

Appendix 1

TEWKESBURY BOROUGH COUNCIL ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

1. Background

A clear Enforcement Policy which is monitored, regularly reviewed and updated is required to ensure that all those who work and live in Tewkesbury Borough have a clear understanding of the Environmental Health Services enforcement standards.

2. Introduction

Tewkesbury Borough Council's Environmental Health Services delivers a range of services including:

- food safety,
- health & safety at work,
- water supplies,
- infectious disease control,
- animal welfare;
- statutory nuisance;
- industrial installation pollution
- contaminated land
- air quality,
- housing conditions in the private sector
- statutory nuisances
- licensing of taxis, premises and personal licences, gambling and lotteries and other licensing administration.
- Anti social behaviour and safeguarding

2.1 Enforcement includes council officers giving advice, carrying out compliance visits and inspections, responding to complaints and service requests, assisting consumers

and businesses to comply with statutory duties & licensing requirements and taking formal enforcement action where warranted against those who breach the law.

2.2 The primary aim is to protect the health and safety of the public.

2.3 The enforcement policy outlines how the Environmental Health Service carries out its enforcement role when delivering the various services outlined above and sets out what businesses and others can expect from Enforcement Officers.

2.4 The policy will be reviewed and updated regularly to take into account new legislative requirements, guidance from central government, respective national bodies and best practice.

3. Objectives of the Enforcement Policy

3.1 To ensure protection of the public from unsafe food, residential and non-residential premises, work practices, products, unscrupulous and illegal traders, noise and atmospheric or land pollution.

3.2 To stop, control and prevent any untoward practices prejudicial to the health of the public, thereby promoting the health of, and safeguarding the public and protecting the welfare of animals in animal licenced establishments.

3.3 To achieve compliance through informal action and through an enabling and supportive relationship with businesses and the public. Formal enforcement procedures, including prosecution, will only be used where in the opinion of the Council or its officers there is a serious or imminent risk of injury to health or personal injury, or a blatant disregard for the law, deliberate intent or negligence, or a history of non-compliance with informal action.

3.4 To ensure a consistent approach with regard to openness, helpfulness and proportionality to the risk posed.

3.5 To promote and maintain a consultative and participatory relationship with businesses, consumers and service users.

3.6 To have a better informed community and thus reduce the need to rely on regulatory intervention for compliance with legislation.

3.7 Environmental Health is committed to implement policies and procedures that subscribe to principles of good enforcement. In forming this policy due consideration has been paid to the Department for Business Innovation & Skills Better Regulation Delivery Office, Regulators' Code which came into effect April 2014 (This code replaced the previously voluntary adopted Enforcement Concordat and Department for Business Enterprise & Regulatory Reform (BERR) Statutory Code of Practice for Regulators published 17 December 2007).

4. The Key Aspects of the Policy

4.1 All enforcement actions and investigations work whether formal or informal will be undertaken in accordance with and are based on applicable legislation and guidance including:

- Relevant Acts of Parliament
- Regulations and Codes of Practice made under the key relevant acts for each enforcement area
- Central & National Guidance from the Food Standards Agency (FSA) and Local Government Regulation (LGR), The Health & Safety Executive, The Local Authority Unit (LAU), The Department of Environment, Food & Rural Affairs (DEFRA), The Environment Agency (EA), The Chartered Institute of Environmental Health (CIEH) and The Better Regulation Delivery Office (BRDO)
- Benchmarking exercises, Best Practice arising from liaison groups and Best Value Reviews. The Regulator's Code. Guidance to help local councils adapt to new rules after EU Exit.

5. Prevention and Promotion

The Council recognises that most businesses, licensees and individuals want to comply with the law and actively seeks to promote awareness about the standards it applies through: -

- routine inspections of premises and practices
- investigatory visits in response to complaints
- persuasion, advice, information and training
- where applicable providing translation where English is not the principal language of communication
- taking firm action against blatant breaches of the law

6. Enforcement Actions

In the event of non-compliance with statutory requirements, a range of enforcement actions are available, these include: -

6.1 Informal Action

Enforcement procedures such as verbal & written advice, providing information leaflets and warning letters.

