

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

CABINET – 23 SEPTEMBER 2014

Title of report	GENERAL ENFORCEMENT POLICY
Key Decision	a) Financial No b) Community Yes
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Purpose of report	To consider and approve the content of the general enforcement policy
Reason for Decision	The council has a statutory duty to enforce a wide range of legislation, with regulatory functions being delivered by a number of service areas across the council. The adoption of an enforcement policy is essential to ensure consistency in enforcement is achieved.
Council Priorities	Homes and Communities Business and Jobs Green Footprints Challenge Value for Money
Implications: Financial/Staff Link to relevant CAT Risk Management	 The approved budget provides for adequate levels of finance and staffing to ensure adequate arrangements are in place to enforce all relevant laws Business CAT There are inherent risks associated with taking enforcement actions. The adoption of this policy will reduce those risks. Legal advice has been sought in the development of the policy. The current general enforcement policy and environment directorate enforcement policy have not been challenged.

Equalities Impact Assessment	N/A
Human Rights	See paragraph 2.3.3 of report
Transformational Government	This relates to the new ways in which council's are being asked to deliver their services.
Comments of Head of Paid Service	Report is satisfactory
Comments of Section 151 Officer	Report is satisfactory
Comments of Monitoring Officer	Report is satisfactory
Consultees	Public, Ashby Tourist Information Centre, Ashby ladies business group, Ashby Town Centre Partnership, LLEP Better Business For All, NWL Chamber of Trade and Commerce, Coalville Town Team, Creative Leicestershire, Federation of Small Businesses, Job Centre Plus, Lets Go Local, Lion Court, Millhouse Business Centre, My area DE74, NLB club- Thringstone, NWL- Green Footprints, South Derbyshire District Council, Springboard Centre.
Background papers	Regulators' Code Code for Crown Prosecutors Internal Consultee comments - Building Control and Community Safety
Recommendations	<ol style="list-style-type: none"> 1. THAT THE CONTENT OF THE GENERAL ENFORCEMENT POLICY IS APPROVED AND ADOPTED BY THE AUTHORITY 2. THAT THE HEAD OF SERVICE IN CONSULTATION WITH THE PORTFOLIO HOLDER BE DELEGATED TO APPROVE SERVICE SPECIFIC ENFORCEMENT POLICIES, IN LINE WITH THE COUNCIL'S GENERAL POLICY 3. THAT THE RELEVANT DIRECTOR BE AUTHORISED TO MAKE MINOR CHANGES TO THE GENERAL ENFORCEMENT POLICY 4. THAT THE ENVIRONMENT DIRECTORATE ENFORCEMENT POLICY ADOPTED IN 2006 IS REVOKED

1.0 BACKGROUND

- 1.1 The council has a statutory duty to enforce a wide range of legislation, with regulatory functions being delivered by a number of service areas across the council. The adoption of an enforcement policy is essential to ensure consistency in enforcement is achieved.
- 1.2 In 1998 the Council signed up to the principles of the enforcement Concordat published by the Cabinet Office. The council published its commitment through a General Enforcement Policy, approved by Executive Board in 2006.
- 1.3 In 2006 a significant proportion of the council's enforcement activity was carried out by the Environment Directorate. A specific Environment Directorate Enforcement Policy was developed and adopted by Executive Board in May 2006.
- 1.4 Currently there are three types of enforcement policies in place:
 - Council General Enforcement Policy – covers all service areas
 - Environment Directorate Enforcement Policy – covers environmental health, car parking, enviro-crime, building control, planning.
 - Service specific Enforcement Policies – some service areas have a specific policy.
- 1.5 The Regulatory Enforcement and Sanctions Act 2008 and the introduction of the Regulators' Code in April 2014 has resulted in a need to review the content of the existing enforcement policies.
- 1.6 It is proposed to simplify the enforcement framework by revoking the environment directorate enforcement policy. The councils General Enforcement Policy has been reviewed and amended. A draft policy referred to as the councils 'General Enforcement Policy is at Appendix 1. If approved, this policy will replace the current General Enforcement Policy adopted by Cabinet in May 2006.
- 1.7 The general enforcement policy is a generic policy covering a range of regulatory functions. It does not deal with service specific enforcement options. These are contained within service specific enforcement policies and operational procedures. These specific policies are likely to need frequent amendments as legislation changes and therefore it is appropriate that their approval be delegated to the relevant Head of Service, in consultation with the Portfolio holder, to remove the need to keep referring back to Cabinet.
- 1.8 The general enforcement policy applies to all law enforcement duties which the council undertakes, except those undertaken by the Revenues and Benefits service. Revenues related enforcement action is detailed within a service specific Recovery Policy.
- 1.9 The following diagram explains the simplified framework:
 - Council General Enforcement Policy (all enforcement action except revenues)
 - Service specific Enforcement Policies (not all services require a specific policy)

2.0 THE POLICY

2.1 A decision about enforcement action, and in particular the decision to prosecute, has serious implications for all involved. The aim of this policy is to ensure that:

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

2.2 The policy sets out what those being regulated can expect from the council when enforcement activities are undertaken.

2.3 Regard has been had to the following legislation, guidance and codes when devising the draft policy:

- Principles of Good Regulation
- Regulators' Code
- Human Rights Act 1998
- Data Protection Act 1998
- The Code for Crown Prosecutors
- Regulatory Enforcement and Sanctions Act 2008

2.3.1 Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006 requires the council to have regard to the principles of good regulation when exercising regulatory functions within our environmental health and licensing services. The council will exercise its regulatory activities in a way which is proportionate, accountable, consistent, transparent and targeted. This is explained further at paragraph 6 of the draft enforcement policy.

2.3.2 Regulator's Code

On 6 April 2014 the Regulators' code was introduced. As required to do so; regard has been had to the Regulators' Code in the preparation of this policy. The code is based around six core objectives which are explained at paragraph 6 of the draft policy. In certain circumstances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented by the service undertaking the enforcement activity or action.

The Environmental Health Team Leader (Business Champion) has delivered two seminars for relevant Team Managers and Team Leaders to ensure that key staff in each service area are fully aware of the requirements of the Code. Each Team Manager and Team Leader are responsible for ensuring that enforcement activities and operational procedures are compliant with the Code.

2.3.3 Human Rights Act 1998

The council apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

2.3.4 Data Protection Act 1998

Where there is a need for the council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

2.3.5 The Code for Crown Prosecutors

When deciding whether to prosecute the council has regard to the provision of the Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'evidential test' and the public interest test. The Code is explained further at paragraph 10 of the draft enforcement policy.

2.3.6 Regulatory Enforcement and Sanctions Act 2008

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. The council will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority.

3.0 CONSULTATION

3.1 An internal and external consultation process commenced on 14 April 2014 and ended on 30 June 2014.

3.2 All relevant Team Managers were consulted.

3.2.1 Comments were received from internal consultees relating to the Community Safety and Building Control regulatory functions. Regard has been had to all comments received in the preparation of this policy.

3.3 An open public consultation was carried out using the council's website.

3.3.1 No comments were received from members of the public.

3.4 In addition a targeted consultation was carried out with the following members of the NWL Business consultation group (Business Champions): Ashby TIC, Ashby ladies business group, Ashby Town Centre Partnership, LLEP Better Business For All, NWL Chamber of Trade and Commerce, Coalville Town Team, Creative Leicestershire, Federation of Small Businesses, Job Centre Plus, Lets Go Local, Lion Court, Millhouse Business Centre, My area DE74, NLB club- Thringstone, NWL- Green Footprints, South Derbyshire District Council, Springboard Centre.

3.4.1 No comments were received as a result of the targeted consultation.