

**DRAFT**  
**SURREY HEATH BOROUGH COUNCIL**  
**CORPORATE ENFORCEMENT POLICY**

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## 1. INTRODUCTION

We are here to make Surrey Heath an even better **place** to live, work and play. We aim to work with our public and private partners and the community to support and promote our local economy to increase the **prosperity** of the local area. It is important that we maintain our place as clean, green and safe for **people** to live happily and healthily. To achieve these objectives we may from time to time be required to take enforcement action and will have regard to the principles of Good Regulation as set out in this Policy.

Local Authorities are required by the Legislative and Regulatory Reform Act 2006 (2006 Act) to have regard to the Principles of Good Regulation when considering taking enforcement action.

The Department for Business Innovation and Skills, Better Regulation Office introduced a Regulators' Code in April 2014. The Code is a central part of the Government's Better Regulation Agenda. Its aim is to embed a risk based proportionate and targeted approach to regulatory inspection and enforcement in regulators it applies to. We must have regard to this Code when developing policies and operational procedures relating to enforcement activity.

If a regulator concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the regulator is not bound to follow that provision, but should record that decision and the reasons for it.

We fully support the principles set out in the 2006 Act and the Regulators' Code as set out in this policy. The Council is committed to services which are courteous and helpful and seeks to work with individuals and businesses, wherever possible, to help them comply with the law.

The Council acknowledges the need for firm action against those who flout the law and put consumers and others at risk. Officers will be required to use this policy as a guide when making decisions with regards to potential enforcement action. Every case will be decided on its own merits. Officers must ensure that they record the reasons for their decision, and this includes cases where the decision is made not to take action.

This document represents our general approach to enforcement and may be supplemented, in some cases, by more specific and detailed service policies.

## **2. ENFORCEMENT ACTIVITY**

The Council is required to take action where appropriate to enforce a wide range of statutes. In some cases this is a duty in others it may be a power and this is a relevant consideration when deciding whether or not to take action.

The statutes relate to:

- Public health and safety
- Quality of life
- Preservation of public and residential amenity
- Maintenance of the environment and
- Protection of public funds

When considering taking action it is important that we have regard to the general principles of good enforcement as outlined in this Policy. The service areas which fall within the scope of this Policy include:

- **Building Control**
- **Corporate Enforcement - including fraud**
- **Environmental Health and Licensing**
- **Democratic**
- **Finance- Fraud**
- **Housing and Planning enforcement**
- **Parking Enforcement**

**From time to time this list may change as new legislation is introduced or other acts are repealed.**

Enforcement decisions and action will also be made with due regard to the provisions of:

- The Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Equal rights and anti-discrimination legislation

## **3. THE SCHEME OF DELEGATION including AUTHORISATION OF OFFICERS**

Part 3 of the Council's Constitution sets out arrangements for delegation of functions including responsibility for enforcement activity.

Functions fall into a number of categories including:

- Delegation to Officers

Section B of Part 3 of the Constitution provides details of the Scheme of Delegation of Functions to Officers.

Officers **MUST** have regard to the Scheme of Delegation as it sets out the extent to which enforcement powers are delegated to officers. In some cases the decision to take enforcement action may lie with the Executive or relevant Council Committee.

**Our Constitution can be found as follows**

<https://surreyheath.moderngov.co.uk/ieListDocuments.aspx?CId=305&MId=3135&Ver=4&Info=1>

#### **4. OBJECTIVES**

We aim to carry out our regulatory duties in such a way to ensure that we:

- *Support businesses and others that we regulate to comply and grow*
- *Provide simple and straightforward ways to engage with those we regulate and to hear their views*
- *Base our regulatory activity on risk, taking firm action when it is appropriate to do so*
- *Provide clear information, guidance and advice to help those we regulate meet their responsibilities to comply*
- *Ensure that we enforce the law in a fair, equitable, transparent and consistent way*

#### **5. PRINCIPLES OF ENFORCEMENT**

Primary responsibility for compliance with the law rests with individuals and businesses. The Council will however provide information and advice to help to raise awareness of the need to comply and how this may be achieved.

