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# Planning and Environmental Health

## Environmental Health and Licensing Team- Enforcement Policy

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# Planning and Environmental Health

## Environmental Health and Licensing Team- Enforcement Policy 2024

### 1. Introduction

Elmbridge Borough Council's Environmental Health and Licensing Service carries out a wide range of duties under various Acts and Regulations, including carrying out programmed inspections, responding to complaints, undertaking investigations and offering advice and guidance. This policy outlines the approach we take when considering what action is appropriate in a particular situation, and will apply to the following functions:

- environmental protection (including noise, land and air pollution, contaminated land and public health issues)
- food safety
- infectious disease
- health and safety at work
- licensing (including alcohol and entertainment, hackney carriage & private hire, gambling, charitable collections, scrap metal, street trading, pavement licensing and animal welfare).

### 2. Our approach to enforcement

Our aim is to protect the public, the environment, businesses, consumers and workers from unacceptable hazards.' And provide advice to assist businesses to comply therefore supporting growth.

To achieve our aim we will pursue the following objectives in our approach to enforcement action:

- we will, wherever possible assist businesses and others trading, living or working in our borough in meeting their legal obligations without unnecessary expense
- focusing on prevention where possible, we will ensure that we enforce the law in a fair, equitable and consistent manner
- we will ensure that regulatory activities are carried out in a way that is transparent, accountable, and proportionate
- targeted at cases where action is needed
- we will take firm action against those who flout the law or act irresponsibly; and/or seek financial gain by deliberately pursuing non-compliance
- we will ensure a consistent application of powers with a view to setting a level playing field for businesses
- we will base our regulatory activities on risk

It is the responsibility of individuals, companies and businesses to comply with the relevant legislation/ codes of practice.

### 3. External Guidance

Our approach to enforcement is based on applicable legislation and influenced by guidance and requirements from National and Government bodies including the Health

and Safety Executive, Department for Environment Food and Rural Affairs, the Food Standards Agency, Department of Transport and the Home Office.

In updating this policy due consideration has been paid to the Legislative and Regulatory Reform Act 2006 and the [Regulators' Code](#) which provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. The Service also follows the Guidance contained in the Code for Crown Prosecutors, produced by The Crown Prosecution Service, and other relevant guidance as it becomes available.

### **Primary Authority Partnership Scheme (PAP)**

The PAP scheme is underpinned by Statutory Guidance which includes obligations for local authorities. The Regulatory and Enforcement Sanctions Act 2008 aims to secure regulatory compliance standards across a wide range of regulatory activities in a consistent and proportionate manner.

The scheme is a partnership between businesses who trade across more than one local authority boundary and a specified local authority regulator. This may include creating an inspection plan that directs enforcement authorities to target specific inspection requirements or planned interventions. As an Enforcement Authority we will have regard to any agreed inspection plans and guidance related to the PAPs scheme, including relating to any proposed enforcement action.

## **4. Scheme of delegation – Authorisation of Officers**

The Council's Constitution [elmbridge.gov.uk/councillors-and-decision-making/constitution-and-governance/our-constitution](http://elmbridge.gov.uk/councillors-and-decision-making/constitution-and-governance/our-constitution) sets out arrangements for delegation of functions including responsibility for enforcement activity.

Part 2 – Responsibility for functions (section G) details the Officers scheme of delegation.

The level of enforcement that Officers are authorised to undertake is dependent on a period of assessment, qualification training and or experience to fulfil the role. Officers will show their written authorisation when visiting premises or carrying out inspections.

## **5. Levels of enforcement action – a stepped approach**

The choice of enforcement action will be based upon the seriousness of any breach of the law using a staged approach to enforcement. We follow a stepped approach aiming to Engage, Explain, Encourage and Enforce in that order.

A combination of enforcement measures may be appropriate in some cases, whilst in other circumstances formal measures may be taken immediately without waning due to the risk or seriousness of the incident.

