

**Agenda Item No:** 9

**Report To:** Cabinet

**Date:** 12<sup>th</sup> May 2016

**Report Title:** The Council's Enforcement Policy and the Local Enforcement Plan for Planning

**Report Author:** Richard Alderton

**Portfolio Holder:** Mike Bennett, Portfolio Holder for Planning and Development



**Summary:**

These two documents arise from the work of the Policy and Compliance Task Group. The first sets out in simple and clear terms the Council's fair but robust approach to enforcement. The second is a service-based enforcement plan which deals with the Planning and Development service and sets out its approach to enforcement including performance standards. In future further enforcement policies for other areas of enforcement will be reported to Cabinet – starting with the next meeting in June. In parallel with this work the website is being reviewed to provide a user-friendly 'report it' function and accessible explanations of the approach the Council takes in the many areas of enforcement it is involved in.

**Key Decision:** YES

**Affected Wards:** All

**Recommendations:** **The Cabinet is asked to recommend to Council that 'The Borough Council's Policy on the Use of Enforcement Powers' and the 'Local Enforcement Plan for Planning' be adopted.**

**Policy Overview:** The Council's 5 year corporate plan includes a commitment to ensuring that enforcement powers are used effectively and to strengthening the approach to enforcement and taking a tougher line on compliance. The Government's National Planning Policy Framework advocates the adoption of Local Enforcement Plans for planning.

**Financial Implications:** Enforcement is a core activity for many areas of the Council and established budgets reflect this. Where additional enforcement activity is proposed needing further resources this may be achieved by redirection of existing resources or new funding may be needed. This report raises no immediate financial implications.

**Risk Assessment** NO – any risks arising from enforcement activity are routinely assessed on a case by case basis taking account of the particular circumstances and with the benefit of legal advice where needed. This report raises no further risk issues.

**Equalities Impact** YES

**Assessment**

**Other Material Implications:** None

**Background Papers:** None

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## The Council's Enforcement Policy and the Local Enforcement Plan for Planning

### Purpose of the Report

1. This report seeks Cabinet's endorsement of an over-arching policy statement on enforcement and a service specific plan – the first example being for planning enforcement.

### Background

2. Delivering a fair but robust approach to enforcement across all areas of the Council's responsibilities is a key priority of this Council. With this in mind a Policy and Compliance Task Group was set up in 2015, chaired by Cllr Stephen Dehnel.
3. The Task Group has identified various areas where work is needed to help put this Council's ambitions into effect:
  - A clear statement of the Council's overall approach to enforcement that can be widely communicated - *covered in this report*;
  - A series of operational plans for key areas of enforcement activity - *the planning example is covered in this report*;
  - A user-friendly and high profile 'report-it' function on the web site – *this is in development as was demonstrated to the last meeting of the Task Group*;
  - A clear structure of responsibilities within the Council identifying all the areas of enforcement activity – *a mapping diagram has been produced for the Group*;
  - A series of presentations on key areas of enforcement activity that generate most public concern and the various initiatives and improvement plans each has – *the Task Group recently considered fly tipping; littering; anti-social behaviour; dog fouling*;
  - Where needed, action plans to deliver a package of improvements in key areas – *for example, planning enforcement where a series of initiatives are now being taken and an extra member of staff being recruited*;
  - Training and support from the Enforcement Support and Investigations Team - *to bring the skills and experience from this team dealing with fraud against the Council to help support enforcement activity around the authority*.
4. The Group has decided to next concentrate on specific issues to fully understand the actions being taken; the options open to the Council; any legal or other constraints that apply; resourcing issues and performance; etc. The first area to be examined in more detail is unauthorised use of public and private land by gypsies and travellers. At the same time progress on work listed above will also be regularly reviewed by the Group.

## Issues for consideration

5. Attached to this report are two items for consideration – their content is self-explanatory but in brief they are:
  - **The Council's Enforcement Policy** – this over-arching policy sets out the Council's general approach to be applied to the very significant number of areas where there is enforcement responsibility. It sets out the fair and proportionate approach the Council will take but also makes it clear the seriousness with which it will pursue those who knowingly and deliberately flout controls, or seek to deceive or defraud the Council.
  - **The Local Enforcement Plan for Planning** – this plan relates specifically to planning enforcement and designed to be a user friendly guide on what constitutes a breach of control; how to report such a breach; the various remedies available to the Council and the performance standards residents can expect us to work to.

## Risk Assessment

6. Risks – financial and otherwise - arising from enforcement activity are routinely assessed on a case by case basis, taking account of the particular circumstances and with the benefit of legal advice where needed. This report raises no further risk issues.

## Equalities Impact Assessment

7. As assessment has been carried out. Enforcement activity is taken for the general public good, although that does mean that people action is taken against may feel their own individual freedoms may have been impacted. The correct balance between protecting the public interest and the rights of individuals is one that must be struck in every case based on the specifics of the case and the severity of the impacts, legislation, case law and the Council's own policy base.
8. Generally in arriving at this balance there are no discriminatory impacts on specific groups of people. Put simply, enforcement action is taken against those who fail to abide by rules and that group of people defines itself.
9. There is one area, however, where a particular group of people may be affected. Gypsies and travellers are in a special position as an ethnic group and this is reflected in national planning policy and legislation. Members of this community are of course subject to enforcement action in the same way as any other members of the community, should it be justified in the terms above. But the general public often do not understand the way in which legislation and Government policy deals with providing for the needs of the gypsy and traveller community. This may cause misunderstanding and

resentment and the Council needs to take what steps it can to widen understanding and awareness of the issues involved.

## **Consultation**

10. These draft policies have been shared with those running enforcement services around the Council and reviewed twice by the Policy and Compliance Task Group.

## **Handling**

11. For these policy documents to be effective they need to be widely disseminated. A review of how all enforcement issues are tackled on the Council's web site is underway to make reporting simpler and to provide user-friendly information to the public on the many areas of enforcement the Council carries out. These documents will be available online but the key elements will be summarised in easy to use web pages with appropriate links.

## **Conclusion**

12. The over-arching policy approach to enforcement provides a clear framework for more specific plans to come forward to demonstrate the Council's commitment to a robust, proportionate and fair approach to enforcement. The first of these plans – for planning enforcement – is also attached for Cabinet's consideration.

## **Portfolio Holder's Views**

13. This administration pledged to target those that flouted rules by strengthening enforcement and taking a tougher line on compliance.
14. This is the first of a series of reports to be brought to Cabinet over coming months outlining recommendations from the Policy and Compliance Task Group on how to deliver a fair and robust approach to enforcement across all departments of the council.
15. Tonight we present in clear terms enforcement policy for the Borough and the specific Planning and Development service plan and I commend both to members for adoption.

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## THE BOROUGH COUNCIL'S POLICY ON THE USE OF ENFORCEMENT POWERS

Ashford Borough Council is responsible for protecting the public interest by regulating a very wide variety of activities undertaken by individuals and businesses throughout the borough. The Council takes this responsibility very seriously. This policy has been produced in line with the Government's Regulators' Code <sup>1</sup>

Effective and well-targeted regulation is essential to protect people from harm and to stop anti-social behaviour and other serious nuisance that can so easily damage people's lives and community cohesion. Where people commit fraud the Council will act to deter others and save tax-payers money being misused.

It is the responsibility of individuals and businesses to comply with the law. We will do all we can to help advise and treat people fairly. But, those who flout the system deliberately and/or repeatedly and cause serious harm can expect the strongest possible response. The range of actions open to the Council and severity of penalties are often dictated by central government but, within these limits, the Council will always aim to act in way which deters others from non-compliance.

