

**Development and Regulatory Services  
Enforcement Policy**

**London Borough of Barnet**

## DEVELOPMENT & REGULATORY SERVICES

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## **PREFACE**

Local authority regulatory services have a key role to play in supporting local economic prosperity and community wellbeing. They ensure that well-run, legally compliant businesses are supported and that consumers, workers and the environment are adequately protected.

The Council of the London Borough of Barnet therefore has a responsibility to protect the communities it serves using the legislative tools delegated by national government.

The London Borough of Barnet Development & Regulatory Services (DRS) administer and enforce a raft of legislation designed to protect health, the environment and the local economy. In doing this, we have flexibility to determine the most appropriate means to achieve compliance, taking account of both national guidance and the Council's Corporate Priorities, Policies and Strategies.

Consistent and fair application of our enforcement powers supports the delivery of the Council's strategic objectives:

- Create the right environment to promote responsible growth, development and success across the borough;
- Support families and individuals that need it – promoting independence, learning and well-being;
- Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.

The Services also support the following principles that underpin everything undertaken by the Council:

- a relentless drive for efficiency;
- a new relationship with citizens;
- a one public sector approach.

This document seeks to explain the Borough's approach to the use of its enforcement powers generally, whether that is criminal prosecution at one end of the spectrum or informal warnings and advice at the other. The policy is underpinned by detailed procedures for staff.

## 1.0 INTRODUCTION

Experience shows that, in most cases, businesses and individuals aim to comply with the law. Failure to do so generally stems from ignorance or carelessness but sometimes from wilfulness or malice and therefore well targeted enforcement and regulation is necessary to achieve the aims and objectives of the services.

The London Borough of Barnet Development & Regulatory Services are responsible for the enforcement of a wide range of laws, including laws designed to protect public health, safety and welfare, mitigate nuisance and anti-social behaviour and maintain fair and safe trading practices.

These laws are applied in the following areas:

- food safety and standards;
- workplace health & safety;
- private sector housing;
- environmental protection;
- public health & nuisance;
- animal health & welfare;
- licensing;
- trading standards;
- building control;
- planning;
- highways.

Each area of work uses different legislation to secure its aims and each has its own extensive body of guidance, which has been developed from experience and case law. This document does not try to capture all of this detailed, complex and often changing background, but reiterates the basic principles of enforcement activity. Matters relating to enforcement generally are contained in Sections, 3, 4 and 5 of this policy. Specific matters and issues relating to the following areas are detailed in the appendices to this policy:

- Appendix A: Private Sector Housing;
- Appendix B: Public Health and Nuisance;
- Appendix C: Food, Health & Safety;
- Appendix D: Trading Standards & Licensing;
- Appendix E: Planning;
- Appendix F: Building Control;
- Appendix G: Highways.

This document sets out the principles by which officers will seek to achieve compliance with the criminal and civil legislation enforced by the services. Such compliance will be ensured by:

- Helping and encouraging businesses and individuals to understand and comply with the law;
- Responding proportionately to breaches of the law;
- Performing enforcement in a fair, practical and consistent manner. Such enforcement performed with due regard to the provisions of the Human Rights Act 1998, equalities legislation, service specific legislation and all other relevant legislation applicable from time to time.

This policy, taken in the context of government and other guidance, seeks to ensure that the application of any enforcement is: -

- proportionate to the offence and risks;
- transparent; in that any person affected understands what is expected of them, what they should expect from the local authority and the reasons for the action;
- consistent in approach;
- appropriate;
- and that the benefits outweigh the costs.

There is also the recognition in this policy that enforcement resources are not limitless and need to be targeted at areas where risk is highest.

The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available are likely to vary substantially. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement from Development & Regulatory Services.

A local authority should have regard to its enforcement policy, as a guide for decision makers, promoting consistency and equity of treatment, but it need not be blindly driven by it. Decisions about prosecution are for the prosecutor to make, not for the enforcement policy to determine.

This policy document supersedes any previous policy documents on enforcement.

## **2.0 GENERAL STATEMENT OF INTENT**

It is the policy of the Council of the London Borough of Barnet to maintain and enhance the amenity of the Borough and to protect the health, safety and wellbeing of its residents, as well as people working in, or visiting the Borough. The Council considers that its powers to initiate formal action and prosecutions under the law are a vital tool to secure essential improvements to the environment and economy of the Borough.

The Council recognises that a key element of its enforcement activity is to allow or even encourage economic progress and will only enforce against or prosecute when there is a clear case for protection. This policy therefore has been drafted to emphasise how the DRS will deliver enforcement functions in a way which enables economic growth for compliant businesses and other regulated entities, by:

- minimising the negative economic impacts of regulatory activities;
- minimising the costs of compliance for duty holders;
- improving confidence in compliance for duty holders; and
- encouraging and promoting compliance.

The use of enforcement will be proportional to any offence committed, consistent in application (including consistency with other local authorities or enforcement agencies), transparent in its use and appropriate to the circumstances of the particular case in question.

Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal proceedings) rather than wilfulness, officers will give advice and attempt to facilitate the training of those involved in addition to enforcement action.

Enforcement action will not, therefore, be a punitive response to minor technical contraventions of law but will be forceful in situations where, for example, the public's health is put at risk or there is a significant environmental impact due to negligence, incompetence or blatant disregard of the law. The cumulative effect of contraventions, which in themselves could be considered as minor, needs to be considered when assessing the most appropriate course of action.

The London Borough of Barnet is a signatory to the Cabinet Office's Enforcement Concordat which commits the Council to good enforcement policies and procedures. In carrying out enforcement, DRS will have due regard to the statutory Regulators' Code, the Data Protection Act 1998, the Human Rights Act 1998, equalities legislation and to conduct enforcement in accordance with better regulation principles.

Officers of the Council will have regard to this policy when making enforcement decisions and all operational procedures will be written to accord with it. Any departure from policy must be exceptional, capable of justification and be fully considered by senior managers before the decision is made unless it is believed that there is significant risk to the public in delaying the decision.

### **2.1 Risk Assessment**

Risk assessment will be used to concentrate resources to maximise effectiveness in ensuring compliance with the law. Risk assessment will be based upon all available relevant and good quality data and explicitly consider:

- The potential impact of non-compliance
- The likelihood of non compliance

## **2.2 Economic progress**

It is recognised that good regulation and enforcement can act as an enabler to economic activity. The impact of regulation and enforcement will be considered including costs, perceptions of fairness and effectiveness. Approaches will be adopted where the benefits justify the costs.

## **2.3 Advice and guidance**

Prevention is better than cure and improved compliance can be achieved through a focus upon support and advice. In providing such advice and guidance the following will be considered:

- Legal requirements will be promptly communicated or otherwise made available upon request;
- General information, advice and guidance will be provided in clear, concise and accessible language using a range of formats and media ensuring efficient use of resources;
- In responding to non-compliance, the primary approach can be the offering of advice and guidance to help ensure compliance, without triggering further enforcement action;
- Advice will distinguish statutory requirements from guidance aimed at improvements above minimum statutory standards.

## **2.4 Inspections and other visits**

Inspections will take place when there are justifiable reasons and where on the basis of risk assessment a visit is required. To ensure effectiveness of inspection programmes and visits the following provisions will be considered:

- Inspections will occur
  - In accordance with statutory inspection duties,
  - In accordance with risk assessments,
  - Where requested,
  - Where relevant intelligence is received.
- Random inspection will be undertaken where appropriate, unless expressly prohibited by legislation or national guidance. This will include the testing of the risk assessment approach or effectiveness of interventions;
- Inspections will be co-ordinated with other enforcement agencies and regulators where practicable;
- Where inspections have been carried out feedback will be given to duty holders to reinforce compliance and to encourage good practice.

The greatest inspection effort will be focussed upon where a breach or breaches pose a serious risk and/or where there is a high likelihood of non-compliance.

### **3.0 ENFORCEMENT OPTIONS**

#### **3.1 Choice of Enforcement Approach**

In any situation which requires action to ensure compliance with the law officers will consider the following when deciding on the most appropriate enforcement method: -

- the degree of risk from the situation;
- the seriousness of the legal contravention;
- the benefits justify the costs of the approach;
- the different technical means of remedying the situation;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- the general attitude of the offender to his or her responsibilities;
- the past history of the person(s), company or premises involved;
- the impact of the enforcement choice in encouraging others to comply with the law;
- the likely effectiveness of the various enforcement options;
- any legal imperatives e.g. the obligation to serve an abatement notice if a statutory nuisance exists;
- any legal guidance, e.g. advice contained in Government circulars.

The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time.

#### **3.2 Options Available**

- refer the matter to another relevant service or agency;
- informal action - written or oral;
- a range of statutory notices generally requiring some remedy within a specified timescale (or possibly immediately);
- simple caution;
- prosecution;
- prohibition;
- injunctive restraint;
- seizure of equipment, food, articles or records (paper or computer)
- execution of work required by a statutory notice where the recipient has not complied;
- issue of a fixed penalty notice.

#### **3.3 Referrals to Other Agencies**

Services regularly consult and work with other agencies, including but not restricted to:

- The London Ambulance Service;
- The London Fire and Emergency Planning Authority (LFEPA);
- The Metropolitan Police;
- Government Agencies;
- Regional agencies;
- Professional bodies;
- Other council departments (e.g., Social Services).

Where there is wider regulatory interest DRS will refer relevant information received to other regulators, for example to the LFEPA where there are problems with means of

escape in case of fire or to the Health and Safety Executive (HSE) where there are gas safety problems.

### **Information Requirements**

Requests for information will only be made where it is necessary after considering the cost and benefit of obtaining the information. Where practicable and not bound by legal constraint, information will be shared with partners. This will prevent the need for the information being provided more than once.

### **3.4 Informal Action**

This level of action will be appropriate where the consequence of non compliance will not pose a significant risk in the short term and the other enforcement options will likely be inappropriate and disproportionate. Examples of informal action include written and oral warnings together with giving advice, and guidance.

Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

### **3.5 Formal Action**

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

Officers will aim to conduct enforcement in a manner that complies with the requirements of relevant legislation and codes of practice. For example this includes but is not limited to the related documents:

- The Enforcement Concordat;
- The Regulators' Code;
- The Code for Crown Prosecutors;
- Police and Criminal Evidence Act 1984 and associated codes procedure;
- Criminal Procedure and Investigations Act 1996;
- Regulation of Investigatory Powers Act 2000;
- Regulatory Enforcement and Sanctions Act 2008;
- Protection of Freedoms Act 2012.

Officers must be satisfied that sufficient evidence is available to justify the enforcement action proposed and that all evidence is properly recorded to satisfy Police and Criminal Evidence Act requirements.

#### **3.5.1 Statutory Notices**

Subject to the many specific rules governing the use of different statutory notices, they will generally be used where there is:

- a clear breach of the law;
- the degree of risk or environmental impact or harm from the situation is significant;
- and

- a remedy needs to be specified and secured within a set period of time.

In some instances service of a notice will be compulsory - e.g. abatement notices under the Environmental Protection Act 1990 or, the grounds for service of a notice need to be laid out, e.g. the property must have a Category 1 hazard before a notice can be served under section 11 of the Housing Act 2004.