### **5.1 Powers of Entry**

Entry may be sought for a number of purposes including:

- inspection

- sampling
- collection of evidence
- checking for compliance
- seizure or detaining of articles or equipment
- investigation
- securing a safe site
- interviewing witnesses
- carrying out works in default

The powers of entry prescribed under legislation vary, with some allowing an authorised officer to request entry to a business address without notice. Alternatively, officers seeking access to a residential property may be required to give notice to an occupier or owner. These powers will normally only be used where informal requests for access to premises have not resulted in access being provided. Failure to provide access as requested may result in an offence of obstruction being committed.

Formal requests for access under powers of entry requiring notice may be made in certain cases. Obstruction of a duly authorised officer, other employee or contractor employed by the Council to carry out their duties may be considered for prosecution.

Where entry has been refused, depending on the legislation, the Council may make an application to a Justice of the Peace to issue a warrant that may authorise entry by the use of force. Such a request may be made where the Council believe an offence may be occurring and there has been a history of failure to provide access or where the alleged offence involves a flagrant breach of the law and access is urgently required.

## 5.2 Prevention

Preventing contravention of the law by raising awareness and promoting good practice is a key aim. The methods that we will pursue to achieve this aim may include advice, issuing of press releases, tweets, alerts, the production of webpages and other forms of written guidance including social media, and the opportunities presented by day-to-day contact with businesses and other customers.

## 5.3 No action

In some cases, minor contraventions of the law may not warrant any action. This may be where the cost of compliance to the offender outweighs the impact of the offence, or the cost of the enforcement action is greater than the impact caused. A decision to take no action will be made by the case officer only in the event of a minor breach and where there is no impact on public safety or environmental damage.

## 5.4 Informal action (including mediation)

We will use our best efforts to resolve any situations where the law may have been broken without resorting to formal notices, or referring the matter to the courts, subject to the requirements to investigate statutory nuisances.

The informal approach will be our first option when circumstances indicate that a minor offence is committed, and we are confident that appropriate corrective action will be taken. We may provide reports, letters or emails following initial action, such as after an inspection or investigation into a complaint about noise from a neighbour.

We will point out areas where the law has been broken and explain why any recommended remedial work is necessary and over what time scale it should be completed. We will always ensure that it is made clear in a report or letter which matters are required by law and what are recommendations of good practice. We will also allow for alternative solutions to be implemented if it achieves the same outcome.

Where appropriate we may also encourage the use of Mediation services that support coaching to help with neighbour disputes [mediationsurrey.org](https://www.mediationsurrey.org)

## 5.5 Voluntary procedures including closures.

Where legislation provides we may accept a signed voluntary undertaking such as voluntary closures to ensure that breaches will be rectified immediately and/or recurrences prevented. The person signing the undertaking, must have the authority of the proprietor/employer to agree to such voluntary action and will be made aware that, by undertaking a voluntary closure they relinquish rights to compensation. The decision to accept voluntary action in part will be based on our confidence that the business or individual will comply. Failure to comply with a voluntary undertaking will be taken seriously and subsequent enforcement action may occur.

## 5.6 Warning letters

These state that in our opinion, there has been a more serious breach of the law and warns that more formal action will follow if the contravention continues or is repeated. A record will be retained and may be referred to if further legal action is required. Warning letters will normally only be issued following consideration and confirmation by a Principal Officer to ensure that our action is fair and consistent. Who to complain to and what steps can be taken if the person disagrees with the warning letter will be detailed in any warning letter sent. There may be circumstances where formal warning letters are not issued prior to commencement of enforcement action.

## 5.7 Legal notices

Many of the various pieces of legislation that we enforce provide for the service of formal notices on individuals, businesses and other organisations requiring them to meet specific legal requirements. Such notices may include, (but is not limited to), Improvement, Prohibition, Emergency Prohibition, Statutory Nuisance, Suspension and Revocation. Save for a notice of revocation, a notice will explain what is wrong, and where appropriate what is required to remedy the situation and timeframe to comply. It will also set out what the likely consequences are if the notice is not complied with. The method of appealing against the notice and the time scale for doing so will be provided in writing at the same time. Notices will only be signed by an authorised Officer.