More specific guidance on the detailed approach in each area of enforcement can be found by following the links below:

*Air quality/ Animal welfare/ Anti-social behaviour/ Benefit fraud/ Building control/ Contaminated land/ Dog fouling/ Electoral fraud/ Food safety/ Fly-posting/ Fly-tipping/ Graffiti/ Health and safety/ Housing tenancy fraud/ Noise/ Licensing/ Litter/ Parking/ Planning/ Pollution/ Private sector housing/ Protected trees/ Revenues fraud/ Unauthorised encampments.*

### Our Range of Responses

There is a range of initial actions we can take to protect the quality of life in the Borough and ensure people comply with legislation. This includes giving advice and guidance; running promotional campaigns (e.g. anti-litter) and carrying out inspections on site which may be programmed, intelligence-led or in response to complaints from members of the public. Some enforcement services will also have officers patrolling the streets.

Where non-compliance is discovered, we will assess the severity of the breach of regulations and the impact on others. Often the issue can be resolved by explaining legal requirements and how compliance can be achieved in a reasonable timescale. Where this fails action will escalate to:

- serving advisory letters, warnings, statutory notices or prohibitions detailing non-compliance and any resulting actions required
- More formal enforcement action e.g. through legal proceedings

The decision to take firm but fair enforcement action will be taken on a case by case basis guided by the law and detailed policies that relate to the different areas of enforcement activity.

The action taken will be in proportion to the gravity and nature of the non-compliance. Factors that will be taken into consideration will include:

- the seriousness of the breach and the harm caused
- the risk that the non-compliance poses to the safety or health of the public at large or to individuals
- the actual or potential damage to economic well being or the quality of life of individuals or the community
- where evidence suggests that the breach was pre-meditated
- where false information has been supplied willfully, or there has been an intent to deceive
- where the case involves a failure to comply in full or in part with the requirements of a statutory approval, license, notice or order
- where there is a history of previous warnings or similar breaches

## Our Commitment

This Council takes enforcement matters and compliance with legal regulations or conditions seriously and will take appropriate action whenever it is justified.

We think it is important that those raising enforcement matters with the Council understand that their concern is being dealt with, and that they have a keen interest in understanding outcomes. However, we must also respect the law that governs the release of personal information, including to third parties. This may limit the extent of feedback that may be provided about outcomes.

Accordingly, where enforcement is needed the person who has brought the matter to the Council's attention can reasonably expect:

- an acknowledgement;
- to be kept up to date about investigations at key stages as far as we are able by law, and
- to be notified of the eventual outcome, as far as we are able by law.

The individual service enforcement policies explain the performance standards we will aim to meet. Some enforcement actions can be taken very quickly – others, where there are rights of appeal for example, have timescales outside the Council's control and may take much longer.

Where the law permits, we will not normally reveal information which discloses the identity of the person informing us of the breach.

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<sup>i</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

## Ashford Borough Council – Local Enforcement Plan for Planning

### ***1. The Council's approach to Planning Enforcement***

This Council puts great value on the quality of life and local environment that local people enjoy – in the Borough's countryside, towns and villages. In all its work on planning and development the Council tries to drive a 'quality agenda', recognising how important development is in creating economic growth and meeting the community's needs, but also the need to control inappropriate and unauthorised development.

When development takes place without permission and causes significant impacts on people's lives, residents of the Borough understandably expect that action should be taken.

This Local Enforcement Plan sets out how the Council can and will respond. We will follow Government advice which encourages councils to try to resolve issues by negotiation as this is very often the quickest and most effective way to resolve problems. It is also the best way to use resources - taking formal action, assuming it succeeds, can be a much longer process than people imagine and consumes a lot of staff time.

But where negotiation fails, or individuals deliberately or persistently ignore the rules and carry out development that seriously impacts on the wider community, then there should be no doubt that the Council will take formal action whenever possible.

In a typical year approaching 350 potential breaches of planning control are reported to us. A large proportion of these (around 40%) turn out to be development that is permitted and where no action can be taken. The next section of this Plan explains what is – and what is not – a breach.

### ***2. What is, and what is not, a breach of planning control?***

A breach could involve such matters as the unauthorised erection of a building or extension to a building, a 'material' change of use of land, or the display of unauthorised advertisements. Other examples of potential breaches of planning control are:

- Unauthorised works to Listed Buildings;
- Unauthorised works to trees subject of a tree preservation order (TPO) or in a conservation area;
- Breaches of conditions attached to planning permissions;
- Not building in accordance with the approved plans of planning permissions;



- Untidy land which has a significant impact on the amenity of the wider area;
- Unauthorised engineering operations, such as raising ground levels or earth bunds.

The following examples are NOT normally breaches of planning control:

- Internal works to a building that is not listed;
- Parking of commercial vehicles on the highway or on grass verges;
- Running a business from home, where the residential use remains the primary use
- Land ownership disputes or trespass issues;
- Infringements of covenants in property Deeds;
- Any works that are deemed to be 'permitted development' under the relevant Government regulations (for example, extensions within specified size limits).

### **3. How do I report a breach?**

To help us deal with your case as soon as possible it is important to provide as much information as you can. Below is a list of the type of information that would assist us in dealing with your complaint:-

- An accurate description of the location or address for the particular site;
- A detailed description of the activities taking place and why they are cause for concern;
- Names, addresses and phone numbers of those persons responsible for the alleged breach or the land owners;
- The date and times of when the alleged breach took place;
- Any other information or evidence (including photos) that may be able to assist;
- Your name and address or e mail address.

Complaints about alleged breaches can be made by e-mail; letter; or telephone providing the complainant gives their name, address and telephone number. We do not usually investigate anonymous complaints unless we can clearly identify the alleged breach of planning control.

### **4. The Council's commitment to you**

We will:

- **Investigate all alleged breaches** of planning control – see the section above on 'How to report an alleged breach';
- **Keep your personal details confidential** at all times, unless required to disclose as part of court proceedings;
- **Quickly register and acknowledge your case** according to its priority level and provide you with a reference number with a named officer as the point of contact;

- **Give each case a ‘priority rating’** (see approach set out below) and visit the site within the timescales set;
- **Actively pursue your case and keep you informed of progress** until the case is closed when we will let you know the outcome;
- **Seek to close 80% of all cases within 12 weeks.** Investigations into alleged breaches of planning control can be complex and may take some time but we will aim to hit this target.

On receipt we will categorise breaches by priority – the priority may change once we have been able to visit the site and fully assess the situation. The categories are as follows:

**High priority:** When irreversible and serious damage to the environment or public amenity would result. Examples include works to protected trees; works affecting the character of a listed building; demolition works in a conservation area; serious traffic safety hazards; contamination and or pollution being created, unauthorised caravan sites , or other development where there is actual or imminent residential occupation.

**Medium priority:** This covers less immediate yet still serious and harmful breaches and is likely to include breaches where building works have just commenced, where severe harm is being created and also non-compliance with certain planning conditions (particularly pre-start conditions).

**Low priority:** This category relates to breaches that are likely to remain stable and that are unlikely to give rise to any severe or lasting harm to amenities. Such breaches may include untidy sites, non-compliance with other planning conditions, erection of satellite dishes, the unauthorised display of advertisements and the erection of fences.

Our approach	Acknowledge; set up case and prioritise	Site Visit and initial contact/ advice	Update informant; ward member and Parish Council
High Priority	Within 24 hours	Within 24 hours	Within 48 hours
Medium Priority	Within 3 working days	Within 7 working days	Within 5 working days after site visit
Low Priority	Within 3 working days	Within 15 working days	Within 5 working days after site visit

## 5. What happens when a breach has been reported?

There are various possible outcomes:

- **No breach exists** – Following a site inspection it may be found that there is no breach of planning control because, for example, the unauthorised use has ceased, or the development is permitted or lawful development. Typically this accounts for around 40% of the cases reported to us;
- **There is a breach of planning control but not ‘expedient’ to pursue** – Just because a breach may exist does not automatically mean that formal action will be taken. It is a common misconception that a breach of planning control is a criminal offence and should automatically attract enforcement action. Central Government Guidance in the National Planning Policy Framework (NPPF) clearly sets out that enforcement powers are discretionary. In turn, minor technical breaches that have only a small impact may not warrant the time and expense in taking action;
- **Negotiations take place to find a solution** – The first priority is to try and resolve any breaches through negotiation. When such negotiations fail to secure a solution formal action will be considered - the Council will not allow negotiations to become protracted.
- **A retrospective application is approved** - A retrospective application will be invited where there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where a development may be made acceptable by way of imposing suitable conditions to control how it takes place.
- **Formal action is taken** - On average between 5- 10% of cases we receive result in formal action being taken. There are a range of formal powers the Council can use to remedy breaches of planning control. The more common forms of enforcement action are listed below:

Type of enforcement action	Purpose
Planning Contravention Notice	Requires persons to divulge information in respect of land and activities. Often under-taken to determine if there is a breach of control and to help decide the appropriate course of action
Breach of Condition Notice	Secures compliance with conditions specified within a planning permission
Enforcement Notice	Requires particular steps to be taken to remedy the situation – there is a right of appeal
Stop Notice / Temporary Stop Notice	Requires the unauthorised activities to cease either immediately or for a period of up to 28 days.
Community Protection Notice	To direct the individual, business or organisation causing ongoing problems or nuisances that

	affect the community's quality of life to stop.
Section 215 Notice	To secure the proper maintenance of land and buildings and protect public amenity
Direct Action	The Council may enter land to take the necessary steps to secure compliance with an Enforcement Notice. This is at the Council's cost although these are recoverable from the landowner.
Injunctions	To prevent unauthorised development and only used in a very limited number of specific circumstances
Prosecution	Failure to comply with a notice is a criminal offence. To secure compliance with any formal enforcement notice and / or to bring the offence before the court



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## Impact Assessment

### When is an assessment needed?

Councils must assess the impact of **proposed policies or practices** while they are being developed, with analysis available for members before a decision is made (i.e. at Cabinet).

Broadly, *policies and practices* can be understood to embrace a full range of different activities, such as Cabinet decisions which substantially change the way in which we do something, setting budgets, developing high-level strategies, and organisational practices such as internal restructuring. Assessments should especially be undertaken if the activity relates closely to an equalities group (see next page).

Importantly, this does not include reports that are 'for note' or do not propose substantial changes – assessments should only be considered when we propose to do something differently.

Assessments should also be carried out when conducting a large-scale review of **existing policies or practices** to check that they remain non-discriminatory. This does not mean filling out an assessment on every report on a subject – it is up to you to decide if the report's scope or scale warrants an assessment

1. General Information	
1.1 Name of project, policy, procedure, practice or issue being assessed	Overarching enforcement policy and Local Enforcement Plan for Planning
1.2 Service / Department	Development
1.3 Head of Service	Richard Alderton
1.4 Assessment Lead Officer	Richard Alderton
1.5 Date of Assessment	29 <sup>th</sup> April 2016
1.6 Is this assessment of an existing or a proposed project, policy, procedure, practice or issue?	Proposed

2. What is Being Assessed?	
2.1 What are the aims of this project, policy, procedure, practice or issue?	To set out clearly the Council's general approach to enforcement across all areas of responsibility and in more detail the approach in the area of planning, including remedies available and performance standards. The approach will be robust but fair and proportionate and will protect the interests of the general public.
2.2 Who is intended to benefit from this project, policy, procedure, practice or issue?	The public as a whole by being protected from many forms of nuisance, or potentially dangerous failures to comply with legislation/ regulations. Most issues have no differential impact on different groups and are just a nuisance to the public or unnecessary cost to the public purse – some impact on specific groups more than others.
2.3 Who else is involved in the provision of this project, policy, procedure, practice or issue?	A wide variety of teams around the Council and many external partners

- within Ashford BC	There are around 70 areas of enforcement activity spread around the Council
- from other agencies	Many agencies including e.g. police; environment agency; KCC; etc

### 3. Possible Sources of Information

In order to assess the impact of proposed decision it is important to bring together all information you have on it to, analyse them and come to conclusions on how it affects those with protected characteristics.

