

<b>Name of Committee:</b>	Cabinet		
<b>Committee Date:</b>	6 March 2024		
<b>Report Title:</b>	Review of Environmental Health and Licensing Enforcement Policy		
<b>Responsible Officer:</b>	Alex Robinson – Executive Head of Place		
<b>Cabinet Lead:</b>	Cllr Elizabeth Lloyd		
<b>Status:</b>	Non-Exempt		
<b>Urgent Decision:</b>	No	<b>Key Decision:</b>	No
<b>Appendices:</b>	Appendix A: Environmental Health and Licensing Enforcement Policy (2024)		
<b>Background Papers:</b>	<a href="#">The Regulators" Code</a>		
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<b>Report Number:</b>	HBC/87/2024		

### Corporate Priorities:

**Wellbeing:** A transparent and robust enforcement policy is needed to ensure that the safety and wellbeing of the Borough's residents and businesses is maintained.

**Pride in Place:** By regularly reviewing its enforcement policy, the Council can ensure that it is working proactively to ensure the safety of its residents and businesses. Furthermore, publishing a transparent policy in the public domain enables our residents and businesses to ensure compliance with the relevant regulatory regimes.

### Executive Summary:

The report outlines the proposed revisions to the Environmental Health and Licensing Enforcement Policy.

### Recommendations:

Members are requested to:

- a) Recommend to Full Council that the Environmental Health and Licensing Enforcement Policy (2024) is approved.
- b) To delegate authority to the Executive Head of Place, in consultation with the relevant Cabinet Lead to amend the Policy following adoption, provided those changes are limited to the correction of factual errors and changes necessary to accommodate national or local changes in regulations, guidance or procedures and shall not otherwise alter the meaning of the Policy.

- c) To delegate authority to the Executive Head of Place, in consultation with the relevant Cabinet Lead to prepare guidance and relevant process notes for the implementation and administration of the Policy.

## 1.0 Introduction

- 1.1 This report outlines the revised Environmental Health and Licensing Enforcement Policy. The revised enforcement policy is intended to apply to the Environmental Health and Licensing services as a whole, encompassing the various legislation and enforcement powers available to all authorised officers within those services.
- 1.2 The policy was last reviewed in 2009, and therefore revisions are required to ensure that the policy is consistent with relevant legislation, options available for enforcement, and the Council's other relevant policies.

## 2.0 Background

- 2.1 An Enforcement Policy is a document which sets out in clear terms how the Council carries out the enforcement of the wide range of legislation it is responsible for implementing. This revised policy is specific to the Environmental Health and Licensing services only.
- 2.2 The policy is an essential document as businesses and individuals who are subject to the legislation the Council enforces should know what to expect when the Council decides to take action. Similarly, those who the Council seek to protect have an expectation that companies and individuals who do not meet the standards required by legislation are required to put right any shortcomings. Publishing the Council's approach to enforcement, and the various enforcement powers available, ensures transparency and openness.
- 2.3 The publication of an enforcement policy is an approach encouraged and supported by the Local Government Association.
- 2.4 The policy outlines the processes for authorised officers to take in the event of non-compliance, ranging from engaging and educating customers to fixed penalty notices and prosecution.
- 2.5 There have been a number of new pieces of legislation introduced since the policy was last updated in 2009, including the Housing and Planning Act 2016 and The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
- 2.6 In particular, statutory guidance relating to the issuing of civil penalties under the Housing and Planning Act 2016 has been published, which the Council must have regard to in taking any enforcement action relating to private sector housing compliance.
- 2.7 The revised policy also includes comprehensive guidance for officers investigating a death at work under the Health and Safety at Work Act

1974, and the Council's protocol for liaison with other investigating authorities.

- 2.8 Consideration has been given to The Regulators' Code General Principles of Enforcement, which seeks to promote the development of transparent, effective dialogue, and understanding between regulators and those they regulate.

### **3.0 Summary of Key Provisions and Changes**

- 3.1 The Environmental Health and Licensing services have duties and powers (both statutory and discretionary) to take action to enforce a wide range of statutes relating to:
- Animal welfare
  - Environmental protection; nuisance and pollution
  - Environmental health; health, food and safety
  - Licensing
  - Pest control
  - Private sector housing
- 3.2 In previous years, the Council has drafted individual enforcement policies for each of the services outlined above. This proved time consuming, repetitive and challenging to ensure that they remained up to date with new and revised legislation.
- 3.3 The revised enforcement policy is intended to apply to the Environmental Health and Licensing services as a whole, encompassing the various legislation and enforcement powers available to all authorised officers within those services.
- 3.4 The revisions are not wholesale changes, but rather updates consistent with new legislation passed by Government since the policy was last updated. The revised policy includes reference to the following new legislation:
- Housing and Planning Act 2016
  - The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
  - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- 3.5 The Housing and Planning Act 2016 includes the provision for civil penalties and rent repayment orders, which the Council cannot currently utilise due to neither being referred to in the current policy. The revised policy includes reference to the Housing and Planning Act 2016 and it's the various enforcement powers it provides, as they are effective options for dealing with non-compliance that the Council intends to utilise in the future.

- 3.6 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 replaces previous animal licensing legislation. Whilst the enforcement powers remain broadly similar to that of previous legislation (suspension and revocation of licences), the policy has been updated to be consistent with the most current legislation.
- 3.7 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 make provision for the service of penalty charge notices (PCN), up to a maximum of £5,000, on landlords who breach a remedial notice served on them under regulations. This legislation is not referenced in the current policy, and therefore is not utilised by the Council. The revised version includes reference to this legislation and its enforcement powers as they are effective enforcement options that the Council intends to utilise in the future.

## **4.0 Options**

- 4.1 Whilst adopting an enforcement policy is not a statutory obligation, the adoption of an enforcement policy demonstrates that the Council acts with transparency, fairness and objectivity when dealing with non-compliance.
- 4.2 There are three options available:
1. Recommend the revised Environmental Health and Licensing Enforcement Policy for adoption by Full Council;
  2. Recommend a modified Environmental Health and Licensing Enforcement Policy for adoption by Full Council; or
  3. Retain the existing 2009 version of the enforcement policy.
- 4.3 The Council considers it essential to undertake periodic reviews to provide a comprehensive update of the policy. This is necessary to enable authorised officers to lawfully exercise their powers under relevant legislation and minimise the risk of successful legal challenge. Therefore, Option 1 is recommended.

## **5.0 Relationship to the Corporate Strategy**

- 5.1 Wellbeing: A transparent and robust enforcement policy is needed to ensure that the safety and wellbeing of the Borough's residents and businesses is maintained.
- 5.2 Pride in Place: By regularly reviewing its enforcement policy, the Council can ensure that it is working proactively to ensure the safety of its residents and businesses. Furthermore, publishing a transparent policy in the public domain enables our residents and businesses to ensure compliance with the relevant regulatory regimes.

## 6.0 Conclusion

- 6.1 This report constitutes a comprehensive review of the enforcement provisions for the Environmental Health and Licensing services, outlined in a dedicated policy document, ensuring a more proportionate response to non-compliance.

## 7.0 Implications and Comments

### 7.1 S151 Comments

Members should be reminded that the primary purpose of the policy is not to generate income for the Council, but to allow appropriate measures to manage the function and purpose of the service. As long as the fee are set in mind to achieving the operational outcomes then they may result in increased income levels for the Council.

### 7.2 Financial Implications

- a) It is likely that adoption of the revised Environmental Health and Licensing Policy will result in additional income for the Council, through payment of civil penalties and Housing Act 2004 notices.
- b) The Council may also be awarded costs in the event of a successful prosecution. However, there is the risk that the Council will not succeed with a prosecution and therefore be liable for costs ordered by the Court.
- c) The Environmental Health and Licensing Enforcement Policy clearly outlines the relevant powers available to officers, the importance of transparency and proportionality, and guidelines for determining whether the evidence threshold has been met for a successful prosecution. This significantly reduces the likelihood of the Council being unsuccessful with enforcement action taken.

### 7.3 Monitoring Officer Comments

The recommendations ensure a comprehensive and consistent single enforcement policy across the Environmental Health and Licensing Service. The policy has been prepared in accordance with legislation and relevant statutory guidance.

### 7.4 Legal Implications

- a) The Council's Environmental Health and Licensing Enforcement Policy could be challenged by way of Judicial Review. However, the Council has drafted a fair, transparent and proportionate policy, consistent with the relevant legislation and statutory guidance, and therefore a successful challenge is unlikely.
- b) The Legislative and Regulatory Reform Act 2006 imposes a duty on regulators to have regard to the principles of good regulation so that regulatory activities are carried out in a way that is transparent, accountable, proportionate and consistent. The revised policy takes account of this duty provides comprehensive guidance to authorised officers considering enforcement action.

- c) Adoption of the Environmental Health and Licensing Enforcement Policy minimises the risk of challenge in response to enforcement action undertaken and seeks to protect the Council from legal challenge.
- d) The revised policy outlines the spectrum of enforcement options available, to allow a proportionate and appropriate response to non-compliance to be considered.
- e) Any authorised officer seeking to undertake enforcement action shall liaise with their Team Leader to seek approval, prior to liaising with the Council's Legal Team to prepare a case.

## 7.5 Equality and Diversity

Section 4.4 of the revised policy states that Council staff responsible for undertaking enforcement action must be fair, independent and objective. They shall not allow any personal views about a suspect, victim, witness or offender influence their decisions. Such issues include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sex, religion or beliefs, political views, or sexual orientation.

## 7.6 Human Resources

Implementation of the revised Environmental Health and Licensing Enforcement Policy does not require any additional resource or appointment of staff beyond filling the currently vacant posts within the service(s).

## 7.7 Information Governance

- a) