



Policy Document

**Environmental
Enforcement Strategy**

6th January 2017

Streetscene Enforcement Policy

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1. INTRODUCTION

It is the stated aim of Burnley Borough Council to protect the public and the environment and promote health, safety and welfare and to enhance the quality of life of all residents, workers and visitors to the Borough. This will be achieved by education, providing advice and by regulating the activities of others. Enforcement action will play an important role in helping the Council to secure compliance with regulatory requirements.

The Council will work with other regulators, such as the Environment Agency and Central Government to ensure co-ordinated and cohesive regulation. The Council will seek to share good practice and local intelligence with appropriate enforcing bodies. The Council will also work with community and voluntary groups in order to achieve common goals.

The enforcement policy sets out the general principles, which the Council intends to follow when taking enforcement action. More detailed, operational guidance may be developed for staff in respect of specific functions. The policy commits the Council to good enforcement policies and practices.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

In certain instances we may conclude that a provision in the Code is either not proportional, 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.

1.1 RESPONSIBILITY & AUTHORISATION

Responsibility for the implementation of the Policy rests with the Head of Streetscene. This Policy covers the role of Authorised Officers within the Unit and / or duly appointed bodies acting on our behalf to carry out day to day enforcement activities. Such authorisation is in accordance with relevant Codes of Practice or National Guidance to carry out inspections, complaints investigation, deal with requests for service, implement and enforce action plans and where necessary to offer advice or training. The Unit Head is responsible for the planning, organisation and subsequent monitoring of all aspects of the Policy.

All Officers / relevant bodies are authorised in accordance with their qualifications, experience and competency. Such Officers are authorised in writing by the Head of Streetscene specifying which legal provisions they are entitled to exercise.

Statutory Notices may only be prepared and signed by Officers designated as competent by the Head of Streetscene.

The issuing of a Simple Caution and any decision to prosecute will only be administered or approved by either the Head of Streetscene, the Streetscene Solicitor or one of the Unit Heads.

2.0 PRINCIPLES OF ENFORCEMENT

The Council will adopt a robust 'zero tolerance' firm but fair approach to environmental regulation. The provision of excellent and clean public spaces and to continue to address quality of life concerns, continue to be integral to the Council meeting its Strategic Objectives for the Town. The principles underlying firm but fair regulation include;

2.1 Standards

In consultation with business and other interested parties, we will draw up clear standards setting out the level of service and performance that the public and business can expect to receive. We will do this via existing Town Centre Partnerships.

2.2 Helpfulness

We believe that prevention is better than cure; we will actively work with local business and individuals to advise about, and assist with, compliance. We will provide a courteous and efficient service, and our staff will identify themselves by name, showing a warrant or other means of identification. We will offer a contact point and telephone number to encourage further liaison. We will strive to ensure that wherever practicable, our activities are effectively co-ordinated to avoid unnecessary overlaps and/or delays.

2.3 Equality

Any enforcement undertaken or changes to operating practices that are adopted by the Council or on its behalf will be done in line with equalities legislation and good practice. In particular, any such operating systems will be undertaken as relevant with the completion of a detailed Equalities Impact Assessment and the impact of changing operating practices will be monitored periodically.

We will seek to ensure that everyone using our services receives equal treatment and we will take positive action to make our services accessible by using for example, interpreters and translations.

The particular needs and interests of consumers within the borough, including business proprietors, their employees and the public will be accommodated wherever possible.

2.4 Proportionality

The enforcement action taken by Burnley Borough Council will be proportionate to the risks posed to the public or environment, the seriousness

of any breach of law, the need for deterrence and in accordance with the overall direction/policy of the Council. However, it is recognised that any form of littering, fly-tipping and dog fouling is pernicious and blights the town and its reputation.

The Council does not wish to subject young people to criminal proceedings unnecessarily. Offences committed by persons under the age of 18 years old will be dealt with in accordance with the Council's Principles of Enforcement and based on the relevant circumstances of the case. This may include wider agency involvement and support.

2.5 Consistency

Whilst Officers exercise discretion, the Unit will endeavour to ensure that enforcement decisions are consistent, balanced, fair and relate to common standards. Variables taken into account when making enforcement decisions include the seriousness of the offence, past history, confidence in management, the consequences of non-compliance, evidence of remorse, consideration of the offender and the likely effectiveness of the various enforcement options.

2.6 Transparency and Openness

Transparency is vitally important in maintaining public confidence in the ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from Streetscene. It also means making clear why an Officer intends to or has taken enforcement action.

2.7 Targeting

In certain circumstances, It may be appropriate to direct resources to address a 'hotspot' area that may need a focused approach. This normally will be identified by a high volume of complaints regarding an area from the public or business community.

2.8 Shared Enforcement – Multi Agency Approach

In some circumstances, risks to the public, workers and the environment are also dealt with by other authorities. Where appropriate we will liaise with all other authorities before taking enforcement action.

Relevant information will be shared with other enforcement bodies, where appropriate.

