

**BOSTON BOROUGH
COUNCIL**

**CORPORATE ENFORCEMENT
POLICY**

February 2004



BOSTON BOROUGH COUNCIL
CORPORATE ENFORCEMENT POLICY

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BOSTON BOROUGH COUNCIL

CORPORATE ENFORCEMENT POLICY

1.0 INTRODUCTION

- 1.1 The Council is responsible for ensuring that a wide range of legislation is being properly complied with. In doing this, the Council must ensure that its actions are in accordance with the European Convention on Human Rights (as implemented by the Human Rights Act 1998) and the Government's Enforcement Concordat. Many of the Council's activities are directed at ensuring that all sectors of society within the Borough of Boston avoid infringements. However, it is inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, balanced and fair manner.
- 1.2 This document contains the detailed statement of policy in respect of the enforcement of legislation by the officers of Boston Borough Council and the framework upon which executive action is based.

2.0 GENERAL STATEMENT

- 2.1 In seeking to secure the highest possible level of compliance with relevant legislation whilst conforming with the spirit of the Human Rights Act 1998, the Cabinet Office Enforcement Concordat and the Code for Crown Prosecutors, the principal enforcement activities of the Council are directed towards avoidance of infringements. It is nevertheless inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, transparent, balanced and fair manner.
- 2.2 All enforcement action, be it verbal warnings, the issue of written warnings, statutory notices, or prosecution, is primarily based upon assessment of risk to public health, economic well being or the environment.
- 2.3 This Authority affirms the importance of achieving consistent, balanced and fair enforcement. To achieve this, regard will be had to guidance contained in Statutory Codes of Practice and other nationally recognised courses. Specific procedures and guidance will be prepared and reviewed as necessary by the appropriate Head of Service to enable the realisation and implementation of the Council's priorities having regard to national guidelines.
- 2.4 To protect privacy, and comply with the Human Rights Act, all investigations where surveillance is essential, but which may cause intrusion into an individual's privacy, will be authorised prior to commencement in compliance with the Authority's guidelines and procedures as required by the Regulation of Investigatory Powers Act 2000.

- 2.5 Any departure from enforcement policies must be exceptional, capable of justification and be fully considered by the appropriate officer before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.
- 2.6 This Authority will ensure that all authorised officers are fully acquainted with requirements of the policy and appropriate training will be given. This Authority will ensure that all persons subject to any enforcement action are fully informed of what is expected and the procedures that will be followed. This is to aim to avoid any misunderstandings and ensure transparency of all enforcement action.
- 2.7 This policy will be fully consulted on to take into account the views of all partners, stakeholders and the local community as a whole.
- 2.8 This document and associated procedures derived from it will be subject to regular review.
- 2.9 **Approval** – this Policy was approved by Boston Borough Council on 8 March 2004.
- 2.10 **Access** – this Policy is available on the Council’s website and in hard copy at the Municipal Buildings, West Street, Boston. Copies can be obtained by telephoning 01205 314200 or by writing to:-

The Head of the Chief Executive’s Office
Boston Borough Council
Municipal Buildings
West Street
Boston
Lincs
PE21 8QR

3.0 ENFORCEMENT OPTIONS

- 3.1 The Council’s enforcement officers will take a staged approach to enforcement of legislation. No enforcement action will be taken against any individual or business unless the investigating officer is satisfied that a breach of legislation has been committed under a relevant piece of law. The exception to this is in the event of a statutory nuisance occurring or it being likely that a statutory nuisance will occur, in which case the Council has a duty to serve an abatement notice on the person responsible to abate the nuisance or to prevent the likely occurrence.
- 3.2 Enforcement action may be taken as the result of the investigation of a complaint, following a routine inspection or some other activity.
- 3.3 Enforcement decisions must be balanced and fair. They must be consistent and taken in the context of ensuring that individuals, the community and the environment are

adequately protected. The criteria which should be considered when deciding whether enforcement action is appropriate are:-

- Whether an offence has been committed.
- Whether the offence has caused harm or is likely to cause harm.
- The seriousness of the offence.
- The history of the activity.
- Confidence in achieving compliance.
- Consequences of non-compliance.
- The likely effectiveness of the various enforcement options.
- The existence of any guidance in the form of Codes of Practice, Government Circulars etc.

3.4 These criteria are not exhaustive and those which apply will depend on the particular circumstances in each case. This does not mean that all factors must be in favour of enforcement action, rather that, on balance, the preponderance is in favour.

3.5 Once these criteria have been considered a number of options for dealing with the situation present themselves. These are:-

- To take informal action
- To serve statutory notices
- To suspend, revoke or refuse to renew a licence
- To issue a fixed penalty notice
- To prosecute or to apply for a Court Order
- To issue a formal caution
- To take no action

or a combination of two or more of the above.

3.6 Consideration of each of these options should be informed by the principles of openness, consistency and proportionality which are discussed later in this Policy.

3.7 In the spirit of taking a staged approach to enforcement, in the first instance the individual or business should be given the opportunity to discuss and remedy problems unless immediate action is required.

3.8 **Informal Action**

3.8.1 Informal action will be taken when:-

- The offence being committed or having been committed is not serious enough to warrant formal action; or
- From the immediate individual's or business' past history it can be reasonably expected that informal action will achieve compliance; or
- The confidence in an individual or business proprietor is high; and

- The consequences of non-compliance will not pose a significant risk to public health, public safety or to the environment.

3.8.2 When an informal approach is used to secure compliance with legislation, confirmation of what action is required will be confirmed in writing within 7 working days of the decision being taken to take informal action. All correspondence will clearly differentiate between legal requirements and recommendations of good practice and must indicate the laws which are being contravened and the measures which will achieve compliance.

