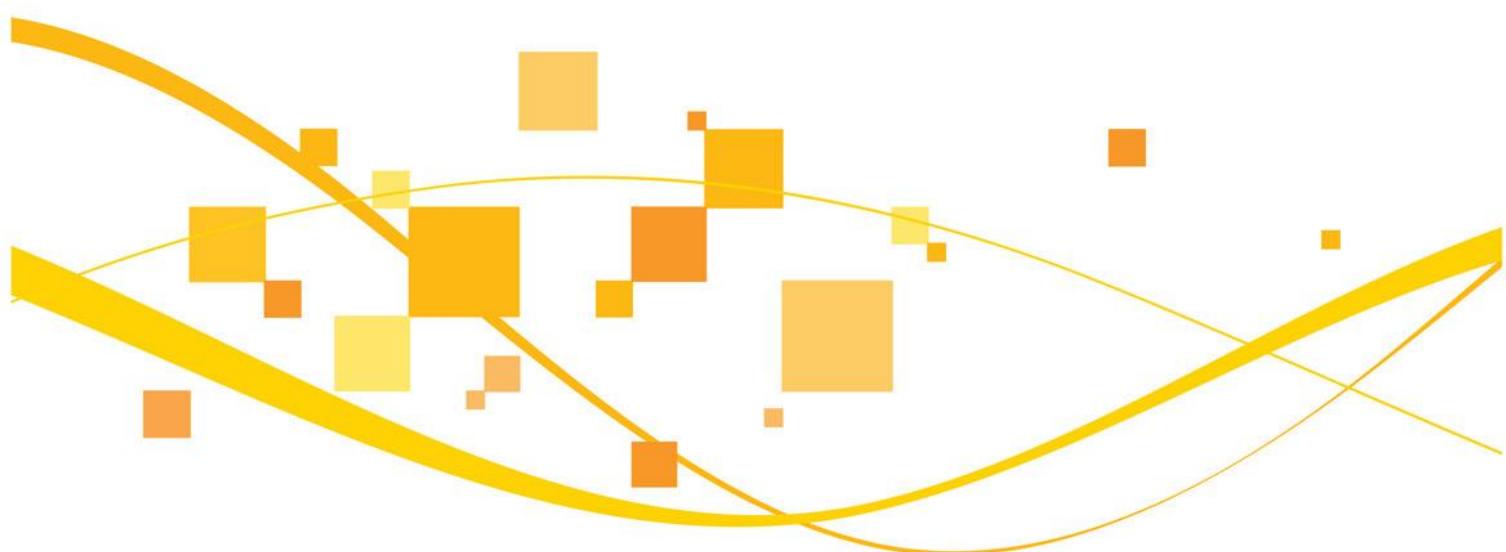


# Regulatory Services Enforcement Policy

Regulatory Services

February 2015



## **Key Information (To correspond with Covalent)**

Author:	Rachel Glover, Environmental Health Manager Neil Costen, Planning Enforcement Manager
Section/Directorate:	Regulatory Services, Resourcing and Place Shaping
Service Impact Assessment:	November 2014
External Consultation:	Policy Development and Review Scrutiny Sub Committee 15 October 2014 Local businesses and residents Essex Federation of Small Businesses Licensed trade and their agents Essex and local Chambers of Commerce Local groups identified with Inclusion and Diversity Basildon Community Safety Partnership Local Police and Fire Authorities Essex local authority regulators Parish and Town Councils Council for Voluntary Services Planning agents
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Policy Approval – Officer Level	Commissioning Director, Resourcing and Place Shaping
Policy Approval – Member Level	Cabinet – 5 February 2015
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## **1. Introduction**

Local authority regulatory services play a vital role in protecting and supporting the public, the environment and groups such as residents and tenants, workers and businesses in the Basildon Borough. It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that both those subject to regulation and those on whose behalf enforcement is carried out can understand the approach we take.

The Council is under a duty to enforce a range of legislation adopting 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, to prosecuting a private landlord for failing to carry out essential repairs to a domestic property. This places the 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.

## **2. Executive Summary**

The purpose of this policy is to explain clearly the approach of the Council's Regulatory Services towards enforcement and dealing with non-compliance. 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 Borough Council's policy in respect of its approach to dealing with non-compliance to those affected by its activities; and officers of the local authority.

It also sets out the principles applied to encourage smarter, risk-based enforcement. The Council is committed to ensuring that its officers act in accordance with this policy. It 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.

The policy was written having regard to the principles outlined in the Regulators Code (Department for Business, Innovation and Skills). It was subject to a consultation process with local stakeholders before being submitted to Cabinet for approval on 5 February 2015. The final policy was issued on 5 February 2015.

## **3. Policy Statement**

The Council is committed to following good enforcement practice in accordance with current legislation listed at Appendix B. This includes carrying out 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.

The policy has been produced in cognisance of Basildon Borough Council's obligations under Section 17 of the Crime and Disorder Act 1998 to exercise its functions, and do all that it reasonably can to prevent and reduce crime and disorder in its area.

The policy also accords with the government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat that has been adopted by the Council; the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006, including the duty to have regard to economic growth (the 'Growth Duty').

#### **4. Context**

##### **4.1 What is 'Enforcement'?**

"Enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with 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, but can include a range of interventions that seek to achieve compliance with the law.

##### **4.2 Why is it important?**

Regulation is important for the protection of the vulnerable, or to achieve other social or environmental objectives. The appropriate use of enforcement powers, including prosecution 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. The Council places great importance on the consistent use of enforcement action and does not set itself numerical targets for prosecutions or statutory notices.

Good enforcement should help economic prosperity and encourage sustained growth without placing unreasonable burdens on businesses. Through their actions, the regulators incorporated within this policy, help to maintain a 'level playing field' to allow fair competition and good companies to thrive. It is acknowledged that this resource should also be encouraging compliant businesses to grow through proportionate regulatory activity and provision of reliable advice, without compromising the protection of the public. 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.

##### **4.3 Why have an enforcement policy?**

There is an expectation from national bodies such as the Better Regulation Delivery Office (Department for Business, Innovation and Skills), the Food Standards Agency and the Health and Safety Executive amongst others that local authorities clearly set out their policy with respect to enforcement to ensure that

there is clarity for all parties who may be affected. The policy must be subject to appropriate consultation at local level before being endorsed by Members.

Fair and effective enforcement is essential to protect the health and safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and, in particular the decision to prosecute, have serious implications for all involved. Regulatory Services will apply this policy to ensure that:

- Decisions about enforcement action are open, fair, proportionate and consistent
- Officers apply current Government guidance and relevant codes of practice
- Everyone understands the principles, which are applied when enforcement action is considered.

#### **4.4 What is the Scope of the policy?**

Whilst it is acknowledged that the Regulators Code relates principally to the Council activities for Environmental Health and Licensing, the principles outlined are considered to be equally relevant to other regulators within Regulatory Services. The scope of the policy is therefore intended to include:

- Environmental Health
- Licensing (this activity is also subject to specific policy on the application of legislation agreed by Licensing Committee)
- Development Management Building Control

Other teams within the Council may be involved in enforcement and regulation should it be necessary, but they are currently outside the scope of this document.

Along with other agencies, the Service contributes 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 and rural environment
- Protection of people in and around buildings, including promotion of access
- Promotion of energy efficiency within buildings

#### **4.5 What is Basildon's approach to enforcement?**

In coming to a decision on how to deal with non-compliance, we will have regard to the following principles which are set out in the Macrory review. In particular, our actions should:

- Aim to change the behaviour of the offender
- Aim to eliminate any financial gain or benefit from non-compliance

- 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
- Be proportionate to the nature of the offence and the harm caused
- Aim to protect children and vulnerable adults from abuse, harm and exploitation.
- Aim to restore the harm caused by regulatory non-compliance, where appropriate
- Aim to deter future non-compliance.

In achieving compliance, we will also deliver against the principles of good enforcement which include openness, helpfulness, proportionality, consistency, targeting, transparency and accountability. On occasions this will involve working in partnership with other enforcement agencies.

#### **Openness:**

- We will provide information and advice in plain language on the rules that we apply. This may be provided either verbally, by telephone, by personal visit where appropriate, or in writing.
- We will be open about our work, including any charges that are set.
- We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- We will make it clear what should be expected from the Council as an Enforcement Authority.
- We will respond to requests for information under the Freedom of Information Act or Environmental Information Regulations, within 20 working days. Our document retention policy will detail our commitment to records management.

#### **Helpfulness:**

- As prevention is better than cure, we will actively work with individuals and businesses to advise and assist. We encourage compliance by providing guidance and liaising with stakeholders on how this can best be presented and disseminated – a request for advice will not directly trigger enforcement action where there is a willingness to resolve any non-compliance which may be identified.
- Our staff will identify themselves and provide a courteous and efficient service.
- We will provide a contact point and telephone number to encourage individuals and businesses to seek advice/information from us.
- Applications for approval of establishments, licensing, registration, or authorisation will be dealt with efficiently and promptly.

#### **Proportionality:**

- We aim to minimise the cost of compliance by ensuring that any action required is proportionate to the risk and that we take proper account of the economic consequences of our actions.