##### **5.1. Overview**

The Council supports the principles of good enforcement, as set out in the 2006 Act and these must be adopted by all Services involved in enforcement.

The principles covered include the need to be:

- Transparent
- Accountable
- Proportionate
- Consistent

- Targeted at cases where action is needed

in our approach to enforcement.

In addition our officers are required to carry out their enforcement duties in a courteous and helpful manner.

We will also employ the principles of the Regulators' Code (RC) in all of our enforcement activities. We will observe the requirements set out by national bodies, for example DEFRA and the Environment Agency and where practicable any national good practice guidance. We will, where appropriate, provide enforcement advice and information in accessible formats such as other languages, large print and Braille.

The principles of the RC are as follows:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activity on risk
4. Regulators should share information about compliance and risk
  - a. We will follow the principle of 'collect once, use many times' when requesting information from those we regulate
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

Our objectives reflect this and we will ensure that these principles are embedded in all of our policies and procedures relating to enforcement and the way we do our work. Details of how we aim to achieve this are provided in a number of service specific enforcement policies.

Including the following service specific policies:

- Corporate Enforcement-Environmental Protection, Fixed Penalty Notice Enforcement Policy

<https://www.surreyheath.gov.uk/sites/default/files/documents/residents/environmental-services/CorpEnfFixedPenNoticeEnfPolicyMar16.pdf>

- Local Enforcement Plan –August 2014

<https://www.surreyheath.gov.uk/sites/default/files/documents/residents/planning/advice-services/SurreyHeathLEP.pdf>

There will be a need to review and update these policies from time to time.

We will respond to challenge from businesses, regulated bodies and individuals in a positive way. As a result we will keep this policy under informal review and will make any necessary changes in an effort to improve and learn from our experiences.

## **8. OTHER CONSIDERATIONS**

When considering enforcement we will have regard to **all** relevant local policies and government guidance that impact on our proposed action. This includes policy and guidance on the Regulation of Investigatory Powers Act 2000 and the Human Rights Act 1998.

A copy of our RIPA policy can be found at:

<https://www.surreyheath.gov.uk/council/information-governance/information-rights-public-shbc>

## **9. ENFORCEMENT OPTIONS**

We recognise the importance of adopting and maintaining consistency in our approach to enforcement. Government guidance covering many areas of our work already exists in the form of Codes of Practice, Planning Policy Guidance and Government Circulars etc. In addition, there are local and regional Codes of Practice which promote consistency in our enforcement activity. We will have regard to any relevant national or local guidance as well as the provisions of the Human Rights Act 1998, Equalities Act 2010 and this Enforcement Policy.

### **9.1. Exercise of Powers of Entry**

In order to enforce the various statutory provisions relating to the different enforcement areas, different provision is made through the legislation governing powers of entry.

Entry may be sought for the purposes of:

- Inspection
- Sampling
- Collection of evidence
- Determination of nuisance
- Checking for compliance with a notice
- Seizure of articles or equipment
- Investigation of an accident
- Securing a safe site
- Interviewing witnesses

- Carrying out works in default

The powers of entry prescribed under the applicable legislation vary. Such powers may allow an authorised officer to request entry to a business address without notice. Alternatively, officers seeking access to primarily residential addresses may be required to give notice to an occupier or owner that they wish to gain entry for a specified purpose on a specified day. These powers will normally only be used where informal requests for access to premises have not resulted in access being provided. Failure to provide access as requested may result in an offence of obstruction being committed.

Formal requests for access under powers of entry requiring notice will be made in the prescribed form, stating the purpose for which entry is required and be signed by an authorised officer.

Obstruction of a duly authorised officer, other employee or contractor employed by the Council to carrying out their duties will be considered for prosecution.