3.9 **Statutory Notices**

3.9.1 Statutory Notices will be served where one or more of the following criteria apply:

- There is a statutory duty to do so.
- There are significant contraventions of legislation.
- There is a lack of confidence in the proprietor or business to respond to an informal approach.
- Where informal action has not been complied with.
- There is a history of non-compliance.
- Standards are generally poor with little management awareness of statutory requirements.
- The consequences of non-compliance could be potentially serious to public health, public safety or to the environment or cause public nuisance or be irreversible; or
- Where, in addition, to prosecution, measures need to be taken to remedy conditions which are serious, deteriorating or where the service of a notice is needed to support a prosecution.

3.9.2 Statutory Notices will be served within 10 working days of the decision to serve them being taken (subject to confirmation of ownership of land etc having been obtained through a Requisition for Information when appropriate).

3.9.3 Failure to comply with a statutory notice will, in general, result in prosecution and/or works in default where appropriate unless there is a good reason not to do so. Works in default are works which have been the subject of a legal notice served on some individual or company. If the notice expires and these works have not been carried out the Council may carry them out in default of the person or business on whom the notice was served.

3.10 **Suspension, revocation or refusal to renew a licence**

3.10.1 These steps would be taken as a result of failure to meet requirements in connection with the continued operation or the renewal of a licence. This could follow receipt of a complaint or be the result of a routine or a licensing inspection or follow the service of a statutory notice. Such a failure must be serious enough to justify these actions.

3.11 **Issue of a Fixed Penalty Notice**

3.11.1 The Borough Council has a policy of issuing fixed penalty notices for offences under the Environmental Protection Act or the Dogs (Fouling of Land) Act. The issuing of fixed penalty notices takes the place of prosecution under these Acts and is carried out in accordance with statutory guidance.

3.12 **Prosecution**

3.12.1 Boston Borough Council recognises that the decision to prosecute is significant and could have far reaching consequences for the offender.

3.12.2 The decision to prosecute will normally be taken by the appropriate Head of Department or Director in consultation with the Solicitor to the Council. There are certain specific exceptions to this principle. For instance, officers authorised under the Health and Safety at Work Act have the authority to take a decision to commence legal proceedings for offences committed under that Act or under any subordinate legislation. If there are significant financial or policy implications the matter may be referred to the relevant Portfolio Holder for consultation or for a decision to be taken. This decision should then be referred to the next available meeting of the Council's Cabinet for endorsement. The criteria for the commencement of legal proceedings will be considered in the following cases where:-

- A flagrant breach of the law such that the safety or well being of an individual, the community or the environment is or has been put at risk or irreversible damage has been caused.
- The integrity of the licensing framework is threatened.
- The alleged offence involves a failure by the suspected offender to correct an identified potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- The alleged offence involves a failure, in full or in part, to comply with the requirements of a statutory notice.
- There is a history of similar offences.
- The alleged offence causes public concern and it is desirable to reassure the public and to deter other offenders.
- Where an authorised officer has been intentionally obstructed in the course of his or her duties.

3.12.3 All relevant evidence and information will be considered before deciding to commence legal proceedings in order to enable a consistent, fair and objective decision to be made.

3.12.4 Regard shall be had to the Guidance contained in the Code for Crown Prosecutors.

3.12.5 Once the decision has been made to commence legal proceedings the relevant paperwork will be normally forwarded to the Council's Legal Officers within 20 working days of that decision. Legal Officers will then ensure service of the summons, normally within 20

working days of receiving those instructions. These timescales will be affected by the complexity of each case and the requirement to collect evidence.

3.12.6 The person or business which is to be the subject of legal proceedings will be informed, in writing within 5 working days of the decision to commence legal proceedings being taken. This undertaking applies to environmental health law enforcement only.

3.13 **Prosecution without warning**

3.13.1 As a general rule, a person or business will be given a reasonable opportunity to comply with the law, although in some circumstances, prosecution may be undertaken without prior warning, eg:-

- The contravention is a particularly serious one.
- There has been a particularly blatant disregard of the law.
- A statutory notice has previously been issued for a similar offence.
- The integrity of the licensing framework is threatened; or

3.14 **Formal Cautions**

3.14.1 Where appropriate, a formal caution may be issued as an alternative to prosecution. Formal cautions will be issued to:-

- Deal quickly and simply with less serious offences;
- Divert less serious offences away from the courts; or
- Reduce the chance of repeat offences.

3.14.2 To safeguard the offender's interests the following conditions must be fulfilled before a caution is administered:-

- There must be evidence of the suspected offender's guilt sufficient to offer a realistic prospect of conviction; and
- The suspected offender must admit the offence; and
- The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

3.14.3 No pressure should be applied to a person to accept a formal caution.

3.14.4 Advice given within Home Office Circular 18/1994 should be taken into account.

3.14.5 A formal caution will not be considered in the case of a second or subsequent offence.

3.14.6 The offer of a formal caution will be made within five working days of the decision to issue one being taken. The caution will then be issued within 20 working days of the offer being accepted. Should a person offered a formal caution refuse to accept it then a course of prosecution will normally be followed.

3.15 **No Action**

3.15.1 There may be instances when no action is taken by the Authority following the investigation of a complaint or the carrying out of an inspection. For example:-

- Following the investigation of complaints it may be found that there is no offence committed.
- Where the offence is not causing harm or it is not expedient to take action.
- Where the cost of compliance to the offender outweighs the impact of the contravention on the community.
- Where the cost of taking action to the enforcing authority outweighs the impact of the offence on the community.
- Formal action would be inappropriate in circumstances such as where a trader has ceased to trade, or the offender is elderly or frail or where formal action could seriously damage their well-being.