Any notice that is served must be clear and unambiguous and contain all the content requirements detailed in the legislation and in any case must state:-

- The legislation, including regulation, section, subsection or paragraph that has been contravened
- The matter which gives rise to the contravention (and if hazards exist what those are)
- The action to be taken by the recipient, which must be reasonable in relation to the hazard or legislation breach
- The timescale for compliance
- The mechanisms for appeal

The demands imposed by notices will be realistic. Whenever possible compliance time limits will be agreed with recipients to ensure they are both attainable and appropriate. Where possible, necessary works will be discussed and alternative solutions considered. Where legal provision permits and the Council have included in its published fees and charges, a charge will be made for notices served, for example, notices served under the Housing Act 2004.

Where appropriate, the officer will inform all interested bodies, including tenants; employees, managers; freeholders; leaseholders and mortgagees of the action taken and its expected outcomes. A copy of notices will be sent to all parties with legal interest in property.

Prosecution and/or works being carried out in default of the notice recipient or their agent will be expected where a statutory notice has not been complied with within the time scale required.

### **3.5.2 Simple Caution**

A simple caution may be offered in certain cases as an alternative to a prosecution. Its purpose is to deal quickly and simply with less serious offences, divert offenders away from court and to reduce the likelihood that they will offend again.

There are four preconditions, which must be satisfied if a matter is to be dealt with by simple caution, as follows: -

1. there is sufficient evidence of an offender's guilt,
2. the offender is 18 years of age or over,
3. the offender admits they committed the crime, and
4. the offender agrees to be given a caution.

The reasons for issuing a simple caution instead of prosecution in the courts will commonly be that the offender has no previous history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this will usually entail remedial work to premises, taking proper steps to ensure that the offence cannot recur and sometimes compensation to any victims. If a simple caution is offered and refused by the offender then the case will most likely proceed to court.

Based on their experience of the courts and in the light of guidance from, amongst other sources, the Home Office and the Code for Crown Prosecutors, officers will judge whether the efforts of the offender will be likely to result in little or no additional penalty being imposed if the case were to proceed by way of prosecution. They will also judge the effects of pursuing a simple caution as opposed to a prosecution on other potential offenders and any relevant public interest issues.

The offender must be given a full explanation of the significance of the caution before being allowed to accept it, as a simple caution is an admission of guilt to a criminal offence and is recorded as such on the Central Register of Convictions held by the Office of Fair Trading. It is not a form of sentence, nor is it a criminal conviction but it will remain on record for three years and may influence a decision to prosecute should the individual or organisation re-offend.

The authorisation to issue simple cautions can only be delegated to officers at Service Manager level and above.

### **3.5.3 Prosecution**

The Council has the power to prosecute offenders for a range of criminal offences and criminal prosecution is the most severe and if successful, punitive approach that can be taken.

Decision on whether to prosecute will be made in accordance with the *Code for Crown Prosecutors* which requires officers to be satisfied that (i) there is enough evidence to provide a realistic prospect of a conviction and (ii) it is in the public interest to do so.

To aid officers in this task, the *Code for Crown Prosecutors* sets out the Full Code Test which consists of two stages:

1. The Evidential Stage
2. The Public Interest Stage

There is a strict order in which the two stages of the Full Code Test are to be applied, as required by the Code for Crown Prosecutors. Officers must first consider the evidential stage. If the strength of evidence does not allow the case to pass this stage, the prosecution cannot go ahead, no matter how important the case or how strong the public interest is in favour of prosecution.

#### The Evidential Stage

The finding that there is enough evidence to provide a realistic prospect of conviction will be based on the officer's objective assessment of the evidence, including how reliable it is, what the defence case may be and how it is likely to affect the prospects of conviction. Officers will also consider whether the evidence can be used in court, i.e. whether it is admissible. The courts may not allow information to be heard, even though it appears to be relevant to the case, if it does not comply with the rules of evidence. If it is likely that the court will exclude some of the evidence, officers will need to consider whether there remains sufficient admissible evidence to satisfy the evidential stage of the test.

#### The Public Interest Stage

In every case where there is sufficient evidence to justify a prosecution, officers must go on to consider whether a prosecution is required in the public interest. In deciding

whether it is in the public interest, officers will need to weigh those factors in favour of and against prosecution carefully and fairly.

When deciding the public interest, officers will consider each of the questions set out in paragraphs 4.12 a) to g) of the Code. The questions are not exhaustive and not all may be relevant in every case. The weight to be attached to them and the factors identified will also vary according to the facts and merits of each case.

These questions include: how serious is the offence committed? What is the level of culpability of the suspect? What are the circumstances of and the harm caused to the victim and also whether prosecution is proportionate. Whilst the Enforcement Service does not act for victims or families of victims, but rather on behalf of the public, when considering the public interest, officers will always take into account the consequences for the victim of whether or not to prosecute and any views expressed by the victim or their family.

Factors for prosecuting include where cases are likely to result in significant sentences; the offence was committed against a vulnerable person; the offence was premeditated, carried out by a group or motivated by a form of discrimination; the defendant has committed similar offences and/or the offending is likely to recur.

Factors against prosecuting include where cases are likely to result in only a nominal penalty; the offence was committed as a result of a genuine mistake or misunderstanding; the loss and/or harm can be described as minor; a prosecution is likely to have a bad effect on the victim; the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health (unless the offence is serious or there is real possibility that it may be repeated); the defendant has rectified the loss/harm caused (although defendants must not avoid prosecution solely because they pay compensation); or details may be made public that could harm sources of information or national security.

Authorisation to proceed with a prosecution can only be given to officers at Service Manager level or above.

Once a summons has been issued it will not be withdrawn unless it is considered that a conviction will not be obtained or that the public interest requires it. The Code for Crown Prosecutors requires an ongoing review of the need to pursue proceedings and officers must advise the Head of Legal Services of any new evidence or information particularly where this may cast doubt on the propriety of the original decision to proceed.

The officer will ensure that decisions to prosecute and results of any legal proceedings are notified to all interested bodies, including tenants; managers; freeholders; leaseholders and mortgagees.

#### **3.5.4 Prohibition**

This power will be used where there are statutory grounds (i.e. that there is an imminent risk of injury to health or a risk of serious personal injury) and where the situation cannot be allowed to continue because of the risks involved.

#### **3.5.5 Injunctions**

An injunction may be sought from the courts in circumstances for example where there is a significant threat to public health or safety and the normal process of law (statutory notices, prosecution or work in default) is likely to be ineffective because the

perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptable period of time having regard to the particular circumstances.

An example might be where, in spite of an Emergency Prohibition Notice or Order being served a Food Business continues to trade. Other examples might be a notice requiring someone to stop causing a noise nuisance, or a builder continuing to work at night and at weekends to complete a contract very quickly because the contractual financial penalties made it economically desirable for them to do so. Injunctive relief may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

A decision to seek an injunction will only be taken by an officer at Service Manager level or above, in consultation with the Head of Legal Services.

### **3.5.6 Work in Default**

Some legislation allows the local authority to undertake the work required by a notice if the recipient of the notice does not do so within the times specified in it.

Where a notice has been served, and where without adequate excuse or reason, the work has not been done, then work in default will generally follow if there is an imminent risk to occupiers or a high risk to public health. This decision will be subject to the practical constraints of the case and the financial circumstances. Prior to carrying out works in default the Council will consider carefully the prospect of recovery of any costs incurred in accordance with current Council policy.

Except in urgent cases the owner/person responsible must be served with:

1. The relevant notice of intention; and
2. Information which clearly states the effect of the proposed action and its subsequent costs including administration charges and details of how such sums may be recovered or made a charge on the property.

The Council will make every effort to recover the full cost of doing the work in default.

Except in urgent cases, where it would be impractical, such as silencing of alarms out of hours, authorisation to proceed with works in default will only be given by an officer at Service Manager level or above.

### **3.5.7 Statutory Orders**

A range of Statutory Orders are available under the legislation enforced by DRS, for example under the Housing Act 2004, an Empty Dwelling Management Order may be used in relation to bringing vacant properties back into residential use. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases.

### **3.5.8 Compulsory Purchase Orders**

The Council may compulsorily purchase property under, for example Section 17 of the Housing Act 1985 (as amended) or The Town and Country Planning Act 1990. This procedure may sometimes follow the exercise of another statutory power or may be carried out without prior action. The consent of the Secretary of State is required and compensation provisions flow from the exercise of this power.

### **3.5.9 Fixed Penalty Notices**

The aim of a Fixed Penalty Notice is to simplify the enforcement process and penalise a contravention of legislation without the need for costly and lengthy court proceedings. This sanction is only available under certain legislation, for example the Clean Neighbourhoods and Environment Act 2005, the Noise Act 1996 and the Health Act 2006 (Smoke Free provisions).

In respect of such offences, the council will normally initially issue a Fixed Penalty Notice and prosecute if the notice is not paid within the time allowed. Where a second or further similar offence occurs within twelve months of an earlier Fixed Penalty Notice, the council will normally proceed to prosecute later offences without issuing a further notice.

In respect of children and young persons under 18 years of age, Fixed Penalty Notices will not normally be issued. Warning letters and notices and other educational approaches will be used instead.

The level of fixed penalty is determined in line with the default sum defined by the legislation. The Council will not negotiate to reduce the penalty and it is not possible for offenders to pay by instalments. Nevertheless, where the legislation allows a discounted penalty is available when payment is made within seven days of the notice being issued.

Anyone receiving a Fixed Penalty Notice can appeal to the Council against its issue. The facts of the case from both the enforcement officer involved and the person appealing will be taken into account. The appellant will be contacted in writing confirming whether their appeal has been allowed.

### **3.5.10 Other Sanctions**

Under the Regulatory Enforcement and Sanctions Act 2008, a range of alternative sanctions may become available to the Council. These include:

- A discretionary requirement -
  - a requirement to pay a monetary penalty to the Council as regulator
  - a requirement to take such steps as the Council may specify
  - a requirement to take such steps as the Council may specify, to put right a breach
- A Stop Notice
- An Enforcement Undertaking

DRS will apply these sanctions as deemed appropriate to the particular circumstances of each individual case and in accordance with relevant guidance. These sanctions may only be used by the Council where the relevant national regulator (e.g. the Food Standards Agency) has satisfied the Minister that the sanctions should be designated to them.

## **3.6 Enforcement where LB Barnet is the statutory duty holder**

Inspection and informal enforcement in these premises will be undertaken as normal. Any serious or repeated breach of legislation will be immediately reported to the Service Manager, who will notify the Chief Executive without delay.

### **3.7 Appeals**

Any applicable rights of appeal, against enforcement decisions, will be made known to affected persons, at the time and in writing, which will form part of any statutory notice.

If a valid appeal is lodged in accordance with the applicable legislation against any action taken or notice served, the Council will review the grounds for the action or notice and where these are considered to still be sound and appropriate will defend the action in the relevant Court or Tribunal.

Where a complaint is received about an enforcement action taken by the Council from the recipient of the action and there exists a formal right of appeal in the relevant Court or Tribunal, the Council will not consider the matter under its formal complaints procedure.

