

Corporate Enforcement Policy

September 2023

Basildon Borough Council

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Governance	
The Policy applies to:	All Officers of the Council involved in enforcement activity
The Policy is available in the following locations:	Publications Scheme <input checked="" type="checkbox"/> Intranet / SharePoint <input checked="" type="checkbox"/> Council website / Service webpage <input checked="" type="checkbox"/>
This Policy has related documents:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Service specific enforcement policies to be included once adopted. Investigation checklist (being developed) Template documents pack for civil and criminal proceedings (being developed)
The Policy was disseminated to:	
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1. Introduction

Basildon Borough Council is responsible for undertaking enforcement activity across a wide range of public services. Our aim is to protect the interests, safety, and wellbeing of all those who live, work, and visit the borough by ensuring the actions of businesses and individuals comply with relevant legislation and codes of practice. We adopt a positive and proactive approach towards ensuring compliance, by helping businesses and individuals understand and meet regulatory and other legal requirements more easily and responding proportionately to breaches.

Basildon Council is under a duty to enforce a range of legislation through a variety of formal and informal sanctions. This can include anything from advising food businesses what they need to do to comply with the law, prosecuting a private landlord for failing to conduct essential repairs to a domestic property, or a householder for illegal disposal of waste. This places Basildon Council and its officers in a position of responsibility to ensure that its approach fits with national and local policy, codes, and guidance. This is particularly important with regard to the economic challenges facing local government and business.

It is the responsibility of individuals and businesses to comply with the law and Codes of Practice, and we recognise that the failure to comply sometimes stems from lack of awareness, carelessness, or a lack of training and management control. Educating through the provision of information and advice, as well as serving notices that provide the opportunity to remedy the breach, are examples of the important tools that officers may use to manage risks. However, in some cases, failure to comply may risk causing serious harm, be the result of deliberate illegal behaviour, or failure to correct an identified serious problem. In these instances, we will not hesitate to take strong enforcement action.

2. Policy Statement

Basildon Borough Council is committed to undertaking fair and proportionate enforcement activity and to protecting the interests, safety and wellbeing of all those who live, work, and visit the borough. This Policy provides a framework for Basildon Council's service areas and enforcement officers by ensuring the consistent and good use of enforcement action through the relevant legislation and Codes of Practice.

3. Legal purpose of this Policy

The purpose of this Policy is to explain Basildon Council's overarching approach towards enforcement and non-compliance with the law and Codes of Practice. It provides guidance on the range of options that are available to achieve compliance with the legislation that we

enforce, and how discretionary powers may be used to regulate and raise standards in various sectors. The document is intended to communicate Basildon Council's Policy approach to dealing with non-compliance to those affected by its activities and officers of the local authority. This Policy also sets out the principles applied to encourage smarter, risk-based enforcement, while ensuring that Basildon Council Officers act in accordance with this Policy. This Policy is not in itself a statement of law and does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

This Policy applies to all of Basildon Council's service areas and provides a framework for our enforcement officers to ensure that their powers are transparent and consistently applied. Under the Corporate Enforcement Policy sits a range of additional departmental enforcement policies. For some services, more specific detail is needed to explain the application of enforcement powers and imposition of penalty fines.

This Policy has been produced in cognisance of Basildon Council's obligations under existing legislation including the Crime and Disorder Act 1998 and the Equality Act 2010 to exercise its functions and do all that it reasonably can to prevent and reduce crime and disorder in its area. The Council is committed to following good enforcement practice in accordance with current legislation and codes of practice. This includes conducting our activities in a robust but fair way that supports those we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens, and assessing whether similar social, environmental, and economic outcomes could be achieved by less burdensome means.

This Policy indicates what can reasonably be expected from enforcement activity in broad terms. It recognises that the circumstances of each individual case are different. If there is a need to deviate from this Policy this will be done where it is justifiable, and the reasons are recorded.

4. Policy Background

There is an expectation from national bodies including the Office for Product Safety and Standards, the Food Standards Agency and the Health and Safety Executive, that local authorities adopt a policy with respect to enforcement to ensure that there is clarity for all parties who may be affected.

