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ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

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ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

1.0 INTRODUCTION

- 1.1 The purpose of this document is to set out the general approach of Test Valley Borough Council's Environmental Health Service to its enforcement functions and the more specific factors which will be taken into account when choosing the most appropriate course of action where different enforcement options exist.
- 1.2 The aim of this policy is to ensure that our regulatory activities are consistent with the principles of good enforcement practice and improve regulatory outcomes without imposing unnecessary burdens on duty holders. It also sets out what can be expected from officers in the performance of their duties.
- 1.3 This policy has been prepared having regard to the principles of regulation set out in section 5 of the Regulatory Enforcement and Sanctions Act 2008 which are that:
 - (a) Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
 - (b) Regulatory activities should be targeted only at cases in which action is needed.
- 1.4 The Council is also required by the Legislative & Regulatory Reform Act 2006 to have regard to the [Regulators' Code](#) which further sets out the principles of good enforcement practice. This includes publishing an enforcement policy.
- 1.5 This policy covers the full range of functions performed by the Environmental Health Service, including food safety, health and safety, infectious disease control, environmental protection, nuisance control, consent street trading, pest control, animal welfare, and private water supplies.
- 1.6 It is recognised that most individuals and businesses wish to comply with the law and we will seek to guide, advise and encourage them to do so, without imposing unnecessary regulatory burdens. However, enforcement action will be appropriate in some circumstances and, because relevant considerations are specific to the circumstances of each case, different enforcement options may exist.
- 1.7 The Council recognises the statutory duty to promote equality in enforcement decision-making. The Council is therefore committed to treating all customers fairly, irrespective of race, ethnicity, nationality, religion, gender, marital status, disability, sexual orientation, age or political views. This includes the provision on request of documents in alternative formats where possible, such as other languages or large print. This policy, in common with other Council policies, will be monitored for any adverse impact on equality issues.

1.8 All decisions regarding enforcement matters will also be consistent with the Council's obligations under the Human Rights Act 1998, most notably the right to a fair trial, the respect for private and family life and the enjoyment of property.

2.0 POWERS AVAILABLE

2.1 The main types of enforcement powers available are outlined below. Other powers may exist and may also be introduced by new legislation. If any formal enforcement action is under consideration, the alleged offender will be notified as soon as practicable unless this might impede an investigation or create a safety risk.

2.2 No Action

No action may be taken where the contravention of law may not warrant any action, for example minor and inadvertent contraventions.

2.3 Informal Action

This may include verbal and/or written advice. Written advice will be recorded on file and, where relevant, may be taken in to account when determining future actions. Informal action may be appropriate in the following circumstances:

- Where the non-compliance does not involve a significant risk to public health.
- Where the issue is not serious enough to support formal action.
- Where our confidence in the individual's/business's management, taking account of their compliance history, is such that it is expected that informal action is likely to achieve compliance.

2.4 Enforcement Notices

A range of statutory notices are available for use and may require certain work to be done, or certain activities to cease. These include abatement notices, hygiene improvement notices, hygiene emergency prohibition notices and community protection notices. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or the carrying out of any necessary works to satisfy the requirements of the notice. Where applicable, notification of any right of appeal will be provided with the notice.

2.5 Voluntary Undertakings

We may in certain circumstances accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The failure to honour voluntary undertakings may result in formal enforcement action.

2.6 Sampling, Detaining and Seizing Food

Food, water and environmental sampling from food businesses will be used both proactively and reactively in accordance with a [Sampling Policy](#). Detention

powers will be used by authorised officers if there is reason to suspect that food does not satisfy food safety requirements. Seizure powers may be used where there is clear evidence of such a failure.

2.7 Seizing Equipment

Seizure and related powers may be used where appropriate to, for example, render harmless any article or substance which is believed to be a cause of imminent danger to public health, or which could cause serious personal injury.

