principles set out below.

#### Informal Action

This will consist of one or more of the following as a consequence of an inspection, investigation or visit:-

- Verbal advice
- Verbal request for action
- Written request for action
- Written warning of formal action if faults are not corrected.

Circumstances in which informal action is likely to be appropriate include situations where:

1. The act or omission is not serious enough to warrant formal action;
2. The individual or company's past history suggests informal action will achieve compliance;

3. Confidence in management is high;
4. Standards of compliance are generally good suggesting a high level of awareness of statutory responsibilities;

AND

The consequences of non-compliance are acceptable in terms of their impact on public health, safety or amenity or the environment.

Officers taking informal action will clearly identify those matters that are contraventions of the law and those that are simply recommendations of good practice. Recipients of informal action will be given the opportunity to discuss the requirements with the investigating officer and to agree an appropriate programme of remedial work and timescale for completion where appropriate. The name of that officer's manager can be provided to encourage feedback and facilitate complaint or appeal. Regular contact with the investigating officer, as the works progress, will be encouraged.

A re-visit will be carried out subsequent to the taking of informal action to confirm that identified faults have been corrected.

#### Formal Action

This will consist of the service of statutory notices or orders, use of formal cautions and instigation of legal proceedings.

In deciding whether to take formal action, and if so which type of action to take, officers will have regard to:-

1. The seriousness of the breach;
2. The individual or company's past history in terms of compliance;
3. Confidence in management;
4. The consequences of non-compliance in terms of risk to people, property, the community and/or the environment;
5. The likely effectiveness of the various enforcement options;
6. The impact on public health, safety or amenity and to the environment;
7. The public interest in taking action.

#### **Prosecutions**

In considering a case for prosecution the Council will adopt and apply the evidential and public interest tests set out in the Code for Crown Prosecutors. Legal advice will be taken where necessary to ensure that only those cases presenting a realistic prospect of conviction will be pursued. Due regard will be had to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

Whilst it is a fundamental principle of this policy that each case will be considered on its own facts and merits, the following factors will indicate that prosecution is likely to be pursued:-

1. The offence has resulted in a serious environmental impact;

2. The offence is clearly foreseeable, or where there have been a series of breaches or incidents that the offender is clearly aware of, and he has failed to take effective remedial action;
3. The offender knows that a course of action or inaction is likely to lead to the commission of an offence or there is an element of intention or wilfulness;
4. A history of non-compliance;
5. The offender shows reluctance to take the appropriate remedial action to prevent further offences.

### Formal Cautions

Formal cautions may be used as an alternative to prosecution in less serious cases. The Council will offer suspects the option of discharging their liability by the acceptance of a caution in appropriate cases provided that:-

1. There is sufficient evidence of the suspect's guilt to give rise to a realistic prospect of conviction;
2. The suspect admits the offence, accepts the seriousness of the conduct and shows remorse;
3. The suspect understands the significance of the caution and agrees to being cautioned;
4. The Council considers there to be little or no likelihood of reoffending.

Where appropriate, the Office of Fair Trading will be advised of any cautions issued, along with any home, lead or originating authority.

Should the suspect reoffend, any previous formal cautions will be referred to in any subsequent proceedings.

### **Public Information**

Details of prosecutions, including the defendants, offences, verdict and sentence will be entered on a public register. The Council believes that public information about enforcement is important to maintain confidence in the regulatory system and to impress upon perpetrators the gravity with which the Council regards offences. It is therefore the Council's policy to give factual information about convictions to the media.