

ASHFIELD DISTRICT COUNCIL

ENVIRONMENTAL PROTECTION SECTION ENFORCEMENT POLICY

ENVIRONMENTAL HEALTH & HOUSING SERVICES



AUGUST 2003

ENVIRONMENTAL PROTECTION SECTION ENFORCEMENT POLICY

1. INTRODUCTION

The Environmental Protection Section, on behalf of Ashfield District Council, has a statutory duty to enforce the provisions of the Environment Act 1995 the Environmental Protection Act 1990, the Pollution Prevention and Control Act 1999 and associated Regulations under those Acts plus a raft of other environmental and health protection legislation within the district. This includes a statutory duty to survey the district for statutory nuisance, deal with abandoned vehicles and regulate certain categories of prescribed processes in terms of emissions to all environmental media.

The work of Environmental Protection Section seeks to contribute towards the stated *Mission* for Ashfield District Council via the *Environmental Strategic Aim*.- To make Ashfield a more environmentally sustainable and attractive place to live, work and visit and the Council's stated Corporate Objectives for *Environment* and *Community Health*.

The Council's Corporate Objective for *Community Safety* is also strongly linked to environmental protection duties delivered by the Environmental Protection Section.

The Council has identified the need for a documented enforcement policy the aim of which is to demonstrate our commitment and clearly set out our approach to raising environmental and health standards throughout the District

The policy will cover the following issues:

- Policy Statement
- Equalities Statement
- The approach we will adopt
- Practical arrangements for putting the policy into effect

2. POLICY STATEMENT

The Council will endeavour to make effective arrangements to enforce the appropriate sections of the Environment Act 1995 and the Environmental Protection Act 1990 and all other legislation relevant to the protection of the environment and human health. The aim is to ensure the protection of all aspects of our environment, now and for the future and to protect the health of all persons that live in, work or visit the district from the adverse effects of pollution within the local environment.

3. EQUALITIES STATEMENT

This policy will be administered in accordance with the adopted Equalities Policy. The policy states that the Council is committed to ensuring that individuals and groups are not discriminated against on the grounds of gender, gender reassignment, colour, race, nationality, ethnic or racial origins, disability, marital status, sexuality, trade union activity, age, political or religious beliefs, or because they live with HIV/AIDS.

4. HUMAN RIGHTS

This policy will be administered with due regard to the requirements of the Human Rights Act 1998.

5. THE APPROACH WE WILL ADOPT

The Council will aim to ensure that all officers in carrying out their enforcement duties adopt a balanced and consistent approach.

Ashfield District Council will, when dealing with environmental protection issues in the area, including noise, pollution of land, air and water and abandoned vehicles, aim to:

- Ensure that a strategy is in place to remediate land, which is contaminated, and to bring such land back into use in accordance with relevant planning policy.
- Ensure that waste deposited unlawfully on land and likely to cause a risk to health, the environment or liable to attract vermin is removed effectively and efficiently.
- Ensure the removal of abandoned vehicles as quickly as possible from land and public highways in the district and seek to implement initiatives to reduce the number of abandoned vehicles.
- Seek to reduce and/or control the emission of noise from commercial/industrial premises and domestic property and to raise awareness about the harmful effects of noise.
- That adverse impacts from new development are minimised by the environmental assessment of planning applications and by the imposition of planning conditions on development that mitigate adverse environmental affects.
- Ensure that the operators of prescribed processes comply with the conditions of their permit to minimise pollution to land, air and water.
- Ensure that incidents of pollution to air due to smoke from chimneys and bonfires are controlled and minimised by effective enforcement and education.
- To investigate all complaints of alleged nuisance and ensure that satisfactory standards that protect public and environmental health are upheld in all cases.
- Liase with other local authorities in the county, through the Nottinghamshire Pollution Working Group, Notts Contaminated Land Sub-group and the Abandoned Vehicle Best Practice Group with the aim of sharing best practice and achieving a consistent approach.
- Use all available media to disseminate information and raise the profile of issues concerning environmental protection and health protection.
- Make consistent enforcement decisions in accordance with the procedure detailed in Appendix A of this policy and the Division's adopted Enforcement Concordat. (Appendix B).

