



# **BARNSLEY**

**Metropolitan Borough Council**

## **Safer Communities**

# **Environmental Crime Enforcement Policy**

**Version Control:** V1

**Status:** Pending Approval

**Date Edited:**

### ***POLICY REVIEW STATEMENT***

*This Policy will be reviewed every three years, or earlier, in line with Government guidance, best practice and legislative changes. As part of the review, we will consult with stakeholders on the contents and effectiveness of the Policy.*

## INTRODUCTION

- 1 The health, wellbeing and safety of our residents, communities and visitors is of paramount importance. Barnsley Council is committed to working together with communities and its partners to maintain a clean and safe environment for the benefit of everyone who lives, works and visits the borough. Environmental crime will not be tolerated and the council will endeavour to act quickly, fairly and proportionately to minimise the impact on victims, the environment and communities. This will help the Council to achieve and deliver change and transformation in the coming years.
- 2 The functions undertaken by Council's Safer Neighbourhood Service assist the Council in achieving its commitments by contributing toward several of the Council's priority outcomes. It strives to accomplish this by undertaking its duties in a fair and equitable manner by requiring individuals, organisations and businesses to fulfil their legal responsibilities. It will achieve this using a combination of education, advice and regulation of others.
- 3 This Enforcement Policy gives clarity as to how the Service will achieve compliance by setting out the various options and the criteria used to determine the most appropriate response to breaches of legislation.

## STATUS OF THE ENFORCEMENT POLICY

4. This policy has been developed and implemented after consultation with stakeholders and was approved by Cabinet on XXXXXX. It has subsequently been reviewed and amended. The amendments in this issue relate only to changes in legislation, national guidance or changes in local circumstances, they do not relate to changes in the overall objectives and principles of the policy.
5. This Policy takes account of the Principles of Good Enforcement: Policy & Procedures outlined in the national Enforcement Concordat and incorporates all aspects of good enforcement practice. It also incorporates the Regulators' Compliance Code which was issued by the Department for Business Enterprise and Regulatory Reform (2008) which Local Authorities are required to have regard to when taking enforcement action in certain specified areas. This includes action under the Control of Pollution (Amendment) Act 1989, Environmental Protection Act 1990, and the Clean Neighbourhoods and Environment Act 2005. In certain instances we may conclude that a provision in the code is either not appropriate, or is outweighed by another provision. We will ensure that any decision to depart from The Code is properly reasoned and based on sound material evidence.

## STATEMENT OF OBJECTIVES

6. The Safer Neighbourhood Service will strive to ensure the health, safety and well-being of all residents, visitors and persons who work in the Borough. It will endeavour to ensure that legislation is enforced fairly and consistently to protect people from harm, support economic prosperity and ensure that no one member of the community can enjoy an unfair advantage by undertaking illegal activities.
7. Enforcement action, whether that is verbal warnings, written warnings, statutory notices, fixed penalty notices, simple cautions or prosecution, is primarily based upon an assessment of risks to health, safety, environment and well-being of residents, visitors and persons who work in the Borough.

8. The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984; the Criminal Procedures and Investigations Act 1996; the Human Rights Act 1998; the Regulation of Investigatory Powers Act 2000 and its amendments; the Equality Act 2010; the Protection of Freedoms Act 2012 and other relevant legislation and guidance.
9. This policy outlines what the Council mean by environmental crime and the broad approach we will take in order to minimise the detrimental effect of environmental crime on residents, visitors and persons who work in the Borough.
10. This policy does not define detailed procedures of how we will deal with individual incidents of environmental crime.
12. Where there is specific guidance on enforcement action, for example, statutory guidance or other relevant guidance and codes of practice issued by professional organisations and bodies, this will be followed, unless there are specific Council policies, which would achieve at least equivalent standards.
13. The Safer Neighbourhood Service recognises that some individuals may have specific difficulties and have different needs in terms of accessing the service. This will be taken into account so as to ensure that the legislation is enforced fairly. Interpreters will be used where the stakeholder has difficulty in understanding English and help will be provided for people with impaired hearing, vision or any other impairment.
14. Enforcement action taken against an individual, business or other duty holder will be consistent with the Council's commitment to equality and diversity. When making a decision to take enforcement action we aim to ensure that there is no discrimination against an individual regardless of race, gender, disability, age, religious belief or sexual orientation.
15. All Authorised Officers will abide by this policy. Any departure from this policy must be justified and fully considered by senior management before the decision is taken.