In most situations before formal action is taken, we will provide an opportunity to discuss matters and hopefully resolve points of difference. However, this may not be possible where immediate action has to be taken, for example in the interests of health and safety, following investigation of statutory nuisances, or to prevent an imminent risk to health, or to protect the environment or where specific legal requirements dictate notices will be served, for example following investigation of statutory nuisances.

## 5.8 Revisits / Reinspections

Where we identify breaches of legislation or licence conditions during inspections or investigations, follow up visits (revisits) may be undertaken, to ensure that appropriate and timely remedial action is carried out. Revisits will normally take place in accordance with the timescale for any remedial work discussed at the time of the initial visit.

## 5.9 Licences, permits, consents or authorisations

Depending on the relevant legislation licences, permits, consent or authorisations may be refused, reviewed, varied, suspended, or revoked if any condition(s) are not complied with, or if any offence(s) are committed or to remedy an unsatisfactory situation. Where necessary additional condition(s) may be added. Such action is not taken lightly, and discussion and communication would generally occur prior to any such action happening, unless the concern was so significant it needed to be actioned immediately.

Authorisations will only be granted where relevant standards are met and compliance with policy is achieved and are in compliance with policy where appropriate.

## 5.10 Seizure and detention

Powers exist under certain legislation for authorised officers to seize or detain items (including goods, equipment, and records, etc.) such as when directed by an external body such as the FSA, UKHSA or HSE, or where a blatant breach of statute has or is about to occur, or where we need to secure compliance with a Notice.

We will where feasible, notify interested parties of any intention to seize and/or detain, the legal basis for such action, the steps involved and their rights to appeal or seek compensation where appropriate.

## 5.11 Works in default (WID)

Powers exist under certain legislation for the Council to undertake works in default to resolve a situation and often involve a charge being put on a property to enable the Council to recoup the costs of WID. Generally WID will only be commenced once the enforcement measures listed above has been exhausted and the parties responsibilities (where known) have failed to obtain compliance.

Where we have to carry out WID, for example where works required in a notice have not been carried out, we will seek to recover the costs of those works and associated costs of administering the necessary works from those responsible

## 5.12 Simple caution

The use of a simple caution will be considered as an alternative to prosecution. Before issuing a caution, the following conditions must be satisfied:

- there must be evidence of guilt sufficient to give a realistic prospect of conviction if the case were to be taken to prosecution;
- the offence is not one where a prosecution is required in the public interest.



- the offender must understand the significance of the simple caution and consent to it; and
- the offender must admit the alleged offence by signing a simple caution form

The Environmental Health and Licensing Manager with Council's Legal Services will determine if the threshold has been met to issue a caution. A caution is a serious matter, which can influence any future decision should the company or individual offend again. It can be referred to in subsequent court proceedings, and if the case is proved, the previous simple caution may be considered by the court, as if it were a previous conviction, if the caution was issued less than three years ago. Where the offer of a simple caution is refused, the case will be reviewed again, and a prosecution may be pursued. In considering and issuing simple cautions we will have regard to the Ministry of Justice Guidance – [Simple Cautions for Adult Offenders](#).

### 5.13 Fixed Penalty or Penalty Charge Notices

Where legislation allows, and there is suitable evidence to support a prosecution, an offender may be offered a fixed penalty or penalty charge notice which gives an offender the opportunity to discharge any liability to prosecution for the offence on payment of a monetary penalty. Where legislation allows the fixed penalty charge is reduced for earlier payment or there is a process of appealing the amount. Details of how this can be done will always be included with the issue of the fixed penalty or penalty charge. If no appeal is made and the penalty is not paid, the matter will be referred to court. In determining the amount of a civil penalty relevant policies will be considered which implement a sliding scale, depending on the severity of the offence, the likelihood of harm and any previous non-compliance.