## **4.0 COMPLIANCE WITH THE PRINCIPLES OF GOOD ENFORCEMENT**

### **4.1 Openness**

In carrying out all of its enforcement duties, DRS will help those it deals with to understand what is expected of them, and what they can expect from the DRS in terms of formal action, informal action and advice. Any service standards such as speed of response or content of inspections will be available on request and information will be provided in plain language wherever appropriate.

To those who are potentially subject to enforcement action DRS will: -

- make it clear what must be done, distinguishing between statutory requirements and what is desirable but not compulsory in written and verbal communication,
- write to confirm any verbal advice if requested,
- give an opportunity to discuss the circumstances, where possible, prior to formal action being taken, unless immediate action is required,
- where immediate action is necessary, give an explanation of why such action is needed and confirm this in writing,
- make it clear what sort of conduct they may expect when an officer visits and what rights of complaint are open to them.

### **4.2 Helpfulness**

Visits are usually made unannounced but, if appropriate, appointments will be made. Where access cannot be obtained during the day, or in other appropriate circumstances, visits, will be made outside normal working hours. Some advice leaflets are available in different languages. DRS will actively work with businesses, especially small and medium sized businesses, to advise on and assist with compliance. Enforcement officers will identify themselves by name and provide a courteous and efficient service.

### **4.3 Proportionality**

The type of enforcement action taken by officers will depend on the risk arising from the activity in question, but must seek to secure the most appropriate standard in the particular circumstances. Action taken will be proportionate to any risks to health, safety or other harm, including economic harm and to the seriousness of any breach.

In considering enforcement, account will be taken of relevant codes and guidance from legal authorities, public authorities and industry.

Where the law requires that risks should be controlled “as far as reasonably practicable”, officers, when considering enforcement, will take into account the cost as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.

Officers of the Council will, in appropriate circumstances, facilitate training and education if this is also needed to address problems attracting enforcement action.

### **4.4 Consistency**

Decisions on enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail. Furthermore, guidance upon which officers

rely, changes over time and a decision made one day may differ from one made the next for that reason. Consequently there may be instances when enforcement may appear to be inconsistent.

Nevertheless DRS will try to ensure that enforcement action is consistent, both within the Borough and with other enforcing authorities. To achieve this, officers will: -

- follow current internal procedural and guidance notes;
- take due account of appropriate guidance from other authoritative bodies such as the Better Regulation Delivery Office (BRDO), Food Standards Agency, the Health and Safety Executive (HSE), the HSE Local Authorities Enforcement Liaison Committee (HELA), Department of Environment, Food and Rural Affairs (DEFRA), Home Office, Ministry of Justice, Office of Fair Trading (OFT), Department for Communities and Local Government (CLG), Trading Standards Institute and the Chartered Institute of Environmental Health;
- liaise with other enforcement agencies as necessary, for example the Health and Safety Executive, Police, DEFRA, CLG;
- operate an inter-agency approach where the local authorities powers are insufficient, complimentary or on grounds of health and safety at work. For example dealing with food suppliers whose business extends into neighbouring authorities;
- consult with the LFEPA before service of a Health and Safety or a Housing Act notice that affects the means of escape in case of fire;
- take account of any new legislation or guidance which impacts on their duties; and
- be represented by lead officers at Local Authority enforcement liaison groups, including for food, health and safety, pollution, and private sector housing.

The above measures will be supplemented by training for enforcement officers, the introduction where appropriate of quality assurance techniques and internal auditing of samples of individual cases.

#### **4.5 Targeting**

The Council accepts that its enforcement resources are limited and that they should be targeted to those persons, premises or companies whose activities give rise to the risks, that are the most serious or least well controlled.

Officers therefore carry out a programme of inspections on a risk-rating basis. Premises or activities with the highest hazards, greatest risks, poorest compliance and worst management will be inspected more frequently than low risk premises. Some very low risk premises may not form part of the inspection programme at all but will generally be given literature or guidance to help them run their business safely and with the least impact on their local environment. It follows therefore that most of the enforcement activity arising from pro-active programmes will be targeted on the cases most requiring it.

The second targeting mechanism is the investigation of complaints where evidence, experience and this policy are used to determine enforcement action.

The third targeting mechanism is planned, special surveys and enforcement initiatives carried out in response to national concerns as voiced by the government or its agencies, or local concerns as voiced by Members of the Council, or residents.

## **4.6 Complaints about the Service**

The Council has a formal Complaints Policy. If anyone wishes to complain about enforcement action they may do so initially by contacting the relevant Team Manager by telephone, details of which are available on [www.barnet.gov.uk](http://www.barnet.gov.uk) or by writing to them at the London Borough of Barnet, North London Business Park, Oakleigh Road South, New Southgate, London, N11 1NP.

Where possible a complaint will be investigated within 10 working days, or if the investigation cannot be completed within this time period a reply will be made and the investigation completed as soon as possible.

If a complainant is dissatisfied with the result of their complaint to the Team Manager they may then complain to the Head of Service, who will respond within 10 working days.

If a complainant is still not satisfied, they can write to the Council's Chief Executive, who will also aim to respond in 10 working days.

If a complainant is still not satisfied following the final stage of the Council's complaints procedure, then they may wish to make a complaint to the Local Government Ombudsman (Telephone: 0300 061 0614).

The complaints procedure is not appropriate in cases of court proceedings or where there is a statutory right of appeal against an action.

## **5.0 PUBLICITY**

DRS will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media may also be provided with factual information about hearings that have gone before the Courts and thus are in the public domain. The media may also be provided with details of other enforcement actions such as simple cautions, seizures of goods or equipment and results of sampling programmes.

A register of health and safety notices, which affect the public, is also available to view at the Council Offices.

The names of companies and individuals convicted of breaking health and safety law in the previous 12 months will be published annually by the HSE.

This policy document is freely available to the public on the internet or by request from Development & Regulatory Services, London Borough of Barnet, North London Business Park, Oakleigh Road South, New Southgate, London, N11 1NP

The policy will be subject to periodic review.

## APPENDIX A

### Private Sector Housing Enforcement

**This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Private Sector Housing Team and to set out the Councils policy where the legislation permits discretion. All decisions on Private Sector Housing enforcement action will be made following consideration of this policy.**

#### 1. Introduction

The Private Sector Housing Team (PSH) deals with:

- Investigating service requests from residents about private sector housing conditions;
- Providing advice and taking enforcement action where appropriate to bring housing up to standard or bring empty properties back into residential use
- Investigating service requests about the condition of empty properties;
- Administration of licences for houses in multiple occupation (HMO);
- Administration of Caravan Site Licensing Scheme.

The service aims to:

- Protect and improve the health and wellbeing of residents and visitors to the borough, in particular by ensuring that they have a safe place to live;
- Increase the number of homes within the borough;
- Relieve the pressure on health and social care resources by helping people to stay safely in their own homes.

The Council has a legal responsibility to ensure that minimum standards are reached and maintained. PSH will aim to improve and maintain housing standards through:

- advice to tenants, landlords and owners;
- encouraging good management practices;
- advice on and enforcement of national and local housing standards.

The PSH team's priority is to bring properties up to a minimum standard rather than to seek the rehousing of the occupiers.

#### 2. Scope

This appendix covers the following enforcement action:

The Housing Health and Safety Rating System (HHSRS);  
Powers to charge for enforcement action;  
Empty Property Enforcement;  
Other Provisions.

### 3. Legislation

PSH is responsible for ensuring that the Council performs their statutory functions under the following legislation:

Housing Acts 1985, 1988, 1996 and 2004;  
Housing Grants, Construction and Regeneration Act 1996;  
Energy Act 2011;  
Environmental Protection Act 1990;  
Public Health Acts 1936 and 1961;  
Building Act 1984;  
Caravan Sites and Control of Development Act 1960;  
Caravan Sites Act 1968;  
Prevention of Damage by Pests Act 1949;  
Local Government (Miscellaneous Provisions) Act 1976 and 1982;

and any regulations, orders or other statutory provisions made under or incorporated into the above

These legislative tools will always be considered and followed where appropriate.

### 4. Housing Health & Safety Rating System (HHSRS) [Housing Act 2004]

#### 4.1 HHSRS Enforcement Regime

HHSRS enables the assessment of risks to the health and safety of occupiers posed by certain specified housing related hazards, and scoring of their severity to decide whether improvements are needed.

Assessed hazards are banded Category 1 or Category 2 depending on the seriousness of the risk. Where Category 1 hazards are found the Council has a duty to take the appropriate enforcement action which may include requiring the owner to remedy the defect. If less serious Category 2 hazards are found, the Council has discretionary power to require action.

Action undertaken by the council is based upon a three-stage consideration:

1. Determine if hazards are present and assess the hazard ratings under the HHSRS;
2. Determine whether the Council has a duty or power to take action; and
3. Determine the most appropriate course of action to deal with the hazard, having regard to Statutory Enforcement Guidance, the Council's Enforcement Policy and associated documents.

Where a specified hazard exists, the courses of action available to the Council are:

- Serve an Improvement Notice;
- Make a Prohibition Order;
- Suspend the Improvement Notice or Prohibition Order
- Take Emergency Action<sup>1</sup>;
- Serve a Hazard Awareness Notice;
- Make a Demolition Order<sup>2</sup>;
- Declare a Clearance Area<sup>2</sup>;

<sup>1</sup> Not available for Category Two hazards

<sup>2</sup> Available for Category Two hazards only in prescribed circumstances

The Enforcement Guidance to the 2004 Act states that the action chosen must be *the most appropriate course of action in relation to the hazard in all the circumstances* and sets out the general factors relevant to the enforcement options listed above.

The Council can act in default and prosecute for lack of compliance to these notices. It can also charge for and recover charges for enforcement action [see 5.0 below].

## 4.2 HHSRS Policies

At a time when resources are scarce action will be directed to the most serious cases. For **Category 1** hazards the Council will carry out its statutory duty to resolve all such hazards identified and will always take appropriate enforcement action where properties are tenanted. Where properties are owner occupied the Council will take action but the nature of the enforcement action may vary on a case by case basis.

For **Category 2** hazards the Council will not generally take action except where a statutory notice is already being served regarding Category 1 hazards. In these circumstances category D hazards will also be dealt with. In extreme circumstances action will be taken where only Category 2 hazards are present for example where there are concerns about a vulnerable person. This will be with the agreement of the Service Manager or Environmental Health Manager.

All notices and orders will state why one type of enforcement action was taken instead of another. They will also clearly state what is required to be done to remedy the hazard, and when it has to be done by. Considerations will be given to the views of owners, landlords and tenants before formal action is taken except in very urgent cases.

Where there are concerns about a vulnerable person, the appropriate agencies will be consulted to help make a decision regarding the appropriate enforcement action.

### Option Appraisal

Typical reasons why one enforcement option may be chosen over another are considered below. It is not possible to take more than one simultaneous action for the same hazard but if the option chosen has not proved satisfactory the Council may consider another course of action (or the same action again). The regeneration and renewal programmes and approved Housing Strategy for the area along with this Enforcement Policy will be used to inform the appropriate course of action.