In addition, fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses, and the environment within the Basildon borough. Decisions about enforcement action and, in particular the decision to prosecute and/or take any other legal action, have potentially serious implications for all involved.

Appropriate enforcement is important for the protection of the vulnerable, or to achieve other social or environmental objectives. The appropriate use of enforcement powers, including prosecution and / or other legal proceedings is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to

comply. Basildon Council places great importance on the consistent use of enforcement action and does not set itself numerical targets for enforcement activity.

Good enforcement should help economic prosperity and encourage sustained growth without placing unreasonable burdens on businesses, individuals, or other organisations. Through their actions, the activity covered by this policy, helps to maintain a 'level playing field' to allow fair competition and good companies to thrive. There is also ample evidence to show that appropriate compliance can reduce avoidable expenditure, for example by lowering labour costs as a result of fewer accidents.

Good enforcement should also be about encouraging compliant businesses to grow through proportionate regulatory activity and provision of reliable advice, without compromising the protection of the public.

All services involved in enforcement activity will apply this policy to ensure that:

- Decisions about enforcement action are open, fair, proportionate, and consistent as far as possible taking into account the individual circumstances of each case.
- Officers apply current Government guidance and relevant codes of practice
- Everyone understands the principles, which are applied when enforcement action is considered.

4.1 Definition of Enforcement

For the purpose of this Policy, "enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with their obligations and the law. The term "enforcement" therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities. It is not limited to formal enforcement action such as prosecution or legal proceedings but can include a range of interventions that seek to achieve compliance with the law.

4.2 Scope of the Policy

This policy covers the enforcement activities undertaken by Basildon Council in the following service areas:

- Environmental Health.
- Licensing (this activity is also subject to specific policy on the application of legislation agreed by Licensing Committee).
- Development Management .
- Building Control.
- Streetscene Enforcement.
- Corporate fraud.
- Tenancy and Estate Management.
- Anti-social Behaviour.
- Community Safety.

Along with other agencies, these service areas contribute to:

- Addressing anti-social behaviour.
- Improving local housing conditions.
- Safeguarding children and vulnerable adults from all types of abuse, harm, and exploitation.
- Protecting public health and amenity.
- Safeguarding of the built, rural, and historic environment.
- Protection of people in and around buildings, including promotion of access.
- Promotion of energy efficiency within buildings.
- Economic prosperity and encouraging sustained growth without placing unreasonable burdens on businesses, individuals, or other organisations.

5. Basildon Council's Approach to Enforcement

Basildon Council is committed to following good enforcement practice. We recognise that robust enforcement is essential for public confidence in upholding the integrity of the regulatory regimes that we administer, but also that good, proportionate regulation is supportive to the economic vitality and growth of the economy and local businesses.

Basildon Council will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. If there is a serious or imminent risk of harm, danger, nuisance, or injury then we will take immediate formal enforcement action as required.

We are more likely to offer advice or a warning, or issue a fixed penalty notice in the first instance if the breach is not so serious as to require immediate legal proceedings to address high risk or very harmful situations, if it is not a persistent or continuing breach, if there has been a history of good compliance or we are confident there will be compliance and is the most appropriate use of resources.

Further to the above paragraph, when we give advice or warnings it will usually be verbally and/or written and give a reasonable period of time for the breaches to be rectified. If the breach has not been rectified after that time and, if the breach warrants further action, we will usually serve, where appropriate and provided for, a formal enforcement notice. A formal enforcement notice details what the breach is, what needs to be done to remedy it, gives a reasonable period of time for compliance and will provide details of appeal provisions (if applicable) if the recipient disagrees with the notice. If the notice has not been complied with once the period for compliance in the notice has expired, we will usually prosecute for the offence. Alternatively, where provided for within the legislation a fixed penalty notice may, subject to the Council considering this is appropriate, be offered providing an opportunity to discharge liability for the offence through payment of such a penalty notice in the first instance.