2.8 Refusal, Suspension, Amendment or Revocation of Licences, Approvals, Consents etc.

Where there is a breach of condition of a licence, approval, consent etc., powers may be used to refuse, suspend, amend or revoke a licence, approval or consent, subject to the provisions of the relevant legislation. The need for such action may be taken in to account when determining any further applications for any similar licence, approval or consent made by the same individual or business.

2.9 Fixed Penalty Notices

Certain offences are subject to fixed penalty notices where prescribed by legislation. They may be used to offer a person the opportunity to discharge liability to conviction for the offence by payment of a fixed penalty. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

2.10 Civil Injunctions

In some circumstances we may seek remedy from the Court in the form of an order or an injunction in order that a breach is rectified and/or prevented from recurring. The Court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

2.11 Prosecutions

A prosecution will only be taken after appropriate consideration of the implications and consequences. It aims to punish wrongdoing, to avoid a recurrence, and to act as a deterrent to others where in the public interest to do so. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example a prohibition notice requiring the operation to stop until certain requirements are met.

2.12 Simple Cautions

Decisions relating to simple cautions will be made where a prosecution would otherwise be justified and having regard to the principles set out in the following guidance: [Simple cautions: guidance for police and prosecutors - GOV.UK \(www.gov.uk\)](http://www.gov.uk), or any revised guidance issued in its place.

3.0 PRINCIPLES OF GOOD ENFORCEMENT PRACTICE

3.1 The principles of good enforcement practice are set out in the Regulators' Code (see paragraph 1.4 above) and a summary of how the Council will apply those principles is given below.

3.2 Supportive of Duty Holders

We believe that prevention is better than cure and that we should work with individuals and businesses to advise and assist with compliance. Therefore, we aim to be supportive of businesses to comply with their legal obligations and at the same time help businesses to thrive. This means applying a proportionate approach to regulation, taking account of business size and capacity, and avoiding imposing unnecessary expense and other regulatory burdens. We will take particular care to work with small businesses and voluntary and community organisations, so that they can meet their legal obligations, where practicable without disproportionate expense.

3.3 Effective Engagement

We aim to clearly explain matters of non-compliance, giving appropriate advice as to actions recommended or required, and where relevant give reasons for decisions taken. We will provide a contact point and telephone number to provide an opportunity where reasonably practicable for dialogue and/or receiving feedback in relation to advice, requirements, decisions, or our approach to regulatory activities generally. Where relevant, we will provide information about the route to appeal against a regulatory decision and the Council's complaints process.

3.4 Proportionate Actions to the Risks Involved and Actions Targeted

Decisions with regard to the most appropriate intervention in response to non-compliance will take account of the likely risks associated with the non-compliance. Regulatory priorities will also be set, where relevant, having regard to the above. This means targeting regulatory effort where possible towards those whose activities which are likely to give rise to the highest risks, for example of harm to the public or the environment, or those who knowingly ignore the law.

3.5 Information Sharing about Compliance and Risk

Where the law allows, we will share information where appropriate with other regulators in order to help target resources and minimise duplication.

3.6 Provision of Clear Information, Guidance and Advice to Promote Compliance

We aim to provide suitable information, advice and guidance (or signposts to information, advice and guidance) to help duty holders to understand and meet their responsibilities. We aim to provide advice in plain language, explaining

why remedial work is necessary and over what timescale, also clearly distinguishing between legal requirements and recommendations.

3.7 **Transparency**

This policy is intended to set out our general service standards in order to help duty holders understand what is expected of them and what they should expect from the Council's Environmental Health Service. We also aim to ensure that duty holders, injured parties, complainants and any other relevant third party are kept informed where appropriate about enforcement action that they have an interest in.

3.8 **Accountability**

We recognise that we are accountable to those being regulated and the public for our actions. The Council has a [Complaints Process](#) for situations where anyone is aggrieved by actions of the Environmental Health Service.

3.9 **Consistency**

We aim to carry out our duties in a fair, equitable and consistent manner, taking a similar approach in similar circumstances to achieve similar ends. Notwithstanding the aim of consistency in similar circumstances, individual decisions will be taken on a case by case basis.

4.0 **SELECTION OF ENFORCEMENT OPTION**

4.1 The seriousness of breaches can vary greatly from loss of life to breaches of an administrative nature, e.g. the failure to register a food business. Prevention is better than cure, and our role therefore involves working with duty holders to advise and assist them comply with the law. However, where it becomes necessary to take formal enforcement action against a business or member of the public then we will do so.

4.2 When considering formal enforcement action we will, where appropriate and reasonably practicable, seek to discuss the circumstances with those suspected of a breach and take these into account when deciding on the approach. This will not apply where immediate action is required to prevent or respond to a breach, or where to do so is likely to defeat the purpose of the proposed enforcement action.

4.3 In reaching a decision on the most appropriate enforcement action, each case will be considered on its own merits, depending on legislative requirements, relevant guidance and taking into account proportionality and necessity of particular actions. Decisions will also take account of the following aspects where relevant, though it should be noted that this is not an exhaustive list:

- **Level of Risk or Harm** – The level of risk or the magnitude of the effect on individuals, the community or the environment. The more serious in nature or impact of the breach, or exposure to risk, the more likely that formal enforcement action will result.

- **Intent** - Whether the contravention was done either deliberately, recklessly, or for financial gain (or cost to the public purse) as opposed to where we are satisfied that the breach was committed unintentionally, or was the result of a genuine mistake or a misunderstanding
- **History of Compliance** - Although the action to be taken will depend upon the circumstances of each case, consideration will be given to the type, seriousness, number and frequency of previous contraventions and enforcement actions.
- **Level of Co-operation** - Co-operation with our officers, prompt reporting of the incident (where relevant), efforts at mitigating the consequences, willingness to prevent a recurrence, and assistance in investigations, are all factors that will be taken into account when considering what level of enforcement action is appropriate for any particular case.
- **Deterrent Effect** – Subject to the evidential test being satisfied, the likely benefit of prosecution as an effective way of preventing repetition of the breach, or as a deterrent to others against committing similar contraventions, will be taken into account.
- **Exceptional Mitigating Circumstances** - A lesser form of action may be considered appropriate where there are exceptional mitigating circumstances, e.g. where an offender is suffering from a serious illness, or the offender is a youth.
- **Foreseeability** – Account will be taken where relevant of whether the consequences of actions or inactions were reasonably foreseeable.

5.0 DECISIONS TO PROSECUTE

5.1 Decisions to prosecute will be made having regard to the evidential test and the public interest test as set out in the [Code for Crown Prosecutors](#). Where no other forms of enforcement action are considered appropriate, prosecution will be put forward.

5.2 The Evidential Test

A prosecution will not be commenced or continued unless we are satisfied that there is sufficient admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction. In particular the following factors will be considered:

- The sufficiency of the evidence
- The likely cogency of any important witnesses and their willingness to co-operate
- Any explanation offered by the suspect
- The likelihood of the suspect being able to establish a statutory defence.

5.3 The Public Interest Test

Where there is sufficient evidence, a prosecution will not be commenced or continued unless it is considered to be in the public interest to do so. A prosecution would normally proceed only if the public interest factors in favour of prosecution outweigh those against. Regard will be paid to the Code for Crown Prosecutors in deciding whether the public interest test has been met. The decision as to whether to prosecute is ultimately a matter of judgment and the final decision in such cases will be made, subject to legal review by a legal officer, by the Environmental Health Manager.

5.4 Scenarios Whereby Prosecution is More Likely

Where the evidential and public interest tests are met, we are more likely to recommend to prosecute in any of the following scenarios listed below.