3.15.2 A decision to take no action must be recorded in writing, along with the reason(s) for taking no action and must take into account the health, safety, environmental damage or nuisance implications of not taking action. All parties involved will be informed, in writing, within 5 working days of the decision to take no action.

3.16 **Determining whether a prosecution is viable and appropriate**

3.16.1 There are two tests which the Council must apply in making this decision. The tests must always be applied in the same order; first the evidential test, followed by the public interest test.

3.16.2 The evidential test means that the Council, as prosecutor, must be satisfied that there is enough reliable and admissible evidence to provide a realistic prospect of conviction. This is an objective test. It means that a jury or magistrates' bench, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

3.16.3 The public interest test involves a number of factors against each other which are for or against prosecution, for example, "for" can be whether a conviction is likely to result in a significant sentence, or whether it is a repeated offence and "against" could be whether the offence is minor or whether the offender is elderly or vulnerable.

3.16.4 Whilst, as outlined, these tests apply when considering prosecution, it is important that consideration should also be given to the evidential test before taking formal enforcement action of any kind.

3.16.5 Deciding on the matter of public interest requires careful consideration of each of the factors involved. For each case these factors will have to be considered separately and given an appropriate weight. A decision will then be taken in terms of the case as a whole.

3.16.6 Further information on the application of the evidential and public interest tests can be found in the Crown Prosecution Service Code for Crown Prosecutors.

3.17 **Dissatisfaction with a decision to take/not to take formal action**

3.17.1 Inevitably there will be occasions when an individual, group, business or organisation is aggrieved by a decision taken following consideration of this Policy. Where this is the case they will be offered the opportunity to discuss the matter with the relevant line manager. If the allegation is that the decision is contrary to this Policy, that allegation will be tested. Where a decision is in compliance with the Policy the rationale behind it will be explained to the aggrieved party. Where a decision is found not to be in compliance with the Policy it should be reconsidered, having had due regard to 4.3.2 below. This is without prejudice to any formal appeals mechanism or to the Council's formal complaints procedure.

4.0 **PRINCIPLES OF ENFORCEMENT**

4.1 The Council believes in firm but fair regulation. This Policy is underpinned by the principles of openness about how the Council operates, consistency of approach and proportionality in the application of the law.

4.2 **Openness**

4.2.1 Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping all stakeholders to understand what is expected of them and what they should expect from the Borough Council. It also means making it clear why an officer intends to take or has taken enforcement action.

4.2.2 The Borough Council will set about its enforcement work in as open a way as possible. It will make clear to anyone who may be affected by its enforcement actions what the results of those actions may be.

4.2.3 The Borough Council will strive to ensure that all stakeholders have a say in the way in which work is done. The Council's approach to information and consultation is set out in Part 6 of this Policy.

4.2.4 The Borough Council will discuss any issues, either general or in relation to specific compliance failures or problems with anyone experiencing difficulties. We will ensure that people know who they are dealing with by quoting the name and contact number of the officer dealing with any enforcement matter on all correspondence or giving those details at the beginning of a telephone conversation.

4.3 Consistency

- 4.3.1 The Borough Council aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions whether to prosecute. This Policy document will inform that process.
- 4.3.2 This does not mean that the Council will commit itself to following a certain course of action in any particular situation. The Council recognises that every situation will have its own circumstances and the correct course of action can only be arrived at following full and careful consideration of all of these circumstances. Officers will need to use professional judgement in order to determine the correct course of action. These circumstances include, but not exclusively, the criteria set out in paragraph 3.3, the points for consideration against each of the enforcement options and the principles of openness, consistency and proportionality which inform the decision making process. Through a process of peer review and inter-authority auditing we hope to promote the development of these decision making skills.

4.4 Proportionality

- 4.4.1 Any action taken by the Borough Council will be proportionate to the risks posed and to the seriousness of any breaches of the law.
- 4.4.2 Some incidents or breaches of regulatory requirements have the potential to cause serious risks to public health or to the environment. There may be occasions when the breach of legislation will justify statutory action. The circumstances in which the various enforcement options available will be appropriate are discussed in detail in part 3 of this Policy. Any such action will only be taken in accordance with the law and after due consideration has been given to an Convention Rights under the Human Rights Act 1998 that may be affected by such action.

5.0 LIAISON

- 5.1 The Borough Council will ensure that liaison between Council departments is co-ordinated and effective enforcement is carried out where the matter is related to more than one of the Council's services.
- 5.2 The Borough Council will liaise with other local authorities, agencies and organisations where it is appropriate. This may be where an enforcement matter extends beyond the Borough's boundary or where the Council shares responsibility with another organisation, eg in respect of dogs, and certain types of nuisance complaint where the Council and the Police may be involved.

6.0 INFORMATION AND CONSULTATION

- 6.1 We will strive to help individuals and organisations to comply with the law wherever possible, especially individuals and small and medium sized businesses. We will seek to do this by offering advice and information translated into foreign languages as and when appropriate. Any letter relating to enforcement will include an offer to discuss the matter further if the recipient so wishes are in respect of the law. Where information and advice leaflets or a digest of the law or the Council's enforcement procedures are available we will make these accessible to people or businesses which may be affected by the Council's enforcement activities. We will seek to increase the range of this sort of literature so that advice and information is available to everyone having dealings with the Borough Council in its role as an enforcer.
- 6.2 The Borough Council will publicise this enforcement policy in order to ensure that as many stakeholders as possible are aware of it. This publicity will take the form of abstracts of the policy being printed and distributed, the Policy being posted on the Council's web site and groups representing interested parties being made aware of it.

