



Blaby District Council **Policy**

Environmental Health, Environmental Services & Community Services Enforcement and Compliance Policy

Original Publish Date	01/11/21	Review Frequency	Every 3 Years	Current Version Publish Date	01/11/21
Approved By*	Council	Approval Date*	21/09/21	Version Number	001
Author Job Title	Environmental Health Manager	Service Area	Environmental Health	Document Register Reference	[Input by iPlan Team]

*Approved by and 'approval date' are in relation to the most recent version.

Review History

Version*	Reviewed By (Job Title)	Review Completion Date	Brief Description of Changes (add 'no changes required' if applicable)

*Version number remains the same if no significant changes are made upon review.

Document Definition / Approval & Review

Defining the document type and how it is approved and reviewed

Blaby District Council policies ‘**outline a set of rules or principles that govern how the council (or services within the council) will operate**’.

Key published documents are approved for publication in line with the approval matrix illustrated in the Key Published Document Procedure.

Unless agreed by exception, key published documents must be reviewed at least **every 3 years** from the date of approval.

Significant updates/changes must also seek reapproval in line with the approval matrix.

Scope

To what and to whom this policy applies

This details the way that enforcement action will be taken by the Environmental Health, Environmental Services, Community Safety and Housing teams. It applies to all persons and businesses that have interaction with those teams.

Terms & Definitions

Definition of any acronyms, jargon, or terms that might have multiple meanings.

Term	Definition

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Environmental Health, Environmental Services & Community Services Enforcement and Compliance Policy

2021-2024

1. Introduction

1.1 Scope of Environmental Health & Environmental Services

The Environmental Health, Environmental Services and Community Services (EH/ES/CS) teams at Blaby District Council enforce over 100 pieces of legislation related to both businesses and individuals.

The main areas of enforcement are:

- Food Safety
- Health and Safety
- Taxi Licensing
- Premises and Personal Licensing
- Environmental Protection
- Pollution Control
- Mobile Homes Site Licensing
- Environmental Crime
- Private Sector Housing
- Animal Behaviour and Welfare
- Anti Social Behaviour
- Public Health

The EH/ES/CS services are committed to ensuring that legislation is enforced fairly and consistently to ensure that one member of the community cannot enjoy an unfair competitive advantage over the rest of the community by illegal activities or biased enforcement procedures.

The effectiveness of legislation in protecting residents depends on the compliance of those being regulated. We recognise that in most cases individuals and businesses want to comply with the law and we will take care to offer assistance to them to meet their legal obligations without unnecessary expense. However, we will take firm action where appropriate, including prosecution, against those who disregard their obligations under the law or act irresponsibly and put our residents' health at risk.

1.2 How this Policy Supports the Council's Priorities

By enforcing the legislation available to us the EH/ES/CS service supports the following corporate priorities:

- Live - Strong, healthy, safe, sustainable communities where the most vulnerable are supported
- Work - A thriving, prosperous, innovative local economy with a skilled and healthy workforce contributing to the local community
- Visit - A strong leisure and tourism sector and well maintained and accessible attractions available in the local area encourage visitors to the district

The legislation that the EH/ES/CS Service enforce is there to protect people in their homes, work and at leisure; and to prevent environmental damage and improve the local and wider environment including climate change strategies. The EH/ES/CS Service feeds into countywide initiatives and liaison groups to achieve consistency in regulation between local authorities as far as it is possible.

1.3 Joint Working

The EH/ES/CS service will work with our internal and external partners to ensure individuals and businesses comply with legislation. This means that we can pool our resources and provide better value for money to our customers when carrying out our duties.

In particular the EH/ES/CS service works closely with other agencies dealing with the wider aspects of Anti Social Behaviour. This includes sharing our data with the Police where appropriate.

1.4 Policy Review

This policy will be reviewed every three years to ensure it stays relevant to current guidance.

2. Competence of Enforcement Officers

The Council recognises that only appropriate, competent, authorised personnel may undertake certain aspects of EH/ES/CS law enforcement. The Council's constitution provides for such authorisation of Officers through its published scheme of delegation.

The service will assess the competence of enforcement officers using nationally recognised standards of competence, such as those provided by the Better Regulation Delivery Office (BRDO).

Each Service Manager will confirm the extent of each officer's authorisation and keep a copy of this on file. Any limitations to the extent of authorisation will also be noted for each officer.

3. Consistency of action

The Council is committed to applying its powers in a way that is consistent with other local authorities. To achieve this, the Council may take part in benchmarking and consistency exercises where it is believed the resources needed to do this will be justified by the improvements which come about as a result.

