



AGENDA ITEM: 10

SUMMARY

Report for:	Cabinet
Date of meeting:	15th September 2015
Part:	1
If Part II, reason:	

Title of report:	Enforcement Policy
Contact:	Councillor Janice Marshall - Portfolio Holder for Environmental, Sustainability and Regulatory Services David Austin – Assistant Director Neighbourhood Delivery Nicholas Egerton - Team Leader Environmental Protection & Housing
Purpose of report:	To provide an opportunity for Members to comment on the Dacorum Borough Councils Enforcement Policy
Recommendations	That Cabinet approve Dacorum Borough Council's Enforcement Policy as detailed in Appendix A of this report.
Corporate Objectives:	To produce an Enforcement Policy in line with current best practice and one that provides value for money and most economical use of resources
Implications:	<u>Financial</u> This policy sets out the council's approach to enforcement. There are no expected financial implications relating to this report. All officers costs associated with delivering the enforcement actions should be achieved within existing resources.
'Value For Money Implications'	<u>Value for Money</u> The Enforcement Policy should help to target action against those who decide to flout the law and minimise action against good businesses. This should help good/compliant businesses to thrive.
Risk Implications	Dacorum Council has a statutory requirement to develop an Enforcement Policy and a requirement to comply with the Regulators Code. Failure to comply with this requirement

	could leave this authority open to legal challenge.
Community Impact Assessment	Community Impact Assessment completed
Health And Safety Implications	There are no additional health and safety implications associated with this report.
Monitoring Officer/S.151 Officer Comments	<p>Deputy Monitoring Officer:</p> <p>The Enforcement Policy should ensure a consistent approach to enforcement decisions across the Council and make the Council's approach to enforcement clear for any perpetrators of unlawful activity.</p> <p>Deputy S.151 Officer</p> <p>There is no direct financial impact of this policy.</p>
Consultees:	<p>Councillor Janice Marshall - Portfolio Holder for Environmental, Sustainability and Regulatory Services</p> <p>All relevant Dacorum Borough Council Departments</p>
Background papers:	<p>The Regulators code:</p> <p>https://www.gov.uk/government/publications/regulators-code</p>
Glossary of acronyms and any other abbreviations used in this report:	Not provided as none used.

Background

- 1.0 In 1998 the Cabinet office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime. The Enforcement Concordat laid down the principles of good enforcement policy and was a voluntary code.
- 1.1 Following the Hampton report (2005) into regulatory functions and the burden created by regulation, the Legislative and Regulatory Reform Act 2006 came into force. Following this a statutory Code of Practice for Regulators was developed to promote the Government’s better regulation agenda.
- 1.2 In the Autumn Statement 2012 Government announced that it would introduce a package of measures to improve the way regulation is delivered at the frontline. The review of the Regulators’ Compliance Code found that although regulators had largely adopted its principles, its delivery was inconsistent and it had not changed regulatory culture and practice. The Regulators’ Code has been designed to address these concerns. It is part of a package of measures to improve the relationship between regulators and those they regulate and to overcome barriers to growth, by improving the way regulation is delivered.
- 1.3 This policy seeks to illustrate how Dacorum Borough Council will apply its enforcement powers.

Dacorum Borough Council

Enforcement Policy



Version Control	Version 1
Status of Strategy	Draft 2
Sponsor	
Author/Reviewer	Nicholas Egerton, Team Leader for Environmental Protection and Housing
Approved	
Review Date	

Contents

1. Background

2. Introduction and Scope
3. The Principles of Good Enforcement- Policy and Procedures
4. The Principles of Good Regulation
5. Have your say

1.0 Background

- 1.1 In 1998 the Cabinet office published the “Enforcement Concordat” to help promote consistency in the UK regulatory enforcement regime. The Enforcement Concordat laid down the principles of good enforcement policy and although a voluntary code of practice it was adopted by The Council.
- 1.2 Following the Hampton report (2005)¹ into regulatory functions and the burden created by regulation, the Legislative and Regulatory Reform Act 2006 came into force.
¹ Reducing administrative burdens: effective inspection and enforcement – Philip Hampton 2005
- 1.3 The ‘Regulators’ Compliance Code’ a statutory Code of Practice for regulators was brought in under the provisions of the Act to promote the Government’s Better Regulation agenda. The Regulators’ Compliance Code came into force on the 6th April 2008.
- 1.4 In the Autumn Statement 2012 Government announced that it would introduce a package of measures to improve the way regulation is delivered at the frontline. The review of the Regulators’ Compliance Code found that although regulators had largely adopted its principles, its delivery was inconsistent and it had not changed regulatory culture and practice. The Regulators’ Code has been designed to address these concerns. It is part of a package of measures to improve the relationship between regulators and those that they regulate, and to overcome barriers to growth by improving the way regulation is delivered.

2.0 Introduction & Scope

- 2.1 This policy seeks to illustrate how Dacorum Borough Council 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.
- 2.2 The Enforcement Policy sets the procedures to be adopted by all services and officers exercising any enforcement functions. The Council is stating its commitment to services which are to be courteous, helpful and work with individuals and businesses, wherever possible, to help them comply with the law.
- 2.3 The Council, nevertheless, 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.

- 2.4 This document represents the Council's Corporate Policy, which may be supplemented in some cases, by more specific and detailed service policies.
- 2.5 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 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.
- 2.6 This document has been prepared with regard to the current principal legislation and statutory guidance including:
- The Regulatory Enforcement and Sanctions Act 2008
 - Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009
 - Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009 SI670/2009
 - Legislative and Regulatory Reform Act 2006
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007
 - Regulators' Code 2014
- 2.7 The Regulatory Enforcement and Sanctions Act established The Local Better Regulation Office (LBRO) which has now been replaced by BRDO (Better Regulation Delivery Office). It also imposed upon Regulation and Enforcement a duty to:
- (a) have regard to any guidance given to a Local Authority by BRDO,
- (b) a duty to comply with guidance where we are directed to do so by BRDO,

- (c) a duty to have regard to any list of enforcement priorities published by BRDO.
- 2.8 The Regulators' Code is in accordance with section 23 of the Legislative and Regulatory Reform Act 2006. Regulators whose functions are specified under section 24(2) of the act must have regard to the Code when developing policies and operational procedures. This policy is based on the six principles of good regulation as identified in the code.
- 2.9 These include:
- 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.
- 2.10 The 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.

3.0 The Principles of Good Enforcement- Policy and Procedures

- 3.1 The primary function of central and local government enforcement work is to protect the public and the environment. However, at the same time, carry out enforcement functions in an equitable, practical and consistent manner to promote a thriving national and local economy. The council is committed to promoting compliance and maintaining a fair and safe environment.
- 3.2 The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. It is recognised that most people and/or organisations want to comply with the law, therefore care will be taken to help businesses and residents meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety

4.0 The Principles of Good Regulation.

4.1.1 This Policy is based on the six principles of good regulation in accordance with the Regulator's Code.

4.2 Carry out activities in a way that supports those regulated to comply and grow

4.2.1 The Council 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. The Council will make sure that we take a proportionate approach to those they regulate, based on relevant factors including, for example, business size and capacity.

4.2.2 When designing and reviewing policies, operational procedures and practices, The Council 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.

4.2.3 The Council 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.

4.2.4 The Council 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.

We recognise that our enforcement should be carried out in a way which is:

- i) Proportionate
- ii) Accountable
- iii) Consistent
- iv) Transparent
- v) Targeted to situations which need action.

4.3 Provide simple and straightforward ways to engage with those regulated and hear their views

- 4.3.1 The Council 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, The Council will consider the impact and where suitable engage with resident and business representatives.
- 4.3.2 In responding to non-compliance The Council 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. The Council 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.
- 4.3.3 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 be likely to defeat the purpose of the proposed enforcement action.
- 4.3.4 Where action is taken The Council will provide an impartial and clearly explained route to appeal against a regulatory decision made, or a failure of this authority to act in accordance with The Regulators Code. This will be in plain language and include practical information on the process involved. Individual officers involved in the initial decision or action against which the appeal is being made will not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.
- 4.3.5 The Council will maintain a corporate complaints database, allowing those regulated to easily make a complaint about the conduct of the regulator.
- 4.3.6 The Council will maintain or develop a range of mechanisms to enable and regularly invite, receive, and take on board customer feedback, including, for example through customer satisfaction surveys of those we regulate.

4.4 Base the regulatory activities on risk

- 4.4.1 The Council 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.
- 4.4.2 The Council 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.

- 4.4.3 Regulators designing a risk assessment framework, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.
- 4.4.4 When assessing risk, The Council will consider where possible the compliance record of those they regulate, including using earned recognition approaches
- 4.4.5 The Council will periodically review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

4.5 Share information about compliance and risk

- 4.5.1 The Council 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 information.
- 4.5.2 When the law allows, both internal department 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 and the Police to tackle incidents of crime and disorder.

4.6 Ensure clear information, guidance and advice is available to help those regulated to enable them to meet their responsibilities to comply

- 4.6.1 The Council 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.
- 4.6.2 Regulators should publish guidance or signpost to external sources of information. Where the Council 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.

- 4.6.3 The Council 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. And 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.
- 4.6.4 The Council will work with other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement and enable a single response to be coordinated.

4.7 Ensure that the approach taken for our regulatory activities is transparent

4.7.1 Each department has clear enforcement strategies which are attached as appendices to this Policy, these enforcement strategies should include:

- a) how they communicate with those they regulate and how they can be contacted;
- b) their approach to providing information, guidance and advice;
- c) their approach or the nationally set approach to check on compliance, including details of the risk assessment framework used to target those checks and protocols for their conduct, clearly setting out what those they regulate should expect;
- d) an explanation of how they respond to non-compliance, however action taken will normally aim to:
 - change the behaviour of the offender (inc negotiation/mediation)
 - eliminate any financial gain or benefit from non-compliance
 - protect those affected by non-compliance
 - be responsive and consider what is appropriate in the particular circumstances
 - be proportionate to the nature of the offence and the harm caused
 - where appropriate reinstate to prior status to eliminate/reduce the harm caused by the non-compliance.
 - deter future non-compliance

Where available government guidance, circulars, codes of practices etc. will be considered.

e) their fees and charges, if any. This information will be updated in the Councils Fees and Charges Policy/Strategy but if requested individual services should be able to explain the basis on which these fees are calculated. Exception to this may include nationally set fees and charges, or charges detailed in legislation. The fees and charges

policy/strategy should include an explanation of whether compliance will affect fees and charges; and

f) how to comment or complain about the service provided and routes to appeal.

- 4.7.2 The Council will publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions. Mechanisms shall be put in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.

5. Have your say

5.1 Please tell us your views on the policy and include any comments or questions you have for us via email: environmental.health@dacorum.gov.uk
OR
use the space below and return to the following address:

FAO, Environmental Health Department, Civic Centre, Marlowes, Hemel Hempstead, Herts, HP1 1HH.

Name: (Optional)
Address: (Optional)

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