- As far as the law allows, we will take account of the circumstances of the case and the attitude of the offender when considering action.
- We will help to promote a thriving local economy by maintaining a fair and safe trading and working environment.
- We are committed to choosing proportionate approaches based on relevant factors such as business size and capacity.
- We are committed to dealing firmly with those who deliberately or persistently fail to comply.
- We will only take action that is necessary to achieve the aims of the statutory regime being enforced.
- When we believe there is reasonable cause that a child, young person or vulnerable adult, may be suffering or may be at risk of suffering significant harm, consideration will always be given to referring these concerns to Children's or Adults Social Care (as appropriate) and/or the Police.

### **Consistency:**

- We will carry out our duties in a fair, equitable and consistent manner.
- Officers are expected to exercise judgement in individual cases but we will endeavour to ensure that a similar approach is taken in similar circumstances.
- We will take account of advice offered to us through bodies such as the Local Government Association (LGA), Food Standards Agency (FSA), Health and Safety Executive (HSE) and the Department for Business Enterprise and Regulatory Reform (BERR).
- Where a Primary Authority Partnership exists, officers will consider advice previously issued by the primary authority when considering the most appropriate course of action. Where, after further liaison with the primary authority, officers consider that formal action is still appropriate; the statutory notification process will be followed. This scheme does not preclude officers from taking immediate action in the event of serious or imminent risks to health or safety.
- Where there is a wider regulatory interest, we will liaise and co-operate with or pass information to the appropriate enforcement agency. This may include the sharing of intelligence with other Government Agencies, Police Forces, Fire Authorities, Statutory Undertakers or other Local Authorities.
- We will liaise with our colleagues in other Essex Authorities and Regulatory Services, to share information and develop a consistent approach to enforcement, e.g. through the use of common protocols.
- We will consult in developing clear standards, setting out the level of service and performance the public and businesses can expect to receive.
- We will publish our standards and how we have performed annually.
- Advice from officers will be put clearly and an explanation given as to why remedial works are necessary.
- The timescales for compliance with notices will be reasonable.
- We will raise safeguarding alerts with the appropriate authorities.

### **Targeting:**

- We will ensure resources are targeted primarily on those whose activities give rise to the most serious risks, where the hazards are least well controlled, or where there is most potential for irreversible harm to the built and natural environments.
- We will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it through the use of a graduated enforcement approach.
- We will identify and implement risk-rating schemes for all service areas where our work routinely brings us into contact with businesses.
- We will seek to ensure our resources are used with maximum effectiveness to avoid burdening businesses with the costs of unnecessary interventions.
- Where more serious non-compliances are identified, we will advise duty holders of the circumstances under which a revisit will be undertaken and the timescale for that revisit.

### **Transparency:**

- We will help duty holders to understand what is expected of them and what they should expect from officers.
- We will clearly distinguish between legal requirements and good practice advice.
- We will have regard to this enforcement policy when making decisions about the appropriateness of enforcement actions. Where for any reason a decision needs to be taken outside of, or in contravention of this policy, a clear and reasoned argument will be recorded as to why that decision was taken.

### **Accountability:**

- We will ensure that we have policies and procedures against which our work can be judged.
- We will ensure there is an effective and accessible mechanism for dealing with comments and complaints.
- Officers are responsible to Elected Members, the public and Government bodies for their actions.

## **4.6 Enforcement Options and Procedures**

Officers will take the most appropriate course of action and each case will be considered in accordance with this document. Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or origin, gender, gender reassignment, disability religion or belief, age, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be affected by undue pressure from any source. Our decisions will have appropriate regard to the principles promoted through the [Council's Equality policies](#) and the Council's Safeguarding Policy

#### **4.7 Working in partnership with others**

Where appropriate, enforcement activities within Regulatory 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.

#### **4.8 Recovering our costs**

We will seek to recover all our legitimate costs from convicted offenders. In addition, 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 their criminal conduct.

#### **4.9 Publicity**

We will consider, in all cases, drawing media attention to factual information about charges that have been laid before the courts, but will take great care to avoid any publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements or deter anyone tempted to disregard their duties.

#### **4.10 Enforcement in respect of Basildon Borough Council**

On rare occasions, there may be a perceived potential for conflict of interest where the 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, Heads of service or Cabinet.

#### **4.11 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](#).

#### **4.12 How often is the policy reviewed?**

It is considered good practice to review Council policies. The last policy was agreed at Cabinet in 2009. It is considered that in future, a 5 yearly review will provide a reasonable timetable in line with other Regulatory Service policies. A review may also be appropriate in the intervening period if there is a significant change in legislation, national codes, guidance or national or local policy.

#### Council Promises

<b>Corporate Promises</b>	<b>Levels of Impact</b>			
	High	Medium	Low	None
We will get the basics right	<u>X</u>			
We will provide value for money		<u>X</u>		
We will demand good public services from our partner organisations			<u>X</u>	
We will support and develop the local economy		<u>X</u>		
We will positively transform our borough			<u>X</u>	

#### **5. Outcomes and Priorities**

This policy seeks to achieve the following Outcome and Priorities:

Outcome – a balanced and transparent enforcement approach which is understood by all relevant stakeholders.

#### Priorities

- Ensuring that stakeholders, including local businesses have a clear understanding of how enforcement decisions are taken at Basildon;
- Delivery of enforcement activity in a way which is consistent with national and local priorities.

#### **6. Links to other Corporate Policies or Partner documents**

Economic Development Policy and Strategy

Basildon Borough Council Corporate Plan

Corporate Plan

Inclusion and Diversity Policy

Local Plan

Basildon 2031 – The Local Plan

Statement of Licensing Policy

Sex Establishment Licensing Policy

Scrap Metal Dealers Act Licensing Policy

Gambling Policy Statement

Safeguarding Policy

Basildon Community Safety Partnership Strategy, Reducing Crime and Anti-Social Behaviour in the Basildon Borough

## **7. Appendices**

- A – Outline of functions of enforcers within Regulatory Services
- B – Legislation, guidance and codes that influenced the preparation of the enforcement policy
- C – Conduct of Investigations
- D – Enforcement procedures
- E – Food safety enforcement
- F – Health and safety enforcement
- G – Glossary of terms

## **Appendix A**

### **OUTLINE OF FUNCTIONS WITHIN REGULATORY SERVICES**

#### **1. ENVIRONMENTAL HEALTH**

Environmental Health Practitioners deliver a wide range of services aimed at safeguarding the environment and improving the health, safety and well-being of our community. They work to ensure that the air is clean; food is fit to eat; housing is suitable for habitation; workplaces are safe; and companies trade fairly.

The Service at Basildon is divided into 2 sections supported by an administration team and led by the Group Manager (Regulation). There is an Environmental Protection Team and a Commercial Team, which covers food, safety and licensing work. The main areas of work are as follows:

Animal Control	<ul style="list-style-type: none"><li>• Pest Control - advice and treatment</li><li>Control of stray dogs</li><li>• Promoting responsible pet management</li></ul>
Housing	<ul style="list-style-type: none"><li>• Tackling unsatisfactory conditions in private rented accommodation</li><li>• Inspection and licensing of houses in multiple occupation</li><li>• Detection of overcrowding</li><li>• Grants for making repairs, improvements or adaptations to homes</li></ul>
Pollution Control	<ul style="list-style-type: none"><li>• Air, land, water pollution monitoring and control.</li><li>• Authorization of industrial processes that discharge to the atmosphere.</li><li>• Stopping statutory nuisances</li><li>• Rectifying defective private drainage systems</li></ul>
Public Health	<ul style="list-style-type: none"><li>• Investigating food poisoning outbreaks and control of communicable disease</li><li>• Promoting public health initiatives</li><li>• Enforcement of 'Smokefree Regulations'</li><li>• Dealing with filthy and verminous premises</li></ul>
Food Safety	<ul style="list-style-type: none"><li>• Inspection of food businesses - enforcement and advice</li><li>• Investigation of complaints about food and food sampling</li><li>• Provision of food hygiene training courses.</li></ul>
Licensing	<ul style="list-style-type: none"><li>• Various licensing and registration functions</li><li>• Regulating alcohol and entertainments, gambling, taxis, skin piercing, animal establishments and charitable collections.</li></ul>
Occupational Health and Safety	<ul style="list-style-type: none"><li>• Inspection of workplaces - enforcement and advice</li><li>• Investigation of accidents at work.</li><li>• Investigation of complaints about health and safety at work</li></ul>

Green Business Forum	<ul style="list-style-type: none"> <li>• Partnership between local businesses and Basildon Borough Council</li> <li>• Promotes environmental awareness and best practice</li> </ul>
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## 2. DEVELOPMENT MANAGEMENT

Unauthorised development	<ul style="list-style-type: none"> <li>• Prevention and control of unauthorised development</li> <li>• Remedy the undesirable effects of unauthorised development having regard to local and national planning policies/guidance</li> </ul>
Compliance	<ul style="list-style-type: none"> <li>• Ensuring compliance with planning and other related legislative requirements is achieved</li> </ul>

## 3. BUILDING CONTROL

Building Regulations	<ul style="list-style-type: none"> <li>• Advice and inspection to ensure compliance with current building regulations</li> <li>• Promotion of suitable access to buildings</li> </ul>
Dangerous structures	<ul style="list-style-type: none"> <li>• Dealing with unsafe structures</li> </ul>
Energy conservation	<ul style="list-style-type: none"> <li>• Provision of advice on energy conservation in respect of buildings and services.</li> </ul>

## Appendix B

### **LEGISLATION, GUIDANCE AND CODES THAT INFLUENCED THE PREPARATION OF THE ENFORCEMENT POLICY**

#### **1. PRINCIPLES OF GOOD REGULATION**

The Legislative and Regulatory Reform Act 2006, Part 2, requires Basildon Borough Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function<sup>1</sup>. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

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.