2.9 Complaints About Our Service

We will maintain informal and formal complaint procedures, which are easily accessible to all service users. The complaint procedure includes details of our method of response to complaints and the time-scales involved.

3.0 APPLICATION OF OUR POLICY

All Officers will have regard to this policy when making enforcement decisions.

3.1 Departure from Policy

Any departure from this policy must be exceptional, capable of justification and be fully considered by the Head of Street scene or a designated alternative officer before a final decision is taken.

This proviso shall not apply where a serious risk of injury to health or to the environment is likely to occur due to a delay in any decision being made. A record of all departures from this policy shall be kept. The Head of Street scene shall as soon as is practicable be informed of any such departures.

3.2 Monitoring Compliance with the Policy

An audit of the enforcement action undertaken by the Department will be carried out on an annual basis, in order to monitor compliance with this policy. The audit results will be reported through the Departmental Management Team Meetings and Business Plans.

4.0 LEVELS OF ENFORCEMENT ACTION

There are a number of levels of enforcement action available to the Council.

4.1 Prevention

To raise awareness and promote good practice in order to help prevent any contravention of the law. This activity may include targeted publicity, media, engagement and routine inspections.

4.2 Informal action

We will use our best endeavours to resolve problems in a speedy and efficient manner when the issue is one that the officer is confident that appropriate corrective action can be taken and the result of the transgression is minor.

4.3 Acceptable Behaviour Contracts (ABC)

ABC's are written voluntary agreements between a person who has been involved in anti-social behaviour and one or more Street scene authorities. The purpose of the ABC is to lead to a correction in anti social behaviour. ABC's will be considered, where appropriate, for use in wider initiatives to forge an agreement for the good of strategic area based initiatives.

4.4 Warning letters

A warning is a written notification that in the Council's opinion an offence has been committed. It will be made clear in writing any such breaches of legislation, and distinctions between guidance and legal requirements will be made. It will be recorded and may be referred to in subsequent proceedings.

4.5 Statutory Notices/Orders

Formal Notices/orders may be served requiring residents or businesses to meet specific legal requirements. The Notice will explain what is wrong, what is required to put things right and the likely consequences if the notice is not complied with.

4.6 Works in Default

The Council will normally carry out works in default of a statutory notice where appropriate and in accordance with legislation.

4.7 Fixed Penalty Notices

Under the Department for Enforcement, Food and Rural Affairs (DEFRA) guidelines (Gov.UK), Fixed penalty notices can only be used in accordance with the enforcement of certain legislation. This includes the; Clean Neighbourhood and Environmental Act 2005, Environmental Protection Act 1990, Dog (Fouling of Land) Act 1996.

The service of a fixed penalty notice will be carried out when the circumstances of the offence satisfy the following criteria;

- The offence is sufficiently serious to warrant prosecution.
- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction
- The offender has expressed remorse and a willingness to comply with the law in future.
- The officer believes that a fixed penalty notice will prevent repeat offences.
- The offender will accept the fixed penalty notice and understands its significance.
- It is in the public interest to issue a fixed penalty notice rather than instigate prosecution proceedings, unless previous fixed penalty notices have not resolved the offender's behaviour.

Fixed penalty notice may be cited in prosecution proceedings in relation to a similar offence committed within three years of the cautions issue.

4.7i Payment of Fixed Penalty Notices

Whilst the payment rate is fixed currently at £75.00 the deadline for payment may be extended at the discretion of the Head of Service or any officer given that authority and in accordance with [Gov.UK](https://www.gov.uk) guidelines.

4.8 Simple Caution

A Caution is the written acceptance by an Offender that they have committed an Offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the Offender is convicted of a subsequent offence. Simple cautions will be recorded centrally and administered by the legal department.

4.9 Prosecution

Where the circumstances warrant and the alternative actions previously mentioned are considered inappropriate or insufficient, then prosecution may result. Before deciding whether a prosecution will be taken consideration will be given to a number of factors including Central Government guidance and the Code for Crown Prosecutors.

4.9i Reparation

Planned and supervised community activities may be identified as an alternative sanction for Fixed Penalty Notices issued to Under 18's. This is subject to availability and at the discretion of the Head of Streetscene.

5.0 The Human Rights Act 1998

Under the Human Rights Act 1998, it is unlawful for the Council to act in a way, which is incompatible with the European Convention on Human Rights. All enforcement activity will be undertaken with due regard to the provisions of the Human Rights Act 1998 and associated legislation. E.g. Regulation of Investigatory Powers Act 2000. Operating practices, policies and training needs are monitored and are updated in accordance with appropriate legislation.

6.0 PUBLICITY

Burnley Borough Council will, where appropriate, support its enforcement activity for the town with both pro-active and reactive publicity campaigns to positively reinforce the key Council Values regarding environmental enforcement. The publicity will be proportionate to the activity and its primary objective will be to educate and deter further environmental crime and activity.

7.0 REVIEW

It is intended that this policy will be subject to an annual review with additional reviews as and when required to accommodate changes in legislation and local needs. We will seek the views of businesses and other stakeholders when undertaking such reviews.

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