7.0 SPECIAL INTERESTS OF STAKEHOLDERS

- 7.1 The Borough Council will attempt to take account of any special needs that stakeholders in its services may have. This includes, but not exclusively:-
- Making inspection visits outside of normal office hours to businesses which do not trade within those hours, eg restaurants, takeaways, nightclubs etc.
 - Allowing tourists access to the service by publicising details of the service in Tourist Information Centres.
 - Providing an out of hours emergency telephone number on which complaints can be registered at any time of the day or night.
 - Offering a limited out of hours noise nuisance investigation service.
 - Providing advice and information on enforcement related matters in languages other than English.

8.0 TRAINING AND APPOINTMENT OF OFFICERS

- 8.1 All officers undertaking enforcement duties will be suitably trained and qualified in order to ensure that they are fully competent to carry out their enforcement activities.
- 8.2 All such officers will be or will have been authorised by the Council to exercise powers under specific statutes and subordinate legislation. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisations will be in writing and in a form which can be shown on request. A copy of an officer's authorisation will be held in their personal file.

- 8.3 The Borough Council supports the principle of continuing professional development and will ensure that officers are given additional in-post training to maintain up-to-date knowledge and skills.

9.0 MANAGEMENT SYSTEMS

- 9.1 In order to ensure consistency of practice and compliance with legal requirements and, where appropriate, Statutory Codes of Practice, management control measures are operated. This is based on an appropriate level of delegation to relevant officers. These are as follows:-
- a) All correspondence is signed by an appropriately qualified and authorised officer and checked by his/her line manager before despatch.
 - b) All prosecutions and formal cautions are agreed in line with the Council's Scheme of Delegation.
 - c) Practical issues are regularly and openly discussed at team meetings.
 - d) Shadowing of officers where necessary.
 - e) Training requirements are identified during the Employee Development Review Process.
- 9.2 The Borough Council will maintain management systems to monitor the quality and nature of enforcement actions undertaken so as to ensure, as far as is reasonably practicable, a uniform and consistent approach where local or national guidance is available, if mandatory, it shall be followed.

10.0 REVIEW OF THE POLICY

- 10.1 This Policy document will be reviewed on a regular basis as appropriate in response to changes in the law and in guidance. Where the Policy can be improved by being amended it will be amended. Any changes which significantly affect the Council's approach to enforcement and prosecution will be taken to the Council's cabinet for approval.



**BOSTON BOROUGH
COUNCIL**

Enforcement Policy

**ENVIRONMENTAL HEALTH
(INCLUDING PORT HEALTH)
& LICENSING**

ENVIRONMENTAL HEALTH (INCLUDING PORT HEALTH) & LICENSING

ENFORCEMENT POLICY

Contents

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ENVIRONMENTAL HEALTH (INCLUDING PORT HEALTH) & LICENSING

1. INTRODUCTION

1.1 Boston Borough Council and Port Health Authority is committed to fair and transparent enforcement. As such it recognises its responsibilities under the Human Rights Act 1998 and will not discriminate against individuals or organisations. The Council has also signed up to the Government's *Concordat on Good Enforcement*.

1.2 Environmental Health (including Port Health) and Licensing Sections are important parts of Boston Borough Council and have responsibility for enforcing a wide range of legislation that may affect individuals, organisations or businesses residing, visiting or operating within the district. Enforcement action is taken by the following Sections:-

Licensing Section

Pollution Section

Commercial Section (Food Safety, Health & Safety)

Port Health Section

1.3 Officers are trained in their enforcement functions and systems are in place to ensure competencies are maintained. Whilst most work is carried out during office hours, we have resource to carry out both proactive and reactive work, out of normal hours. Where work is undertaken out of office hours, the principles of this Policy will still be observed. Depending upon the particular circumstances, Environmental Health and Licensing Services may use a variety of means, including education, advice, guidance, warning letters and legal notices (including "Fixed Penalty" notices) to ensure that individuals, organisations or businesses meet their legal responsibilities. Where there are serious breaches of legislation or risks to health, safety or the environment, activities may be prohibited, licences revoked, formal cautions issued, legal notices served, works done in default and prosecutions instigated.

1.4 Much modern legislation is goal setting – setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goals is often set out in Codes of practice and there is also a wide variety of advisory material describing good practice. Neither Codes nor guidance material are in terms which necessarily fit every case. In considering whether good practice has been adopted, officers will take relevant Codes and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters below.

1.5 Sometimes the law is prescriptive – spelling out in detail what must be done. For example, contact with live wires must be avoided or failure to clean up after a dog has fouled in a prescribed area. Prescriptive law limits the discretion of the duty holder and the enforcer.

- 1.6 This document is intended to provide members of the public, organisations and businesses with information and guidance about the practical application of the enforcement policy operated by Environmental Health (including Port Health) & Licensing Sections. Whilst the document aims to provide the reader with a clear understanding of the policy due to the individual nature of many of the circumstances, it cannot be considered either exhaustive or complete. The document also incorporates and adopts the principles set out in the LACOTS Guidance on Food Safety Enforcement Policies.

2. AUTHORISATION

- 2.1 Environmental Health Officers, including those additionally authorised for Port Health duties, and Licensing Officers are required to be authorised to exercise statutory functions on behalf of the Council. Officers will carry a card with them that can be produced on request to confirm their authority to carry out inspections, investigations and to enter premises.
- 2.2 A separate certificate of appointment is provided for officers appointed under the Health and Safety at Works etc Act 1974.

3. PRACTICAL APPLICATION OF THE POLICY

- 3.1 The following gives an outline of the practical application of enforcement powers and the type of action that will normally be taken according to the circumstances that typically occur. Where it is appropriate for action to be taken by other departments of the authority, they will be informed of the situation.
- 3.2 Minor Breaches of Legislation
- 3.2.1 Where relatively minor breaches of legislation occur and there is a willingness of the duty holder to undertake the necessary remedial measures, an oral or written warning will normally be given in the first instance.
- 3.2.2 All reports or letters following any inspection, visit or monitoring activity will clearly state the breaches of legislation identified and the remedial measures required. Where recommendations are made which relate to good practice or advice, then these will be clearly distinguished from any legal requirements. Clear guidance, information or advice will also be given positively to encourage compliance.
- 3.3 Serious Breaches of Legislation
- 3.3.1 Authorised Officers have powers to serve a range of legally binding enforcement notices upon duty holders in breach of legislation, in order to prohibit activities or effect necessary improvements. These notices are usually served where serious breaches of legislation have been identified or where there are serious risks to health, safety or the environment.

Officers are authorised to serve various notices by virtue of their qualifications, training and competence.

3.3.2 The use of formal enforcement notices will normally be restricted to circumstances where:-

- a) There are serious breaches of legislation.
- b) There are potential or serious risks to health, safety or the environment.
- c) The Environmental Health Section has a 'statutory duty' to serve a notice, or
- d) An informal approach has proved unsuccessful.

3.3.3 Whenever practicable, and except in cases of immediate risks to health, safety or the environment, prior warning of the intention to serve an enforcement notice or to undertake enforcement action will be given to the duty holder. The warning will include a suitable period to deal with the matters or discuss the circumstances of the case, prior to the commencement of formal action. However, warning will not be issued where a fixed penalty scheme exists, eg dog fouling offences.

3.4 Licensing, Registration and Certification – Breaches of Conditions

3.4.1 The Licensing and Environmental Health (including Port Health) Sections issue licences, registration and certificates for a variety of activities such as Caravan Sites, Food Premises, Places of Public Entertainment, Riding and Animal Boarding Establishments, Environmental Protection Act Part B Processes, Hackney Carriage and Private Hire Vehicles, Tattooists and Ear Piercing, Deratting Exemption Certificates etc. Licences and registrations are usually issued subject to specific conditions which control the management and provision of appropriate facilities at such premises. Certificates are normally documentation stating that certain conditions were met or maintained at a specific time (eg Deratting Exemption Certificates).

3.4.2 Where relatively minor breaches of licence or registration conditions occur and there is a willingness of the duty holder to undertake the necessary remedial measures, a verbal or written warning will usually be given in the first instance. Where there are serious failings to comply with the licence conditions, or where the informal approach has failed to effect the necessary improvements, a formal report will be submitted to the Licensing Committee and recommendations made as to whether or not a licence will be granted, renewed or revoked. The duty holder will be entitled to make representations in support of their case.

3.4.3 Where serious breaches of licensing or registration requirements occur, they will be considered in accordance with the criteria relating to prosecutions and, if appropriate, legal proceedings will be instigated.

4. LEAD/HOME AUTHORITY PARTNERSHIP SCHEMES

4.1 The Lead Authority Partnership Scheme and Home Authority Arrangement promotes consistency of enforcement among businesses with multiple outlets in different local

authority areas. The Lead Authority process involves a local authority forming a partnership with a company. The local authority then carries out a Safety management Review (SMR) of the company, produces a report of its findings and, where necessary, the company produces an action plan in response. The Lead Authority then enters into a long-term liaison arrangement where it acts as a focal point for liaison with other local authorities on health and safety issues affecting the company. The full list of registered partnerships is held by the Local Authority Unit.

- 4.2 We will discuss with the appropriate Lead/Home Authority any shortcomings in participating companies' centrally agreed policies or procedures. If we are considering formal enforcement action, ie notices or prosecution, against an outlet of a participating company we will except in the case of immediate action, discuss the matter with the Lead/Home Authority before taking action. Where immediate action has been necessary we will advise the Lead/Home Authority as soon as reasonably practicable.

5. SHARED ENFORCEMENT RESPONSIBILITY

- 5.1 In circumstances where enforcement responsibility is shared between enforcement agencies, for example in relation to waste offences (where both local councils and the Environmental Agency can take enforcement action), the relevant section will have regard to procedures agreed with other enforcement agencies, particular where memoranda of understanding exist.
- 5.2 In some cases, enforcement powers will rest with another agency, for example the Health and Safety Executive. In these situations, the relevant section will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

6. APPEALS

6.1 Statutory Rights of Appeal

- 6.1.1 Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms and help with completion to enable an appeal to be made.

Signed:

Designation:

Date:



**BOSTON BOROUGH
COUNCIL**

Enforcement Policy

PLANNING

PLANNING ENFORCEMENT POLICY

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PLANNING

1. BACKGROUND

- 1.1 Weaknesses in the effectiveness of the enforcement system were clear in the 1980s when loopholes in the legal powers meant that recipients of Enforcement Notices, would 'string out' the process by various delaying tactics. This led to a major report by Robert Carnwath QC in 1989, 'Enforcing Planning Control'. The Carnwath report led directly to new and substantially improved powers to enforce planning control in 1991.
- 1.2 Sections I and II of the Planning and Compensation Act 1991, PPG 18, 'Enforcing Planning Control', and DETR Circular 10/97, 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' set out the current legislation and guidance to local planning authorities on planning enforcement control. The Circular was accompanied by a 'Good Practice Guide for Local Planning Authorities', which is both long and helpful.
- 1.3 The Government encourages Local Planning Authorities to publish and publicise their policies on enforcement. The policies should explain the Council's enforcement procedures and practice.
- 1.4 The Good Practice Guide recommends that a statement of enforcement policy will address:-
 - (1) the main planning policies applicable in the Council's administrative area, as stated in its development plan.
 - (2) the type and incidence of enforcement problems.
 - (2) the resources (financial and staff) to be devoted to enforcing planning control, as part of the authority's planning function or in association with their other enforcement responsibilities.
 - (4) the procedure for dealing with complaints about allegedly unauthorised development .
- 1.5 PPG 18 reminds Local Planning Authorities that they 'have a general discretion to take enforcement action when they regard it as expedient. In considering any enforcement action the decisive issue for the L P A should be whether the breach of control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity in the locality of the site)'. To put these comments into perspective however, they are prefaced by the remark that 'nothing in this Note should be taken as condoning a willful breach of planning law'.

