

DARTFORD
BOROUGH COUNCIL

**Housing Services
Enforcement
Policy**

March 2009

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Housing Services Enforcement Policy

INTRODUCTION

1. Our aim is to protect and improve housing, the environment and quality of life for everyone who lives in Dartford.
2. Housing Services is responsible for enforcing legislation relating to:-
 - Housing Act 1985
 - Housing Act 2004
 - Environmental Protection Act 1990
 - Public Health Act 1936 (as amended)
 - Building Act 1984
 - Local Government (Miscellaneous Provisions) Act 1976
 - Caravan Sites and Control of Development Act 1960
 - Landlord & Tenant Act 1985
 - The Protection of Eviction Act 1977
3. This policy sets out the general principles which will be applied in relation to enforcement. Its implementation and effectiveness will be monitored and reviewed on a regular basis. This Council has adopted the Enforcement Concordat, which has been developed jointly by the Cabinet Office and the Local Government Association; this policy is consistent with the principles of good enforcement it sets out.
4. Housing Services is committed to the promotion of equal opportunities in all of our activities. Every effort will be made to ensure that everyone is treated equitably and fairly, regardless of sex, colour, race, nationality, ethnic group, regional or national origin, age, marital status, disability, political or religious belief, sexuality or class, as identified in the Council's Comprehensive Equality Policy.
5. The Human Rights Act 1998 has incorporated the rights and freedoms guaranteed under the European Convention on Human Rights into UK law. Those that are of relevance to the enforcement activities are:
 - The right to a fair hearing (Article 6),
 - The right to respect for private and family life (Article 8),
 - The protection of property (Protocol 1, Article 1)

There is a hierarchy of convention rights; some are absolute, some can be limited and some are qualified.

In carrying out enforcement, officers will be mindful of human rights to ensure that any action which could interfere with a Convention right is legitimate, appropriate and proportionate to the intended objective.

PURPOSE AND METHOD OF ENFORCEMENT

6. The primary concern of officers in Housing Services is to protect the health, safety and welfare of tenants, homeowners and the general public. The Service is concerned with the maintenance of minimum housing standards and fair treatment of tenants. It is recognised that most individuals and organisations are anxious to comply with the law and in these cases the officers' role will often be to educate, guide and support.
7. If enforcement officers find evidence that the law is being broken they can respond in various ways. Having considered all relevant information and evidence, the choices for enforcement action are:-
 - to take no action
 - to take informal action - this includes
 - offering advice and guidance
 - verbal warnings and requests for action
 - sending a letter
 - issuing an inspection report
 - to issue statutory notices
 - to issue fixed penalty notices
 - to close premises
 - to carry out works in default
 - to revoke licences
 - to use formal cautions
 - to prosecute

PRINCIPLES OF ENFORCEMENT

8. To achieve effective and equitable enforcement four key principles will be used as guidance:

- *proportionality* in the application of the law and in securing compliance
- *consistency* of approach
- *transparency* about how we operate and what those regulated may expect from us, and
- *targeting* of enforcement action.

Proportionality

9. The concept of proportionality is included in much of the regulatory system through the balance of action to protect the public and the environment against risks and costs. Some incidents or breaches of regulatory requirements cause or have the potential to cause serious harm to health or environmental damage. Others may interfere with people's enjoyment or rights. The enforcement action taken will be proportionate to the risks posed and to the seriousness of any breach of the law.
10. Informal action is normally appropriate when:
 - the act or omission is not serious enough to warrant formal action
 - from the individual's/enterprise's past history, it can be reasonably expected that informal action will achieve compliance
 - confidence in the individual's/enterprise's management involvement is high
 - the consequences of non-compliance will not pose a significant risk to public health or the environment

Consistency

11. Consistency means taking a similar approach in similar circumstances to achieve similar ends. Whether it be in relation to advice tendered, our response to incidents, the use of powers, or decisions on whether to prosecute. Consistency does not mean simple uniformity, and therefore officers will take account of many variables including:
 - the risk to health
 - the scale of environmental impact