Where entry has been refused, depending on the particular legislation, the Council will normally make an application to a Justice of the Peace at The Magistrates Court to issue a warrant authorising entry by force, if needed. The Justice will be shown sworn information in writing that such entry is necessary and proportionate given the circumstances involved.

Application for a warrant to enter will be made when there are facts that in the reasonable belief of the Council indicate the commission of an offence and at least one of the following applies:

- There has been a history of failure to provide access in response to informal and/or formal requests to do so
- The alleged offence involves a flagrant breach of the law such that the safety, health or wellbeing of residents or others may be put at risk
- The alleged offence involves a knowing or wilful failure to comply in full or in part with the requirements of a statutory notice, statutory instrument or other legal duty
- The alleged offence involves a failure to comply with a requirement after having been given reasonable opportunity to do so
- There is a history of similar offences involving risk to the safety, health or wellbeing of residents or others or breach of legal duty

Execution of warrants for entry will be notified to the relevant police office and where appropriate the police may be asked to assist in the execution or to help prevent a breach of the peace.

In some circumstances an application for a warrant may be made without any reference to the owner or occupier of a premises. This includes where, for example, giving notice of our intended entry will defeat the purpose of entry or where there is a potential imminent risk to life. This is allowed for in a raft of legislation, and will be covered in service specific enforcement policies.

If the premises subject to the warrant are unoccupied or the occupier is temporarily absent, the Council will leave the premises as effectively secured against trespassers as it was found and the officer will inform the owner/occupier of the visit. If new locks have been fitted to secure the premises, information will be left on how to obtain the keys.

## **9.2. A staged approach to enforcement:**

### **9.2.1 Prevention**

As a first step to enforcement we will promote good practice, ensure policy compliance to help prevent contravention. We aim to achieve this by raising awareness of the reasons and need to comply. This includes providing appropriate training courses, seminars, press releases, use of the Council's web site and written guidance.

This approach will be used where appropriate.

### **9.2.2. Approvals, Consents and Licences**

These cover a range of activities specified by individual pieces of legislation. A significant number are compulsory such as building regulation approvals, planning and licensing applications but a few are optional. These form an important part of the preventative aspects of our work.

We aim to work with applicants to help them to understand what is required to gain approval. We will provide both pre and post-application advice and publish relevant guidelines.

Applications may be approved;

- As submitted
- Varied by agreement and then approved
- Subject to conditions

Applicants or their agents will be notified, in writing, of the outcome of their application. Where an application is refused details of the reason(s) for rejection will be provided. Details of any statutory right of appeal of a decision to refuse an application will also be provided.

Examples of applications which may be refused include the following circumstances (this is not an exhaustive list):

- They do not comply with Building Regulation
- Work at inspection stage does not meet minimum standards and remedial action is required
- Where contraventions exist

- Where an application is against local policy
- Where a food business fails to meet all the structural and equipment requirements

Details of how to apply for an approval, consent or licence will be provided on our web site together with the relevant application form.

### **9.2.3. Informal Action**

In appropriate circumstances we will work with anyone found to have broken the law without issuing formal notices or taking other forms of formal action.

As part of this approach we will, for example, offer advice, mediation in appropriate cases or request action where required. We will monitor the progress of any undertakings and timetabled schedules of action.

This approach may be adopted where for example:

- The contravention does not warrant immediate formal action
- There is no demonstrable harm to the amenity of the area
- There is confidence that informal action will achieve legal compliance within a reasonable timescale
- Standards are generally good, with an awareness of and general compliance with statutory requirements
- We are taking action on behalf of a customer, who has indicated they prefer an informal approach

If however this approach fails to achieve the necessary results **we will** take formal action to ensure that the required outcomes are achieved.

### **9.2.4. Formal Action**

Formal action will be considered where:

- An informal approach has failed to achieve the desired outcomes
- A significant contravention of legislation exists
- There is significant harm or detriment to the amenity of the area
- Where we are required by legislation to take a specified action
- Where there is no confidence that there will be a successful outcome using an informal approach
- Urgent action is required to remedy conditions which are deteriorating
- Formal action is likely to achieve the desired outcome and is proportionate to the risk involved
- There is a history of non-compliance
- Where a charge applied to a Fixed Penalty Notice has not been paid

- Where in the opinion of a suitably qualified and experienced officer this is the only viable option, given all the available evidence.