- 1.6 The Good Practice Guide reminds LPAs that Section 73A of the Act enables retrospective planning permissions to be given. The authority's approach to enforcing planning control over unauthorised development should not therefore be stricter, for planning purposes, than it would be when considering the merits of a prior application for planning permission before development starts. The authority should not use their enforcement powers solely to compel someone who has carried out unauthorised development which is acceptable on its planning merits, without the imposition of any planning conditions, to pay the planning application fee the authority would have received if an application had been submitted to them.'

2. CORE OBJECTIVES FOR ENFORCEMENT

- 2.1 The Council recognises the importance of establishing effective controls over unauthorised development and use of land to assist in the preservation and enhancement of the qualities of the built and natural environment of the area and to protect public amenities; it therefore will not condone willful breaches of planning law. It will exercise its discretion to take enforcement action if it is considered expedient to do so. While all serious problems will be tackled, some trivial or technical breaches of control which cause no harm to public amenity may not justify action.
- 2.2 The Enforcement Team will investigate breaches of planning control using whichever methods are appropriate to reach a satisfactory conclusion. This will usually include a visit to the site of the alleged breach and, if appropriate, meetings with the aggrieved parties. Where appropriate the Enforcement Team will involve other agencies in any investigation, either other Council officers or outside authorities, depending on the type of breach.

3. MAIN PLANNING POLICIES

- 3.1 The main planning policies applicable to Boston Borough Council are those contained in the Development Plan. The components of the Development Plan are the Lincolnshire Structure Plan and the Boston Borough Local Plan, with the latter being used for day-to-day planning purposes. The Local Plan was formally adopted in April 1997. It is currently being reviewed, but the 1997 version will continue to have status until the formal stages of the replacement document have been completed.
- 3.2 Further guidance given to local authorities on enforcement is contained in: -
- Planning Policy Guidance Note 18 'Enforcing Planning Control'
 - Planning Policy Guidance Note 19 'Control of Advertisements'
 - Enforcing Planning Control: Good Practice Guide for Local Planning Authorities
 - Department of the Environment Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements'

These will be considered in Part 6, which covers the Council's procedures for dealing with breaches of planning control.

3.3 Following the Carnwath recommendations, a wider range of legal powers became available for enforcement purposes. These include:-

- Planning Contravention Notice
- Breach of Condition Notice
- Enforcement Notice
- Stop Notice
- Injunction or Prosecution
- Section 215 Notice
- Default Action.

4 TYPE AND INCIDENCE OF ENFORCEMENT PROBLEMS

4.1 Many complaints can be resolved in a relatively short period of time and the majority of these can be dealt with without formal action, for instance there may be no breach and therefore no action needed; regularisation is achieved through a successful planning application or the breach is dealt with by the owner rectifying the matter after discussion. However, any negotiations which are carried out should not be allowed to hamper or delay formal enforcement action that may be required to make any development or use more acceptable on planning grounds or conversely compel it to stop.

5 RESOURCES

5.1 The Council recognises the importance of establishing effective control over unauthorised development and monitoring approved development for compliance. Enforcement work is a technically complex component of the development control regime involving planning and legal considerations.

5.2 Planning enforcement activity is labour intensive, and thorough investigation of the relevant planning history and painstaking evaluation of the facts are the foundation of effective enforcement.

5.3 The Enforcement Team is under the line management of the Development Control Manager and consists of the Senior Enforcement Officer, and one part-time officer.

5.4 Legal services are provided by the Legal and Property Services Section and in addition, when necessary, advice is sought externally.

5.5 Where necessary external specialist professional advice is sought, for example on trees and agricultural issues.

- 5.6 As mentioned in paragraph 2.2 other Borough Council departments or outside bodies may also be involved. It is clearly important to liaise closely with them as appropriate, to avoid wasteful duplication of effort but also to explore possible joint action. In some cases the objective (which may just be to stop an unauthorised activity) could well be met by letting other agencies use their own legislation.
- 5.7 Regular liaison is maintained with counterpart officers of most of these agencies in order to keep working relationships effective.

6 PROCEDURE FOR DEALING WITH ENQUIRIES AND COMPLAINTS

- 6.1 All investigations are entered and maintained within the enforcement system.
- 6.2 Complaints and enquiries will be recorded and allocated a case reference number. Ideally all complaints should be in writing, however complaints over the telephone will be accepted.
- 6.3 All complaints are to be treated as confidential. The name of the complainant will therefore only be revealed outside of the Enforcement Team on a 'Need to Know' basis. However, the nature of the complaint may make it obvious to the subject of the complaint who the complainant is, and the complainant will be warned of this but assured that his/her details will not be revealed or confirmed directly to the subject.
- 6.4 Anonymous complaints will not be pursued unless there is an unambiguous breach of planning control readily identified, which harms amenity. This will not be recorded as an official complaint until an Enforcement Officer has made an assessment when next visiting the area.
- 6.5 The Enforcement Team will not normally maintain a formal priority rating but each complaint will be assessed on its merits. There are certain circumstances when immediate action is necessary, such as unauthorised work to a Listed Building, unauthorised work to a protected tree or hedge or unauthorised development which is causing serious harm to the amenity of an area. Any of these may require prompt remedy.
- 6.6 Complaints will normally be acknowledged either verbally or in writing and a full investigation will be carried out.
- 6.7 Where no breach is discovered or the breach is quickly resolved the complainant will be informed verbally or in writing. Where the complaint is not resolved quickly the complainant will be kept informed as to the progress of the investigation and of the final resolution.
- 6.8 Where it is determined that a breach of planning control has taken place, the matter will be dealt with informally if possible, by attempting to persuade the owner or occupier to remedy any harmful effects of the unauthorised development. Where necessary the Council will use all available powers and procedures (listed at 3.3) to obtain compliance.