- the attitude and actions of management
 - confidence in management
 - evidence of good practice as identified in relevant codes of practice
 - the likely effectiveness of the various enforcement options
 - the history of previous incidents or breaches
 - application of the Crown Prosecution Service Guidance
12. Decisions on enforcement action are a matter of professional judgement and the exercise of discretion. To ensure consistency of enforcement standards Dartford Borough Council will ensure:-
- officers are aware of this policy and have adequate training and competency in all relevant aspects of enforcement
 - officers have regard to national and local co-ordination arrangements for example:
 - Statutory Codes of Practice/Guidance
 - Health and Safety Executive guidance
 - LACORS (Local Authorities Co-ordinating Body on Food and Trading Standards) guidance
 - Chartered Institute of Environmental Health/Chartered Institute of Housing - Professional Practice Notes
 - Kent Chief Officer Groups - guidance/practice notes locally adopted standards e.g. the Council's standards relating to Houses in Multiple Occupation
 - liaison with the "Home Authority", where appointed
 - liaison with the "Lead Authority" where appointed
 - publication and dissemination of Dartford Borough Council standards and policies
 - a commitment to cross-boundary auditing of enforcement procedures and practices.

Transparency

13. Transparency is important in maintaining public confidence in Housing Services' ability to regulate. It means helping those regulated, and others, to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer

intends to, or has taken enforcement action. To achieve this Housing Services will ensure that:

- where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out: a distinction being made between best practice advice and legal requirements
 - an opportunity is provided to discuss with the enforcement officer or his manager what is required to comply with the law before formal enforcement action is taken, *unless* urgent action is required, for example, to protect health and safety, the environment or to prevent evidence being destroyed
 - where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event
 - a written explanation is given on any rights of appeal against formal enforcement action at the time the action is taken.
14. Plain English will be used, as far as practicable, in all written communications. Translation of written communications into Braille or an alternative language and where necessary, a translator for face to face discussions on enforcement issues, will be provided where a need has been identified.

Targeting

15. Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the greatest risks. Nationally and locally agreed risk assessment rules will be used to assist in the targeting of resources.

PROSECUTION

16. The use of the court process to institute a prosecution is an important part of enforcement. It aims to punish serious wrongdoing, to avoid recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the use to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
17. It is recognised that the institution of a prosecution is a serious matter that should only be taken after full consideration of all the implications and consequences.

18. Regard will be had to relevant guides and codes of practice and issues identified in the Crown Prosecution service guidance.

COVERT SURVEILLANCE

19. Where appropriate covert surveillance will be undertaken in accordance with current legislation and Home Office and council guidelines.

WORKING WITH OTHER REGULATORS

20. Where the Council and another enforcement body both have enforcement responsibilities, liaison with that other body will be undertaken to ensure effective co-ordination and to avoid inconsistencies or duplication.

RECOVERY OF COSTS

21. Where the Council has carried out remedial works in default, full costs including administration costs incurred, will be pursued from those responsible.
22. The Private Sector Housing Team will recharge for associated costs of serving Enforcement Notices, in accordance with Section 49 of the Housing Act 2004.

COMPLAINTS PROCEDURE

23. Dissatisfaction with any actions or decisions must in the first instance be dealt with through the Council's Corporate Complaints Procedure which is explained in the leaflet *"How to Complain to Dartford Borough Council"*
24. In the event that the complainant remains dissatisfied after the Council has investigated the complaint, the complainant may refer the complaint to the Local Government Ombudsman, who is independent of the Council. From April 2009, the Ombudsman will not consider complaints unless it has been through all stages of the Council's complaints procedure. There are some exceptions to this including:
 - Complaints about homelessness
 - Complaints by or on behalf of children and young people
 - Complaints against more than one body
 - Complaints where the Council's Chief Executive has exercised discretion not to investigate further

- Complaints where the Ombudsmen has exercised discretion to accept a complaint because he/she has good reason to believe the council would not handle it effectively
- Where there has been unreasonable delay by the council in processing a complaint; and
- Where the Ombudsmen deems it is appropriate to contact complainants who have made 'premature' complaints

25. This Policy will be reviewed annually.

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