## **PURPOSE OF ENFORCEMENT**

16. The purpose of enforcement is to ensure that preventative or remedial action is taken to protect health and the environment by securing compliance with the regulatory system. Whilst the Safer Neighbourhood Service seeks to ensure full voluntary compliance with relevant legislative requirements whenever possible, it will not hesitate to use its enforcement powers if necessary.

## **PUBLICITY**

17. The Council may utilise social media and other publications in order to advertise positive outcomes from Environmental Enforcement. Publicity around this form of enforcement may also take place in order to behavioural change campaigns.

## DEFINITION OF ENVIRONMENTAL CRIME

18. Environmental crime includes all offences either as defined in legislation or developed under the common law that relates to the environment. The environment is defined for the purposes of this policy as the surroundings in which we live. Section 1 of the Environmental Protection Act 1990 defines the environment as 'all, or any, of the following media, namely the air, water, and land'.

The Council has the power to take enforcement action against persons that commit a variety of environmental crimes. The following are considered to be the core offences upon which action will be taken:

- Littering
- Dog fouling
- Abandoned vehicles
- Nuisance vehicles
- Fly-tipping
- Fly-posting
- Graffiti
- Duty of care offences
- Litter and refuse control offences
- Noise

This list is not exhaustive and represents the most common offences. We will always seek to take the appropriate action for these offences using a wide range of enforcement actions as prescribed by legislation.

## PRINCIPLES OF ENFORCEMENT

19. The Safer Neighbourhood Service believes in firm but fair regulation however, keeping actions still flexible enough to allow or even encourage economic progress. Underlying this policy are the principles of: **proportionality** in applying the law and securing compliance; **consistency** of approach; **transparency** about how the Service operates; **accountability** in accordance with the Regulators' Code and what those who are regulated may expect from the Service and **targeting** of enforcement action.

### **Proportionality**

Proportionality means related enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities, to achieve compliance, should be proportionate to any risks to public health, safety, environment, the rights of others and to the seriousness of any breach.

### **Consistency**

Consistency of approach does not mean dealing with similar situations in exactly the same way. It means taking a broadly comparable approach to achieve similar ends. There is a right to expect consistency from an enforcing authority when:

- a) Issuing advice

- b) Responding to requests for service
- c) Using statutory notices
- d) Deciding to prosecute.

### **Transparency**

Transparency is about the Service being open and clear about its enforcement activities and in particular helping duty holders, and individuals understand what is expected of them and what they can expect from the Service. It also means making it clear about what they have to do, but also, where this is relevant, what they do not have to do. That means distinguishing between what is a statutory requirement as opposed to what is advice or guidance about best practice.

### **Accountability**

Accountability means that Authorised Officers should be responsible for their enforcement actions and conduct. They should undertake their duties in a courteous and efficient manner and procedures are in place to allow duty holders, and individuals the opportunity to provide feedback and make complaints about the standard of service.

### **Targeting**

Targeting means making sure that enforcement is targeted primarily on those whose activities give rise to the most serious risk or where the hazards are least well controlled. The Environmental risk will ensure that action is focused on the duty holders who are responsible for the risk and best placed to control it by the effective use of tools and powers.

## **SHARED ENFORCEMENT AND AUTHORISED OFFICERS**

- 20. Legislation to protect public health, employees, animal health and the environment is enforced by several enforcement agencies. Where there are shared enforcement roles e.g. South Yorkshire Police, DEFRA, Environment Agency, Berneslai Homes and others the Authorised Officers will notify the relevant enforcement agency.
- 21. Officer Authorisation to utilise relevant powers is managed by the Local Authority and is based on Service competency and responsibility. This is also the case for external organisation authorisation to other services or companies where appropriate.

## **OUR APPROACH**

- 22. We are committed to dealing with environmental crime in our communities, considering existing and new methods of deterrence, detection, investigation and enforcement alongside partnership working with communities and other key agencies. We recognise different types of environmental crime will require use of different interventions and legislation to achieve the correct resolution. The decisions relating to how environmental crime is dealt with will be in-line with principles of enforcement contained within this Policy.