- 6.9 The Council would prefer compliance by negotiation but will not detract from taking formal action if compliance is refused or willfully delayed.
- 6.10 The Council is committed to fair and transparent enforcement. As such it recognises its responsibilities under the Human Rights Act 1998 and will not discriminate against individuals or organisations. The Council has also signed up to the Government's *Concordat on Good Enforcement*. The Council's existing policies and practices support the intentions of the *Concordat*. Investigations will be conducted within the requirements of the Regulation of Investigatory Powers Act, (RIPA) 2000.
- 6.11 The Council is most aware of the need to protect staff safety. It follows certain procedures already. It will involve the police if trouble is expected.
- 6.12 In considering whether it is expedient to initiate enforcement action the Council shall pay due regard to current planning policies in force and all other material considerations. It will not be swayed by immaterial or non-planning considerations.
- 6.13 The enforcement policy will be regularly reviewed.

7 CATEGORIES OF ENFORCEMENT ACTION

- 7.1 The Council has discretion on whether or not to take enforcement action. Formal enforcement action will not normally be initiated where a trivial or technical breach of planning control has occurred which causes no harm to the amenity in the locality of the site, for reasons spelt out in 1.5 and 1.6.
- 7.2 Where development has been carried out without obtaining planning permission and unconditional planning permission could be granted but the owner or occupier refuses to submit a planning application, the Council will consider serving a Planning Contravention Notice. This requires the recipient to provide certain information to the Council. Such Notices are also useful because they indicate to the recipient the implications of having made a possible planning contravention. However, where there is no planning objection to the development, formal enforcement proceedings will not normally be initiated. This is likely to occur in very few cases.
- 7.3 Where development has been carried out without planning permission and it is considered permission could be granted, subject to conditions, but the owner or occupier refuses to submit a planning application, an enforcement notice will be served, the effect of which shall be to grant permission subject to implementation of work which will make the development acceptable.
- 7.4 Where development has been carried out without planning permission and it is likely that permission would be granted, the applicant may still make such an application, but will not be encouraged to do so by officers as it could simply delay reaching a satisfactory conclusion.

- 7.5 Where unauthorised development has taken place which is unacceptable, but relocation is feasible, a reasonable timescale to effect relocation will be suggested in writing to the owner or occupier. If the timescale is ignored formal enforcement proceedings will be initiated.
- 7.6 In certain circumstances, the unauthorised development may provide valued local employment. If relocation is feasible, a realistic compliance period for the activity to cease, or at a scale to be acceptably reduced to mitigate the harm to amenity will be suggested. The compliance date will be assessed on the type of activity and the time scale for relocation but will not normally be less than 3 months.
- 7.7 Appropriate consideration needs to be given to operators of small businesses or self-employed persons. In these circumstances, consideration will be given to allow the business to continue operating from the site or operate less intensively. However, this will only apply where there is no serious harm to public amenity. Where there is serious harm to public amenity, formal enforcement action will be necessary which will set a realistic date for compliance. Where there is evidence brought to the attention of the authority that serious and meaningful attempts are being made to comply with the requirements of the enforcement notice, consideration will be given to relax any requirements in the notice, including the compliance period, depending upon the circumstances of the case and the injury to public amenity.
- 7.8 Where conditions of a planning permission have not been complied with and there is clear resistance from the owner or developer to move to complying with it in a reasonable timescale the Council will serve a Breach of Condition Notice or Enforcement Notice depending on the circumstances of each case.
- 7.9 Where a building or land is in a condition which seriously detracts from, or affects the character of an area, as defined by Section 215 of the Town and Country Planning Act, 1990, (as amended), the owner or occupier of the land will be requested to carry out work to improve the appearance of the building or land within a specific time period. If the owner or occupier fails to carry out the specified works a notice shall be served under the provisions of Section 215. If the notice has not been complied with consideration shall be given to entering the land and carrying out the works in default. A charge will then be placed on the land to help recover the costs of any expenditure when default powers are used to clean up the site. Alternatively take out a prosecution for non compliance with the Notice.
- 7.10 It is not appropriate to use this power excessively in cases where sites are weed-strewn. While these can look unsightly, formal action can take up much time and effort for only limited benefit. A Notice might compel the owner to cut down grass or weeds, but a few weeks later they can have grown again. Informal approaches are more appropriate in these cases.
- 7.11 The display of illegal advertisements and fly posting can harm amenity or public safety. If consent would not normally be granted for the advertisement, the owner or occupier will be requested in writing to remove the advertisement. Where the advertisement continues to be displayed, proceedings will be initiated against the owner, occupier or advertising agency.

- 7.12 In cases of fly posting, and where resources permit, all posters illegally displayed shall be removed after giving initial warning to the owner, occupier or organisation responsible for displaying the poster. The Council also reserves the right to take formal proceedings against those responsible for the fly posting.
- 7.13 The timescale for completing an investigation will vary depending on the caseload of the Enforcement Officer, the complexity of the case and the requirements to regularise the breach.
- 7.14 Appeals against enforcement action will be notified to complainants. All deadlines set by the Planning Inspectorate will be adhered to. If any deadline set by the Planning Inspectorate cannot be met, the Inspectorate will be informed in writing and deferment requested.
- 7.15 Officers of the Council will inspect properties by mutual consent where possible. If not possible the appropriate powers of entry will be exercised by named officers under the provisions of Section 196A, 196B and 196C of the Town and Country Planning Act 1990. Where entry is refused, a Notice of Intended Entry shall be served stating a date and time when entry shall be effected. If entry is again refused, entry by warrant issued by a Justice of the Peace shall be obtained. Similar provisions apply for entry to listed buildings under Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and for tree preservation enforcement purposes under Sections 214B, 214C and 214D of the Town and Country Planning Act 1990.

