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# Dacorum Borough Council

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## Enforcement Policy of: Environmental & Community Protection

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# 1. Introduction & Scope

- 1.1 This policy seeks to illustrate how Environmental & Community Protection will apply its enforcement powers. This could range from criminal prosecutions at one end of the spectrum to informal warnings or advice at the other. This policy is underpinned by procedures that ensure consistency of approach by officers.
- 1.2 This Enforcement Policy details the principles to be adopted by all services and officers exercising any of the enforcement functions. ~~The~~ Environmental & Community Protection is stating its commitment to services which are courteous, helpful and work with individuals and businesses, wherever possible, to help them comply with the law.
- 1.3 Environmental & Community Protection will avoid imposing unnecessary regulatory burdens through their regulatory activities and where suitable shall assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. However the Council cannot neglect its statutory inspection functions or other duties imposed upon it.
- 1.4 The Council acknowledges the need for firm action against those who flout the law and put consumers and others at risk. The Council expects all officers taking enforcement decisions to take the Policy as a guide when making their decision. Every case must be decided on its own individual facts. Officers must ensure that, if they depart from the Policy when they make their decision, they can provide reasons for doing so.
- 1.5 This document represents the Environmental & Community Protection Corporate Policy, which may in some instances be supplemented, by more specific and detailed guidance given by the specific regulator e.g. Food Standards Agency, Health & Safety Executive.
- 1.6 The purpose of this policy is to outline the Council's approach when securing compliance with the law, and should leave most readers in no doubt as to what they can expect by way of enforcement action from Environmental & Community Protection as part of Dacorum Borough Council. The policy cannot be absolutely prescriptive due to the complexity and variety of activities enforced and also the frequency of changing guidance and legislative requirements.
- 1.7 When designing and reviewing policies, operational procedures and practices, Environmental & Community Protection will consider how we may be able to support individuals, or enable economic growth for compliant businesses and other regulated entities, for example, by considering how we can best:
  - understand and minimise negative economic impacts of our regulatory activities;
  - minimising the costs of compliance for those regulated;
  - improve confidence in compliance for those regulated; and encourage and promote compliance.

## **2. The Principles of Good Regulation**

This document has been prepared with regard to the current principal legislation and statutory guidance including:

### **2.1 Regulators' Code (Better Regulation Delivery Office, 2014)**

2.1.1 Regulators must have regard to the Regulators Code when developing policies and operational procedures. This policy is based on the six principles of good regulation as identified in the code being:

- 1) Regulators should carry out their activities in a way that supports those they regulate to comply and grow
- 2) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
- 3) Regulators should base the regulatory activities based on risk
- 4) Regulators should share information about compliance and risk
- 5) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- 6) Regulators should ensure that their approach to their regulatory activities is transparent.

2.1.2 This Policy is based on the principles of good regulation in accordance with the Regulator's Code, all regulatory interventions with individuals and businesses will be:

#### **i) Proportionate**

Environmental & Community Protection will make sure that we take a proportionate approach to those they regulate, based on relevant factors including:

- i) Nature of the non-compliance
- ii) Willingness of the individual or business to comply with the legislation
- iii) Co-operation of the individual or business with the regulatory to comply
- iv) Previous compliance history of the individual or business across the regulatory spectrum
- v) Seriousness of the non-compliance
- vi) Whether the non-compliance took advantage of the vulnerable
- vii) Whether the non-compliance was motivated by financial gain, for example, business size and capacity.

**ii) Accountable**

Environmental & Community Protection will ensure that the activities it undertakes will be open to public scrutiny with clear and accessible policies and operate a fair and efficient complaints procedure (details in section X).

**iii) Consistent**

Environmental & Community Protection will carry out their duties in a fair and consistent manner. Regard will be given to national and statutory guidelines, as well as any other arrangements in place to promote consistency.

**iv) Transparent**

Environmental & Community Protection are committed in applicable circumstances and as far as practicably possible, to provide open and transparent advice, guidance and information. Information such as fees and charges will be published in advance of agreeing with any person to become liable for them

Steps will also be taken to ensure that those that are regulated are always aware of what is a statutory requirement necessary to comply with the law, what is considered best practice if applicable or what is considered as being optional not compulsory for a business or individual to follow

**v) Targeted to situations which need action.**

Environmental & Community Protection will take an evidence based approach to determining the priority risks in their area of responsibility, and will allocate resources where they would be most effective in addressing those priority risks.