However, Basildon Council will not hesitate to take all necessary enforcement action against those who commit serious offences, flout the law, fail to follow advice or warnings to achieve compliance, or breach matters that are of key priority to the Council. Also, if the breach presents a serious or imminent risk of harm, nuisance, danger, or injury then we will respond by taking immediate formal enforcement action as needed (by the service of an immediate notice such as Stop, Seizure, Prohibition, Suspension or Abatement Notices).

6. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires local authorities such as Basildon Council to have regard to the Principles of Good Regulation¹ when exercising a specified regulatory function. For local authorities, the specified functions include those conducted by our environmental health and licensing services, but we have also extended these principles to other areas of enforcement as listed under the scope of this Policy.

We will exercise our regulatory activities in a way which is:

- i. Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- ii. Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- iii. Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- iv. Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- v. Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities. Targeted would also include activities based on intelligence lead work.

6.1 Regulators' Code (BRDO, 2014)

Basildon Council has had regard to the Regulators' Code (BRDO, 2014)² in the preparation of this Policy. In certain instances, we 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 [Legislative and Regulatory Reform Act 2006 \(legislation.gov.uk\)](http://legislation.gov.uk)

² [Regulators' Code \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

6.2 Human Rights Act 1998

Basildon Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home, and correspondence.

6.3 Data Protection Act 2018

Where there is a need for Basildon Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018.

6.4 The Code for Crown Prosecutors

When deciding whether to prosecute Basildon Council has regard to the provisions of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985. 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 that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test.'

- 1) Evidential Test - is there enough evidence against the defendant?
When deciding whether there is enough evidence to prosecute, Basildon Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- 2) Public Interest Test – is it in the public interest for the case to be brought to the court?
Basildon Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors and other relevant considerations that we take into account are listed in Appendix A.

6.5 Clear Explanations of non-compliance and dialogue

In taking informal and formal enforcement action, we seek to provide individuals and businesses with clear explanations of what the breach is, what action is needed and the reasons for this. We will also offer advice but differentiate between those matters that are legal requirements and those matters that are advice and good practice.

We will provide the individual/ business with an opportunity to discuss with us the advice given, actions required, or decisions taken in relation to non-compliance, except where we need to take immediate enforcement action to respond to or prevent serious or imminent risk.

6.6 Recovering our costs

We will seek to recover all our legitimate costs. In addition, Basildon 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 where appropriate. The purpose of any such actions would be to recover any financial benefit that the offender has obtained from their criminal conduct.

6.7 Publicity

Basildon Council will consider, in all cases, drawing media attention to factual information about legal action that has been taken, but will take great care to avoid any publicity that could prejudice a fair trial. The Council will also consider publicising any conviction/court judgment that could serve to draw attention to the need to comply with legal requirements or deter anyone tempted to disregard their duties.

6.8 Enforcement in respect of Basildon Borough Council

On rare occasions, there may be a perceived potential for conflict of interest where Basildon Council has ownership or management interests in premises normally enforced by their own inspecting officers.

For instance, where the Council are the clear duty-holder for health and safety purposes, the premises will be transferred to the Health and Safety Executive for enforcement. Responsibility for day-to-day health and safety at work matters on such premises lies with the head of the relevant service. In other contexts, such as food hygiene, pollution or licensing issues, enforcement officers will offer advice as they would in other circumstances. If considered necessary, any disputed matters would be referred to Executive Directors, relevant heads of service or Service Committee.

6.9 No Action

In certain circumstances, contravention of the law may not warrant any action. This can be where there is insufficient evidence, or it is not in the public interest to proceed. Some areas of legislation only allow the Council to take action where it is expedient to do so, taking into account the level of harm caused by the contravention. In certain cases, it may not be considered expedient to take enforcement action. All such decisions will be made transparently.