Signed:

Designation:

Date:



**BOSTON BOROUGH
COUNCIL**

Enforcement Policy

BUILDING CONTROL

BUILDING CONTROL ENFORCEMENT POLICY

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BUILDING CONTROL

1. INTRODUCTION

1.1 Boston Borough Council is committed to fair and transparent enforcement. As such it recognises its responsibilities under the Human Rights Act 1998 and will not discriminate against individuals or organisations. The Council has also signed up to the Government's *Concordat on Good Enforcement*.

1.2 The Building Control Section is an important part of Boston Borough Council and has responsibility for enforcing a wide range of legislation that may affect individuals, organisations or businesses residing, visiting or operating within the district. Enforcement action is taken in the following areas:-

Building Regulations
Dangerous Structure
Demolitions
Safety at Sports Grounds

1.3 Officers are trained in their enforcement functions and systems are in place to ensure competencies are maintained. Whilst most work is carried out during office hours, we have resource to carry out both proactive and reactive work, out of normal hours. Where work is undertaken out of office hours, the principles of this Policy will still be observed. Depending upon the particular circumstances, Building Control may use a variety of means, including education, advice, guidance, warning letters and legal notices to ensure that individuals, organisations or businesses meet their legal responsibilities. Where there are serious breaches of legislation or risks to health or public safety, activities may be prohibited, formal cautions issued, legal notices served, works done in default and prosecutions instigated.

1.4 Much modern legislation is goal setting – setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goals is often set out in Codes of practice and there is also a wide variety of advisory material describing good practice. Neither Codes nor guidance material are in terms which necessarily fit every case. In considering whether good practice has been adopted, officers will take relevant Codes and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters below.

1.5 This document is intended to provide members of the public, organisations and businesses with information and guidance about the practical application of the enforcement policy operated by Building Control. Whilst the document aims to provide the reader with a clear understanding of the policy due to the individual nature of many of the circumstances, it cannot be considered either exhaustive or complete.

2. AUTHORISATION

- 2.1 Building Control Officers are required to be authorised to exercise statutory functions on behalf of the Council. Officers will carry a card with them that can be produced on request to confirm their authority to carry out inspections, investigations and to enter premises.

3. PRACTICAL APPLICATION OF THE POLICY

- 3.1 The following gives an outline of the practical application of enforcement powers and the type of action that will normally be taken according to the circumstances that typically occur. Where it is appropriate for action to be taken by other departments of the authority, they will be informed of the situation.

3.2 Minor Breaches of Legislation

- 3.2.1 Where relatively minor breaches of legislation occur and there is a willingness of the duty holder to undertake the necessary remedial measures, an oral or written warning will normally be given in the first instance.
- 3.2.2 All reports or letters following any inspection, visit or monitoring activity will clearly state the breaches of legislation identified and the remedial measures required. Where recommendations are made which relate to good practice or advice, then these will be clearly distinguished from any legal requirements. Clear guidance, information or advice will also be given positively to encourage compliance.

3.3 Serious Breaches of Legislation

- 3.3.1 Authorised Officers have powers to serve a range of legally binding enforcement notices upon duty holders in breach of legislation, in order to prohibit activities or effect necessary improvements. These notices are usually served where serious breaches of legislation have been identified or where there are serious risks to health or public safety. Officers are authorised to serve various notices by virtue of their qualifications, training and competence.
- 3.3.2 The use of formal enforcement notices will normally be restricted to circumstances where:-
- e) There are serious breaches of legislation.
 - f) There are potential or serious risks to health or public safety.
 - g) The Building Control Section has a 'statutory duty' to serve a notice; or
 - h) An informal approach has proved unsuccessful.
- 3.3.3 Whenever practicable, and except in cases of immediate risks to health or public safety or the environment, prior warning of the intention to serve an enforcement notice or to undertake enforcement action will be given to the duty holder. The warning will include a

suitable period to deal with the matters or discuss the circumstances of the case, prior to the commencement of formal action.

4. SHARED ENFORCEMENT RESPONSIBILITY

- 4.1 In circumstances where enforcement responsibility is shared between enforcement agencies, for example in relation to waste offences (where both local councils and the Environmental Agency can take enforcement action), the relevant section will have regard to procedures agreed with other enforcement agencies, particular where memoranda of understanding exist.
- 4.2 In some cases, enforcement powers will rest with another agency, for example the Health and Safety Executive. In these situations, the relevant section will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

5. APPEALS

5.1 Statutory Rights of Appeal

- 5.1.1 Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms and help with completion to enable an appeal to be made.

Signed:

Designation:

Date:



**BOSTON BOROUGH
COUNCIL**

Enforcement Policy

HOUSING

HOUSING

ENFORCEMENT POLICY

DOCUMENT WILL BE COMPLETED
ONCE LEGISLATION
IS AVAILABLE.



**BOSTON BOROUGH
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Enforcement Policy

HOUSING BENEFITS / FRAUD

HOUSING BENEFITS / FRAUD

ENFORCEMENT POLICY

**THIS IS CONTAINED IN THE ANTI-FRAUD
AND CORRUPTION POLICY APPROVED
BY FULL COUNCIL ON 28 JULY 2003.**