Where formal action is taken we will continue to work with either the business or individual with the aim of achieving a successful outcome and compliance with the law. This will not prevent us taking immediate action where warranted e.g. where there is an immediate risk to health, safety or the environment.

Officers are required to have regard to the Council's Scheme of Delegation to ensure that only suitably qualified and experienced officers with delegated powers take formal action.

### **9.2.5. Statutory Notices**

There is provision for the use of Statutory Notices in a wide range of legislation covering a range of potential contraventions. These may be served on individuals, businesses and other organisations requiring them to meet specific legal obligations.

In some cases there is the right of appeal against the notice on a range of grounds. We will provide details of how to appeal a notice including the timescale for lodging an appeal.

Where a notice is served the notice will explain:

- What is wrong
- What is required to put things right, including the timescale for compliance
- And the likely consequences of failing to comply with the terms of the notice

In some cases a notice can be served to prevent the occurrence or recurrence of a problem e.g. a statutory noise nuisance

The service of some notices including Housing Notices may result in a charge being made for the service of the Notice.

### **9.2.6. Appeals**

The majority of legislation enforced by officers has a statutory appeals procedure. Where there is provision for an appeal against action taken by the Council, details of the procedures to be followed, the grounds for appeal and the timescales within which an appeal should be lodged will be provided in writing. In most cases this information will form part of any Statutory Notice when served.

### **9.2.7. Fixed Penalty Notices**

Fixed Penalty Notices (FPN) may be used to deal with a wide range of potential offences and apply a penalty for the offence as an alternative to prosecution in the first instance.

These are generally only issued where:

- An offence has been committed
- An FPN is a proportionate response
- There is evidence to support prosecution if the offender does not pay the fixed penalty sum
- We believe the name and address of the offender are correct

When considering the service of FPNs we will follow Defra guidance on the issuing and enforcement by councils.

A copy of this guidance can be found at.

<https://www.gov.uk/guidance/fixed-penalty-notice-issuing-and-enforcement-by-councils>

A separate policy outlining our approach to the use of FPNs can be found on the Council's website.

### **9.2.8. Works in Default-WID**

Whilst it is the responsibility of others to achieve compliance with the law in some cases it may be necessary for the Council to undertake work to achieve that compliance. To achieve this we may seek a warrant to gain entry to land or premises to do so.

In cases where we carry out WID, we will seek to recover our costs from the responsible person. If the costs cannot be recovered we will, if allowed by the relevant legislation, place a financial charge on the property which will be recovered at a later date.

Occasions where WID will be used include the following:

- Immediate work is required to protect the public and it is not practicable to contact the responsible person, or they are not willing to respond immediately
- A 'statutory notice' requiring work to be undertaken has not been complied with and there has been no appeal against the notice
- There is no responsible person e.g. burial or cremation of a deceased person with no next-of-kin

### **9.2.9. Cautions**

A Simple Caution (previously known as a formal caution) where an offence is admitted may be issued as an alternative to a prosecution and will be considered when making any decision to prosecute.

Cautions will be issued to:

- Deal quickly and simply with less serious offences
- Divert less serious offences away from the courts or

- Reduce the chances of repeat offences

To protect the offender's interest the following must be considered before a caution is administered;

- There must be evidence of guilt sufficient to give a realistic prospect of a successful prosecution
- The offender MUST admit the offence
- The offender MUST understand the significance of a caution and give an informed consent to be cautioned

The issuing of a caution may be considered at a later date if the company or individual offends again. It may be referred to in any subsequent court proceedings, but this will not apply if the caution was issued more than three years before. We will pursue a prosecution in cases where the offer of a caution has been refused.

The Council maintains a central register of cautions administered.