6. PRACTICAL ARRANGEMENTS FOR PUTTING THE POLICY INTO EFFECT

i) HOW THE COUNCIL WILL CARRY OUT ITS DUTIES

a) **Pro-Active**

o Contaminated Land

- Preparation and implementation of a cogent strategy that will identify potentially contaminated land within the District. Seek to prioritise potentially contaminated land according to the potential for the site to cause harm to water, vegetation and/or human health. Implementation of remediation measures according to the risk posed by the land either via the planning process or by using enforcement powers contained within the Environment Act.

- o LAPC and LA-IPPC Regulatory Regime.
 - Under the Environmental Protection Act 1990 and the Pollution Prevention and Control Regulations (England and Wales) 2000, certain categories of industrial processes are allocated to local authorities for regulation of emissions to air and in certain cases all environmental media. These processes operate under authorisations or permits, which are issued by the Council and invoke conditions on the operator to minimise the impact of the process on the environment and air quality. All regulated processes are inspected in accordance with the risk rating inspection regime dictated by Defra.
- o Air Quality Management
 - Councils have a duty to measure and assess the level of certain air pollutants within their districts and to declare Air Quality Management Areas (AQMA's) where air pollutants are likely to exceed air quality objectives. Where an AQMA has been declared, the Council must implement an action plan to reduce pollution levels to objective levels. Where pollution levels are compliant with air quality objectives, Council's should implement Local Air Quality Strategies that seek to reduce air pollution to the lowest level reasonably possible.
- o Environmental Assessment of Planning Applications
 - All planning applications submitted to the Council which are likely to have a detrimental affect on the amenity of an area are subjected to an environmental assessment by officers in the Environmental Protection Section. The assessment is designed to identify any detrimental environmental impact posed by the development. Developments that are detrimental to the amenity of an area are either refused consent or conditions are placed upon the developer to mitigate the detrimental effects.
- o Sustainable Development.
 - Sustainability is promoted through all council policies and the Local Strategic Partnership via a dedicated officer who co-ordinates the dissemination of advice and information through established corporate mechanisms.

b) **Reactive**

Reactive inspections of regulated industrial processes are carried out on receipt of a complaint. Inspection of contaminated land is undertaken in accordance with the priority rating afforded to the land by the contaminated land strategy. All other complaints or requests for service concerning statutory nuisance, smoke and abandoned vehicles are actioned within 3 working days and appropriate enforcement procedures implemented.

c) **Education**

The operators of prescribed processes are advised of their duties at routine inspections or by direct mail where changes in relevant legislation are forthcoming. National initiatives designed to promote awareness of environment and health issues, such as Noise Action Day, are supported where possible. Other community initiatives are undertaken when a need is identified and promoted through the local media. Advice and information is

available via leaflets and the Council's web-site or by dedicated presentations.

d) **Enforcement**

To ensure an effective, transparent and consistent approach to enforcement, authorised officers will follow guidance in Appendices A and B to this document.

ii) WHO WILL IMPLEMENT THE POLICY

Responsibility for the implementation of the policy rests with the Head of Environmental Health & Housing Services. Day to day activities are carried out by authorised officers in the Environmental Protection Section. The Environmental Protection Manager is responsible for the planning, organisation and monitoring of all aspects of the policy. Inspections, complaint investigations and education will be carried out by officers authorised in writing.

APPENDIX A

ENFORCEMENT PROCEDURE

Local authorities have a variety of options available to them when ensuring required standards are met. The decision on what action should be taken will depend largely upon the extent and nature of pollution and the seriousness of the risk posed to the environment and/or human health.

Action can take a number of forms and the options available to officers are:

- Informal action
- Service of statutory notice
- Works in default
- Issue of formal cautions
- Instigation of prosecution proceedings

Informal Action

Authorised officers may use informal procedures where they believe that such procedures will secure compliance with the requirements of environmental and/or health protection legislation within a reasonable timescale. Informal action will normally follow discussions with business and/or perpetrators of environmental offences. Written confirmation of actions agreed with the business and/or the perpetrators of environmental offences will be sent by the authorised officer following discussions.

Informal action is predominantly used where the seriousness of the risk posed to the environment and/or human health is relatively minor. Informal action can be used to resolve matters of a more serious nature in exceptional circumstances.

Authorised officers will endeavour to ensure that businesses and/or persons are aware of their duties and responsibilities and ensure they know that advice is readily available from the local authority.

Service of Statutory Notices

The service of statutory notices will be considered in any of the following circumstances:-

- Attempts to resolve the situation informally have failed.
- There are serious contraventions of legislation, which pose a significant risk to public health or the environment.
- There is a lack of confidence in the duty holder to respond to informal action.
- There is a history of non-compliance.
- The operator, owner or person responsible is unknown or unable to be contacted.
- Where the legislation requires service of a statutory notice to entitle the Council to take further action.
- A situation exists which places a mandatory duty on the Council to serve a statutory notice e.g. statutory nuisance.
- Although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy a situation, which poses an immediate and significant risk to public health or the environment.

- A notice is required to formalise an agreed course of action.

If a statutory notice is served, the recipient will be informed in writing, either by covering letter or by reference to notes on the reverse of a notice or contained within an authorisation document, of any right of appeal.

Works in Default

The Council may carry out works in default where works required by a statutory notice have not been started or completed satisfactorily within the specified timescales.

Default action will normally be carried out where there is risk to public health or the environment, such that the consequences of not taking action would be unacceptable.

A recipient of a notice will normally be advised of the Council's intention to carry out default works. There are situations however, where the Council may take immediate action without service of a notice (e.g. preventing risks to public health or harm to the environment) where such action is considered necessary. Such action will only be taken where there is considered to be an imminent risk to public health or the environment.

The Council can reclaim the costs of works in default, including administration costs. In most cases, such costs can be entered as a charge on property or can be recovered through the courts.

Formal Cautions

The service of a formal caution will be considered when the circumstances of the offence satisfy the criteria detailed in Home Office Circular 18/1994:-

- The offence is sufficiently serious to warrant prosecution; and
- It is a first offence; and/or
- The offence occurred through ignorance and the offender has expressed remorse and a willingness to comply with the law in future; and
- The officer believes that a formal caution will prevent repeat offences.

A formal caution may only be issued if the following criteria are satisfied:-

- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.
- The offender admits that they are guilty.
- The offender will accept the formal caution and understands its significance.
- It is in the public interest to issue a formal caution rather than instigate prosecution proceedings.

Formal cautions may be cited in prosecution proceedings in relation to a similar offence committed within three years of the caution's issue. A central register of formal cautions issued will be maintained. A copy of the caution will be sent to the Office of Fair Trading.

Prosecution

The instigation of legal proceedings will be considered in the following cases:-

- (a) Where the offence involves a flagrant breach of the law such that public health or the environment has been placed at serious risk.

- (b) Where the offence involves a failure to comply with a statutory notice.
- (c) Where there is a history of similar offences involving serious risk to public health or the environment.
- (d) Where an individual/business is unwilling to prevent a recurrence of, or resolve the offence.
- (e) Where an authorised officer has been intentionally obstructed in the course of his/her duties.

Guidance

The Council aims to follow central government guidance and advice in the form of Circulars, Codes of Practice, Planning Policy Guides, Process Guidance Notes and BREF Notes in all matters relevant to this policy.

COMPLAINTS ABOUT OUR SERVICE

Should you feel dissatisfied with the way you have been treated by the Council, or the way this policy has been implemented, you should initially complain in writing to:

Head of Environmental Health & Housing Services,
Ashfield District Council,
Urban Road,
Kirkby-in-Ashfield,
NOTTINGHAM,
NG17 8DA.
Tel: 01623 450000
Fax: 01623 437530

It is our aim to respond to you within ten working days. If having received a response, you are still dissatisfied, you can access the Council's formal complaint system. A form for this purpose can be obtained on request by telephoning 01623 450000.

If you still feel aggrieved, you have the right to take your case to the Local Government Ombudsman who can be contacted by telephoning 01904 663200 or via the website www.lgo.org.uk

WEBSITE

Further information on services provided by Ashfield District Council can be found on our website at www.ashfield-dc.gov.uk.

Copies of this document are available in large print on request to the Environmental Protection Manager on 01623 457416.

ASHFIELD DISTRICT COUNCIL



**ENVIRONMENTAL HEALTH & HOUSING
SERVICES**

**ENFORCEMENT
POLICY STATEMENT**

MAY 2003

1.0 INTRODUCTION

This document sets out what businesses, individuals and the community as a whole can expect from the Division's enforcement officers. It commits us to good enforcement policies and procedures.

The primary function of the Division's enforcement work is to protect the public and the environment. At the same time equitable and consistent enforcement helps to maintain a level playing field for local business, as well as our service users.

We recognise that the effectiveness of legislation depends upon the compliance of those regulated and that most businesses and individuals want to comply with the law. We will therefore assist and advise wherever possible, whilst taking firm action against those who flout the law or act irresponsibly.

Ashfield District Council and Environmental Health and Housing Services have formally adopted the Government's Concordat on Good Enforcement, we thereby commit ourselves to the following policies and procedures.

2.0 POLICIES

2.1 Standards

In consultation with business and other interested parties, we will draw up clear standards setting out the level of service and performance that the public and business can expect to receive. We will publish these standards and our annual performance against them.

2.2 Openness

We will provide accessible information and advice, in plain language, on the legislation that we enforce. We will be open about how we set about our work, consulting local business and other interested parties.

2.3 Helpfulness

We believe that prevention is better than cure; we will actively work with local business to advise on, and assist with compliance. We will provide a courteous and efficient service, and our staff will identify themselves by name. We will offer a

contact point and telephone number to encourage further liaison. Applications for licences, registrations etc. will be dealt with efficiently and promptly. We will strive to ensure that wherever practicable, our activities are effectively co-ordinated to avoid unnecessary overlaps and/or delays.

2.4 Complaints about our service

We will maintain our informal and formal complaints procedures, which are easily accessible to all service users, and which explain all rights of complaint and appeal, including the likely time-scales involved.

2.5 Proportionality

We will take into account the costs of compliance for business by ensuring that any enforcement action we take or remedial action we require is proportional to the risks. We will, as far as the law allows, work with business and individuals so that they can meet their legal obligations, without unnecessary expense.

2.6 Consistency

We will carry out our duties in a fair, equitable and consistent manner. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

2.7 Human Rights Act 1998

All enforcement activity will be undertaken with due regard to the provisions of the above legislation, which derives from the European Convention on Human Rights especially:-

Article 6 – the right to a fair trial.

Article 8 – the right to respect for private and family life.

Article 1 of the First Protocol, which relates to the protection of property.

3.0 PROCEDURES

- Advice from an officer will be put clearly and simply, in writing on request and including any appropriate timescale. Legal requirements will be clearly distinguished from best practice advice.
- Before formal enforcement action is taken, officers will provide an opportunity for discussion of relevant circumstances, unless immediate action is required (e.g. to prevent destruction of evidence).
- Where immediate action is taken, reasons for such action will be given at the time, and confirmed in writing within 10 working days.
- Where there are rights of appeal against formal action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.

4.0 APPLICATION OF OUR POLICY

- All Officers must refer to this policy when making enforcement decisions. It must be read in conjunction with relevant approved guidance on enforcement action, which may be produced. Regard must also be had to any relevant procedures applied by the Environmental Health and Housing Services Division.

Note: For the purpose of this Policy “enforcement” includes legal notices, formal cautioning and prosecution.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the Section Manager before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

In cases of emergency or where exceptional conditions prevail, the Head of Environmental Health and Housing Services may suspend all or part of this policy where necessary to achieve effective running of the service and/or where there is a risk or injury or to health of employees or members of the public.

5.0 DECIDING WHETHER TO PROSECUTE

Before deciding whether a prosecution will be taken against a business or an individual, the Prosecuting Officer shall consider a number of factors in line with the Code of Crown Prosecutors. These factors may include the following:-

- The seriousness of the alleged offence;
- The history of the party concerned;
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers;
- Whether it is in the public interest to prosecute
- The likelihood of success of the prosecution.
- Whether any action (including formal caution) would be more appropriate or effective.

These factors are **NOT** listed in order of significance. The rating of the various factors will vary with each situation under consideration.

6.0 REVIEW

It is intended that this document will be subject to an annual review with additional reviews as and when required and improvement by the Environmental Health and Housing Management Team, to accommodate changes in legislation, local needs and the views of our customers.

7.0 ANY QUERIES

Please contact Bill Buckley, Head of Environmental Health and Housing Services, Ashfield District Council, Council Offices, Urban Road, Kirkby-in-Ashfield, Nottingham, NG17 8DA. Telephone 01623 450000. E-mail b.buckley@ashfield-dc.gov.uk