23. In making decisions on what method of intervention to use we will consider several criteria. The considerations used will include:

- The seriousness of the offence;
- The impact on individuals and the community;
- The history of the activity;
- Confidence in achieving compliance;
- Consequences of non-compliance; and
- Likely effectiveness of the various types of intervention.

24. Authorised Officers will generally take a staged approach to addressing incidents of environmental crime based on the above considerations and this Policy document. The staged approach, in no particular order could be as follows:

- Take no action;
- Take informal action;
- Issue formal/informal warning letters;
- Serve statutory notices;
- Issue formal cautions;
- Issue Fixed Penalty Notices (FPN);
- Prosecute;
- Issuing of Injunction;
- Seizure of equipment;
- Confiscation of assets.

Full details relating to each type of intervention can be found in our environmental operational procedures.

25. Higher level action may be required at times such as the following:

### **Warrants**

Should any Authorised Officer be unreasonably refused access to a property and has strong grounds to believe that an illegal activity is taking place, or it is believed that an activity would temporarily cease and would continue at a later date, an application for a warrant may be necessary.

Although Authorised Officers have powers of entry in most circumstances they may apply for a warrant and request assistance from the Police in appropriate circumstances. All Officers identifying the need for a warrant will discuss the matter, prior to an application being made, with management to ensure it is in-line with this Policy.

### **Seizure/Suspension**

Authorised Officers will use appropriate statutory powers to take possession and detain articles, substances or equipment where the relevant legislation allows and the criteria of which is met. This may include the seizure of articles, substances or equipment whilst investigations take place.

## **RECOVERY OF COSTS**

26. The Council will seek to recover the costs of any environmental crime investigation undertaken by the Council. Any monies recovered will be recycled in-line with current Government guidance.

## **DATA PROTECTION AND INFORMATION SHARING**

27. All data and information recorded as part of the Council's investigations will be processed under the Data Protection legislation. The Council Data Protection Policy and any relevant GDPR Information is available on the Council's website.
28. Confidentiality, Information Security and Computer Usage Policies set out further controls as part of the Council's overall commitment to ensuring compliance with Information Management and Security.
29. Where appropriate, the Council will share information with key partners such as South Yorkshire Police and Berneslai Homes in order to prevent and detect crime and to ensure a co-ordinated approach is taken to addressing Environmental Crime. In these circumstances, information will be shared securely in line with data protection laws, other relevant legislation including the Crime and Disorder Act 1998, the Inter-Agency Information Sharing Protocol and information sharing agreements in place with our key partner agencies.

## **EQUALITY AND DIVERSITY**

30. We are committed to promoting equality and diversity and ensuring that all our customers are treated fairly taking into account their individual needs. We will take all reasonable steps to ensure we do not unlawfully discriminate and will treat everyone with the same level of courtesy, dignity and respect regardless of:
  - Disability;
  - Age;
  - Gender reassignment
  - Pregnancy, maternity, breastfeeding;
  - Marriage and civil partnership;
  - Race
  - Religion and belief
  - Sex
  - Sexual orientation.

## **CUSTOMER FEEDBACK AND COMPLAINTS**

31. We are committed to providing a high quality customer-focused service and welcome feedback about what we are doing well and where we can make improvements. You can contact our Customer Feedback and Improvement Team by

- Visiting our website at [barnsley.gov.uk](https://www.barnsley.gov.uk) and completing the online form;
- Telephone us on 01226 773555;
- Write to us at Customer Services Feedback and Improvement Team, PO Box 679, Barnsley, S70 9GG

We also recognise that sometimes things can go wrong. When they do, we will work with customers to try and resolve the problem and learn from this to improve our services in future. As a first step we encourage customers to contact the responsible person who is dealing with the case or their supervisors so that we can work together to resolve the problem as soon as possible. Where this is not possible you can make a complaint by contacting our Customer Feedback and Improvement Team as detailed above.