**A Hazard Awareness Notice** draws the attention of the person responsible for the works of the desirability of remedial action although the person responsible is under no legal obligation to remove or reduce the hazard. It may be considered to be the most appropriate course of action in relation to the hazard where:

- The occupier is aware of the risks posed by the hazard(s) but expressed a desire to remain in the property and for the works not to be undertaken
- The property is occupied solely by the owner and his/her immediate family and there is no imminent risk associated with the hazards identified.
- In cases relating to overcrowding –
  - Where the family have no desire to move e.g. due to local care arrangements and the occupiers are not at serious risk or
  - where the overcrowding has been caused by a natural/invited increase in family size *and* the banding is less than an “A”

An **Improvement Notice** requires the relevant person to undertake prescribed works to the property prescribed by the Council. It could be considered to be the most appropriate course of action in relation to the hazard where:

- Once the improvements are completed it can be expected that the hazards within the property will be reduced to an acceptable level and they can take place whilst the tenants are in occupation; and
- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

A **Prohibition Order** closes the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants). It could be considered to be the most appropriate course of action in relation to the hazard where:

- The cost of the improvement works is likely to be prohibitive, bearing in mind the value of the property; or
- The landlord is able to bear the cost of the refurbishment and the property is vacant; or
- The extent of the works is such that undertaking remedial action is likely to be a lengthy process and it would not be possible to complete them with the tenants in occupation.

**Emergency Remedial Action** involves undertaking works to the property prescribed by the Council in default of the owner without prior service of notice or upon service of notice. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; and
- Once the improvements are completed it can be expected that the hazard(s) within the property will be reduced to an acceptable level and they can take place whilst the tenants are in occupation; and
- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has also expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

An **Emergency Prohibition Order** closes the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants). It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; or
- The cost of the improvement works is likely to be prohibitive, bearing in mind the reduction in risk and the value of the property; or
- The extent of the works is such that undertaking emergency remedial action is likely to be a lengthy process exposing the occupier to an unacceptable risk; or
- Due to the nature of the hazard the Council do not consider any works are appropriate and practical in relation to the hazard(s) found at the property.

**Suspended Improvement Notice or Prohibition Order** This would involve no actions until a trigger event occurs. A suspended notice is required to be reviewed at intervals

of no greater than 12 months from the date of service. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The tenants are aware of the hazards within the dwelling and have expressed a desire to remain in residence at the property without the disturbance of the works; or
- The works required to remove or reduce the hazards to an acceptable level cannot be completed with the tenants in place and the occupier is currently unwilling to vacate the premises; or
- The tenant is not in imminent risk and does not want to leave until a suitable property in a suitable location has been located.

## **5. Powers to charge for enforcement action [Housing Act 2004]**

The Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred in:

- serving an Improvement Notice;
- making a Prohibition Order;
- serving a Hazard Awareness Notice;
- taking Emergency Remedial Action;
- making an Emergency Prohibition Order;
- making a Demolition Order.

The expenses are in connection with inspection of the premises, subsequent consideration of action and the service of notices. Where notices are served under the Housing Act 2004 a charge as published in the Council's schedule of fees and charges will be made.

As the fees are not of a punitive nature but to cover the Council's enforcement costs it will be normal practice to charge the appropriate fee for enforcement action. The fees are set annually at Cabinet Resources Committee and will only be waived due to financial hardship following agreement by the Service Manager or Environmental Health Manager.

## **6. Enforcement Options for Empty Properties**

A range of powers exist to help deal with the problems caused by empty properties and bring the property back into use. The main enforcement options are discussed below. Full details of the Council's approach to empty property work can be found in the *Empty Property Strategy 2013-14*.

### **6.1 Enforced Sale**

The Council is entitled to force the sale of a property in order to recover a debt secured against it as a Local Land Charge or caution with the Land Registry. This course of action will be considered by the Council once debts owed exceed £1000.

Not all debts may be secured as a Local Land Charge or caution with the Land Registry. For 'person' debts such as Council Tax debt, the Council can apply to the County Court for an Interim Charging Order. If successful the Council may then apply for a Final Charging Order and order the sale of the property. This power may be used for debt of any size but naturally smaller debts are more likely to be repaid.

## **6.2 Empty Dwelling Management Orders [Housing Act 2004]**

Empty Dwelling Management Orders (EDMOs) enable the Council to take over the management of a residential property that has been empty for more than 6 months.

EDMOs will be considered where the property is having a detrimental effect on the local community; negotiations to bring a property back into residential use have failed and the likely rental income from the property will, in a reasonable timescale, offset the expenses likely to be incurred in bringing the property up to a habitable standard and managing the property

EDMOs can be Interim or Final. An Interim Order should be considered as the final opportunity for a voluntary solution to be found to bring the property back into use.

## **6.3 Compulsory Purchase [Housing Act 1985; Town & Country Planning Act 1990]**

The Council can compulsorily acquire underused or ineffectively used property for residential purposes if there is a compelling case in the public interest for its acquisition to meet general housing need in the area.

Compulsory Purchase will be considered where the property is having a detrimental effect on the local community; negotiations to bring a property back into residential use have failed and an Interim EDMO is not appropriate (for example the property is in a very dilapidated condition).

Compulsory purchase will only be used as the enforcement route of last resort for returning empty homes to use. Where this is the case the Council may apply to the Secretary of State for a Compulsory Purchase Order (CPO) to be made. In making the application the Council must show (among other things) a clear intention for the use of the property/land, and be able to show that it has the necessary resources available to follow through with the CPO.

Owners of properties that are compulsory purchased may be entitled to compensation over and above the open market value of the property.

The final decision to proceed with a CPO will be made by the Council's Cabinet and Resources Committee.

## **6.4 Unsecure buildings [Local Government (Miscellaneous Provisions) Act 1982]**

Where an empty property is found to be vulnerable to unauthorised access the Council can require the owner to board up a property to prevent such access and if necessary to carry out the work in default of the owner if they fail to comply.

## **7. Other provisions**

All other housing legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

## APPENDIX B

### Public Health, and Nuisance, Environmental Protection & Antisocial Behaviour Enforcement

**This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Public Health and Nuisance Scientific Services, and Priority Intervention Teams, and to set out the Councils policy where the legislation permits discretion. All decisions on enforcement action will be made following consideration of this policy.**

#### 1. Introduction

**Public Health and Nuisance Scientific Services, Priority Intervention Teams** investigate resident's service requests concerning:

- Smoke Control Areas.
- Air pollution complaints, e.g. emissions of smoke, dust, effluvia and odours, from industry, shops, houses and vehicles.
- Contamination of land.
- Noise and vibration complaints from houses, shops, entertainment facilities, building and demolition works, industry and streets (but not general traffic noise).
- Asbestos.
- Pest Control
- Filthy and Verminous premises
- Faulty private drainage from single premises and misconnections
- Accumulations on private land
- Local Authority Air Pollution control
- Antisocial behaviour
- Hate crime
- Lighting and other areas of nuisance
- Street trading

The overriding aim of any enforcement action is to ensure that no person living in, working in, or visiting the area suffers significant adverse health effects or nuisance from exposure to air, noise or land pollution, pests, private drainage or antisocial behaviour.

#### 2. Scope

This Appendix covers the following enforcement action:

Environmental Protection  
Public Health  
Statutory Nuisance  
Antisocial behaviour  
Street trading

#### 3. Legislation

**Public Health and Nuisance, Scientific Services, Priority Intervention Teams** are responsible for ensuring that the Council performs its statutory functions under the following legislation:

Environmental Protection Act 1990  
 Environment Act 1995  
 Clean Air Act 1993  
 Noise Act 1996  
 Noise and Statutory Nuisance Act 1993  
 Control of Pollution Act 1974  
 Pollution Prevention and Control Act 1999  
 Clean Neighbourhoods and Environment Act 2005  
 Public Health Acts 1936 and 1961  
 Environmental Protection Act 1990 Part II, III and IV  
 Building Act 1984  
 Caravan Sites and Control of Development Act 1960  
 Prevention of Damage by Pests Act 1949  
 Refuse Disposal (Amenity) Act 1978  
 Anti-Social Behaviour Act 2003  
 Town and Country Planning Act 1990, Section 215  
 Public Health (Control of Disease) Act 1984  
 Local Government (Miscellaneous Provisions) Acts 1976 and 1982  
 National Assistance Act 1948, Section 47  
 Criminal Justice and Public Order Act 1994 Sections 77-79  
 Control of Pollution Act 1974  
 Highways Act 1980  
 Licensing Act 2003  
 Town and Country Planning Act 1990, Section 215

and any regulations, orders or other statutory provisions made under or incorporated into the above

These legislative tools will always be considered and followed where appropriate.

#### **4.0 Enforcement options to be read in conjunction with Enforcement policy. (see 3.0 ENFORCEMENT OPTIONS)**

Most of the powers listed below are from the statutory legislation above. In most cases these powers are set out in the legislation in the form of statutory duties requiring that statutory nuisances, if proven, must be addressed and not left to the discretion of the enforcement officer. However, the enforcement options to abate these statutory problems may be discretionary.

Typical reasons why one enforcement option may be chosen over another are considered below. It is not possible to take more than one simultaneous action for the same hazard but if the option chosen has not proved satisfactory the Council may consider another course of action (or the same action again).

- No action
- Informal action verbal or written
- Informal warnings in writing
- Notification of nuisance
- Notification of offence
- Issue of a fixed penalty notice\*
- Service of statutory enforcement or prohibition notices
- Revocation of authorisation
- Carrying out works in default of a notice
- Seizure of equipment\*\*
- Formal caution

- Prosecution

\*FPN available under certain legislation only

\*\* Noise nuisance only

Not all of these options are available in every circumstance emphasising the need to consider powers available under each piece of legislation individually.

Decisions on whether to prosecute will always take into consideration appropriate statutory defences, such as best practicable means, and, where applicable, best available techniques not entailing excessive cost (BATNEEC).

All statutory notices will be served by officers in accordance with the scheme of delegation and the requirements of the appropriate legislation.

All statutory notices served on companies will be served at the registered office and be directed to the company secretary. Wherever possible, a copy of the notice will be delivered to the site and handed to the person responsible for the process/incident, or a suitable representative.

**4.1 Prohibition Notice** – some legislation gives the Council the power to serve a prohibition notice to stop an activity or process where there is an imminent risk to health, safety or pollution.

**4.2 Prosecution** - A prosecution may result from:-

- non-compliance with a statutory notice
- failure to pay a fixed penalty notice
- a serious breach of the law

In the latter case the considerations must include:-

- Seriousness of alleged offence
- Previous history/co-operation of duty holder, if applicable
- Possible defences
- Availability of witnesses
- Public benefit of a prosecution

**4.3 Simple Cautions** – The enforcement officer may issue a Simple Caution in accordance with Home Office Circulars in the following circumstances -

- i) There is evidence sufficient for realistic prospect of conviction
- ii) The defendant admits the offence
- iii) The defendant understands the significance of a Simple Caution and is willing to accept the Caution
- iv) A Simple Caution is in the public interest

If the duty holder does not accept the offer of a Simple Caution, then a prosecution will be instituted.

**[Note** - The offender will be given a full explanation of the significance of the caution before being allowed to accept it, as a simple caution is an admission of guilt to a criminal offence and is recorded as such on the Central Register of Convictions held by the Office of Fair Trading. It is not a form of sentence, nor is it a criminal conviction but

it will remain on record for three years and may influence a decision to prosecute should the individual or organisation re-offend.