7. Conduct of investigations

All investigations will be conducted under the following legislation and in accordance with any associated guidance or codes of practice, or other subject specific legislation in so far as they relate to Basildon Council and the type of case being dealt with:

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

- Criminal Justice and Police Act 2001
- Human Rights Act 1998
- Investigatory Powers Act 2016

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants. Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

7.1 Enforcement Powers

For the vast majority of legislation that we enforce, Basildon Council authorises Enforcement Officers (with powers set out in that legislation) to assist in inspections and investigations. Such powers include powers of entry to gain access to land and premises, by force, with a warrant if required, powers to inspect premises, equipment and documents and seize equipment and documents if needed, powers to take samples, powers to seek assistance and information from individuals and the authority to issue fixed penalty notice or other formal notices. This is not an exhaustive list.

For the vast majority of legislation that Basildon Council enforces, there are usually provisions where a person commits an offence of obstruction if they do not allow Enforcement Officers to exercise their powers. If individuals or businesses obstruct Enforcement Officers in the course of their duties, Basildon Council will view this very seriously. Basildon Council is likely to instigate prosecution for obstruction offences if these persist once the person has been advised (orally or in writing) that they are committing the offence.

If Enforcement Officers need to seize items during the course of an investigation, they will ensure that the business/ individual is provided with a notice/letter detailing what items they have seized, under what legislation, what the arrangements are for return of the items (if applicable) and the Enforcement Officer's contact details. This will usually be provided at the time of seizing items, but in exceptional circumstances will be provided the next working day or as soon as practicable thereafter.

8. Decisions on Enforcement action

Basildon Council's Scheme of Delegation details the arrangements for the authorisation of Council Officers to discharge the enforcement powers on behalf of the Council. Enforcement Officers will be authorised to undertake enforcement action once their line manager and the delegated authorising officer (usually a Director, or Head of Service) is satisfied that they are competent to do so. Assessment of their competency is based on a number of factors and can include a period of assessment, qualifications, experience, and specific training.

Enforcement Officers undertake investigations which are supervised by their line manager. Where formal notices are required, this will usually be discussed with and agreed by a line manager; unless immediate action is needed, in which case it is reviewed after service of the notice.

For those offences for which the Council has a zero-tolerance approach and are enforced by Fixed Penalty Notice (FPN) and Penalty Charge Notice (PCN), the Enforcement Officer will usually issue the FPN or PCN.

Enforcement Officers recommending instigation of a prosecution or offering of a simple caution will complete an investigation file and will pass the file to their line manager who will review it against this Policy and make a recommendation. The file is then passed to the Head of Service to decide on whether to instigate a prosecution or offer a simple caution. If the Head of Service agrees with the decision to prosecute/ offer a caution they will complete a decision sheet with their reasoning, having had regard to this Corporate Enforcement Policy and pass the file to the Council's Legal Services.

8.1 Range of Enforcement Actions available

Enforcement actions available to Basildon Council include:

- A. Compliance Advice, Guidance and Support;
- B. Voluntary Undertakings;
- C. Statutory (Legal) Notices;
- D. Financial penalties (e.g., Fixed Penalty Notice and Penalty Charge Notices);
- E. Injunctive Actions/ Enforcement Orders/Other civil or quasi legal proceedings;
- F. Simple Caution;
- G. Prosecution; and
- H. Refusal/ Suspension/ Revocation of Licences

8.2 How Decisions are Made on Enforcement Action

In making decisions about the most appropriate enforcement action to take, we are mindful of the principles set out in the Macrory Review of Regulatory Penalties 2006³ concerning sanctions and penalties. These principles are:

- A. aim to change the behaviour of the offender;
- B. aim to eliminate any financial gain or benefit from non-compliance;

- C. be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- D. be proportionate to the nature of the offence and the harm caused;
- E. aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- F. aim to deter future non-compliance.

When deciding on the enforcement action to be taken, we will consider the risk and seriousness posed by the offending, failure to take advice or warnings, deliberate non-compliance and flouting of the law.

In making enforcement decisions about offences under Health and Safety legislation, we will have regard to the HSE's Enforcement Management Model.

We will provide a timely explanation in writing of any rights to representation or rights to appeal, and practical information on the process involved.