Environmental & Community Protection will consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.

When assessing risk, Environmental & Community Protection will consider where possible the compliance record of those they regulate, including using earned recognition approaches e.g. businesses that are implementing assured advice from their Primary Authority Partnership.

2.1.2 Environmental & Community Protection have had regard to the Regulator's Code in the preparation of this enforcement policy, as well as in any operational procedures.

2.1.3 The Code permits in certain instances, if concluded that a provision of the Code is not relevant or outweighed by another provision, to depart from it. If this occurs, it shall be ensured that any decision to depart from the Code is properly reasoned, based on material evidence and documented

## **2.2 Protection of Human Rights**

- 2.2.1 The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering any enforcement action. There is a clear public interest in enforcing relevant public and environmental protection regulations, in a proportionate way. In deciding whether enforcement action is taken, the council should, where relevant, have regard to the potential impact on the health, welfare of those affected by the proposed action, and those who are affected by the breach of regulations.
- 2.2.2 In particular, due regard will be given to the right to a fair trial and right to respect for private and family life, home and correspondence.

## **2.3 Data Protection Act 2018**

- 2.3.1 In all cases of sharing information, the principles of the Data Protection Act 2018
- 2.3.2 Environmental & Community Protection will where possible collectively follow the principle of “collect once, use many times” when requesting information from those they regulate, avoiding where possible repeated visits or requests for the same information.
- 2.3.3 When the law allows, both internal departments and external regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication. This may include for example data sharing protocols between this authority, neighbouring local authorities, and other regulators and the Police to tackle incidents of crime and disorder.

## **2.4 Regulatory Enforcement and Sanctions Act 2008**

- 2.4.1 The Regulatory Enforcement and Sanctions Act 2008 imposed upon Regulation and Enforcement a duty to:
  - (a) have regard to any guidance given to a Local Authority by OPSS (Office for Product Safety and Standards formerly Better Regulation Delivery Office which became Regulatory Delivery in 2016 and is now OPSS),
  - (b) a duty to comply with guidance where we are directed to do so by OPSS,
  - (c) a duty to have regard to any list of enforcement priorities published by OPSS.
- 2.4.2 The Act also established the ‘Primary Authority’ scheme, and Environmental & Community Protection will comply with the requirements of the Act when considering enforcement action against any business or organisation that has a Primary Authority relationship

## **2.5 The Code of Crown Prosecutors**

- 2.5.1 When deciding whether to prosecute, due regard is given to the Code of Crown Prosecutors as issued by the Director of Public Prosecutions, including the two tests that must be satisfied being

### **The Evidential Test**

We must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply.

### **The Public Interest Test**

The public interest will be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the propensity to prosecute but others may not.

## **2.6 Equalities, vulnerable groups and people in minority groups**

- 2.6.1 The enforcement services covered by this compliance and enforcement policy will align with and meet the equality policies and objectives adopted by the council. We will aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services.

## **2.7 Better Business For All**

- 2.7.1 Dacorum Council has signed up to 'Better Business for All' (BBfa). BBfa is Hertfordshire regulators' response to reducing regulatory burdens on business and aims to support growth, by building stronger relationships between businesses, local regulators and other interested parties. The partnership, which has been endorsed by all of the county's local authority Leaders, was formed in 2013 and includes representatives from both business and regulators.

## **3. Dealing with Non-Compliance**

### **3.1 Principles of Action**

- 3.1.1 In cases where non-compliance is found by Officers, action shall be taken to achieve one or more of the following outcomes:
- Change the behaviour of the offender to achieve future compliance
  - Eliminate any financial gain or benefit from non-compliance
  - Deter repeat non-compliance
  - Remove the harm caused by non-compliance
  - Make safe any non-compliance involving a breach of safety legislation
  - Refer, where applicable, breaches to another enforcement body

### **3.2 Investigations**

- 3.2.1 In conducting any investigation into non-compliance, due regard will be had to associated guidance, codes of practice and legislation, including:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001

- 3.2.2 Formal interviews, under the Police and Criminal Evidence Act 1984, shall be conducted where a person, company or other legal entity is suspected of breaching legal requirements and formal action is considered.