### 5.14 Prosecution

A prosecution is normally a last resort after alternatives have failed to remedy problems. This may happen where it is necessary to protect consumers, employees or the environment, in order to try and prevent a recurrence, and act as a warning to others. We would only prosecute without prior warning in very severe circumstances, or where the action was deliberate and or sought to achieve financial advantage.

Any decision to prosecute will take into account the Government's Code for Crown Prosecutors. Under this code there are two tests that need to be satisfied before a decision to prosecute can be agreed. The first stage is the **evidential test**, where we must be satisfied that there is enough evidence to provide a "realistic prospect of conviction". If the case does not meet the evidential test, it cannot go ahead, no matter how serious it may be. If the evidential test is passed the case must then pass the second stage, **the public interest test**. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest.

We may take a prosecution against those who are considered responsible for the offence. Where a Company is involved, we may prosecute the company where the offence resulted from its activities. We may however consider any part played in the offence by officers of the company, such as directors or managers. Action could also be taken against other employees where the offence was committed with their consent, was due to their neglect, or they 'turned a blind eye' to the circumstances of the offence.



We will apply the principles of 'Criminal Procedures & Investigations Act 1996' as well as Home Office Guidance, when making decisions on the course of action to be taken in any particular case.

Each case is considered individually, and the balance for or against prosecution is reviewed in light of the circumstances of the case, in consultation with Legal Services. The following factors will be considered when deciding whether to prosecute:

- the seriousness and effect of the offence;
- whether the offence, or the circumstances leading to it were foreseeable;
- the intent of the offender;
- the history of offending;
- the attitude of the offender; and
- the deterrent effect of a prosecution, on the offender and others.

There are times where the circumstances of the case mean that the balance tends to be in favour of a prosecution. These would include:

- offences which have, or may have, significant consequences for the environment or the health or safety of the public or employees;
- carrying out operations without, or in serious breach of, a relevant licence, permit or authorisation;
- excessive or repeated breaches of legal requirements;
- failure to supply information without reasonable excuse, or knowingly supplying false or misleading information;
- obstruction of the Council officers in carrying out their powers; or
- impersonating the Council officers.

Where a prosecution is pursued, and the defendant is found guilty, our policy is to seek to recover the costs incurred by the Council in undertaking the prosecution.

### 5.15 Court Orders / Injunctions

A direction from the court (such as an order or an injunction) may be sought to resolve a breach of a notice and/or prevent a situation from recurring. The Court may also direct that certain activities are ceased or remedied. Failure to comply with a court order is a serious offence that may lead to imprisonment as it constitutes contempt of court.

### 5.16 Publicity

Depending on the circumstances of the case, and if considered to be in the public interest, we may publish the names of all the companies and individuals who have been convicted of relevant offences.. The Council may also provide factual information on any convictions and on improvement and prohibition notices, which they have issued to the media. The purpose of publicising this is to act as a deterrent to criminal behaviour and encourage compliance with the legislation.

### 5.17 Proceeds of Crime

In some cases, money or assets earned because of, or in connection with, an offence may potentially be recovered under the Proceeds of Crime Act 2002, as updated by the Serious Crimes Act 2015. Where appropriate action to confiscate the proceeds of those who benefit from criminal conduct may follow.

### 5.18 Restorative Justice

Where this appropriate and available, the Council may consider the use of Restorative Justice. This may involve using a specialist restorative justice provider to deliver both group and one-to-one interventions to modify and change attitudes.

### 5.19 Appeals

Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.

### 5.20 Pandemic / emergencies.

During periods of emergency such as the Coronavirus (COVID 19) Pandemic, or other emergencies, the authority may not always follow the enforcement policy listed above where it is guided by Government, Public Health England, The Health and Safety Executive or other relevant agency to follow alternative procedures or practices.

Changing legislation, regulations, advice and guidance relating to the pandemic and other emergencies would mean it is not possible to list what the different approach would be, however we would always follow the official advice and guidance provided in relation to relevant enforcement.

### 5.21 Information sharing

Sometimes we have a legal duty to provide personal information to other organisations, service providers or partners. Details regarding this and how it may affect you is contained within [Elmbridge Borough Councils Privacy Notice](#).