9. Information Sharing & Responsibility

Section 5 of the Crime and Disorder Act 1998 places a duty on Basildon Council to reasonably prevent crime and disorder in our area. The Council will fulfil this obligation by sharing information regarding its investigations with other council services and partner agencies including, (though not exhaustively):

- Police
- Department of Business Energy and Industrial Strategy
- Food Standards Agency
- Health and Safety Executive
- Environment Agency
- Fire Brigade
- HM Revenue and Customs

All disclosures will be in accordance within the provisions of the General Data Protection Regulations (GDPR) 2018.

9.1 Working in partnership with others

Where appropriate, enforcement activities within the Council's enforcement services will be coordinated with other regulatory bodies and enforcement agencies, both within and outside the council. In this way, we will seek to maximise the appropriateness and effectiveness of any enforcement and have an integrated approach to problem solving.

Where an enforcement matter affects a wide geographical area beyond the Council's boundaries, potentially involving enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of this matter as soon as possible with a view to delivering a coordinated approach to enforcement activity. Where enforcement action is being taken by another service, we will provide all reasonable

assistance including witness statements and sharing evidence (subject to legal and data protection constraints).

10. Comments, compliments, complaints

Basildon Council is committed to the delivery of responsive, good quality customer services to the people of the Borough and would welcome comments and feedback about the impact the enforcement policy may have on local residents and/or business through our Customer Services team.

11. Corporate Knowledge

Corporate Ambitions	Levels of Impact			
	High	Medium	Low	None
We want Basildon to be home to healthy and active local communities able to support themselves and each other.	<u>X</u>			
We want Basildon to offer a high quality of life for all residents through attractive, liveable, accessible, and safe neighbourhoods and towns along with the provision of enduring facilities, green spaces and town centres that meet the needs of the community.	<u>X</u>			
We want Basildon to have a thriving, dynamic and diverse economy where all our communities benefit from increased opportunity and our workforce has the right skills for our local economy and beyond.	<u>X</u>			
Fit for Purpose Council	<u>X</u>			

Outcome and Priorities

Outcome	Priority
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Protect the interests, safety, and wellbeing of all those who live, work, and visit the borough by ensuring the actions of businesses and individuals comply with relevant legislation and Codes of Practice.	Help businesses and individuals to understand meet regulatory and other legal requirements
We adopt a positive and proactive approach towards ensuring compliance	Respond proportionately to breaches

12. Links to other Corporate Policies or Partner documents

- [Corporate Plan 2022-26](#)
- [Basildon Borough Council Constitution](#)
- [Inclusion and Diversity Policy 2021-24](#)
- [Local Plan \(when adopted\)](#)
- [Licensing Act 2003: Statement of Licensing Policy 2019-24](#)
- [Sex Establishment Licensing Policy 2019-24](#)
- [Scrap Metal Dealers Licensing Policy 2019-24](#)
- [Gambling Act 2005: Final Statement of Licensing Policy 2022-25](#)
- [Safeguarding Policy 2022-27](#)
- [Safer Basildon Partnership Strategy 2018-21](#)
- [Anti-social Behaviour Policy 2021-26](#)
- [Responding to Domestic Abuse Policy 2021-26](#)

12.1 National Legislation:

- [Police and Criminal Evidence Act 1984.](#)
- [Prosecution of Offences Act 1985](#)
- [Criminal Procedure and Investigations Act 1996](#)
- [Crime and Disorder Act 1998](#)
- [Human Rights Act 1998.](#)
- [Regulation of Investigatory Powers Act 2000.](#)
- [Criminal Justice and Police Act 2001](#)
- [Proceeds of Crime Act 2002](#)
- [Legislative and Regulatory Reform Act 2006](#)
- [Equality Act 2010](#)
- [Data Protection Act 2018](#)Anti-social Behaviour, Crime and Policing Act 2014
- Investigatory Powers Act 2016

13. Appendices

Monday to Friday
10am to 5pm



Basildon Council
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