- 3.2.3 Officers reserve the right not to offer this facility if it is not feasible to do so or cannot be facilitated.

- 3.2.4 Officers will also comply with any requirements of the particular legislation under which they are acting, and associated codes of practice and guidance.

### **3.3 Powers and Authorisation of Officers**

- 3.3.1 Officers will be duly authorised to carry out certain activities in line with competence, assessment and or qualification. This includes, but not limited to:

#### **Powers of Entry**

- The council through a wide range of legislation is provided with specific powers of entry, which is a right for a person (usually in the form of delegated authority from the council to named



officers) to legally enter defined premises, such as businesses, vehicles or land for specific purposes.

- Powers of entry include enabling our officers to undertake inspections and investigations for a wide range of regulatory responsibilities including food safety, health and safety and environmental protection legislation, in addition to dealing with emergencies or searching for evidence during those investigations. Officers are allowed to do once they have entered the premises. This might, for instance, include conducting a search, seizing relevant items or collecting samples.

### **Powers of Seizure**

- The council through a wide range of legislation is provided with specific powers of seizure, including goods, documents and items.
- Where any seized items are subject to any form of testing, the results of that testing will be made available to the person who had ownership of the goods

3.3.2 Environmental & Community Protection have processes and procedures in place to ensure that the Officers are competent, capable and suitably qualified.

3.3.3 We will ensure our enforcement officers are equipped with the appropriate level of skills, competencies and experience commensurate with the role and responsibilities and the support necessary to undertake their job effectively and efficiently. Continuing Professional Development (CPD), qualifications, training and development to meet statutory codes of practice, HSE's Section 18 Standard.

3.3.4 Environmental & Community Protection will ensure that officers have the necessary knowledge and skills to support those regulated, including having an understanding of those regulated to enable us to choose proportionate and effective approaches.

3.3.5 Environmental & Community Protection will ensure that their officers understand the statutory principles of good regulation as detailed in the Legislative and Regulatory Reform Act 2006 and of the Regulators Code, and how the regulator delivers its activities in accordance with them.

### **3.4 Obstruction of an Officer**

3.4.1 Under a number of pieces of legislation that Officers enforce and are authorised under, there is an offence of obstructing an officer in the conduct of their duties. This can include failing to give appropriate assistance, providing false information, and stopping an Officer from conducting an inspection.

- 3.4.1 Obstruction is taken very seriously, as it is the prevention of a person from doing their lawful duty to protect public and environmental health. Formal action will be considered, including prosecution, if the person(s) does not take heed to being advised to desist (either verbally or in writing)

## **4. Enforcement Action**

- 4.1 When determining the type of enforcement action to take, consideration will include:
- Seriousness in terms of impact or likely impact on public safety and health and local environment
  - Council policies and priorities
  - Risk to animal health and welfare
  - Deliberate or repeated non-compliance
  - Economic disadvantage to other businesses caused by the non-compliance
  - Public confidence
  - Relevant national criteria
- 4.2 In responding to non-compliance Environmental & Community Protection will clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Environmental & Community Protection will provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that we acting in a way that is proportionate and consistent, but equally achieving compliance to protect wider society.
- 4.3 The above paragraph does not apply where immediate enforcement action is required to prevent or respond to a serious breach, or where providing such an opportunity would defeat the purpose of the proposed enforcement action e.g. obtaining a warrant, prohibition notices, stop notices, seizure of animals in distress.
- 4.4 Where action is taken Environmental & Community Protection we will provide an impartial and clearly explained route to appeal against a regulatory decision. This will be in plain language and include practical information on the process involved
- 4.5 The enforcement options available are dependent on the legislation being enforced and the sanctions available to the Council, some are mandatory. If the Council fails to act when it is under a statutory duty then the Council itself could be acting unlawfully.

The list below demonstrate some of the enforcement options but is not definitive nor exhaustive:

- No action
- Informal action and advice
- Fixed Penalty Notices
- Detention/seizure of food/goods/equipment
- Simple caution
- Prosecution

### **No Action**

In some circumstances, contraventions of the law may not justify any action. Examples 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. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade. Such decisions will take into account the public interest principle and in such cases we will advise the offender and any 'victim' of the reasons for taking no action.