#### **2. REGULATORS' CODE**

Basildon Borough Council has had regard to the Regulators' Code (made under section 23 of the Legislative and Regulatory Reform Act 2006) 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.

#### **3. HUMAN RIGHTS ACT 1998**

Basildon Borough 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.

#### **4. DATA PROTECTION ACT 1998**

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<sup>1</sup> Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at [www.legislation.gov.uk](http://www.legislation.gov.uk)

Where there is a need for Basildon Borough Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

## **5. REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

## **6. CRIME AND DISORDER ACT 1998**

Section 17 of the Crime and Disorder Act 1998 imposes a duty on local authorities to exercise its functions with due regard to the crime, disorder and environmental issues affecting the local area and do all they reasonably can to prevent them. The duty reflects the reality that there are potential crime or disorder implications in decisions made across the full range of statutory services.

## **7. FOOD FRAMEWORK AGREEMENT**

The Framework Agreement on official feed and food law controls sets out what the Food Standards Agency expects from local authorities in their delivery of official controls on feed and food law. This takes account of the Government's better regulation agenda and of principles of good regulation.

## **8. HEALTH AND SAFETY EXECUTIVE'S ENFORCEMENT POLICY STATEMENT**

This Policy Statement sets out the general principles and approach which the health and safety enforcing authorities are expected to follow. All local authority staff who take enforcement decisions are required to follow the above statement.

## **Appendix C**

### **CONDUCT OF INVESTIGATIONS**

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Basildon Borough Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- Home Office Code of Practice on Powers of Entry

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants. Officers of Regulatory Services are authorised to make use of these powers, but they do not have the power to arrest.

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.

#### **1. INTERVIEWS UNDER CAUTION**

The individual/company under investigation will be offered the opportunity of an interview under the Police and Criminal Evidence Act where the option of formal action (simple caution or prosecution) is under consideration.

#### **2. STATUTORY TIME LIMITS**

Any investigation will be governed by the statutory time limit involved and any report to be considered for prosecution will be completed as soon as possible. Witnesses and others involved in an investigation will be kept informed of the progress of the investigation by the investigating officer.

#### **3. CASE REVIEWS**

The line manager will review the progress of investigations with the case officer on a regular basis. Proceedings will only be instigated once the case file has been signed off by a senior manager in accordance with the scheme of delegation.

#### **4. EXERCISE OF POWERS OF ENTRY**

Officers will at all times have regard to the provisions of the Home Office Code of Practice with respect to Powers of Entry when exercising their statutory powers, including where appropriate, the need to minimise disruption to business.

## **Appendix D**

### **ENFORCEMENT OPTIONS AND PROCEDURES**

#### **1. NOTIFYING ALLEGED OFFENDERS:**

If we receive information (for example from a complainant) that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.

During the progression of enforcement investigations or actions, all relevant interested parties, such as business proprietors and witnesses, will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.

#### **2. GRADUATED ENFORCEMENT APPROACH:**

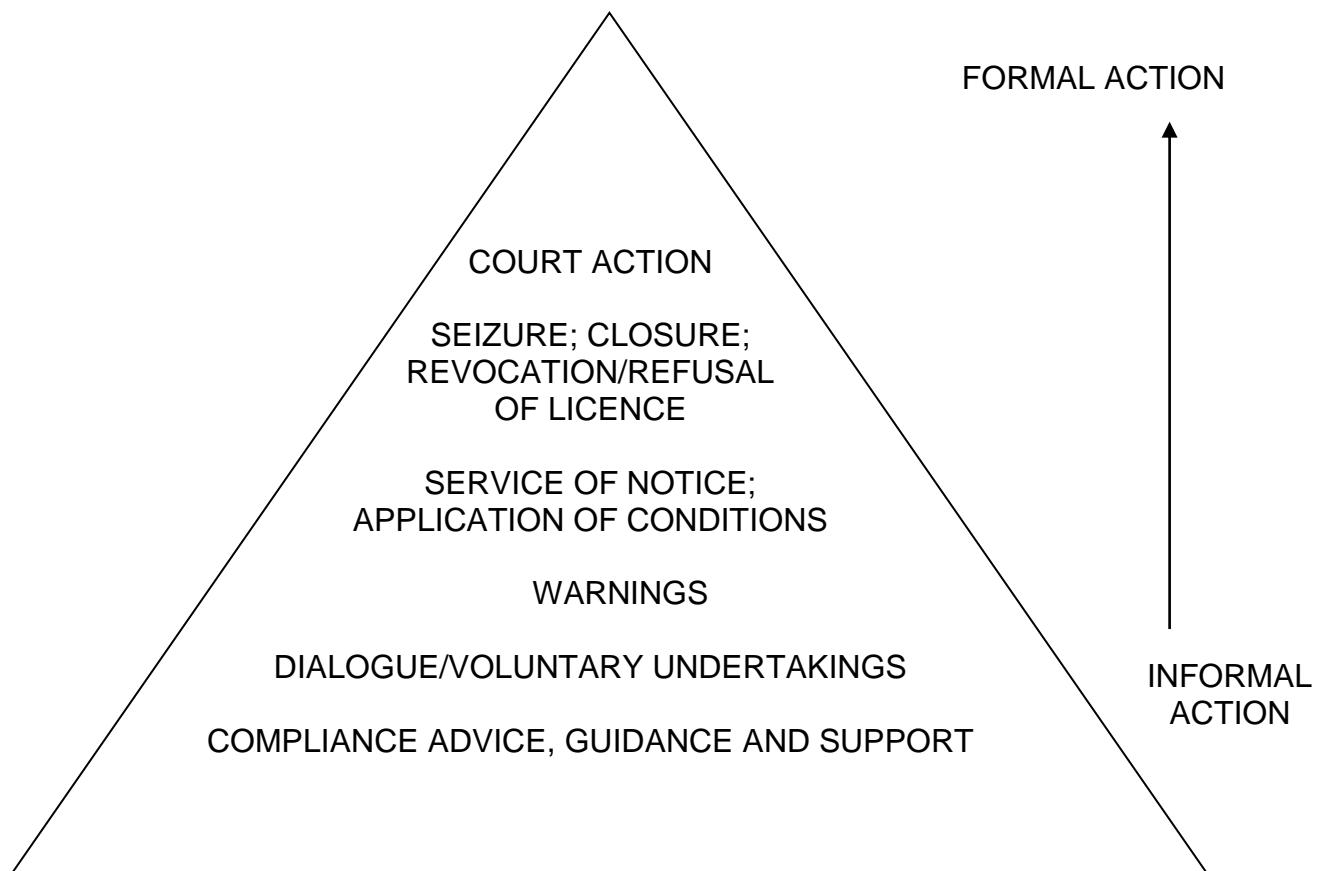
Decisions about the most appropriate enforcement action to be taken are based upon professional judgement having regard to the application of this policy document, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

Decisions will take account of the following: –

- ◆ the seriousness of the offence;
- ◆ the past history of the offender(s);
- ◆ confidence in the duty holder's willingness and ability to prevent a recurrence;
- ◆ the consequences of non-compliance;
- ◆ the likely effectiveness of various enforcement options;
- ◆ what is in the public interest;
- ◆ The views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance;
- ◆ sufficiency of evidence to support the action.

The individual service areas will have certain powers which are specific to their role and the legislation that they enforce. This is covered in more detail in the appendices.

Having considered the above, the evidence and any other relevant information, we have a range of compliance options available to us with the enforcement options indicated below



### **3. TO TAKE INFORMAL ACTION – SUCH AS: -**

- ◆ giving advice and/or information
- ◆ verbal warning
- ◆ written warning
- ◆ acceptance of a voluntary undertaking to rectify or prevent recurrence of breaches

Informal action may be appropriate if: –

- ◆ the act or omission is not serious enough to warrant formal action;
- ◆ previous experience indicates that informal action will achieve compliance;
- ◆ non-compliance will not pose a significant risk to public health or safety or breaches are minor in nature, or are not causing demonstrable harm to visual or residential amenities ;
- ◆ informal action is appropriate and likely to be effective in assisting individuals and businesses in rectifying breaches as quickly and efficiently as possible.

We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.

Sometimes we will offer advice about “good practice”, but we will clearly distinguish between what must be done to comply with the law and what is advice only.

Failure to follow informal advice or honour voluntary undertaking (s) relating to contraventions of the law could result in an escalation of enforcement action. Advice and verbal warnings will be noted on the relevant case file. If a similar breach is identified in the future, details of advice given previously will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such information may be presented in evidence.

#### **4. TO TAKE FORMAL ACTION – SUCH AS: -**

- ◆ serving Statutory Notices e.g. abatement notices, Improvement, Prohibition and Community Protection Notices
- ◆ serving Fixed Penalty Notices or Penalty Charge Notices;
- ◆ offering a simple caution;
- ◆ prosecution;
- ◆ seizure of equipment, goods or materials;
- ◆ closure of premises.