Information on a policy, project or procedure can come in many forms :-

- Census and other demographic information
- User satisfaction and other surveys
- Previous consultation exercises
- Performance Indicators
- Eligibility Criteria
- Service uptake data
- Complaints
- Customer Profiling
- MOSAIC data

In order to come to conclusions on impacts in section 4 you **must** have taken in to account all appropriate information, and be able to provide this if necessary in support of the judgements you make.

Also, it is not enough to have broad information on service users – to meet equalities duties this information **must** be broken down – where applicable – into the relevant protected characteristics which may be affected by this decision. For example, when considering disabled access to a new community facility, overall usage figures are not enough – an understanding of how many disabled users within this total must be demonstrated.

The protected characteristics are :-

Age	Disability	Gender reassignment	Marriage and civil partnership	Pregnancy and maternity
Race	Religion and belief	Sex	Sexual orientation	

More information on the definitions of these characteristics can be found here - <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/protected-characteristics-definitions/>

### 4. What judgements can we make?

4.1 Does the evidence already available indicate that the project, policy, procedure, practice or issue may affect these groups differently? (please check the relevant box and provide evidence where possible)	Positive Impact?	Negative Impact?	No Differential Impact	If yes, can it be justified (and how)?
<b>Impact Factors:</b>				
<b>Age</b> (please detail any specific groups considered)	x			e.g. Elderly people may be especially vulnerable to rogue collectors – enforcement of unlicensed house to house collections and other charity collections.
<b>Disability</b> (please detail any specific groups considered)	x			e.g. Enforcement of building control regulations to ensure adequate access for people with disabilities
<b>Gender</b> (please detail any specific groups considered)	x			e.g. licensing of sex establishments
<b>Gender Reassignment</b>	<input type="checkbox"/>	<input type="checkbox"/>	x	
<b>Marriage / Civil Partnership</b>	<input type="checkbox"/>	<input type="checkbox"/>	x	
<b>Pregnancy &amp; Maternity</b>	<input type="checkbox"/>	<input type="checkbox"/>	x	
<b>Race</b> (please detail any specific groups considered)		x		The Local Enforcement Plan for Planning may impact on gypsy and traveller groups as this is a disproportionate area of planning enforcement activity in comparison with the size of this community. Whilst the enforcement plan is designed to treat this community fairly and proportionately, there is a lack of public understanding of the position this group have a result of the law and Government policy and this can lead to conflict and discrimination. The Council need to widen public understanding of the decisions it takes so that law abiding travellers do not suffer this discrimination.
<b>Religion / Belief</b>	<input type="checkbox"/>	<input type="checkbox"/>	x	
<b>Sexual Orientation</b> (please detail any specific groups considered)	<input type="checkbox"/>	<input type="checkbox"/>	x	
<b>Other (please specify)</b>	<input type="checkbox"/>	<input type="checkbox"/>	x	



## 5. Conclusions

5.1 Does the decision maximise opportunities to promote equality and good inter-group relations? If “yes” please state how?

Yes by making it clear that nuisance, fraud etc cause problems for the public as a whole and generally bear no relation to different groups. The policy emphasises fairness, proportionality and robustness to give people confidence in the system.

5.2 Based on the answers to the above can we confidently say that in its present form the decision treats different groups fairly (bearing in mind “fairly” may mean differently) and that no further amendment is required?

Yes

**If further action is identified to ensure fair impacts please complete the Action Plan available on the intranet and attach it to this form**

## 6. Monitoring and Review

How will monitoring of this policy, procedure or practice be reported (where appropriate)?

There are around 70 areas of enforcement activity and each service responsible will need to monitor the effectiveness of actions taken and identify any discriminatory practices or outcomes should they arise.

When is it proposed to next review the project, policy, procedure, practice or issue?

A series of service specific policies will be emerging and each will need to be subject to an equalities impact assessment.

Any additional comments?