### **Informal action and advice**

For minor breaches we may only give verbal or written advice. We will clearly identify any contraventions and give advice on how to put them right. We will include 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. For example, inspections of food businesses under the food hygiene legislation will include what will be required to meet food safety legal requirements and our officers will determine the necessary actions and time allowed to meet the legal requirements.

Environmental & Community Protection will provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be clearly distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.

Regulators should publish guidance or signpost to external sources of information. Where the Environmental & Community Protection has produced the guidance this should be presented in a clear, accessible, concise format, using media appropriate to the target audience and

written in plain language for the audience, and review the effectiveness of the guidance they produce to ensure that it meets their needs.

Environmental & Community Protection shall seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action. When responding to requests for advice, our primary concern shall be to provide the advice necessary to support compliance, and provide advice that can be relied on.

### **Fixed Penalty Notices**

Certain offences are subject to fixed penalty notices (FPNs). A FPN can be offered as an alternative to going to Court. They are available for some low level offences and avoid a criminal record for the defendant. Where legislation permits an offence to be dealt with by way of an FPN, we may choose to administer an FPN on a first occasion without issuing a warning, for example, for environmental offences under the Environmental Protection Act 1990, the Anti-social Behaviour Act 2003 and a number of other pieces of legislation, as amended and extended by the Clean Neighbourhoods and Environment Act 2005. These include smoke free, litter, graffiti, certain noise nuisance and parking offences.

### **Detention/seizure of food/goods/equipment**

Some legislation enables authorised officers to seize or detain food, goods, equipment or documents, for example unsafe food, sound equipment that is being used to cause a statutory noise nuisance. When we seize goods we will give the person from whom the goods are taken an appropriate Goods Seized Notice.

Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, where appropriate, an ASBO or CRASBO will be sought to stop the activity.

### **Simple Caution**

A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For a simple caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case.
- The offender must admit the offence.
- It must be in the public interest to use a simple caution.
- The offender must be 18 years or over.

Officers will not offer a caution where the offender has received one already for a similar offence within the last 2 years.

A record of the caution will be kept on file for 2 years. If the offender commits a further offence, the caution may influence our decision to take a prosecution

### **Prosecution**

A prosecution will normally ensue where the individual or organisation meets one or more of the following criteria:

- Deliberately, recklessly, negligently or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.
- An attempt to make financial gain at the expense of others.
- Assaulted or obstructed an officer in the course of his/her duties.

4.3 In some instances where enforcement action has been taken, the Council may choose to publicise it, but in making such a decision each case will be looked at and consideration given to:

- Whether the offence is widespread, particularly in an area, and coverage will assist in securing compliance by others
- Drawing attention to particular serious hazards
- Public interest

## **5. Appeals and Complaints**

- 5.1 Enforcement notices will detail the methods of appeal e.g. Employment Tribunal, Magistrates Court, Planning Inspectorate Where appeals are dealt with internally the individual officers involved in the initial decision or action against which the appeal is being made will not be involved in considering the appeal e.g. appeal against a Food Hygiene Rating score, the appeal will be heard by different officer than provided the rating.
- 5.2 An internal complaints procedure is available should an individual or business wish to question an enforcement decision when no other formal or specific appeals avenues are available. This does not apply to prosecutions as the hearing itself will be the arena that the individual or business can present their own case.

- 5.3 We will strive to satisfy those we serve, recognising that enforcement actions will not be welcomed by those who are the subject of those actions. By meeting the requirements set out in this policy we hope that this will ensure satisfactory service delivery. However, where individuals directly affected by our services consider the service standards have not been met, then they can seek redress through the council's complaints procedure.
- 5.3 It should be noted that a complaint against an Officer will not automatically remove the Officer from the case nor invalidate any formal action taken (especially if there is an appeal process in place connected to the formal action). It will be for the line manager of the Officer to decide if they are to continue on the case based on the evidence provided, or whether another Officer will accompany them on future visits for the protection of both parties.
- 5.4 Details about the Councils complaint procedures can be found at <http://www.dacorum.gov.uk/docs/default-source/complaints/dacorum-borough-council-corporate-complaints-policy.pdf?sfvrsn=4>