Formal action and prosecution will be taken in respect of the most serious cases. This is usually where an offence has occurred, the person responsible has been identified and one or more of the following applies: -

- ◆ action is required by statute;
- ◆ urgent action is required;
- ◆ the protection of a vulnerable individual needs to be secured or there is benefit to the public;
- ◆ action has been or needs to be taken by default;
- ◆ there is reason to believe that the duty holder responsible will not take the required steps within a reasonable period of time;
- ◆ an Authorised Officer has been obstructed in the course of their duties;
- ◆ any other reason where the Authorised Officer can justify the need to the Service Manager.

##### **4.1 Service of Notices:**

Certain legislation allows notices to be served requiring offenders to take specific actions ('Improvement Notices', 'Community Protection Notices'). Notices may require activities to cease immediately ('Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', 'Community Protection Notices') where the circumstances relating to health, safety, environmental damage or nuisance. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of non-compliance.

Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or where appropriate, the carrying out of work in default. Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

In deciding whether to serve either a Statutory Notice, the following conditions will also apply: –

- ◆ standards are generally poor with little management awareness of statutory requirements;
- ◆ non-compliance could be potentially serious to public health, or there is a threat to the amenity of the area.

It should only be necessary to consider the use of a Prohibition or Stop Notice in one or more of the following circumstances: –

- ◆ the consequences of not taking immediate and decisive action to protect public health or amenity would be unacceptable;
- ◆ in the case of health and safety at work, an imminent risk of injury or health can be demonstrated;
- ◆ the guidance criteria, specified in relevant Codes of Practices are fulfilled;
- ◆ there is no confidence in the integrity of an offer made by a duty holder to voluntarily close premises, ceased work or cease the use of any equipment, process or treatment which is the subject of the non-compliance.

In serious cases, it may be necessary to adopt a variety of enforcement options to achieve the appropriate outcome. In serious cases, this may include prosecution as well as serving notice.

#### **4.2 Right of Appeal against Notices and Works in Default**

Where there are rights of appeal against formal action, advice on appeal procedures will be clearly set out in writing at the time the action is taken together with an explanation of the implications of non-compliance.

Specifically, whenever possible, this advice will be issued with the Enforcement Notice.

Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with, the local authority can decide to carry out the works to satisfy the requirements of the notice. Furthermore, where the law allows it, the person or business served with the notice can then be charged for the costs incurred by the Council.

#### **4.3 Seizure**

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 nuisance, or any goods that may be required as evidence for possible future court proceedings. When goods are seized, the person from whom the goods are taken will be given an appropriate receipt, and an explanation explaining the reason for the seizure and the implications of that process for the item(s) seized. In some cases, forfeiture can follow court action.

#### **4.4 Fixed Penalty Notices (FPN) & Penalty Charge Notices PCN)**

Certain laws enable the service of fixed penalty notices to secure an immediate sanction to be imposed where a breach of legislation has been witnessed. These are recognised as a low-level enforcement tool (they are not a criminal fine), which avoids the offender acquiring a criminal record. The officer could choose to issue such a notice without issuing a warning. Failure to pay the fine is likely to result in the offender being prosecuted in the case of a Fixed Penalty Notice, or pursued in the County Court in the case of an unpaid Penalty Charge Notice.

If a fixed penalty is paid in respect of a breach, Basildon Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Basildon Council is only able to issue fixed penalty notices where it has specific powers to do so (e.g. smoking in an enclosed public place). Where fixed penalty notices are available, their issue will be at the discretion of Basildon Council. In some cases, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

#### **4.5 Refusal, Suspension and Revocation of Licences**

A business or individual may require prior approval such as a licence, registration, permission or permit before carrying out a certain activity. The Council administers numerous licensing and permissioning regimes, each having different rules for making applications and their determination. It is impossible to fully explain these procedures in this document and applicants and licence-holders should contact the relevant service area if they are in any doubt.

In the case of licensing, usually the local authority grants a licence upon receipt of a valid application if the requirements for licensing are met. These standards may be specified in legislation, local byelaws, or other suitability criteria adopted by the local authority. In some cases, an application must be advertised and the determination of the licence will depend upon the receipt of representations. In certain instances, the council will arrange a hearing to determine the application, commonly resulting in a decision to grant the licence, with or without conditions, or to refuse the licence.

Where a licence or other form of prior approval is refused, the business/individual will be advised on the reason for refusal, and where appropriate the action which must be taken in order to enable the authority to issue the appropriate

licence/approval. Advice will be given on the appeal processes open to the business or individual concerned.

Various sanctions are available to local authorities where breaches of statute or licence conditions come to light. Informal actions may result (as described above). Alternatively many licence regimes allow the licensing authority to suspend or revoke the licence, where this is justified. Aggrieved parties can usually appeal against these decisions to a Magistrates Court. When considering future licence applications, Basildon Council may take previous breaches and enforcement action into account.

#### **4.6 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.

#### **4.7 Injunctive Actions, Enforcement Orders, etc.**

In some circumstances, Basildon Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Basildon Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

#### **4.8 Prosecutions and Simple Cautions**

We follow guidance Code for Crown Prosecutors set by the Crown Prosecution Service in applying two tests that determine whether a prosecution or simple caution is viable and appropriate. A caution or prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test.

#### **4.9 The Evidential Test: *Is there enough evidence against the defendant?***

When deciding whether there is enough evidence to charge, the local authority must consider whether the evidence can be used in court and is reliable. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge, assuming that a jury or bench of magistrates are properly directed in accordance with the law.

#### **4.10 The Public Interest Test: Is it in the public interest to bring the case to court?**

A prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution. The Council must balance factors for and against prosecution carefully and fairly. A decision to prosecute usually depends on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

#### **4.11 Simple Cautions**

A simple caution may be offered where there is an admission and acceptance of guilt. Normally this will only be offered for first (or less serious) offences; the offender should not have received a simple caution for a similar offence within the last 2 years. Sufficient evidence will have been obtained to prove the case, and it has been determined that this course of action is in the public interest. The offender must be 18 years of age or over.

This course of action is normally considered when the criteria for prosecution are met but extenuating circumstances suggest a more lenient approach would achieve the same objectives. A simple caution will appear on the offender's criminal record. Should the offer of a simple caution be refused, then a prosecution should automatically follow.

If the offender commits a further offence, the caution is likely to influence the Council's decision to take a prosecution. It is likely to influence how Basildon Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted or a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Ministry of Justice – Simple Caution for Adult Offender guidance and other relevant guidance.

#### **4.12 Prosecution**

Prosecutions will only be undertaken when the offence and the person or body corporate responsible for it has been identified, and one or more of the following applies: –

The duty holder has shown disregard for: -

- (a) The legal process;
- (b) The meeting of legal responsibilities, including for example, deliberate, negligent or persistent breach of legal obligations which were likely to cause material loss or harm to others, particularly where written warnings or formal notices have previously been issued;

- (c) The likelihood of the alleged offence to seriously prejudice the health, safety or other entitlement of people, animals or the environment
- (d) Basildon Council officers, who in the course of their duties have been assaulted or obstructed.

A successful prosecution will result in a criminal record. The Court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

#### **4.13 Other Factors**

Other important legislation and government guidance exists which influences the local authority's enforcement activities and may have to be taken into account before enforcement action is commenced. Further explanation of such legislation is given at [Appendix B](#).

Most legislation applies a statutory time limit in which offences must be investigated and resolved or prosecuted or they will be considered to be "out of time". We will seek to complete our investigations in a timely manner thus ensuring that we adhere to these time constraints.

#### **4.14 To Take No Action:**

There will be times when it is appropriate to take no action, particularly where there is no statutory contravention, or risk to public health, safety or amenity. This could also include where the cost of compliance to the offender outweighs the detrimental impact of the contravention; or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. In such cases, we will advise the offender and/or the complainant of the reason for the decision taken.

Where the law provides the complainant with other options to resolve the issues which affect them, such as civil remedies (e.g. Anti-Social Behaviour Orders), we will make sure that they are directed to the most appropriate source of information to assist them. This may involve referral to other council departments, external organisations or to seek independent legal advice.

#### **4.15 Civil Action:**

The enforcement action we take is distinct from any civil claims for compensation. We will not necessarily pursue enforcement actions in all cases where civil claims are anticipated, nor will the Council actively assist in such cases.

This is without prejudice to disclosure of information on investigations where this is permitted under statute, or required of the Council under the Freedom of Information Act. Any information sharing will not be at the expense of breaching data protection.

#### **4.16 Anonymous Complaints:**

Such complaints are commonly received and the reasons for wishing to remain anonymous vary. Anonymity often hinders an investigation, preventing an officer from making a comprehensive assessment of all relevant facts to enable a just or informed decision on a matter. Furthermore, certain environmental health laws require the identification of someone who is aggrieved by the situation as a precursor to taking effective legal action.

Each anonymous complaint received will be assessed to determine the most appropriate follow-up action depending on the circumstances and seriousness of the allegation.

#### **4.17 Enforcement in respect of Basildon Borough Council**

On rare occasions, there may be a perceived potential for conflict of interest where the 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, Heads of service or Cabinet.

### **5. ANCILLARY MATTERS CONCERNING THE ENFORCEMENT POLICY**

#### **5.1 Authorisations:**

All appointed officers will be properly authorised and act in accordance with our policy and the Scheme of Delegation maintained in accordance with the Council's Constitution. We will ensure that enforcement officers are trained and competent for the purposes of enforcing the relevant functions for which they are authorised.