In certain circumstances legislation specifically provides for information to be shared amongst nominated parties such as other enforcement authorities or government departments.

### 5.22 Company Directors disqualification

In certain cases, it may be appropriate to pursue disqualification of a company director under the Company Directors Disqualification Act 1986.

### 5.23 Multi-agency enforcement activities

On occasions we may work with other authorities and agencies to undertake joint action and enforcement where appropriate, including the likes of the police, fire service, building control FSA, HSE UKHSA and emergency planning.

We will provide all reasonable assistance to support our partners where possible which may include providing witness statements and sharing evidence subject to compliance with legal and data controls.

## 6. Our commitment to you

Officers and staff will always be aware and aim to deliver on the following;

- we will always endeavour to be courteous and helpful
- officers will introduce themselves and show identification on arrival or when requested
- we will enter into discussion and offer advice to try and ensure that people do not unnecessarily expose themselves to the possibility of formal action through a lack of understanding, or information
- we will ensure that when discussing any action, officers make clear what is recommended as good practice, and what is actually required by the law
- before taking enforcement action the case will be discussed with a senior officer to ensure that the proposed action is appropriate and fair
- where formal action is taken, officers will provide an opportunity to discuss the case and, if possible resolve points of difference, unless immediate action is required, for example in the interests of health and safety or environmental protection, or to prevent evidence being destroyed
- where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing, in most cases within 5 working days and in all cases, within 10 working days
- where there are rights of appeal against formal action, advice on the appeal process will be clearly set out in writing at the time. There are also opportunities for review of the case by a more senior officer, where there is disagreement with any enforcement action taken
- we will be consistent in our approach following the criteria and guidance set down in relevant legislation, codes of practice, written procedures or instructions
- where appropriate, we will liaise with peers in related enforcement bodies to ensure that we are making consistent decisions with others. We may have similar enforcement powers as other bodies and therefore will co-ordinate our approach to seek to avoid duplication and ensure the most appropriate action is taken
- we will be objective to ensure that our decisions are not influenced by gender, ethnic origin, religious or political beliefs, sexual preferences or any other status
- we will where necessary, provide help or guidance where a disability or other special need makes it difficult for a duty holder to understand or comply with our requirements
- where English is not the first language and understanding is a barrier we will endeavour to seek support so those we are communicating with are not disadvantaged. The Council does not provide automatic translation of publications from English into other languages. Translation or interpreting services will be provided where needed to ensure access to essential services or participation in local democracy. However it should be noted, 2020 statutory taxi guidance expects licence holders to have adequate English. Each request for translation will be assessed on case by case basis.
- in implementing this policy, we will consider the requirements of the Human Rights Act 1998

## 7. Our expectation of customers and contacts

Elmbridge Borough Council is committed to ensuring that all employees work in a healthy and safe environment free from discrimination, intimidation and harassment.

Harassment and bullying are totally unacceptable, and the Council is committed to preventing and eradicating it in all of its forms. We expect the customers and contacts we deal with, treat all our employees with respect and dignity. Harassment, bullying

and inappropriate behaviour must not occur and any occurrence will be treated seriously and appropriate action taken to prevent its recurrence.

## 8. The process for making a complaint to Elmbridge Borough Council

We care about the people of our borough and will listen to your suggestions for improving services. We will endeavour to keep you informed about the progress and outcome of your complaint. We will put the problem right if we believe your complaint is well founded, and we will make sure that we take action to prevent the problem recurring.

Details of how to make a complaint;

[elmbridge.gov.uk/your-council/step-by-step/complaints](http://elmbridge.gov.uk/your-council/step-by-step/complaints)

## 9. Enforcement policy review

This Policy will be reviewed periodically and at least every 5 years by the Environmental Health and Licensing team, to identify where updates or improvements can be implemented.

## 10. Further information or feedback

If you have any comments or feedback on this Enforcement Policy or would like further information, then please contact [envhealth@elmbridge.gov.uk](mailto:envhealth@elmbridge.gov.uk)