6.2 Formal Action

6.2.1 Statutory notices, requiring compliance immediately or within a specified time, and prosecutions will normally be confined to serious breaches of the law. For breaches posing a nuisance or considerable risk to the health of the public or specific individuals the Council will serve either an improvement or abatement notice requiring compliance immediately or within a specified time. Where there is imminent risk of serious personal injury, prohibition powers in form of prohibition notices/orders will be used to stop the activity or close down the premises. These powers may involve seizure and detention of the offending equipment where necessary. In addition the proprietor, landlord, business operator or individual responsible can be prosecuted in the Magistrates Court for non-compliance with a notice or other such offence.

6.2.2 Simple Caution where an offence is admitted: -

This procedure is an alternative to taking action in the Courts. Should a further offence be committed, it may be cited in any subsequent Court proceedings. A Simple Caution is a serious matter and it is recorded by the Council and where applicable on the Police National Computer. Cautioning is recognised as an increasingly important way of keeping offenders out of Court and in many circumstances reducing the risk that they will re-offend. In considering and issuing simple cautions we will have regard to the Ministry of Justice Guidance April 2013 – Simple Cautions for Adult Offenders. The caution will be administered by a Senior Officer who has been designated a ‘Cautioning Officer’ (e.g. the Head of Community Services).

6.3 Fixed Penalty Notices / Penalty Charge Notices

Where provided for in legislation (Antisocial Behaviour, Crime and Policing Act 2014) in circumstances where it is appropriate to do so the Council may deal with some offences by way of fixed penalty notices. The Fixed Penalty Scheme is appended to this Policy.

6.4 Prosecutions

The decision to prosecute does not preclude the issue of legal notices as well. Prosecutions have a preventative role in drawing attention to the need for compliance and the maintenance of good standards.

We will apply the principles of “Criminal Procedures & Investigations Act 1996” and “Crown Prosecutors” statutory Code of Practice as well as Home Office Guidance, when making decisions on the course of action to be taken in any particular case.

6.4.1 As an alternative to prosecution, the Housing and Planning Act 2016 introduced Civil Penalties for certain Housing Act 2004 and related regulations. The Civil Penalty Policy is appended to this policy.

6.4.2 In deciding whether to prosecute or issue a Civil Penalty, or not, we will ensure action is in the public interest and an evidential test; and consider the following matters:

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6.4.1.1 The gravity of the offence/s, for example whether: -

- there has been blatant disregard for the law, deliberate intent or negligence
- there are persistent poor standards and malpractice
- there has been an injury or a case of ill health as a result of a substantial legal contravention
- a particular contravention has caused serious public alarm
- those affected are particularly vulnerable

6.4.1.2 The general record and approach of the offender, for example: -

- repeated breaches of legal requirements or license conditions or various breaches of a multiple concern and, where it appears that an individual or a company is neither willing nor able to deal adequately with these
- failure to comply with statutory notices where matters of significant concern are persistent rather than transitory
- previous convictions or cautions which are relevant to the offence

6.5 Referral of a matter to the Council's Licensing or Regulatory Committee.

Where such a matter warrants referral to one of the above Committees a panel of Councillors will hear the case and take a decisions based on this policy (and in the case of licensing the Council's Licensing Policy) and issue such sanctions as are available to them including no action, warnings, suspension or revocation of a licence.

7. Our Standards

7.1 **Consistency: We will:** -

- carry out our duties in an efficient, fair, courteous and consistent manner

- have in place in-house procedures and arrangements which are reviewed and updated regularly to promote and monitor consistency in the way we deliver the service
- have in place effective arrangements for liaison with other Local Authorities and enforcement bodies such as LGR, Food Standards Agency, Health & Safety Executive, Fire Authority, Police Authority, Environment Agency, etc., particularly where there is a shared enforcement role.
- draw up yearly activities, priorities and targets, setting out the level of service and performance the public and businesses can expect to receive through our Annual Service Plans
- publish our performance against the plans annually