## **6. Working and Liaison with External Agencies and other Regulatory Bodies**

- 6.1 Where there is a wider regulatory interest, enforcement activities covering Environment and Public Protection will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 6.2 Where an enforcement matter affects a wider geographical area beyond the council's boundary, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.
- 6.3 Where a business operating in more than one local authority and has chosen to have a registered PAP under the Regulatory Reform Act 2006, we will, where required, comply with the agreement provisions for enforcement and notify the relevant Primary Authority of the enforcement action we propose to take. We may under the Act also refer the matter to the relevant enforcement body if appropriate. The council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:
- Government Agencies for example the Health and Safety Executive and Food Standards Agency
  - Police Forces
  - Fire Authorities
  - Other Local Authorities

- 6.4 We will recognise businesses efforts to comply with regulatory requirements and standards and will use our resources effectively to explore alternative compliance and enforcement approaches to secure compliance.
- 6.5 Where there is a legal basis to do so, we will look to recover our costs and make reasonable charges for the time and effort spent on investigating and taking enforcement action.

## **7. Benchmarking**

- 7.1 We work with organisations such as the the Food Standards Agency, the Health and Safety Executive and the Local Government Association to share data on our performance and facilitate benchmarking.

## **8. Freedom of information**

- 8.1 Requests for information may be made under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000. The council publishes guidance on how to make requests.

## **9. Review of Policy**

- 9.1 We will undertake an annual review of this Enforcement Policy and report to the councils Strategic Planning and Enforcement Overview and Scrutiny Committee quarterly on our activities, performance and regulatory outcome.
- 9.2 Environmental & Community Protection will ensure that we have mechanisms in place to engage with those we regulate, citizens and others to offer views and contribute to the development of policies and service standards. Before changing policies, practices or service standards, Environmental & Community Protection will consider the impact and where suitable engage with resident and business representatives. This revision merely brings the current policy up to date but does not alter the enforcement principles.

## 10. Have your say

10.1 Please tell us your views on the policy and include any comments or questions you have for us via email:

[ecp@dacorum.gov.uk](mailto:ecp@dacorum.gov.uk)

OR

use the space below and return to the following address:

FAO, Environmental and Community Protection, The Forum, Marlowes, Hemel Hempstead, Herts, HP1 IDN.

Name:

Address:

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## **Appendix A: Food Hygiene**

For the purposes of Food Safety, this policy is intended to satisfy the criteria as set out in “The Framework Agreement on Official Feed and Food Controls by Local Authorities” produced by the Food Standards Agency.

The enforcement approach to food hygiene matters will have regard to:

1. Food Law Code of practice
2. Food Law Practice Guidance Note

These documents are produced by the Food Standards Agency and are regularly updated. Environmental & Community Protection will ensure that the most current version is consulted as they advise when it is appropriate to serve notices, offer voluntary or formal closure.

## **Appendix B: Health & Safety at Work**

For the purposes of Health & Safety, this policy is intended to satisfy the criteria as set out in the “Health and Safety Executive / Local Authorities Enforcement Liaison Committee (HELA) guidance” in terms of references to a Local Authority’s enforcement policy.

The enforcement approach to health & safety matters will have regard to:

1. The Enforcement Management Model
2. Local Authority Circulars

These documents are produced by the Health & Safety Executive and are regularly updated. Environmental & Community Protection will ensure that the most current version is consulted. The Enforcement Management model guides health & safety regulators on the most appropriate course of action ranging from informal advice through to prosecution.

## **Appendix C: Noise and Nuisance**

**The enforcement approach to noise and nuisance will have regard to:**

1. The Environmental Protection Act 1990
2. Anti-social behaviour, Crime and Policing Act 2014: Anti-social behaviour powers. Statutory guidance for frontline professionals

## **Appendix D: Environmental Permitting/Contaminated land**

## **Environmental Permitting:**

The enforcement approach to environmental permitting matters will have regard to:

1. Environmental Permitting General Guidance Manual on Policy and Procedures for A2 and B Installations (April 2012)
2. Local Air Pollution Prevention and Control. LAPPC Risk Method (July 2013)

## **Contaminated Land:**

The enforcement approach to contaminated land matters will have regard to:

1. Environmental Protection Act 1990: Part 2A – Contaminated Land Statutory Guidance (April 2012)

## **Appendix E: Dogs**

Dangerous Dogs Law – Guidance for Enforcers

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69263/dogs-guide-enforcers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69263/dogs-guide-enforcers.pdf)

Dealing with irresponsible dog ownership: practitioners' manual