Authority for making decisions on instituting legal proceedings and other formal measures are similarly drawn from the Scheme of Delegation within the Council's Constitution.

#### **5.2 Monitoring the Policy:**

It is essential that officers adhere to the enforcement policy. To ensure that officers comply with this enforcement policy, line Managers will monitor selected cases. Deviations from the policy will be reported to the Group Manager (Regulation). The Group Manager (Regulation) will only accept any departure from policy in exceptional circumstances capable of justification, and only after full consideration and authorisation.

### **5.3 Appeals**

If any business or individual is unhappy with the action taken, or the information or advice given by the Council's Regulatory Services staff, they will be given the opportunity of discussing the matter with the officer's line manager. This is without prejudice to any formal appeals mechanism. Further independent challenge panels are also available in respect of health and safety at work advice and food safety advice.

### **5.4 Health and Safety at Work advice**

If a business believes that action taken or advice given by one of our inspectors about health and safety at work is incorrect or exceeds what is required to control the risk adequately, they can initially contact the inspector who gave the advice or their line manager to raise their concerns in the first instance. If after this, they are still unhappy with the advice received, they can raise their concerns with the [Independent Regulatory Challenge Panel](#). The Panel will consider their concerns and make appropriate recommendations which our inspectors then have to have regard to.

Referral to the Independent Regulatory Challenge Panel is not appropriate if the concerns relate to service of legal notice(s) or prosecution action. In such cases, there are established appeal processes through the Employment tribunals or the courts.

### **5.5 Food Safety Advice to Businesses**

If a business is unhappy with written advice they have received on food safety issues because they think it is incorrect or goes beyond legal requirements, they can initially contact the officer concerned or their line manager to raise their concerns. If after this they are still unhappy with the outcome, we would ask the business to follow our complaints procedure. If it is felt that this has not provided a satisfactory outcome, there is then the option to raise the concerns with the Food Standards Agency's [Independent Business Appeal Panel](#)

Referral to the Independent Business Appeal Panel is not appropriate if the concerns relate to service of legal notice(s) or prosecution action. In such cases, there are established appeal processes through the courts.

## **Appendix E**

### **FOOD SAFETY ENFORCEMENT**

#### **1. ENFORCEMENT OPTIONS**

The following section relates to the specific enforcement issues relating to the food safety work carried out by Basildon Borough Council and is included to ensure compliance with the Framework Agreement. The authority has responsibility for enforcement of food legislation and carries out its food enforcement activities having regard to the provisions of the Food Law Code of Practice (England).

There is a range of enforcement options which are similar in principle to the main body of this policy – further explanation is provided as appropriate. Action could include one, or any combination of the following:

- A. No action
- B. Revisit
- C. Advice
- D. Informal Action
- E. Formal Notice – Hygiene Improvement or Remedial Action
- F. Detention and Seizure
- G. Emergency Prohibition
- H. Revocation or suspension of approval
- I. Simple Caution
- J. Prosecution
- K. Warrant to Enter Premises

##### **1.1 No action**

In exceptional circumstances, contraventions may not warrant any action. This could arise, for example where the cost of compliance to the business outweighs the detrimental impact of the contravention on the community. The Regulators Code is clear in expecting the Service to recognise that “a key element of their activity will be to allow, or even encourage economic progress and only to intervene where there is a clear case for protection”.

Any decision to take no action will be recorded, including the reasons for this decision.

##### **1.2 Revisit**

We will advise a business whether it is our intention to revisit. Revisits will be carried out in all instances where there is a formal notice. Where contraventions of food hygiene or processing regulations are found or evidence of poor hygiene practices, a revisit will normally be carried out. For very minor contraventions, we may advise that a check will be carried out at the next routine inspection.

##### **1.3 Advice**

We recognise that very often we are approached by businesses for advice on compliance issues and good hygiene practice. We will always offer appropriate advice, distinguishing between legal requirements and recommendations. We recognise that this is a very important part of our working relationship with businesses and demonstrates the willingness of the business to pro-actively manage situations. If significant contraventions are highlighted as a result of this contact, it may still be necessary to adopt an additional enforcement approach if public health needs protecting.

#### **1.4 Informal Action**

Informal action to secure compliance with legislation will include offering advice and the use of written or verbal warnings, including those generated following inspection.

Informal action will be considered in one or more of the following circumstances:-

- the act or omission is not serious enough to warrant formal action;
- the previous history of the individual/enterprise indicates that it can reasonably be expected to achieve compliance through the use of informal action;
- confidence in the management is high;
- the consequences of non-compliance will not pose a significant risk to public health.

Where an informal approach is used to secure compliance the written documentation issued will:-

- explain the scope of the inspection;
- contain all clear, unambiguous information necessary as required by the Food Law Code of Practice in order that the business may understand what work is necessary and why;
- indicate the measures which will enable compliance with legal requirements and clearly state that other means of achieving the same effect may be used;
- clearly indicate any recommendations of good practice under an appropriate heading, to distinguish them from legal requirements.

#### **1.5 Formal Notices – Hygiene Improvement/Remedial Action**

The use of Hygiene Improvement or Remedial Action Notices would generally be followed in the following circumstances:

- there are significant contraventions of the legislation;
- there is a lack of confidence in the food business operator or enterprise to respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements;

- the consequences of non-compliance could be potentially serious to public health;
- where it is intended to prosecute, and effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating;
- additionally in terms of Remedial Action Notices, where the inspection process is being obstructed.

At the time of the visit, or at least prior to the service of a notice, the authorised officer will discuss with persons having the necessary authority to take action within the business, realistic time limits for compliance with the Notice – this will consider not only the practicality of carrying out works, but the food safety implications of the contravention.

A revisit will be made to assess compliance with the notice on the date of expiry. Failure to comply with a Hygiene Improvement Notice will normally lead to a prosecution.

## **1.6 Detention and Seizure**

Where officers have grounds for suspecting that food does not comply with the food safety requirements in Hygiene Regulations, they may use powers to inspect, detain, seize and arrange for condemnation of food. When food is seized, we will give the person from whom the food is taken an appropriate receipt. The food will then be taken before a Magistrate as soon as possible for them to confirm the seizure and condemn the food as unfit. If the Magistrate does not condemn the food, we will release it back to the owner who will be entitled to claim compensation for any loss suffered. We will always give full details of our actions to the owner of the food when we exercise this power, and explain the procedures and implications of any actions taken by both sides.

## **1.7 Emergency Prohibition**

The use of a Hygiene Emergency Prohibition Notice will be considered appropriate only if there is an imminent risk of injury to health and one or more of the following circumstances are present:-

- the consequences of not taking immediate and decisive action to protect public health would be unacceptable;
- an imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts, including a food analyst or food examiner;
- the guidance criteria, specified in the Food Law Code of Practice concerning the conditions when prohibition may be appropriate are fulfilled;
- there is no confidence in the integrity of any offer made by the food business operator to voluntarily close the premises or cease the use of equipment, process, or treatment associated with the imminent risk.
- the food business operator is unwilling to confirm in writing his/her offer of a voluntary prohibition;

Wherever possible, a second opinion from another suitably authorised officer will be obtained prior to the notice being issued.

### **1.8 Revocation or Suspension of Approval/Licence**

This action would only be taken once other enforcement options have been considered since to take such action would affect the ability of the business to continue to trade.

Revocation would be considered where:-

- serious deficiencies are identified;
- the officer has had to repeatedly stop production at the establishment and the food business operator is not able to provide an adequate guarantee that acceptable standards will be maintained in the future.

In such cases, temporary suspension would be considered as a possible enforcement option in the first instance.

A second opinion will be sought from another suitably authorised officer prior to any formal action being commenced.

### **4.9 Simple Caution**

The same principles apply as in Appendix D.

### **1.10 Prosecution**

The following are circumstances where prosecution may be initiated:

- the alleged offence(s) involve a significant breach of the law such that public health has been put at risk;
- the alleged offence(s) involve a failure by the suspected offender to correct an identified risk to food safety having been given reasonable opportunity to comply with the lawful requirements of an authorised officer;
- the offence(s) involves a failure to comply in full or in part with the requirements of a statutory notice;
- obstruction of an officer whilst undertaking his or her duties;
- there is a history of similar offences

The officer must be satisfied that there is sufficient relevant, admissible, substantial and reliable evidence that an offence has been committed.

Further considerations in this connection are listed within the main body of this enforcement policy.

### **1.11 Warrant to Enter Premises**

Officers may apply to the Magistrates Court for a warrant to enter premises in the following circumstances:

- necessary entry is required at an unreasonable time; and/or
- entry to a premises is refused; and/or
- entry is expected to be refused; and/or
- the premises are vacant and entry is required.

In all cases, officers will exercise their powers courteously and with respect for persons and property, and only use reasonable force when this is considered necessary and proportionate to the circumstances.

## **5. PRE-NOTIFICATION OF INSPECTION**

The general principle for official control inspections is that they shall be carried out without prior warning. Each case will be considered on its merits and having regard to the nature of the business being inspected and the Home Office Code of Practice on Powers of Entry.