- Incidents or breaches which have significant consequences for public health and/or safety, or the environment, or which have the potential for such consequences.
- Knowingly carrying out certain activities without a relevant licence, registration, approval etc.
- Excessive or persistent breaches of regulatory requirements in relation to the same or similar circumstances.
- Failure to comply or to comply adequately with formal remedial requirements.
- Reckless disregard for recognised minimum legal standards of operating.
- Failure to supply information without reasonable excuse, or knowingly or recklessly supplying false or misleading information.
- Obstruction of our staff in carrying out their powers.
- A simple caution has been offered but the offender has refused to accept it.
- There has been a repetition of a breach that was previously subject to a simple caution.

6.0 APPEALS, COMPLAINTS AND FEEDBACK

6.1 Individuals and businesses may have a statutory right of appeal in the case of some types of enforcement action.

6.2 Separate to any statutory right of appeal, the Council does have a [Complaints Process](#) for cases where an individual or a business is dissatisfied with the conduct of an officer. In other cases where an individual or a business is dissatisfied with the advice of, or a decision from, an officer, but not the conduct of the officer, then in the first instance we would encourage the person who is aggrieved to try to resolve the matter with the case officer directly. We are always willing to discuss the reason why we have made decisions or acted in a particular way. However, if that fails then the manager of the case officer (or Environmental Health Manager) will, except where urgent action is considered necessary, review the matter upon request.

6.3 An informal right of appeal exists against a rating given under the national Food Hygiene Rating Scheme, the mechanism for which is included in food hygiene

inspection reports. We will ensure that individuals who took a decision or action against which an appeal is made will not be involved in considering the appeal.

- 6.4 Feedback is also welcomed from businesses and individuals who are subject to regulation by the Environmental Health Service with regard to either this policy, its practical implementation or its general approach taken to regulatory functions.

7.0 LIAISON WITH OTHER REGULATORS

- 7.1 If a business operates in more than one local authority area and has chosen to have a registered Primary Authority under the Regulatory Enforcement and Sanctions Act 2008, we will, where required, comply with the provisions for enforcement and notify the Primary Authority of the enforcement action proposed.

- 7.2 In addition to the above we will, where appropriate, co-operate and co-ordinate with any other relevant regulatory body and/or enforcement agency. The purpose of this liaison will be to ensure effective action, avoid inconsistencies and any potential conflicts of interest, and to ensure that any proceedings instituted are the most appropriate sanction and taken by the most appropriate agency.

- 7.3 We may share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including Government agencies, Police / Fire Authorities, statutory undertakers and other local authorities. When sharing information with other agencies we will follow the provisions of the Data Protection Act 2018 and in particular the key principles of the General Data Protection Regulation.

8.0 CHARGES AND COST RECOVERY

- 8.1 Most of the regulatory work that we do is free of charge though where a charge is made then it will be in accordance with the Council's [Schedule of Fees and Charges](#).

- 8.2 We will normally seek to recover as much of our formal enforcement costs (e.g. prosecution) as possible. Where we have carried out remedial works we will seek to recover the full costs incurred from those originally responsible.

9.0 ENFORCEMENT IN PREMISES WHERE THE COUNCIL HAS AN INTEREST

- 9.1 In situations where the Council's Environmental Health Service is the enforcing authority (for example for food safety or workplace safety purposes) for any business for which the Council has an interest, then we will seek compliance with legal requirements in the same way as for all other businesses. This includes notifying the Food Standards Agency of relevant incidents.

- 9.2 In the event of a conflict of interest arising then advice will be obtained from the Council's Legal Service. There is provision to transfer enforcement

responsibilities for workplace health and safety matters to the Health & Safety Executive in some cases and relevant guidelines will be followed in this respect.

10.0 REVIEW

- 10.1 This policy will be reviewed periodically, with an aim to review it fully at least every five years with interim reviews annually and in light of relevant changes to legislation and guidance.
- 10.2 The Council welcomes any feedback or comments with regard to the content of this policy or its implementation.
- 10.3 This policy will be made available on the Council's website at www.testvalley.gov.uk and a hard copy, or in a specific format if required, will be provided upon request. To request this, or to provide comments or feedback, our contact details are given below:

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