4. Planning and Reporting

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Each Service Manager will review and plan the work of the service area annually and in line with the latest legislative requirements, current service demands and emerging threats/trends.

5. Charging for Enforcement Action

Some legislation such as the Housing Act 2004 and Caravan Sites and Control of Development Act 1960 (as amended) gives Local Authorities the power to make a charge if enforcement action is necessary. The service will make use of these powers and will make a charge to ensure that, where the legislation allows, we recover the full costs of enforcement. Where possible fees will be set and reviewed as part of the fees and charges review process.

6. Equality

The Council fully recognises and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the relevant legislation and guidance. Action taken against an individual, business or organisation will be consistent with the Council's commitment to equality and diversity.

The EH/ES/CS Service recognises that some individuals need additional support or information in different formats to enable equal access to our service and where possible this will be accommodated. However, where the proprietor of a business does not speak or read English they will be encouraged to arrange their own translations. If this is not possible then the Council will aim to provide this service.

Mental capacity issues are considered in each case to ensure that the individual we are taking enforcement action against understands the consequences of their actions and is able to make informed decisions.

7. Indemnification of Officers

The Council has adopted an indemnification policy with regard to authorised officers. This means the Council covers any potential liability of authorised officers whilst carrying out their duties.

8. Conduct of Investigations

All investigations will be carried out in accordance with any associated guidance or codes of practice, in so far as they relate to Blaby District Council.

Overt surveillance will form part of some investigations. If for any reason the service needs to carry out any covert surveillance we will follow the relevant guidance such as the Regulatory Investigative Powers Act (RIPA).

9. Principles of Enforcement

The Legislative and Regulatory Reform Act 2006 set out the approach regulators should take when carrying out their enforcement functions. The purpose of the legislation is to remove unnecessary burdens from businesses. These burdens are described as:

- a) A financial cost
- b) An administrative inconvenience
- c) An obstacle to efficiency, productivity or profitability or
- d) A sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

10. Regulators' Code

The Regulators' Code is a statutory code and the Council must adhere to it when making enforcement decisions. The Code provides a flexible, principles-based framework that supports and enables regulators to design their service and enforcement policies in a way that best suits the needs of businesses and other regulated bodies. The main principles are:

- a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- b) Regulators should provide simple and straightforward ways to engage with those they regulate and acknowledge their views.
- c) Regulators should base their regulatory activities on risk.
- d) Regulators should share information about compliance and risk.
- e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- f) Regulators should ensure that their approach to their regulatory activities is transparent.

11. General Enforcement

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:

Evidential Test - is there enough evidence against the defendant?

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

Before a prosecution proceeds, the appropriate Officer must be satisfied that the case is in the public interest and is supported by sufficient relevant evidence which is:

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- Admissible
- Substantial
- Reliable

The Code for Crown Prosecutors contains the following factors and these (as well as other relevant factors) will be taken into account:

- a) The seriousness of the alleged offence.
- b) The previous history of the party concerned.
- c) The likelihood that a defence can be established.
- d) Whether important witnesses are willing and able to co-operate.
- e) Willingness of the party to prevent the problem recurring.
- f) Whether prosecution would be of public benefit.
- g) Whether a Simple Caution might be more appropriate.
- h) Any explanation offered by the party concerned
- i) The victim's view.

12. Enforcement Options

Blaby District Council uses the following enforcement options:

- a) Informal Action
- b) Written Warnings
- c) Statutory Notices
- d) Simple Cautions
- e) Prosecution
- f) Work in default
- g) Fixed Penalty Notices
- h) Seizure of equipment
- i) Forfeiture Proceedings
- j) Licence Reviews
- k) Refusal, Suspension and Revocation of Licence
- l) Civil Penalties
- m) Rent repayment Orders
- n) Criminal Behaviour Orders

12.1. Enforcement Approach

The approach to enforcement action will take into account a number of factors including risks to health, previous compliance history, confidence in management/individual and seriousness of the contravention. Stronger action is likely to be taken where risk is high and/or confidence is low but the individual circumstances surrounding a situation will also be taken into consideration. Where there is an imminent risk to health then there will be a presumption in favour of enforcement unless an equivalent alternative can be identified.

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Additionally, we will take into account guidance and advice from Government Departments, Advisory Bodies, Local Authority Associations and Professional and or Technical Bodies.

Investigation and decision-making will not be unduly prolonged or delayed. It will be in accordance with principles laid out in the:

- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000

We will keep witnesses, complainants or other parties informed as to the progress of the case.

Once the decision to prosecute has been made, we will refer the matter to Legal Services.