## Appendix F

### HEALTH AND SAFETY ENFORCEMENT

#### 1. AIM

The aim of Basildon Council's Health and Safety Enforcement Policy is to ensure that duty holders manage and control risks effectively thus preventing harm. In particular our policy is to:

- Ensure that duty holders take action to deal immediately with serious risks
- Promote and achieve sustained compliance with the law
- Ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, are held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

In this context "enforcement" applies to all dealings between the Council as a health and safety enforcing authority and those on whom the law places duties (employers, the self employed, employees and others).

The Council believes in firm but fair enforcement of health and safety law in line with HSC's Enforcement Policy Statement (EPS). This is informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action, transparency about how we operate and what those regulated may expect, and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities as a whole and are explained more fully in the Policy section of this document.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, or to assist such claims.

We have a range of tools at our disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Many of our dealings are informal e.g. offering duty holders' information and advice. Where appropriate our Inspectors may also serve Improvement and Prohibition Notices and prosecute.

Subject to the evidential tests in the Code for Crown Prosecutors, circumstances where we will normally prosecute, or recommend prosecution, following an investigation or other regulatory contact are where:

- death was a result of a breach of the legislation;
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;

- work has been carried out without or in serious breach of an appropriate licence;
- a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- there has been a failure to comply with a written warning or an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- inspectors have been intentionally obstructed in the lawful course of their duties;
- false information has been willfully supplied, or there has been intent to deceive.

We will also consider prosecution, or consider recommending prosecution where following an investigation or other regulatory contact, the following circumstances apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- A breach that gives rise to significant risk has continued, despite relevant warnings from employees, or their representatives, or others affected by a work activity.

Where inspectors are assaulted we will also seek police assistance with a view to seeking the prosecution of offenders. Subject to the above we will identify and prosecute individuals if we consider that a conviction is warranted and can be secured. Additionally we will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

As with prosecution, we will use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. We will use discretion in deciding when to investigate or what enforcement action may be appropriate. Such judgments will be made in accordance with the following principles that are in accordance with the *Enforcement Concordat* and Section 18 Guidance (including the EPS).

The Health and Safety Commission's priorities are used to target our activities and resources via our Service Plan, including the provisions of the [National Local Authority Enforcement Code](#). To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. We will carry out a site investigation of a reportable work-related death, unless there are specific reasons for not doing so.

Our health and safety team will aim to:

- Inspect/carry out interventions at those premises for which it has enforcement responsibility and investigate accidents and complaints in accordance with the Council's selection criteria policy;
- Rate premises according to risk, (which includes management organisation, and the type of activities etc.) in order to determine the frequency of future inspections;
- Seek to promote health and safety through advice and guidance, and by the provision of training; and
- Take formal enforcement action, in accordance with the EPS, when it is the most appropriate way of dealing with the matter.

Where we can we will endeavour to make provision for the particular interests of stakeholders. For example we may make visits out of normal office hours but at times when the business is open; or we may arrange for interpreters/translations to be available if particular groups of duty holders do not have English as a first language.

## **2. PRINCIPLES OF ENFORCEMENT**

### **2.1 The Process of Enforcement**

Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices.

Enforcement decisions must be impartial, justified and procedurally correct. The Health and Safety Executive's EPS sets out the approach we follow.

The Enforcement Management Model (EMM) – together with the procedure for its application – provides the Council with a framework for making enforcement decisions that meet the principles in the EPS. It captures the issues inspectors consider when exercising their professional judgment and reflects the process by which enforcement decisions are reached.

### **2.2 The Purpose of the EMM**

The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:

- promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
- promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
- be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
- help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.

The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the EPS have been met.

The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

### **2.3 Enforcement Tools**

Enforcing Authority (EA) Inspectors have a range of tools at their disposal to seek compliance with the law and to ensure a proportionate response to criminal offences. Where appropriate they may:

- Serve Improvement and Prohibition Notices
- Prosecute
- In very exceptional circumstances issue Simple Cautions.

Simple Cautions will not be used –

- As a let off
- Where there are some mitigating circumstances
- Where there is doubt about the public interest
- Where either the prosecutor's office or the court are too busy.

### **2.4 Investigation**

As with prosecution (see below), the Health and Safety Executive expects us to use discretion in deciding whether incidents, complaints or cases of ill health should be investigated. The Commissions priorities are reflected in the HELA Strategy that we use to target our activities and resources via our Environmental and Health Services Service Plan.

To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances. The Health and Safety Executive's Strategic Plan recognises that it is neither possible nor necessary for the purposes of the Act to investigate all issues of non compliance with the law that are uncovered in the course of planned inspection, or reported events.

A more detailed policy on investigating reportable workplace accidents and ill health is detailed below.

### **2.5 Action by the Courts**

Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given some guidance on some of the factors that should inform the courts in health and safety cases (R v F. Howe and Son (Engineers) Ltd [1992] 2 All ER, and subsequent judgments).

## **2.6 Representation to the Courts**

In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make we will have regard to Court of Appeal guidance: the Court of Appeal has said "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

## **2.7 Death at Work**

Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate. (To ensure decisions on investigation and prosecution are coordinated the HSE, the Association of Chief Police Officers and the CPS have jointly agreed and published "Work Related Deaths: A Protocol for Liaison. Basildon Council has agreed that it should take account of the Protocol when responding to work-related deaths).

## **2.8 Incident Investigation**

It is the policy of the Council to investigate reportable accidents under the Reporting of Injuries, Disease, and Dangerous Occurrences Regulations 2013 according to the HSE's Incident Selection Criteria. .

An initial assessment of the incident will be made and a decision taken on investigation within 3 working days (except in the case of work related deaths where a decision will be taken upon receipt by an inspector).

They will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.

The purpose of investigation is to:

- Identify immediate and underlying causes
- Ensure the duty holder takes appropriate remedial action to prevent reoccurrence
- Evaluate compliance with the relevant statutory provisions
- Apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

Investigations will be:

- Continued only so far as they are proportionate to the achievement of the objectives set for them [see below]

- Conducted and/or supervised by staff who are competent
- Provided with adequate resources and support, including information, equipment and staffing
- Conducted so that efficient and effective use is made of the resources committed to them
- Timely, so far as this is within the control of the investigating inspector
- Subject to suitable management procedures for monitoring the conduct and outcome of investigations

Factors to determine whether an investigation continues to be proportionate:

- Public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries
- The potential (taking into account reasonable foreseeability) for a repetition of the circumstances to result in a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally
- The extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation
- The extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s)
- The prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

## **2.9 Complaints**

A complaint is a concern originating from outside the council in relation to a work activity for which Basildon Council is the enforcing authority, that is sufficiently specific to enable identification of the issue and the dutyholder and/or location and that either:

- Has caused or has potential to cause significant harm, or alleges the denial of basic employee welfare facilities, or
- Appears to constitute a significant breach of law for which Basildon Council is the enforcing authority.

The level of investigation will depend upon

- The severity and scale of actual or potential harm, or the high potential for harm arising from an event;
- The seriousness of any potential breach of the law;
- The track record of the duty holder;
- The enforcement priorities of the Council;
- The practicality of achieving results;
- The wider relevance of the event including serious public concern.

Officers will not always visit the premises which are the subject of a complaint - a judgment will be made following initial contact with the complainant, when it may

be determined that a phone call to the premises concerned will be the most appropriate.

## APPENDIX F

### PLANNING ENFORCEMENT

#### 1. INTRODUCTION

The Town and Country Planning Acts give local planning authorities discretionary powers to tackle breaches of planning control. This section sets out the procedures that the Council will adopt when investigating and, where applicable, remedying breaches of planning control.

Unauthorised development can have adverse consequences and, if unchecked, can undermine confidence in the planning system. The Council is, therefore, committed to the effective enforcement of planning control.

The Government's National Planning Policy Framework states that:

*"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."*

Planning enforcement can be a complex and involved process with varying timescales. The aim of this strategy is to ensure the Planning Enforcement Service:

- Has a decision making process that is open, transparent and is seen to be fair and balanced
- Provides an excellent service to those who live and work in and visit the Borough of Basildon
- Is accessible to all users, keeping all interested parties updated
- Takes action, where appropriate, that is timely, proportionate and reasonable
- Achieves and maintains effective and efficient enforcement of planning control

It is not a criminal offence to carry out building works without planning permission to a building which is not protected by conservation area or listed building controls or change the use of land. The Council strongly advises against such action for the following reasons:

- The Council can use its enforcement powers against building works or use of land that does not have planning permission
- Unresolved breaches in planning control can also significantly slow and disrupt the sale of land and property

When the Council receives an allegation or enquiry from a member of the public, or other third party, officers will not reveal the identity of the person to any other

members of the public or Councillors except in exceptional circumstances. Neither will they reveal the identity of the person being investigated. If there is an enforcement appeal and the complainant has evidence that is important to the Council's case, officers may ask the person to participate in the planning appeal which is a public forum. This means that anonymity cannot be guaranteed for either party.

## **2. OBJECTIVES AND GENERAL PRINCIPLES**

The Council's objectives are:

- To remedy harm caused by breaches of planning control
- To strike a balance between protecting public safety, amenity and other important interests and enabling acceptable development to take place, even though it may initially have been unauthorised
- To ensure that the policies and the credibility of the Council and the planning system is not undermined
- To carry out all enforcement duties openly, fairly, helpfully, proportionately and consistently
- To reduce the need for enforcement by encouraging the public to seek pre-planning advice

General Principles

- All reasonable complaints will be investigated
- Complaints will be prioritised according to their urgency and potential harm
- Enforcement action will be taken where it is expedient to remedy harmful consequences and when it is in the wider public interest.
- Formal action will be proportionate to the breach.

## **3. MAKING A COMPLAINT**

Most investigations into breaches of planning control result from complaints from the public, Councillors or Parish Councils, but the Council will act pro-actively where a significant breach of planning control is apparent even if no complaint has been received. All investigations will follow the same general procedure as set out in 4.0 below.

The Planning Enforcement service will not normally take the lead in investigating possible breaches of planning control that occur on Council-owned land or on highway land. The appropriate Council service or the Highway Authority will have stronger powers to remedy such breaches.

The Council's Planning Enforcement Team will instigate investigations into allegations relating to:

- unauthorised building works and any other physical works that fall within the statutory definition of development
- unauthorised material changes of use to a building or land
- unauthorised display of advertisements

- unauthorised work to listed buildings
- unauthorised demolition of some buildings
- untidy land that is harmful to the amenity of a neighbourhood or a particular part of the Green Belt; or
- breaches of planning conditions that have been applied to planning permissions

It will not normally instigate investigation of the following types of complaints:

- anonymous complaints - unless it relates to a potentially serious breach
- persistent complaints which have previously been investigated and resolved
- vexatious or malicious complaints
- boundary disputes between neighbours
- property and land ownership issues which are not planning related
- breaches of covenants between landowners
- loss of views
- competition between businesses; or
- trespass.

Complainants will need to provide officers with their name and contact details, along with the following base information to enable the instigation of an investigation.

- The contravenor's name if known;
- The address or location of the building or land the subject of complaint;
- The nature of the activity or works the subject of complaint and any other relevant information that may assist officers in the investigation of the allegation.

When a valid complaint is received, it will be entered on to the Council's computerised database and acknowledged within 5 working days and an initial prioritisation of the allegation will be undertaken.

#### **4. COMPLAINT PRIORITISATION**

The Council has limited resources to carry out investigations and therefore needs to prioritise processing of some allegations over others. Officers will give highest priority to allegations of activities that are likely to cause irreversible or substantial harm in planning terms.

Complaints will be prioritised in accordance with the following categories

- (a) High Priority Complaints – Will be investigated within 5 working days if not immediately depending on the nature of breach.
- Breaches of planning control in the Green Belt where irreversible harm is being or likely to be caused
  - Breaches of Tree Preservation Orders, where trees are under threat and are likely to be lost or severely damaged
  - Unauthorised building works to listed buildings where irreparable damage to the character or appearance of the building may be caused
  - Unauthorised works to buildings and trees in a conservation area

- Breaches of planning conditions or legal agreements causing immediate and serious harm to highway and public safety or residential living conditions
- Unauthorised building works that are in progress and causing serious harm to visual and/or residential amenities
- Unauthorised changes in the use of buildings or land causing serious harm to highway and public safety, visual and/or residential amenities
- Unauthorised development or changes in use which without intervention would be nearing immunity from enforcement action by virtue of either the 4 or 10 year immunity rules
- All other breaches that represent a serious danger to the public

(b) Medium Priority Complaints – Will be investigated within 10 working days of receipt.

- Unauthorised development or changes in the use of land or buildings not causing demonstrable harm to residential living conditions or public amenity
- Unauthorised development that has been completed or changes in use that have existed for more than a month
- Unauthorised advertisements causing potential harm to highway and public safety or have a detrimental impact upon the character and appearance of the streetscene.
- Breaches of planning conditions not causing demonstrable harm to highway and public safety or impacting on residential living conditions or public amenity
- Unauthorised works to protected buildings not in danger of demolition or irreparable damage

(c) Low Priority Complaints – Will be investigated within 20 working days of receipt.

- Minor residential development such as garden sheds walls and fences not causing harm to residential living conditions or public amenity
- Development where planning permission if sought could be granted
- Untidy land or buildings, except where there is a serious loss of visual amenity
- Anonymous complaints, except when it relates to development in the Green Belt
- All other complaints not causing any demonstrable harm to highway and public safety, residential living conditions or public amenity

## **5. INVESTIGATING ALLEGATIONS**

Initially officers will check the Council's planning records to establish the planning history of the site and the existence of any planning constraints. This check may show that planning permission has been granted or that a use is constrained by a planning condition.

In most cases, the investigating officer will then visit the site to establish whether a breach of planning control has or is occurring. The officer may use an aerial drone to assist with their assessment to ensure social distancing requirements are maintained throughout the visit. The officer will normally try to contact the landowner to inform them of the site visit.

It will sometimes be necessary for the Council to carry out more than one visit to establish whether there has been a breach. In other cases the information gathered during the visit(s) might be unclear or contradictory. In these instances officers might serve a Planning Contravention Notice to obtain further information. This is a formal notice that includes questions relating to the alleged breach.

Following a review of the Council's planning records; an assessment of the information gathered during the site visit(s) and any other evidence, officers will come to an initial view about:

- whether a breach has occurred as a matter of fact
- whether the time limits for taking enforcement action have expired
- the likely impact the activities may have on the environment and community and what harm, if any is it causing
- what course of action should be taken

Once officers have agreed the next course of action, the contravenor and complainant will be notified accordingly.

## **6. ENFORCEMENT OPTIONS**

While the Council is keen to ensure compliance with planning controls, it has to balance the needs of a variety of interested parties including local residents; visitors, developers; and businesses. The Council does not condone wilful breaches of planning control, but both the law and government guidance is clear that planning enforcement action is discretionary and must be proportionate.

Where possible, the Council aims to work with people who have breached planning controls to amicably regularise breaches. Where this is not possible the Council will take a proportionate approach to the breach depending on whether it is consistent with the Council's local plan and the level of harm it causes to other people or the local area.

The enforcement options available to the Council are as follows;

### **6.1 Take no further action**

Officers will take no further action if no breach has taken place; or it is likely that the Council would grant planning permission for the works or use - in this case the owner / occupier will be advised to apply for planning permission and officers will explain that not applying for permission could result in difficulties in future sales of the property / land.

### **6.2 Negotiate**

If a breach has occurred that causes harm and it can be easily remedied, officers will negotiate with the owner / occupier to agree the required remedial action and reasonable timescale for compliance. If the owner / occupier declines, to take appropriate formal enforcement action commensurate with the breach of control,

officers will inform the complainant of their action and explain what further action may be taken.

### **6.3 Formal Action**

When officers consider that there has been a breach of planning control that is causing significant harm or where negotiations have failed, officers will seek the Council's authority to take appropriate planning enforcement action to bring about compliance with planning control.

## **7. ENFORCEMENT ACTION**

The type of enforcement notice that can be served is determined by the nature of the breach. A list of the notices available to the Council to use against confirmed breaches of planning control are listed below.

### **7.1 Planning Enforcement Notice**

In the case of physical works and changes in use of land, a Planning Enforcement Notice will be served. It needs to be served on the owner of the land which the breach relates to and any other person with an interest in the land. The notice will describe the breach, why the Council think the notice should be served and what needs to be done to deal with the harm that the breach is causing and when this remedial work needs to be carried out.

Once a notice has been served, there is a right of appeal. The appeal needs to be made in writing to the Planning Inspectorate. There are a number of grounds for appeal against an enforcement notice. The Council sometimes relies on information or evidence from a third party. Where this evidence is critical to the Council's case these people will be asked to attend as witnesses at the appeal. The Council cannot serve an enforcement notice against breaches that have taken place more than 4 years previously (for building and engineering works or change of use to a house) or 10 years previously (for all other breaches) unless the person responsible for the breach has deliberately concealed it.

### **7.2 Breach of Conditions Notice**

Councils can only serve breach of condition notices to deal with the failure to comply with conditions applied to planning permissions. The Council has to use other powers to deal with breaches of conditions relating to a listed building or conservation area consent. Before the Council serves a breach of condition notice it has to have evidence that the requirements of a valid and enforceable condition have been breached. The breach of condition enforcement notice must state what steps need to be taken to comply with the condition and give a deadline for complying with these steps (this cannot be less than 28 days).

There is no right of appeal to the Planning Inspectorate against a breach of condition notice. The Council cannot serve a breach of condition notice against breaches that have taken place more than 10 years previously unless the person responsible for the breach has deliberately concealed it.

### **7.3 Listed Building, Conservation Area and Tree Replacement Enforcement Notices**

A building is listed if it is included in a list compiled by the Government. In order to qualify for listed status a building must have some special architectural or historic interest. Listed building consent is required for any works involving the demolition of a listed building or the alteration or extension of a listed building that would affect its special architectural or historic interest, such as the replacing of timber window frames with ones manufactured from UPVC. Listed building and Conservation area enforcement notices are similar to planning enforcement notices. The notice must clearly explain the breach, what needs to be done to readdress the breach and provide a timescale for complying with the notices requirements. There is no time limit for the Council taking enforcement action against a breach of listed building consent. A Tree Replacement Notice can be issued where the Council considers it desirable to replace a protected tree that has been removed without permission. Failure to comply with a tree replacement notice can lead to the Council undertaking works in default.

### **7.4 Listed Building, Conservation Area and Protected Trees Prosecutions**

Where works have been done to a listed building, or a building within a conservation area, or to a protected tree without the Council's consent and those works have caused considerable damage or have resulted in the demolition of a building or felling of a tree, the Council has the option of prosecuting the owners and those who have carried out the works. The Council is likely to bring a prosecution where the breach has severely damaged or destroyed a protected tree; the historic fabric of a listed building which cannot be easily remedied, or where the building makes a positive contribution to the character and appearance of a Conservation Area.

### **7.5 Temporary Stop Notices and Stop Notices**

A temporary stop notice requires a particular activity, relating to all or part of an alleged breach, to cease immediately. The notice lasts for a maximum of 28 days. The Council can serve a stop notice after an enforcement notice which requires some or all of the activities in the enforcement notice to cease before the time limits for complying have expired. The Council will only consider serving these kinds of notice in exceptional circumstances, where officers judge that an activity should cease immediately to safeguard the amenity of an area because of either the risk of harm to public safety; or significant harm to amenity; or serious/irreversible harm to the environment. The requirements of both notices must be proportionate and only restrict the activity, or part of the activity, that is necessary to safeguard against the harm. Before the Council serves either notice, officers must be able to demonstrate that the benefits from the notice outweigh the costs. Officers will normally try to negotiate informal alternatives with the person carrying out an activity before deciding to serve either a stop or a temporary stop notice.

### **7.6 Court Injunction**

The Council can apply to the Courts for an injunction to restrain an alleged breach where officers consider it necessary. Officers will only recommend that the Council applies for an injunction in exceptional circumstances where there is clear evidence that a breach (this can be a breach of planning, listed building or tree control) has or is likely to occur, the breach is or will give rise to harm to public safety, significant harm to amenity or serious / irreversible harm to the environment; and an Injunction is the most proportionate form of remedy in the particular circumstances.

## **7.7 Untidy Land Notice**

Where officers consider that the condition of land is causing harm to the amenity of an area, the Council has the power to serve a notice requiring the land to be tidied. The notice must specify what needs to be done to tidy the land and give a deadline for complying. Where the requirements of the notice are not satisfied, the Council has the discretion to extend the deadline or to instigate prosecution proceedings against the owner and / or take direct action to remedy the situation.

## **7.8 Advertisements**

Where officers consider that an advertisement has been erected without permission and the advertisement is causing harm to the appearance of the area or public safety, the Council has the right to bring a prosecution. It also has the power to remove structures used to display adverts and adverts themselves in some circumstances. The Council has the power to issue a removal notice which if not complied with permits the authority to take direct action to remove placards and posters, provided it takes reasonable steps to notify the person who displayed the placard/poster before removing it. The Council will use this power against people who decide to persistently display posters and placards without advertisement consent in locations which cause harm to amenity or public safety

## **7.9 Discontinuance Notices and Article 4 Directions**

In very exceptional circumstances the Council will consider serving a discontinuance notice to stop an existing use or require the removal of buildings that have previously been given planning permission by the Council or consent through permitted development rights. The Council can also issue an Article 4 Direction to remove permitted development rights. Before exercising these powers the Council will consider development plan policies and all other relevant material planning considerations.

## **7.10 Direct Action**

Where the Council has served an enforcement notice and the requirements of the notice have not been carried out, the Council has the power to take direct action. If the Council takes direct action and is unable to recover the cost from the landowner, it may put a charge on the land to recover its costs. Before the Council decides to take direct action, it will assess whether the breach is continuing to cause significant or substantial harm over a wide area, the overall costs of carrying out the action and the prospects of recovering these costs, the possible risks to the

health and safety of Council employees, contractors, the owner or occupier(s) of the property; and whether the direct action is consistent with Council's corporate objectives and the overriding objectives of national planning policy.

## **8. PLANNING ENFORCEMENT SERVICE STANDARDS**

The Council's Planning Enforcement Team aims to meet the following milestones in the investigation and resolution of complaints.

- MILESTONE ONE – Acknowledge all complaints and allocate them to an investigating officer with 5 working days of receipt.
- MILESTONE TWO – Research planning history and carry out an initial site inspection within 10 working days of a complaint being allocated to an officer.
- MILESTONE THREE – Complete investigation and determine whether a breach has occurred as a matter of fact and whether further action is required within 20 working days of allocation.
- MILESTONE FOUR – Agree action and inform complainant within 25 working days of allocation.
- MILESTONE FIVE – Draft authorising report and agree timelines for taking formal action within 30 working days of allocation.

## Appendix G

### **GLOSSARY OF TERMS**

Abatement Notices	This action may be taken where there is an on-going or recurring nuisance/defect and where the legislation allows. The notice will require certain steps to be taken to resolve the problem.
Better Regulation Agenda	The Government's better regulation agenda aims to use targeted measures to simplify and improve existing regulation; communicate more clearly with businesses, to help them understand what they must do to comply with the law.
Code for Crown Prosecutors	The Code devised by the Crown Prosecution Service which sets out the principles to be followed when a decision is being taken about whether a prosecution case should be taken.
Company Directors Discrimination Act	This Act allows a court to make a disqualification order against a company director that prevents them from acting as if they were a director within a company.
Data Protection Act	The Data Protection Act requires anyone who handles personal information to comply with a number of important principles. It also gives individuals rights over their personal information.
Department for Business Innovation and Skills (BIS)	The aim of the Department for Business Innovation and Skills is to improve the quality of working life for individuals, and create the conditions for business success. They support better regulation and are working to promote best practice and effective employment relations.
Duty holders	Health and safety legislation specifies who has responsibilities under the law. Those bodies/persons are referred to as duty holders
Employment Tribunal	The Employment Tribunals are independent judicial bodies that determine disputes between employers and employees over employment rights, and consider appeals against health and safety enforcement notices.
Enforcement/enforcing Authority	All local authorities take on the role of enforcement authority in respect of relevant functions and legislation within their geographical area. Some enforcement agencies may also be involved – roles and responsibilities are specified in legislation and guidance.
Enforcement Concordat	The Government introduced the Enforcement Concordat in 1998 in collaboration with business and local and national regulators. The Enforcement Concordat encourages partnership working between enforcers and businesses, and sets out the Principles of Good Enforcement which enforcers should apply in order to achieve higher levels of voluntary compliance
Enforcement Management Model	The Enforcement Management Model (EMM) is a framework which helps inspectors make health and safety enforcement decisions in line with the Health and Safety Executive's Enforcement Policy Statement. Its purpose is to ensure fair and consistent enforcement decisions are taken.

Environmental Information Regulations (EIR)	The Environmental Information Regulations give certain rights of access to environmental information to the general public.
Fixed Penalty Notices	Fixed penalty notices generally deal with environmental offences such as litter, graffiti and dog fouling, and can be issued by local authority officers and police community support officers. These notices can be issued to anyone over 10 years old where the law allows it. Penalty notices are not the same as criminal convictions. However, failure to pay the fine may result in higher fines or imprisonment.
Food Standards Agency	The Food Standards Agency is an independent Government department set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food.
Freedom of Information Act (FOI)	The Freedom of Information Act gives you the right to obtain information held by public authorities unless there are good reasons to keep it confidential.
Health and Safety Executive (HSE)	The HSE is a public body responsible for enforcement of health and safety in certain workplaces. Regulations define which workplaces are the responsibility of the HSE and which are the responsibility of local authorities.
Improvement Notices	This action may be taken under certain legislation where there is a legal contravention. The notice will require works to be carried out within a specified time period. Failure to comply is an offence.
Better Regulation Delivery Office (BRDO)	BRDO is a non-departmental public body, accountable to the Department of Business, Innovation and Skills through the Better Regulation Executive. Its focus is on ensuring that inspection and enforcement are based on an assessment of risk, so that businesses are supported and regulatory resources are focused on those who flout it.
Local Government Association (LGA)	is a voluntary lobbying organisation, acting on behalf of the local government sector
Penalty Charge Notice	Penalty charge notices may be issued for contraventions of specific regulations/orders where no criminal offence has been committed. Failure to pay a penalty charge notice will result in recovery of the debt through the civil courts.
Primary Authority	The primary authority is the local authority that has formed a partnership with a business and is registered on LBRO's website. The authority provides advice and guidance to that business, and other enforcement authorities must consider this advice when undertaking enforcement activity.
Prohibition Notices	This action may be taken where there is a serious risk to health or safety and where the legislation allows. The notice may require closure of a business; prevent use of a machine or process, until such time as the risk has been controlled. Failure to comply is an offence.
Regulators Code	The Regulators' Code asks regulators to perform their duties in a business-friendly way, by planning regulation and inspections in a way that causes least disruption to the economy.
Section 18 guidance	Section 18 of the Health and Safety at Work etc. Act 1974 places a

	duty on the Health and Safety Executive and local authorities to make adequate arrangements for enforcement.
Simple Caution	A 'simple caution' is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from court, and to reduce the likelihood that they will offend again.
Statutory enforcement notice	The powers of officers are set down in legislation. Many laws allow enforcement officers to issue statutory notices. These require action to be undertaken within a certain time to ensure legal compliance, e.g. improvement and prohibition notices.
Statutory undertakers	These are the various companies and agencies with legal rights to carry out certain development and highways works, e.g. gas, telephone and electricity companies.

**Monday to Friday**  
**10am to 5pm**



**Basildon Council**  
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