## ENVIRONMENTAL CRIME ENFORCEMENT FINE LEVELS

32. It is not the intention of this policy to be prescriptive as to when a fixed penalty notice should be issued; officers must consider each set of circumstances when reaching a decision if the issue of a fixed penalty notice is appropriate. A fixed penalty notice may only be issued where an officer has reason to believe a person has committed a relevant offence and there is sufficient evidence to a criminal standard of proof to support prosecution should the notice be unpaid.
33. Fixed Penalty Notices are issued in order to provide the offender with the ability to discharge their conviction by way of paying the notice.
34. The below table relates to all environmental enforcement offences liable for discharge by means of Fixed Penalty Notice. The SNS does not currently utilise all the below powers, however does have the ability to do so if required.
35. The table below consists of the current fine levels for 2018/19, these levels are set by statutory bodies and legislation however may be subject to change dependant on guidance or legislation changes and will be reviewed on an annual basis in-line with the Council's fees and charges.

Description of Offence	Legislation	Fixed Penalty Notice Levy
Abandoning a vehicle	Part 2 S10 Clean Neighbourhood & Environment Act 2005	£200
Depositing Litter	S87 Environmental Protection Act 1990	£100
Failing to comply with Litter Clearing Notice	S92C(2) Environmental Protection Act 1990	£100
Failing to comply with Street Litter Control Notice	S94(8) Environmental Protection Act 1990	£100
Distribution of Printed Matter	S94B and Schedule 3A Environmental Protection Act	£100
Graffiti (on property)	Part 6 S43 Anti-Social Behaviour Act 2003	£100
Graffiti (Highway Signs)	Part 6 S43 Anti-Social Behaviour Act 2003	£100
Graffiti (on Highways)	Part 6 S43 Anti-Social Behaviour Act 2003	£100
Flyposting (illegal adverts)	Part 6 S43 Anti-Social Behaviour Act 2003	£100
Failing to comply with Household Waste Provisions	S46 Environmental Protection Act 1990	£60
Failing to comply with Commercial or Industrial Waste provisions	S47 Environmental Protection Act 1990	£100
Failing to make/keep or provide documents relating to Controlled Waste	S34 Environmental Protection Act 1990	£300
Failing to produce a Waste Transfer Note	S34 Environmental Protection act 1990 Chapter 43 (Part II)	£300
Parking of vehicles exposed for sale on a road	Part 2 Clean Neighbourhoods & Environment Act 2005	£100
Repairing of vehicles in a road by a business	S4 Clean Neighbourhoods & Environment Act 2005	£100
Failure to remove dog faeces from designated land	S3 Dogs (Fouling of Land) Act 1996	£50
Failure to notify nominated key holder	S73(2) Clean Neighbourhoods & Environment Act 2005	£75



Noise exceeding permitted levels (Domestic Premises)	S4 Noise Act 1996	£100
Noise exceeding permitted levels (Licenced Premises)	S4A Noise Act 1996	£500
Fly Tipping	S33(I) Environmental Protection Act 1990. The unauthorised deposit of waste (Fixed Penalties) Regulations 2016.	£300
<b>Note: All above fine levels could be subject to change dependant on legislation amendments.</b>		

## RELEVANT LEGISLATION COVERED BY THIS POLICY

36. This policy takes into account relevant legislation including: *(List not exhaustive)*

- Anti-social Behaviour Act 2003
- ASB, Crime and Policing Act 2014
- Clean Neighbourhoods and Environment Act 2005
- Children’s Act 2004
- Crime and Disorder Act 1998
- Criminal Justice and Police Act 2001
- Data Protection Act 1998 and 2003
- Dogs (Fouling of Land Act) 1996
- Environmental Protection Act 1990
- Equalities Act 2010
- Freedom of Information Act 2000
- Human Rights Act 1998
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)
- Local Government Act 1972
- Localism Act 2011
- Mental Health Act 1983 (amended 2007)
- Noise Act 1996 as amended by ASB Act 2003 and the Clean Neighbourhoods and Environment Act 2005
- Police and Criminal Evidence Act (PACE)
- Police Reform and Social Responsibility Act 2011
- Refuse Disposal (Amenity) Act 1978
- Regulation of Investigatory Powers Act 2000
- Road Traffic Regulation Act 1984.