## **5.0 Other provisions**

All other legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

## APPENDIX C

### Food, Health and Safety Enforcement

**This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Food, Health and Safety Team and to set out the Council's policy where the legislation permits discretion. All decisions on Food, Health and Safety enforcement action will be made following consideration of the overarching policy and relevant sections of this Appendix.**

#### 1. Introduction

The Food, Health and Safety Team (FHS) deals with:

- Investigating service requests from residents and consumers about food, food premises, health and safety in commercial workplaces, animal welfare, and smoking in public buildings;
- Delivery of a programme of planned and prioritised interventions to monitor compliance with statutory standards in food businesses, workplaces and licensed premises;
- Providing advice and taking enforcement action where appropriate to bring food businesses and work premises up to standard;
- Administration of licences for special treatment establishments and animal welfare;
- Control of infectious diseases;
- Promoting health through targeted projects and schemes, particularly in the area of diet.

The service aims to:

- Protect and improve the health and wellbeing of residents, consumers and visitors to the borough, primarily by ensuring that they have safe places to eat, visit and work;
- Support and advise regulated businesses in complying with their duties;
- Ensure that consumers are not misled and that traders don't gain unfair competitive advantage through illegal practice.

#### 2. Scope

This appendix covers the following enforcement action:

Use of powers to enforce food safety and standards;  
Use of powers to enforce health, safety and welfare in workplaces;  
Use of licensing powers for special treatment establishments and animal welfare  
Use of powers to control the spread of infectious disease;  
Use of powers to control smoking in smoke free premises.

#### 3. Legislation

FHS is responsible for ensuring that the Council performs their statutory functions under the following primary legislation:

Health and Safety at Work etc Act 1974;

Pet Animals Act 1951;  
Breeding of Dogs Acts 1973 and 1991;  
Breeding of Dogs Licensing Act 1998;  
Animal Boarding Establishments Act 1963;  
Riding Establishments Acts 1964 and 1970;  
Zoo Licensing Act 1981;  
Dangerous Wild Animals Act 1976;  
Performing Animals (Regulations) Acts 1925 and 1998;  
Animal Welfare Act 2006;  
Animal Health Act 1981;  
The Food Safety Act 1990; and

any Orders, or Regulations or other instruments made there under, or having effect by virtue of the European Communities Act 1972 and relating to food safety or animal feedstuffs including;

Regulation (EC) No.178/2002– principles of food law  
Regulation (EC) No.852/2004– general hygiene requirements  
Regulation (EC) No.853/2004– hygiene requirements for approved premises  
Regulation (EC) No.2073/2005 – microbiological criteria of foodstuffs;  
Public Health (Control of Disease) Act 1984 (as amended)  
Health Act 2006  
London Local Authorities Act 1991

and any regulations, orders or other statutory provisions made under or incorporated into the above

#### **4. Food Law Enforcement Regime**

##### **4.1 Food Law Code of Practice**

Enforcement of food law is governed by the Food Law Code of Practice (England) issued under Section 40 of the Food Safety Act 1990. This code, which the Council is statutorily bound to observe, gives guidance on the approach to and application of enforcement powers will be followed. Any significant divergence from the Code will be agreed with the Food Standards Agency, which oversees food law enforcement by local authorities.

There are discretionary matters which the Code indicates should be subject to local policies, as follows.

##### **4.2 Food Complaints and Service Requests – Policy**

The decision to take action in response to a complaint or service request will be based on the Service's reactive work policy below:

##### **General Complaints about Food and Food Premises**

Complaints are broadly categorised as high, medium or low risk to public health. Complaints in the first two categories will be investigated in full. High risk complaints e.g. cockroach/rat infestations, food poisonings, will receive same day or one day responses. Medium risk e.g. foreign bodies, service requests, will receive 3 or 5 day responses.

Where the complaint relates to food sold by responsible traders, such as most major supermarket and catering chains and national manufacturers, the complaint will initially be categorised as low risk unless it falls within the same day or one day response categories. The complainant in these low risk cases will be recommended to return the goods to the retailer. This permits resources to be focussed where greatest local improvement can be, and needs to be, effected. The list of companies recognised as falling into the “responsible trader” bracket will be reviewed annually and when circumstances indicate a decline in food safety management standards at a company. The assessment of suitability for investigation will normally be straightforward but account must be taken of:

1. any particular risk or significant hazard indicated by the complaint, e.g. dangerous foreign bodies/contaminants, allergy risk from inadequate labelling, activities which give rise to significant hygiene risks, etc.;
2. any history of similar types of complaint;
3. any history of poor response to complaints by the business.

### **4.3 Food Sampling Policy**

Sampling is intended to compliment the Council’s programme of inspections of food businesses and is carried out in order to protect health, prevent food fraud and to prevent unfair commercial competition.

#### **Sample Priorities**

Food sampling is broadly prioritised as follows:

- a) investigate food poisoning outbreaks and food contamination incidents;
- b) investigate complaints - where sampling or analysis is necessary;
- c) check food suspected of being contaminated when undertaking inspections;
- d) ensure that imported foods comply with compositional requirements and are not contaminated;
- e) check on foods manufactured or processed within the Borough particularly at premises approved under product specific legislation;
- f) check on foods marketed by major companies based in the borough for whom we are Home Authority;
- g) participate in co-ordinated sampling at European and National levels (EU / PHE / DEFRA / FSA);
- h) participate in co-ordinated programme sampling with other London Boroughs to deal with cross border issues;
- i) as part of food hygiene inspection;
- j) specific Barnet projects to confirm satisfactory conditions and identify problem areas.

A sampling plan is drawn up every year in consultation with the Food Examiner, the Council’s appointed Public Analyst, and the London Food Co-ordinating Group. Sampling which is undertaken under priorities (a) to (c) above will not be included in the sampling plan but will be a reactive element of an inspection and/or investigation when required.

The agreed sampling plan will not be published as it is generally our policy to sample and inspect without prior notice.

## **Action on Results**

Businesses will be informed of the results of all samples taken. In respect of an individual business we will take enforcement action on results that indicate unsatisfactory or hazardous samples, by applying the following criteria.

### **Potentially hazardous samples**

Where the laboratory indicates that a sample is potentially hazardous or unfit, without delay we will:

- Detain the batch of food, if sampled informally and resample formally;
- Seize the batch of food for destruction, if sampled formally;
- In certain circumstances consider voluntary surrender of the food by the business;
- Investigate the extent of the contamination in the food chain, the practices that may have led to the hazardous food product and their application throughout the company and food industry, with a view to tracing other contaminated products and preventing further contamination. The Food Standards Agency will be notified immediately using the prescribed incident report form where the risk may either affect numbers of people in other boroughs or there is serious risk to consumers, in accordance with the Food Safety Act Code of Practice;
- Immediately notify the manufacturer/importer/proprietor of the results if this not done in carrying out the above;
- Immediately notify the relevant Primary, Home and/or Originating Authority for the manufacturer or importer of the food;
- Consider whether it would be appropriate to initiate a prosecution or formal caution against the proprietor having regard to the Service's Enforcement Policy.

### **Significant legal contravention (non-hazardous)**

A significant contravention might be one where the product was sub-standard for reasons of financial gain (e.g. counterfeit or an intentionally misleading description) or was not of the nature, substance or quality demanded. We will warn the trader in writing, explaining the results, the standard expected, the possible reasons for the failure and suggestions for improvement. The Primary, Home and/or Originating Authority will be consulted to determine which authority is best positioned to pursue the matter to a satisfactory conclusion, the default position being that Barnet will if the other authorities are unwilling. Formal enforcement will be considered on a case by case basis in accordance with the main Enforcement Policy.

### **Unsatisfactory/Sub-standard samples**

Where the food is shown to be unsatisfactory or sub-standard but the risk to public health is not significant, or the commercial gain from non-compliance is minimal, we will adopt an advisory/warning approach to the trader explaining the results, the standard expected, the possible reasons for the failure, suggestions for improvement and inviting them to advise us of their intended action.

Where a response is not received or a response is unsatisfactory, consideration will be given to whether formal action is appropriate in line with the Enforcement Policy. For goods that are not manufactured in or imported into Barnet we will generally advise the manufacturer/importer of the food and advise the Primary, Home and/or Originating Authority in writing. Further follow up is unlikely.

## **5. Health and Safety Enforcement Regime**

The FHS Team will follow the statutory National Local Authority (LA) Enforcement Code and supplementary guidance issued by the Health and Safety Executive (HSE), which sets out the risk-based approach to targeting health and safety interventions to be followed by Local Authority regulators.

The list of activities/sectors suitable for targeting for proactive inspection by local authorities, published each year by HSE, will also be followed in setting our annual service and inspection plans. Current HSE guidance on the selection of complaints and reported injuries for investigation will also be followed with the following local provisions.

It is not possible to investigate every complaint about businesses without undue impact on our other activities. Even though a complaint may be fully justified, it may not relate to significant risks to health and safety. Service requests will be evaluated, and investigated if one or more of the relevant criteria below are satisfied.

The initial evaluation will normally be carried out by a Team Leader or the Service Manager. If a complaint that has been selected for investigation is later found to fall outside these criteria, the investigation may be abandoned, with the reasons recorded.

If a complaint is not to be investigated, or the investigation is abandoned, the complainant will be informed promptly. In most cases it should be possible to offer simple advice about what they can do to resolve the problem (for example they can contact the duty holder themselves).

Complaints will normally be investigated, and enforcement action taken as appropriate, if:

- There has been a major injury as defined in RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013);
- There is a high potential for such harm occurring if action is not taken;
- The matter complained of is significant and the relevant duty holder has a known poor compliance record;
- The matter complained of is relevant to our other enforcement priorities;
- There is likely to be serious public concern about the issue.

Complaints will not normally be investigated if it appears that:

- The practicality of achieving lasting improvement is low;
- The track record of the relevant duty holder is good;
- Other options are reasonably available to the complainant;
- The matter could appropriately be dealt with by another agency;
- They relate to comparatively minor or remote risks, suspicions or allegations inadequately supported by evidence, employee welfare provisions, customer facilities or nuisance issues.

## **6. Policy on Enforcement of Smoke Free Provisions**

Smoke Free legislation (Health Act 2006) came into effect on 01 July 2007. No one is now permitted to smoke in any enclosed place the public has access to e.g. pubs, nightclubs, offices, shops, works vehicles and leisure centres. The Department of Health (DoH) has indicated that a graduated enforcement approach, assisting compliance rather than immediate enforcement is desirable. However, in situations

where individuals flagrantly flout the law, it is the Department's view that enforcement action by the local authority remains entirely warranted. Barnet's Smoke Free enforcement policy will be as follows:

- As with all council enforcement measures, all action taken shall be fair, proportional, consistent and decided upon with reference to the Enforcement Concordat, the Regulators' Code, and the over-arching DRS Enforcement Policy;
- Enforcement will be in line with Department of Health Guidance;
- A graduated approach to enforcement will be taken. This will comprise starting with advice to assist compliance, an initial warning letter to first offenders, a second and final warning to repeat offenders and finally the issue of a fixed penalty notice or proceedings for intransigent repeat offenders;
- The regulatory officers will primarily be Environmental Health Officers, assisted by Food Safety Officers and Health and Safety Officers in the Environmental Health Department, who will be trained and provided with the necessary authority to enforce.

Regulatory officers have the following enforcement options available to them:

- Verbal warning (includes advice on compliance);
- Written warning, 1st and 2nd Stage. (1st Stage includes advice on compliance);
- Fixed Penalty Notice (FPN) or legal proceedings against an owner, occupier, manager or any other person in charge of no smoking premises for failing to display no-smoking signage (section 6(5) offence);
- FPN or legal proceedings against an individual smoking in no-smoking premises (section 7(2) offence);
- Legal proceedings against an owner, occupier, manager or any other person in charge of no-smoking premises for failing to prevent smoking in a smoke free place (section 8 (4) offence) – fixed penalty is not available for this offence.

There are no formal appeal provisions against the service of a FPN. However, Part 4 of the FPN, as set out in the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, relates to the making of a request for a court hearing.

If someone is found smoking in a smoke free area where other persons are present, the enforcement officer will notify the person in charge of the premises who will be expected to:

- Draw the attention of the person smoking to the no-smoking signs in the area and inform them that they are committing an offence by smoking;
- Politely ask them to stop smoking or direct them to the place that they are permitted to smoke;
- If the person continues smoking ask them to leave the premises and if possible send warning letter(s).

If a repeat offender is witnessed smoking by the enforcement officer and refuses to stop, the officer will implement procedures for issuing a Fixed Penalty Notice.

## **Signage**

The same enforcement approach will apply as above albeit with only the following options, namely:

- Verbal warning (includes advice on compliance);

- Written warning, 1st and 2nd Stage (1st Stage includes advice on compliance);
- Fixed Penalty Notice (FPN) or legal proceedings against an owner, occupier, manager or any other person in charge of no smoking premises for failing to display no-smoking signage (section 6(5) offence).

### **Smoking 'shelters':**

Smoking shelters are increasingly being installed at some premises as a means to provide smokers somewhere to smoke where they are protected from inclement weather. Such shelters must meet defined specifications in order to be exempt, i.e. avoid being considered enclosed premises in their own right and thus needing to be smoke free.

To ensure consistency of enforcement across London, the policy adopted by the Association of London Environmental Health Managers will be applied in determining if smoking shelters are located or constructed in such a way as to meet the exemption requirements.

## APPENDIX D

### Trading Standards and Licensing Enforcement

**This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Trading Standards and Licensing Teams and to set out the Councils policy where the legislation permits discretion. All decisions on Trading Standards and Licensing enforcement action will be made following consideration of this policy.**

#### 1. Introduction

The Trading Standards Team (TS) undertakes:

- Pricing inspections and complaints;
- Product safety inspections and complaints;
- Fair trading inspections and complaints;
- Consumer credit inspections and complaints;
- Counterfeiting inspections and complaints;
- Provision of Primary/home authority and business support;
- Licensing and registration relating to fireworks, scrap metal dealers, poisons and motor salvage operators;
- Maintenance of metrology standards.

The Licensing Team (LT) is responsible for the administration and enforcement of approximately 1000 premises which are licensed for alcohol and public entertainment; 75 premises licensed for gambling and 70 premises licensed for street trading. The work undertaken by the team includes:

- Processing premises and personal licence applications
- Processing temporary event notices
- Processing representations and requests for review of premises licences
- Processing gambling premises licences and permits
- Checking and enforcing compliance with licence conditions
- Investigating complaints about licensed premises and activities
- Dealing with businesses operating without a required licence
- Taking the lead in drafting licensing policy

The service aims to:

- Ensure a fair and safe trading environment for all and to protect consumers within the London Borough of Barnet.
- Ensure an environment which encourages highly compliant and well controlled licensed premises.

The Council has a legal responsibility to ensure that minimum standards are reached and maintained. TS and LT will aim to improve and maintain the trading environment through:

- Working together with residents and businesses
- Encouraging good management and due diligence for business
- Undertaking risk based and targeted advice visits to traders
- Focusing resources on the most serious issues
- Undertaking targeted enforcement projects

## **2. Scope**

This appendix covers the following enforcement action:

Enforcement based complaints and service requests in relation to all trading standards legislation

## **3. Legislation**

TS are responsible for ensuring that the Council performs their statutory functions under the following legislation (this list is not exhaustive):

- Animal Health Act 1981
- Protection of Children (Tobacco) Act 1986
- The Children and Young Persons (Protection from tobacco) Act 1991
- Clean Air Act 1993
- Consumer Credit Act 1974
- Consumer Protections Act 1974
- Control of Pollutions Act 1974
- Copyright Designs and patents Act 1988
- Copyright etc and trade marks Act 2002
- Criminal Justice and police Act 2001
- Development of tourism Act 1969
- Educations reform act 1988
- Energy Act 1976
- Estate agents Act 1979
- European communities act 1972
- Hallmarking act 1973
- Health and safety at work etc act 1974
- Medicines Act 1968
- Poisons Act 1972
- Prices Act 1974/1975
- Property Misdemeanors Act 1991
- Timeshare Act 1992
- Trade Mark Act 1994
- Video Recordings Act 1984 and 1993
- Weights and Measures Act 1985

and any regulations, orders or other statutory provisions made under or incorporated into the above

LT are responsible for ensuring that the Council performs their statutory functions under the following legislation (this list is not exhaustive):

- Licensing Act 2003
- Gambling Act 2005
- London Local Authorities Act 1991 (street trading)
- Live Music Act 2011

These legislative tools will always be considered and followed where appropriate.

#### **4. Enforcement complaints and service requests**

It is not possible to investigate every complaint about businesses without undue impact on our other activities. Even though a complaint may be fully justified, it may not relate to significant risks to health and safety, or significant fraudulent practice. Service requests will be evaluated by TS based upon the information provided and the following in particular will be considered:

- The likely reoccurrence of the complaint
- The history of the trader
- The consequence of the risk
- The likely outcome of an investigation

To ensure that TS resources remain focused on the most serious issues, the case will be investigated if one or more of these criteria are satisfied.

If a complaint that has been selected for investigation is later found to fall outside these criteria, the investigation may be abandoned, with the reasons recorded.

If a complaint is not to be investigated, or the investigation is abandoned, the complainant will be informed promptly. In most cases it should be possible to offer simple advice about what they can do to resolve the problem (for example they can contact the trader themselves). These requests will be recorded on the TS database. This information will be assessed as a whole to prioritise the activities and actions in relation to the fair trading environment in London Borough of Barnet.

#### **5. Other provisions**

All other trading standards and licensing legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

## APPENDIX E

### Planning Enforcement

**This appendix must be read in conjunction with the main enforcement policy. Its purpose is to set out the Councils policy where the legislation permits discretion. All decisions on planning enforcement action will be made following consideration of this policy. This document has been drafted mindful of the advice contained in paragraph 207 of the National Planning Policy Framework (March 2012)**

#### **1.0 THE PLANNING ENFORCEMENT TEAM AND ITS OBJECTIVES**

##### **1.1 The planning enforcement team**

The planning enforcement function of the council is carried out by a dedicated team that sits within the Planning & Development Management & Building Control Service.

##### **1.2 Framework**

The planning enforcement function operates within the legislative framework set out in the Town and Country Planning Act 1990 (as amended) ("the Act") and all of its subordinate and associated legislation.

In addition to matters pertaining to the Town and Country Planning Act planning enforcement officers may from time to time be called to investigate, or to assist in the investigation of, matters that are the subject of other enforcement regimes, for instance those sanctioned by the Environmental Acts.

##### **1.3 Objective**

The primary objective of the planning enforcement team is to investigate alleged breaches of planning control and to take action where it is appropriate and expedient to do so.

In determining the expediency of taking enforcement action, the local planning authority will have regard to the policies of the council's 'Development Plan' and all other material considerations.

##### **1.4 What does the enforcement team investigate?**

The enforcement team is responsible for investigations into alleged breaches of planning control. Examples of the type of activities that might be investigated by the planning enforcement team include:

- The carrying out of building works and engineering operations;
- Changing the use of the buildings or land;
- Breaching the conditions on which a planning permission was granted;
- Unauthorised works to a Listed Building that affect its character as a building of special architectural or historic interest;
- Unauthorised total or substantial demolition in a Conservation Area;
- Unauthorised display of advertisements;
- Unauthorised works to protected trees; and

- Allowing the condition of land to deteriorate to such an extent that it is adversely affecting the amenity of an area.

## **1.5 Criminal liability**

The carrying out of development without consent does not generally constitute a criminal offence. However, it is an offence not to comply with the terms of a formal notice issued by the local planning authority or to carry out the following operations without the prior consent of the council: unauthorised works to listed buildings, total or substantial demolition in a conservation area, the unauthorised display of advertisements, and unauthorised works to protected trees.

Not all development requires planning permission. Certain building works and some changes of use may be undertaken without planning permission.

The following are examples of activities which are not breaches of planning control and therefore enforcement action may not be taken under planning legislation.

- Parking of commercial vans on the highway in residential areas;
- Operating a business from a home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Parking a caravan within the residential boundary of a property (providing that it is ancillary to the house);
- Clearing land of undergrowth, bushes and trees (providing that some form of statutory protection is not in place);
- Undertaking works that are permitted development - specific works that are exempted by legislation from the need to obtain planning permission.

In addition to the above some common concerns are beyond the remit of the enforcement team to investigate. Typical examples of such matters include:

- Private disputes between neighbours;
- Concerns over trespasses and of building on land belonging to another
- Land ownership and boundary disputes;
- Anonymous complaints.

## **2.0 CONTACTING THE ENFORCEMENT TEAM**

Before a planning enforcement investigation can commence it is important that certain basic information be provided. As well as identifying the land to which the complaint relates the complainant must be prepared to provide the council with their name and full contact details including their street address. The local planning authority requests that email addresses and/or telephone numbers be provided but do not consider them to be a pre-requisite to commencing an enforcement investigation or an adequate substitute for a street address. Where no contact details are supplied an investigation will not take place.

### **2.1 Submitting a complaint or enquiry in writing**

A complaint can be submitted in writing by post at 'Planning Enforcement, Building 4, North London Business Park, Oakleigh Road south, London, N11 1NP' or online through the planning section of the council's internet site (<http://planningcases.barnet.gov.uk/planning-enforcement-cases/acolnetcgi.exe>).

## **2.2 Submitting a complaint by telephone and in person**

Requests that a case be opened may be taken over the telephone by Customer Support Group agents on 020 8359 3000 but if you would prefer to discuss the matter with a planning officer prior to formally reporting the matter a duty planner is available by telephone from Monday-Friday 9am-5pm or in person at the 'Barnet House' office between 9am to 1pm on Mondays, Wednesdays and Fridays (except bank public holidays and between Christmas and New Year). Please note that the duty planner is located at Barnet House, 1255 High Road, London, N20 0EJ and not at the North London Business Park address.

Complainants' details are held in strict confidence in accordance with government legislation.

## **2.3 Proactive Enforcement**

Although the routine monitoring of the implementation of all planning approvals will not be undertaken, the local planning authority may choose to manage some enforcement work on a pro-active basis where it is appropriate to do so and where the resources directed to a pro-active investigation are most likely to be commensurate to the issues that may arise. Decisions on the appropriateness of a pro-active approach to enforcement will be taken on a case-by-case basis.

## **3.0 WHAT WILL HAPPEN TO THE CASE?**

Should at least a minimum level of information be provided with a request for service the council will record the information on its database within 5 (working days) days of receipt. An acknowledgement letter or email will be sent to the interested party at this time. This letter will contain the name and contact details of the officer assigned to investigate the matter and a reference number for ease of communication in the future.

### **3.1 Cases which take priority**

The London Borough of Barnet investigates in excess of 1500 enquires regarding alleged breaches a year and therefore the following priorities have been introduced.

1. Alleged damage to a listed building or a tree protected by a Tree Preservation Order (where once the damage occurs it can often be irreversible).
2. Alleged unauthorised works that are taking place at the time of complaint and involve significant public harm.
3. Other alleged breaches will be allocated an appropriate priority according to the nature and impact of the works.

## **4.0 THE INVESTIGATION**

### **4.1 The planning enforcement process**

The investigation into alleged breach of planning control will be undertaken in a manner compatible with government guidance. Every enforcement case is different and there is therefore no set procedural rules. However, the general approach will remain broadly consistent across all investigations.

## **4.2 Initial site inspection**

Once the case has been logged and assigned a priority, the planning enforcement officer assigned to the case may need to visit the premises in order to help establish the exact nature of the alleged breach. Where a visit is necessary, the planning enforcement officer will try to visit the site as soon as is practicable, having regard to the priority of the case.

## **4.3 Powers of Entry**

In many circumstances it will not be prudent or possible to arrange the initial visit ahead of time. As a result the case officer will not normally give advance warning of a site visit. Regrettably it is often the case that access to the land will not be possible at the first attempt, leading to delays in the conduct of the investigation.

Officers conducting planning enforcement investigations enjoy powers of entry onto land connected with the investigation. It is an offence for a person to wilfully obstruct a person acting in exercise of such a right. Although the co-operation of the owner or occupier of the land is always preferred the local planning authority may approach the courts for a warrant to enter the land and/or prosecute for wilful obstruction if such co-operation is not forthcoming.

## **4.4 Reprioritisation**

At all stages of the investigation, the planning enforcement officer will be able to reprioritise the case if circumstances dictate that it appropriate to do so.

## **5.0 ESTABLISHING A BREACH OF CONTROL**

Although it is often possible to establish the extent of a breach of planning control immediately on entry to the land on other occasions identification of a breach may take longer.

### **5.1 Immunity periods**

In most circumstances action may only be taken against a breach of planning control within four or ten years of that breach first occurring (the relevant time period depending on the nature of the breach) Therefore, it may be necessary for the officer to conduct a detailed investigation into the history of the site if the age of development is not immediately apparent.

### **5.2 Materiality and permitted developments**

Certain changes of use and types of operational development may constitute "permitted development" that is to say developments for which a grant of planning permission from the local planning authority is not required. Establishing whether or not a breach of planning control has actually occurred may therefore demand that detailed measurements be taken or that other detailed information be gathered.

Likewise planning permission is often not required for certain changes of use or for running a business from home where the business does not have a 'material' impact on the area.

### **5.3 Obtaining further information**

In order to assist in obtaining the sort of information required to properly investigate allegation information the local planning authority may consider it expedient to consider:

- Inviting the owner/ occupier of the land to submit an application for a Certificate of Lawfulness for an Existing Use or Development (LDC). An LDC constitutes an official confirmation from the local planning authority that a development is lawful for the purposes of the planning acts. An LDC will only be granted if the applicant is able to provide sufficient evidence to show that the use or development is lawful;
- Issuing a Planning Contravention Notice (PCN). Those served with a PCN are required to provide certain information relating to the use or development of their land. This information may be used by the local planning authority to establish whether or not a breach of planning control has occurred and the most appropriate form of action in the event that it has.

## **6.0 ENFORCEMENT ACTION**

If a breach of planning control is established the local planning authority must consider what action, if any, is necessary

### **6.1 Informal resolution**

In all instances where it is appropriate to do so the Local Planning Authority will first attempt to resolve breaches of planning control informally through negotiation with owners and/or occupiers of the land. Only in exceptional circumstances will formal enforcement action be taken without reference first being made to those who appear to have an interest in the land. Furthermore, where the ownership of the land is not immediately apparent the council cannot guarantee that prior warning of enforcement action will be given even if circumstances would otherwise dictate such contact to be desirable.

### **6.2 Expediency**

The planning enforcement team must always act in a manner that is proportionate to the breach of planning control identified and must act in the public interest. Before taking any action the local planning authority must be satisfied that the harm to public interests outweighs any public benefit derived from the development complained of. It would be unreasonable council to issue an enforcement notice solely to remedy the absence of a valid planning permission. If formal action were taken for this reason the council would be at risk of being instructed to pay the costs appellant's costs in pursuing an appeal.

### **6.3 Public and private interests**

The planning system does not exist to protect the private interests of one person against the activities of another, although private interests will often coincide with the public interest. The distinction between private and public interests is often difficult to determine for example the loss in value of a house besides a new development is likely to be a matter of purely private interest but the loss of amenity to neighbouring occupiers resulting from a development is likely to be of public interest.

## **6.4 Retrospective applications**

Where it appears that there is a reasonable prospect that planning permission would be granted for the development, the developer will be encouraged to submit a retrospective planning application. The determination of a retrospective planning application differs from a prospective application only in that the impacts of the development will likely already be known. All planning considerations will be taken into account but the process will not be influenced by the failure to apply in advance or the fact that the development already exists or the use already in operation.

## **6.5 Formal enforcement action**

Where a breach of control is identified and where informal negotiations fail; a retrospective planning application is refused; or where the situation demands urgent attention the local planning authority will consider the expediency of taking formal action. The consideration of enforcement action mirrors closely that undertaken in respect of a planning application.

There are several powers available to the local planning authority and the type of enforcement action taken will depend upon the nature of the breach of planning control. In most circumstances formal action will consist of the service of a formal notice demanding some form of remedial action in a set time period on the owners and occupiers of the land. In determining the most appropriate form of action the council will be mindful of all relevant considerations including matters pertaining to equal opportunities and human rights legislation

## **6.6 Enforcement Register**

All Enforcement Notices, Breach of Conditions Notices, Listed Building Enforcement Notices, Conservation Area Enforcement Notices and Stop Notices are recorded on the Local Land Charges Register and on the London Borough of Barnet Enforcement Register (<http://planningcases.barnet.gov.uk/planning-enforcement-cases/acolnetcqi.exe>). Intended actions or notices awaiting service will not, however, appear.

## **6.7 Appeals**

In the majority of cases those served with a notice are extended the opportunity to appeal against any or all of the terms of the notice. A commonly pursued ground of appeal is that planning permission should be granted for the development in question. Any appeals will be made to the 'Planning Inspectorate' a body belonging to the 'Department for Communities and Local Government', a wing of central government independent of local authorities. Should an appeal be made the notice will be held in abeyance pending the outcome. The appeals process is a lengthy one and may take a significant amount of time to resolve.

## **6.8 Prosecutions**

Where the requirements of an Enforcement Notice, Breach of Condition Notice, or Stop Notice or not met in the requisite time period, an offence will have been committed. In such circumstances the local planning authority may consider it appropriate to pursue the matters through the courts. It may also be deemed appropriate to prosecute for offences relating to advertisement, protected tree, conservation area or listed building controls, and for non-compliance with Planning Contravention Notices

Decision on whether to prosecute will be made in accordance with the *Code for Crown Prosecutors* which requires officers to be satisfied that (i) there is enough evidence to provide a realistic prospect of a conviction and (ii) it is in the public interest to do so. Fuller details of application of the code are to be found at paragraphs 3.5.4 of the main body of this policy document.

## **6.9 Injunctions**

In certain rare circumstances the local planning authority may deem it appropriate to approach the courts with a request that an injunction be issued. Fuller details of the general approach that will be taken by the local planning authority in regards to injunctions is to be found at paragraph 3.5.6 of the main body of this policy document.

## **6.10 Direct Action**

As an alternative or complement to the aforementioned powers where any steps required by an enforcement notice to be taken are not taken within the period for compliance the local planning authority may appoint contractors to enter the land to take the required steps and to recover from the owner of the land any expenses incurred in so doing.

Although the local planning authority is entitled to recover any costs incurred in pursuing direct action prompt recovery may prove difficult or impossible. Direct action is therefore unlikely to be taken if equally expeditious action can be taken with less threat to the public pursue.

## **7.0 CLOSING A CASE**

Before a planning enforcement file is closed the recommendation of the investigating officer that no further action is necessary will be reviewed by a principal officer or the planning enforcement manager. Should the reviewing officer not be satisfied with the recommendation or if insufficient information is recorded to support the recommendation the original officer or a suitable substitute will be asked to re-examine the matter.

### **7.1 Notifying complainants**

On conclusion of an investigation the local planning authority will in normal circumstances inform the complainant of their intention to close the case and provide reasons for so doing. This information will usually be communicated in writing by email or by letter when no email address is given. Where it is not possible to communicate in writing verbal confirmation will be given and a written record of any resulting conversations kept. The complainant will be advised that further discussions as to the reasons for concluding the case may be held. Should the complainant not be satisfied with the outcome of the investigation a request that the case be re-opened may be made to the investigating officer or the principal enforcement officer or planning enforcement manager. The case will be re-opened if it is deemed by any of these officers that it is appropriate to do so. However, no automatic right to a further review should be assumed.

## **7.2 Notifying land owners/occupiers**

The owners and occupiers of land to which a planning enforcement investigation related or those otherwise apparently responsible for any alleged breach of planning control will not routinely be advised as to the outcome of an investigation. Where some form of written confirmation as to the lawfulness of a situation is requested the requesting party will usually be advised to apply for planning permission or a certificate of lawfulness as the situation dictates.

## APPENDIX F

### Building Control Enforcement Policy

**This is to be read in conjunction with the 'Building Control Services Enforcement Policy' published by the LABC. Its purpose is to outline the areas of legislation used by the Building Control Team and to set out the Councils policy where the legislation permits discretion.**

#### 1. Introduction

The Building Control Team (BC) deals with:

- Investigating complaints from residents about contraventions of the Building Regulations and London Building Acts [Amendment] Act, 1939;
- Providing advice and taking enforcement action where appropriate to bring buildings up to the minimum Building Regulation standards from plan examination /site inspection procedures with new works;
- Investigating requests about the emergency condition of a building/structure from the Public/Police/Fire service.

The Service aims to:

- Protect the safety of residents and visitors in the borough in relation to buildings/structures;
- Ensure new building work meets the minimum standards of the Building Regulations and associated legislation;
- Take the necessary action in respect of any contravention of this legislation.

#### 2. Scope

This appendix covers the following enforcement action:

Enforcement against contraventions of the Building Regulations;  
Enforcement of dangerous structures;  
Power to charge for enforcement action;  
Enforcement of demolitions;  
Other Provisions.

#### 3. Legislation

BC is responsible for ensuring that the Council performs their statutory functions under the following legislation:

Building Act 1984;  
Building Regulations 2010;  
London Building Acts [Amendment] Act, 1939  
Associated legislation.

## 4.1 BC Enforcement Regime

Site visits are conducted in accordance with the Building Regulation policy to determine compliance with Building Regulations and allied legislation.

Contravening work is drawn to the attention of the builder/owner as soon as is practicable and remedial works agreed and recorded on the officer's site inspection records. Re-inspection of works will be carried out as necessary. Any continuing contravention will be processed in accordance with the current enforcement policy/procedure.

The Council have the following options (not necessarily exhaustive) when dealing with building regulation contraventions:

- Inform builder verbally and finally a letter with advice;
- Inform owner /agent with advice letter;
- Serve relevant warning letters;
- Serve relevant legal notice and/or record on Local Land charges register;
- Formal caution;
- Prosecution;
- Injunction.

The Enforcement Guidance states that the action chosen must be *the most appropriate course of action in relation to the hazard in all the circumstances* and sets out the general factors relevant to the enforcement options listed above.

The Council can act in default and prosecute for lack of compliance to these notices. It can also charge for and recover charges for enforcement action.

The Council has **powers to charge for enforcement action;** a] for Dangerous Structures under section 66 of the London Building Acts [Amendment] Act, 1939 and b] for the alteration or removal of offending work under section 36 [3] Building Act 1984. The Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred.

All other BC legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.

## APPENDIX G

### Highways Enforcement

**This appendix must be read in conjunction with the main Enforcement Policy. Its purpose is to outline the areas of legislation used by the Highways Network Management team and to set out the Councils policy where the legislation permits discretion. All decisions on Highways enforcement action will be made on the basis of available resources and following consideration of this policy.**

#### 1.0 Introduction

The Highway Network Management Team deals with:

- Managing and maintaining the highway network with the use of relevant legislation
- Administration of and consideration of Licence and Permit requests and determining via issuance or refusal of such, including attaching conditions as deemed appropriate;
- Providing advice and taking enforcement and potentially legal action where appropriate to ensure compliance with conditions and legislation;
- Investigating service requests about the condition of the public highway;
- Carrying out routine and adhoc inspections of the highway network;
- Responding to requests from any source identifying any issues related to the highway network.

The service aims to:

- Protect and improve the public highway network to the benefit of residents and visitors to the borough, in particular by ensuring that they have a safe place to live;
- Effectively manage and co-ordinate all activity taking place on the public highway;
- Ensure compliance with relevant legislation and Barnet specific requirements and conditions.

The Council has a legal responsibility 'Duty of Care' to ensure that the highway network is managed and maintained in an appropriate manner

#### 2.0 Scope

This appendix covers the following enforcement action:

Street Works Fixed Penalty Notices (FPN);  
Powers to recover costs;  
Powers to charge for enforcement action;  
Powers to apply appropriate fines;  
Powers to ensure compliance with notices/warnings issued in accordance with legislation;  
Other Provisions.

#### 3.0 Legislation

The Highways Team is responsible for ensuring that the Council performs their statutory functions under the following legislation:

Highways Act 1980;  
The Road Traffic Regulation Act 1984;  
The Traffic Management Act 2004;  
New Roads and Street Works Act 1991;  
Road Traffic Act 1991;  
The Road Traffic (Special Parking Areas) (England) Order 2003;  
Data Protection Act 1998;  
The Equality Act 2006;  
Town & Country Planning Act 1990;  
Greater London Authority Act 1999;  
The Road Traffic Act 1988;  
Road Traffic Regulation Act 1984;  
The Traffic Signs Regulations and General Directions 2002;  
Disability Discrimination Act 2005;  
London Local Authority Acts (various);  
Health and Safety at Work Act 1974;  
Construction Design and Management Act;  
Rights of Way Act 1990;  
Freedom of Information Act 2000;  
Flood and Water Management Act 2010 and Flood Risk Regulations;

and any regulations, orders or other statutory provisions made under or incorporated into the above

These legislative tools will always be considered and followed where appropriate.

#### **4.0 Enforcement Regime**

##### **4.1 Fixed Penalty Notice Scheme**

The Permit scheme also includes a Fixed Penalty Notice regime where offending utility companies who work without a valid Permit or in breach of attached permit conditions have the opportunity to discharge any liability and avoid prosecution in a magistrate's court by paying a one off fine.

Since 1st July 2012 Barnet has run a Fixed Penalty Scheme. Under this scheme if any works are identified as not having a permit or working in breach of a permit condition the Street Works Inspector may issue a Fixed Penalty Notice (FPN) to the offending statutory undertaker.

FPN's will be issued to ensure site safety and the timeliness / accuracy of permit data in line with Barnet's Enforcement Policy. FPN's are seen as a vital tool to ensure that the council is doing all it can to exercise its Network Management Duty.

The Permit / NRSWA Team will manage all the day-to-day administration of the FPN process ensuring that correct fines are paid within the required time, evidence is accurate, letters are sent out, and court papers are prepared. The Permit/NRSWA Compliance Officer is the highway authority's first point of contact for any utility queries.

These fines encourage utility companies to provide accurate information, work safely and minimise disruption.

## **4.2 New Roads and Street Works Act 1991 & Traffic Management Act 2004 Enforcement Policy**

### **4.2.1 Introduction**

Under the New Roads and Street Works Act 1991 local highway authorities have a duty to coordinate the works of statutory utility companies.

Under section 16 of the Traffic Management Act 2004 (the Network Management Duty) an authority must manage their road network with a view to achieving two objectives so far as may be reasonably practicable having regard for their other obligations, policies and objectives. These two objectives are:

To secure the expeditious movement of traffic on that network, and

To facilitate the expeditious movement of traffic on road networks for which another authority is the traffic authority.

In order to comply with these obligations it is essential that the London Borough of Barnet, as the highway authority, is fully aware of operations being undertaken on the road network and that information provided is timely and accurate and that those operations are undertaken having due regard to the safety and convenience of all road users.

This document sets out the London Borough of Barnet's policy for enforcing sanctions on the statutory utility companies where infringement of a utility's legal requirements compromises the local authority's ability to coordinate and manage works or works are undertaken in an unsafe or unduly disruptive manner.

### **4.2.2 Barnet Council's New Roads and Street Works Act 1991 & Traffic Management Act 2004 Enforcement Policy**

Barnet wishes to foster a spirit of partnership with all statutory utility companies and recognises that significant time and resources are required to instigate and progress court proceedings, both to utility companies and the Council. However, where utility companies operating within the Borough fail to perform their duties in accordance with the required standards the London Borough of Barnet will issue Fixed Penalty Notices (FPN) or commence prosecutions in order to ensure that all street works operations on the network are managed effectively and undertaken safely. This includes failure to observe the correct notification procedures or providing inaccurate notifications, insufficient or incorrect signing and guarding while the works are in progress and failure to comply with approved codes of practice.

This enforcement policy governs all statutory offences under the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004. It covers those offences which the Council will seek to issue proceedings in the Magistrates' court and those offences for which Fixed Penalty Notices can be issued. Barnet Council will use the Fixed Penalty Notice Scheme for those to which the scheme applies. However, in all cases where the penalty remains unpaid at the end of the period for payment, prosecution through the Magistrates Court may be progressed.

Prosecution is generally viewed as the final option when all other efforts to compel the statutory undertaker to comply with the legislation have failed. However prosecution may be considered necessary as the preferred option due to particular circumstances.

Payment of FPNs outside the period for payment will only be allowed with the prior written consent of the London Borough of Barnet. Confirmation that payment of an FPN has been accepted will be provided to the statutory undertakers in writing. Any unauthorised payments will be refunded. A period of delay may be encountered whilst the receipt of the unauthorised payment is confirmed and then approved for refund.

It is intended that a consistent approach is taken to enforcement. However, the circumstances of each offence must be taken into account and a uniform approach will not always be appropriate. Therefore an element of judgement will be used to ensure that those offences that have a detrimental impact on any of the Council's statutory duties under either the New Roads and Street Works Act 1991 or the Traffic Management Act 2004 are dealt with appropriately.

### **4.3 Statutory Provisions**

Statutory provisions for which the London Borough of Barnet as Highway Authority may issue Fixed Penalty Notices or prosecute are contained within the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004 together with supporting regulations and orders.

### **4.4 Enforcement Processes**

#### **4.4.1 Noticing Offences**

Notices which are not submitted to the Council or are not submitted in the correct format can cause the Council to use unnecessary resources to address the problem; this drain on resources could in turn lead to ineffective coordination work and poor network management. In these circumstances the issuing of a Fixed Penalty Notice will be considered.

Fixed Penalty Notices will be issued in accordance with The Street Works (Fixed Penalty) (England) Regulations 2007. The fixed penalty notice will be issued via EToN direct to the utility company in the first instance. If this is not possible for any reason, e-mail, fax or post will be used.

In all cases evidence will be tested. In cases where FPN's are issued and the penalty remains unpaid at the end of the period for payment, prosecution through the magistrate's court may be progressed.

A statutory utility company may make representations against the issuing of a FPN within the prescribed payment period. This appeal will be heard by a nominated officer of Highway Services, London Borough of Barnet who has had no involvement in the issue of the original notice.

#### **4.4.2 Permit Offences**

Where works commence without a permit or permit conditions are broken a Fixed Penalty Notice will be considered.

Fixed Penalty Notices will be issued in accordance with The Traffic Management Permit Scheme (England) Regulations 2007. The fixed penalty notice will be issued via EToN direct to the utility company in the first instance. If this is not possible for any reason, e-mail, fax or post will be used.

In all cases where the penalty remains unpaid at the end of the decriminalised period, prosecution through the magistrate's court may be progressed.

A statutory utility company may make representations against the issuing of a FPN within the prescribed payment period. This appeal will be heard by a nominated officer of Highway Services, London Borough of Barnet who has had no involvement in the issue of the original notice.

#### **4.4.3 Poor Performance of Statutory Utility Companies' Works on Street**

Barnet Council Street Works Inspectors will monitor utility works on street.

If statutory utility companies carry out work which is not to the required standard, a Defect Notice will be issued. In conjunction with liaising with the utility company directly, this action will frequently have the desired effect of improving their performance to acceptable standards. However, where there is clear failure to perform their duties in accordance with the Specification for the Reinstatement of Openings in Highways, provide the required standards of signing and guarding whilst the works are in progress or fail to co-operate with the Council, the London Borough of Barnet may invoke a prosecution in order to ensure that all street works operations on the network are managed effectively and undertaken safely.

#### **4.5 Prosecution Processes**

The Street Works Inspectors of Network Management have responsibility for gathering the required evidence, which will be reviewed and checked by the Permit/NRSWA Manager.

The decision to issue proceedings will be taken by the Council in accordance with the Enforcement Policy.

#### **5.0 General Powers to charge for enforcement action and to instigate fines** [Related to Various Acts]

Within many of the above legislation the Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred in taking enforcement action and also to impose fines:

The expenses are in connection with various investigatory activities, inspection of sites, making necessary enquires and subsequent consideration of action and in relevant cases the service of notices. Where charges are made it will be in accordance with the charges set out in the legislation, as amended from time to time.

## **6.0 Other provisions**

All other highways legislation within the teams remit will be enforced in accordance with the specific requirements of that legislation and the criteria detailed in the Enforcement Policy. Enforcement action undertaken by Officers will be commensurate with their level of authorisation under the Council's Scheme of Delegation.