7.2 Openness: We will: -

- provide information and advice in plain language on the rules we apply
- be open about how we set about our work, including the charges that we set
- discuss general issues and specific compliance failings or problems with anyone experiencing difficulties
- provide an opportunity to discuss the circumstances of a case and, if possible, resolve points of difference before enforcement action is taken (unless immediate action is required)
- give an explanation of why immediate action is required
- give advice on the rights of appeal against formal action

7.3 Helpfulness: We will: -

- actively work with individuals, businesses, especially small and medium sized businesses, to advise on and assist with compliance
- provide a courteous and efficient service and our staff will identify themselves by name
- provide a contact point and telephone number for further dealings with us and we will encourage individuals and businesses to seek advice/information from us
- deal with applications for licences, registrations and consents in accordance with service standards
- ensure that wherever practicable our enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays
- have provision to visit a business out of normal office hours at times when the business is available, where it is not otherwise feasible to visit during normal office hours.

7.4 Proportionality: We will: -

- minimise the costs of compliance for individuals and businesses by ensuring that any action reflects the risks involved
- as far as the law allows, take account of the circumstances of the case and the attitude/actions of the individual or organisation when considering action
- take particular care to work with individuals, small businesses, voluntary and community organisations so that they can meet their legal obligations without unnecessary expense
- ensure that information given to a business, landlord or individual, whether written or verbal, will clearly identify those requirements which are mandatory and those which are advisory or are recommendations of best practice

8. Publicity

8.1 The Council will publicise cases of businesses, licensees and individuals it successfully prosecutes for environmental health and related offences as well as those it rewards for implementing very high standards. Names of companies and individuals convicted of environmental health offences may be published on the Council's website. Cases subject to appeal will not be published, to account for the appeals process a period of 10 weeks will be allowed to elapse following conviction before a case is added. Where the Council is notified of an appeal outside this time period, the case will be removed from the site.

9. Consultation With Customers: We will: -

- endeavour to make residents and those who run a business in Tewkesbury Borough aware of our enforcement standards and policy, and assist them to comply with the law.
- consult businesses, residents and service users for feedback on our service and policies

We want to provide the best service possible. Help us to achieve this by telling us when you are satisfied with our service and when you are not. We welcome any suggestions as to how the service may be improved.

10. Complaints and Appeals

We subscribe to the Council's Corporate Complaints and Appeals Procedure. In addition, the majority of legislation enforced by officers of the Environmental Health Service has an in built appeals procedure prescribed within.

In addition to the Council's complaints procedure there are a number of other independent panel's which can consider appeals such as the Health & Safety Executive Independent Challenge Panel and the Residential Property Tribunal,

although generally complaints should be directed through the local authority in the first instance.

If you feel we have given an unsatisfactory service contrary to these criteria, **you can complain direct via our report it function on our website.**

This Enforcement Policy supersedes and replaces all earlier enforcement policies relating to Tewkesbury Borough Council Environmental Health Services.

November 2021

Appendix 1.



Fixed Penalty Notice Scheme Tewkesbury Borough Council

Community Services
V2 October 2021

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1 Introduction

- 1.1 The use of fixed penalty notices is an enforcement option which is available to the council in connection with a range of environmental offences. A fixed penalty notice can be issued by an authorised officer of the Council and can provide a quick and effective way of dealing with low level environmental crimes by offering the offender an opportunity to pay a penalty fine as an alternative to prosecution.
- 1.2 Payment of a fixed penalty notice discharges an offender's liability for the offence and does not create a criminal record. The use of fixed penalty notices provides the Council with a means of dealing with low level offences in a proportionate and cost effective manner.
- 1.3 Separately, the council may impose a civil penalty for the following offences. Civil Penalties procedures are detailed in the Civil Penalty Policy. Civil Penalties can be imposed up to £30,000 per offence.

Offences

Housing Act 2004

Section 30 failure to comply with an Improvement Notice.

Section 72 and Section 95 failure to licence an HMO and non-compliance with conditions attached to a licence.

Section 139(7) contravention of an Overcrowding Notice.

Section 234 failure to comply with management regulations in respect of HMOs.