12.2 Publicity

In October 2014 the Government updated its guidance Publicising Sentencing Outcomes. This document states that;

- Verdicts and sentences in criminal cases are given out in open court and are a matter of public record.
- There should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:
 - reassure the public;
 - increase trust and confidence in the Criminal Justice System (CJS);
 - improve the effectiveness of the CJS;
 - discourage offending and/or re-offending.

The service will therefore aim to publicise the outcomes of cases taken.

12.3 Proceeds of Crime

The Council either through its own Officers or in co-operation with the Police may make an application under the Proceeds of Crime Act 2002 to restrain or confiscate the assets of the offender. The purpose of any such actions would be to recover any financial benefit that the offender has obtained from his/her criminal conduct.

12.4 Work in Default

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The local authority has the discretion on whether or not to carry out work if a Statutory Notice has not been complied with. Non-compliance with a Notice will not automatically result in the instigation of works in default. If it becomes necessary to carry out default work consideration should always be given to whether a prosecution is appropriate in addition to or as well as carrying out the work.

The decision is not taken lightly and is based on the circumstances of each case. The circumstances, which are likely to warrant works in default may be characterised by one or more of the following criteria:

- a) The conditions are such that the occupant's or the public's health, safety or well being is put at risk
- b) The person responsible either cannot be found or has not responded to requests to contact us.
- c) A failure by the offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.

Work in default will be subject to the approval of a Manager with authority to spend up to the estimated costs of the work. It is the Council's duty to spend public money in a responsible way and make attempts to recover any costs. Depending on the legislation a local land charge will be applied and/or an invoice raised for the full costs including officer time and other expenses.

12.5 Fixed Penalty Notices

Some legislation allows local authorities to offer a Fixed Penalty Notice (FPN) to an offender as a way of discharging their liability for the offence. In circumstances where a person or business fails to accept or pay a FPN, then in order to maintain the integrity of these legislative regimes, Environmental Health & Environmental Services will consider an escalation of enforcement action.

12.6 Forfeiture Proceedings

This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them being used to cause a further problem. In appropriate circumstances, an application for forfeiture to the Magistrates Courts will be made.

12.7 Seizure of goods/equipment

Certain legislation enables authorised Officers to seize goods, equipment or documents for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance, or any goods that may be required as evidence for possible future court proceedings. An appropriate receipt will be issued when goods are seized.

12.8 Licence Reviews

A premises licence may be reviewed by the licensing authority of its own volition or following the receipt of an application for a review, which is essentially a request by a third party to the licensing authority to review a particular licence.

12.9 Refusal, Suspension and Revocation of Licences and Permits

Where there is a requirement for a business to be licensed by the local authority, the licence may be granted unless representations or objections are received against the application.

Some legislation requires any appeals or representations to be heard at the Licensing Committee or its sub committee. The Committee can decide to grant, grant with conditions, or refuse the licence application.

Where the Licensing Committee does not form part of the licensing process an applicant can use the complaints procedure to have the decision looked at again.

Licences and permits may be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety and/or animal welfare.

12.10 Civil Penalties

Civil penalties provide an alternative and potentially more useful sanction to local authorities. It enables consideration to be given in regards to the approach taken to deal with some landlords, could reduce lengthy legal processes and provides a very clear framework for the level of penalty in relation to the level of offence and harm. These are available for specified housing offences and are the subject of a separate Civil Penalties policy.

12.11 Rent Repayment Orders

There is provision within the Housing Act 2004 to make rent repayment orders for the following:

- Offence in relation to licensing of Houses in Multiple Occupation (section 72)
- Failure to comply with an Improvement Notice (section 30)
- Failure to comply with a Prohibition Order (section 32)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016

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- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

These orders are made by the First Tier Tribunal and can require a landlord to repay a specified amount of rent back to the Council or the tenant, which can be up to 12 months' rent.

Orders can be granted to either the tenant or the local housing authority, depending on who paid the rent. The repayment or rent via an order is distributed to the person or body that paid the rent in the first instance, or where it was shared in an equitable manner.

A rent repayment order can be made against a landlord who has received a civil penalty, but only at a time when there is no longer any prospect of the landlord appealing against the penalty. The Government has made clear the local authorities must always consider a rent repayment order after a civil penalty has been successfully imposed.

There is also an expectation that local authorities will help, support and advise tenants who wish to pursue rent repayment orders.

13. Prevent Duty

In all enforcement decisions Blaby District Council will give due regard to any legislation that has been introduced to reduce the threat of terrorism from individuals/groups; and to enhance the protection of publicly accessible locations across Blaby District from terrorist attacks and to ensure organisational preparedness.