#### **9.2.10. Prosecution**

We recognise that the decision to prosecute is a serious matter. Prosecution will in most cases be used as a last resort. The decision to prosecute will be taken in accordance with the Council's Scheme of Delegation as set out in our Constitution.

In accordance with Article 14 of the Constitution the Head of Legal Services is authorised to institute legal proceedings in respect of all functions of the Council.

Before deciding to prosecute we will have regard to the Attorney General's Code for Crown Prosecutors which means that the following criteria will be considered:

- Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction
- Whether the prosecution is in the public interest

The public interest test will be applied in each case where prosecution is being considered.

To determine the public interest test the following questions will be considered;

- How serious is the offence that has been committed?
- What is the level of culpability of the offender?
- What are the circumstances and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is prosecution a proportionate response?
- The cost to the Council, especially where it could be regarded as excessive when weighed against any likely penalty

- Sources of information may require protection.

In deciding on the public interest, the Council will make an overall assessment based on the circumstances of each case.

A copy of the Code for Crown Prosecutors can be found at

<https://www.cps.gov.uk/publication/code-crown-prosecutors>.

### **9.2.11. Restorative Justice**

Where appropriate and available, the Council will consider the use of Restorative Justice. This is a process through which parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.

## **10. TRAINING AND APPOINTMENT OF OFFICERS**

Officers undertaking enforcement duties will be suitably trained and qualified to ensure that they are competent to undertake their enforcement activities.

Officers will be mentored and shadowed to ensure that there is a consistent approach to enforcement.

The Council supports the continuing professional development of its officers and will ensure all officers are given additional in-post training to keep their knowledge and skills up to date. This will be highlighted as part of the personal development plans and as part of their annual performance reviews.

In line with the Council's Scheme of Delegation, officers will be delegated tasks commensurate with their roles. Officers will have a variety of delegated powers to assist them in carrying out their duties. Officers will carry an identity card and their authorisation with them at all times.

It is an offence to obstruct an authorised officer who is conducting an inspection or investigation. We would consider prosecuting anyone obstructing an officer.

## **11. SHARED REGULATORY ROLES**

Where the Council has a shared complementary regulatory role or is required to inform an outside agency of an incident or occurrence it will do so. When sharing information we will have regard to the General Data Protection Regulations (GDPR).

External agencies include (but are not restricted to):

- Defra
- Environment Agency
- Fire Authority
- Food Standards Agency

- Health and Safety Executive
- Other Councils
- Police
- Utility Providers
- Surrey County Council

To reduce the regulatory burdens, officers will attempt to co-ordinate visits and actions with other agencies to achieve efficiencies, effective outcomes and to minimise inconvenience for those being inspected.

Wherever possible, in situations where there is a shared or overlap of enforcement role, the most appropriate authority will, by mutual agreement take the lead and carry out the required enforcement action.

## **12. OUR SERVICE STANDARDS- WHAT YOU CAN EXPECT FROM US**

The Council is committed to measuring its performance against challenging targets. To achieve this we have developed the **Annual Plan** containing a set of four themes with priorities and additional success measures. These targets ensure we achieve our **Five Year Strategy** objectives.

We publish two performance reports a year, a mid-year and an end-of-year report. The most recent report can be found on our website together with the framework which illustrates how we co-ordinate our performance management work.

<https://www.surreyheath.gov.uk/council/about-council/performance-management>

### **Implementation of the enforcement policy**

The appropriate Executive Head of Service is responsible for ensuring that all enforcement officers are familiar with the requirements of and carry out their duties in accordance with this Enforcement Policy.