The Electrical Safety Standards Regulations 2020

section 3 failure to obtain electrical safety certificates for private rented properties

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 1.4 Section 4 failure to comply with a remedial notice

Additionally legislation may be imposed temporarily such as in relation to the Covid Pandemic whereby fixed penalties for specific offences may be

imposed under existing legislation. Any such penalties imposed will follow this procedure.

2 Aim

2.1 The aim of this scheme is to outline the Council's approach to the use of fixed penalty notices and ensure that use of the notices is proportionate, transparent and consistent with both the Council's Corporate Enforcement Policy and guidance issued by central government. The policy also aims to establish the specific offences for which the Council may issue a fixed penalty notice together with the associated fine level. Furthermore this policy will assist the Council with the targeting of enforcement activity and support the Council's wider corporate commitment to tackle environmental crime within Tewkesbury Borough.

3 Objectives

3.1 The objectives of this scheme are as follows.

- To establish the specific offences for which the Council may serve fixed penalty notices.
- To establish the fixed penalty fine level which will be imposed by the Council in respect of each offence.
- To outline the circumstances in which use of a fixed penalty notice is considered to be appropriate.

4 Fixed penalty notice offences and fine levels

4.1 The power to issue fixed penalty notices is conferred on the Council by the legislation which governs each specific offence. The Council will issue fixed penalty notices for all environmental offences where it has a statutory option to do so. This includes offences relating to dog fouling, dog control, littering, fly tipping and abandoned vehicles.

- 4.2 The fixed penalty fine level is specified by the specific legislation governing the offence. This may include a specified discount penalty for early payment.
- 4.3 A full schedule of the offences for which the Council may serve a fixed penalty notice, together with the fixed penalty fine level, is provided in the appendix to this policy.

5 Appropriate use of fixed penalty notices

- 5.1 A fixed penalty notice may only be issued by a Council Officer who has been provided with delegated authority to issue notices for the specific offence in question.
- 5.2 The decision to serve a fixed penalty notice will be taken on a case by case basis and a notice shall only be served in circumstances where sufficient evidence exists to provide a realistic prospect of conviction. The evidence to support the service of a fixed penalty notice may come from direct observation of the offence by the officer or from reliable witness testimony.
- 5.3 The Council will only issue fixed penalty notices for offences which are considered suitable to be discharged by way of a fixed penalty fine. This will generally be one off incidents of relatively low level environmental crime. The Council will not consider fixed penalty notices to be appropriate in cases where serious criminal activity, organisation and intent are indicated.
- 5.4 The Council will use fixed penalty notices in cases where it is considered to be in the public interest to pursue offenders in the courts for non-payment. The Council will not serve fixed penalty notices for offences

which are deemed to be so minor or trivial that they could be effectively be dealt with by other means. For example verbal advice or a written warning.

5.3 Fixed penalty notices will not be used for repeat offenders or for individuals who have previously received a fixed penalty notice for a similar matter. In these circumstances an alternative enforcement option will be considered such as direct prosecution.

5.4 Fixed penalty notices may not be served in cases where individuals are uncooperative, hostile or aggressive. In these circumstances assistance from the Police may be sought and direct prosecution considered.

5.5 Fixed penalty notices will only be served in cases where the officer is satisfied that the offender has provided accurate identity and address details. Failure to provide accurate name and address details to an authorised officer represents an offence.

In circumstances where an offender fails to provide accurate identity details then advice will be sought from the police and alternative enforcement options considered.

5.6 Fixed penalty notices will not be served on individuals under the age of 16.

5.7 The Council will take all reasonable steps to avoid serving fixed penalty notices on persons who are considered to be vulnerable. In this context vulnerable is defined as someone perceived to have a chaotic lifestyle, such as homelessness, or those that suffer from a mental impediment.

5.8 Fixed penalty notices served by the Council will include the following information.

- Details of the alleged offence.
- Where and when the offence took place.

- How the fixed penalty is issued (in person or by post)
- Details of the fine imposed and any discount available for paying early.
- When the fine must be paid by (this must be at least 14 days) and the time limit for the discount period.
- How the fine can be paid.

6.0 Service of fixed penalty notices

6.1 The Council may serve fixed penalty notices on offenders either by mail or on the spot using carbon copy fixed penalty notices.

6.2 Where the legislation allows fixed penalty notices will not be served on anyone under the age of 16. For juveniles between 16 to 17 the name and address of a parent or legal guardian will be sought.

7.0 Payment of fixed penalty notices.

7.1 Full payment of the fixed penalty notice must be paid within 21 days from the date the notice was issued. In circumstances where a discount is available then this must be paid within 10 days from the date of issue.

7.2 The Council only accepts fixed penalty notice payments in full and does not accept either deferred payments or payment by instalments.

7.3 The fixed penalty notice will quote a unique reference number and will provide details of the payment methods accepted by the Council.

8 Non-payment of fixed penalty notices

8.1 The Council is committed to prosecute offenders for non-payment or partial payment of a fixed penalty notice.

8.2 Should payment not be received within the timeframe stated on the notice then a warning letter will be sent stating a further time period in which payment is expected. Should payment still not be received following the warning letter then the matter may be referred to the Council's Legal Department for consideration.

9 Challenging a fixed penalty notice

9.1 A statutory appeal process does not exist for fixed penalty notices and the Council does not offer a non-statutory appeals process. Should an alleged offender wish to challenge a fixed penalty notice then the prosecution proceedings at the magistrate's court, in connection with non-payment, would be the appropriate forum for this challenge.

10 Relevant legislation

- 10.1 Clean Neighbourhoods and Environment Act 2005 (CNEA), Section 3,4 & 6 (Nuisance Parking); Section 10 (Abandoned Vehicles); Section 19,22 & 24 (Litter & Refuse); Section 28 – 30 (Graffiti & fly Posting); Sections 38,45,48 & 52 (Transport of Waste) Sections 46 & 47 (Receptacles for Household and Commercial Waste); Section 73 -76 (Audible Intruder Alarms); Sections 82 – 85 (Noise from Premises); Sections 96 to 98 (Use of Fixed Penalty Receipts)
- 10.2 Environmental Protection Act 1990: Sections 34(A)(2), 46A-D, 47Z A and B, 88(1), 94(A), and Schedule 3A Paragraph 7.
- 10.3 Refuse Disposal Amenity Act 1978, Section 2(A).
- 10.4 Control of Pollution Amendment Act 1989, Section 5B
- 10.5 Noise Act 1996, Section 8
- 10.6 Health Act 2006, Section 9
- 10.7 The Environmental Offences (Fixed Penalties (Miscellaneous Provisions) Regulations 2006 & 2007
- 10.8 The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 & 2007
- 10.9 The Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) (Amendment) Regulations 2012
- 10.10 Deregulation Act 2015, Section 58 and schedule 12
- 10.11 Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

11 Relevant Guidance

- 11.1 Fixed penalty notices: issuing and enforcement by councils
- 11.2 Corporate Enforcement Policy: Tewkesbury Borough Council

12.0 Fixed Penalty Offences and Fine Levels

Offence	Penalty if paid within 14 days	Full Penalty
Depositing litter	£50	£75
Dog fouling	£50	£50
Unauthorised deposit of waste (fly tipping)	£200	£400
Failure to furnish waste transfer notes	£180	£300
Failure to produce waste carriers licence	£180	£300
Fly-posting	£50	£75
Graffiti	£50	£75
Abandoning a vehicle	£120	£200
Nuisance parking	£60	£100
Non-compliance with notice requiring receptacles for household waste.	£40	£60
Non-compliance with notice requiring receptacles for commercial waste.	£60	£100
Alarm noise: Failure to nominate key holder or notify local authority of key holder's details.	£50	£75
Smoking in a public place	£30	£50
Failure to display no smoking signs	£150	£200

Noise exceeding permitted level – domestic premises	£60	£100
Noise exceeding permitted levels – licensed premises	£500	£500
Failure to comply with a Community Protection Notice	£60	£100
Breach of a Public Space Protection Order	£60	£100
Littering from Vehicles	£50	£100

Appendix 2

Civil Penalties Scheme

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