### **Monitoring and reporting arrangements**

The Council will take steps to ensure that the Enforcement Policy is followed. This will be achieved the following ways:-

- The appropriate Executive Head of Service is accountable to the Chief Executive, the appropriate Portfolio Holder and the relevant Committee, Licensing Committee and Scrutiny Committee for the proper discharge of the powers and duties
- Authorised officers have delegated authority to sign formal notices further to the Council's Constitution and agreed scheme of delegation

- Enforcement Liaison Group – This is a Council wide forum for all enforcement officers and solicitors to meet to discuss enforcement issues.
- Team Meetings - these provide a general forum for discussion of approaches to different problems and the need for consistency.
- 1:1 meetings between team leaders and enforcement officers.
- Multi-agency team meetings – these include Safer Surrey Heath Partnership, Nuisance Group, Best Practice Panel, Surrey Environmental Health Managers Group and Study Groups.
- case by case consideration of enforcement action - when considering the enforcement options of each case the case officer shall have regard to this enforcement policy.

## **Publicity**

The Council will, if the public interest determines and depending on the gravity, publish the names of all the companies and individuals who have been convicted of breaking the law. The Council will also make publicly available information on any convictions and on improvement and prohibition notices, which they have issued. The Council may inform members of the media about forthcoming court cases so that they have the option of being present and can report on the outcome of the case.

The Council will consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care will be taken to avoid any publicity which could prejudice a fair trial. They will also consider publicising any conviction which could serve to draw attention to the need to comply with legislative requirements, or deter anyone tempted to disregard their legal duties.

## **13. HOW TO COMPLAIN**

The Council provides well-publicised, effective and timely complaints procedures easily accessible to business and residents. All complaints will be investigated in accordance with laid down procedures. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

<https://www.surreyheath.gov.uk/council/complaints-compliments>

<https://www.surreyheath.gov.uk/webform/submit-complaint>

## **14. HOW TO CONTACT US**

### **By telephone**

You can use the telephone number given on any correspondence sent to you, or you can telephone our Customer Contact Centre

Customer Contact Centre  
Tel: 01276 707100 (This is also a 24 hour Emergency line)  
[contactcentre@surreyheath.gov.uk](mailto:contactcentre@surreyheath.gov.uk) (link sends e-mail)

### **In person**

We can be found at the following address

**Surrey Heath House, Knoll Road, Camberley, Surrey GU15 3HD**

Surrey Heath House is located off the A30 in the centre of Camberley and is a short distance from the M3. Postcode for satnav GU15 3HD. [\*\*View visitor parking map and information.\*\*](#)

### **Surrey Heath House Opening Times**

Mon to Thurs 8.30am to 5.00pm  
Fri 8.30am to 4.30pm

The contact centre is closed during UK public holidays. If you call when our contact centre is closed you will hear a message giving useful information and emergency telephone numbers.

### **Or write to us at**

Surrey Heath House, Knoll Road, Camberley, Surrey GU15 3HD

### **By email**

An email address that you can use is provided on all correspondence.

### **Complaints ABOUT OUR SERVICE to You**

At Surrey Heath Borough Council we aim to give the best possible service to all our customers. If we get things wrong we want to try to put them right and improve our services for the future. We also want to know when we do things well so that we can share good practice across.

Our web site provides details of How to complain or to make a Comment on our Services.

[\*\*http://www.surreyheath.gov.uk/council/complaints-compliments\*\*](http://www.surreyheath.gov.uk/council/complaints-compliments)

Once we receive a formal complaint using the Council's Complaints procedure we will respond in a timely fashion. We will keep you up to date with regards to the progress of our investigation of your complaint.

### **15. REVIEW OF THE ENFORCEMENT POLICY**

This policy will be reviewed every three years or sooner should legislation change.

This policy was first published in xxxxx2018 and will be reviewed xxxx2021

**References:**

- Code for Crown Prosecutors
- Council's Constitution – Part 3, Responsibilities for Functions
- Defra Guidance –Fixed Penalty notices: issuing and enforcement by councils
- Regulators' Code- Department for Business Innovation and Skills, Better Regulation Delivery Office

**Service Specific Enforcement Policies:**

- Regulatory Services: Local Enforcement Plan
- Transformation: Fixed Penalty Notices, Environmental Offences

**MAIN POINTS OF CONTACT:**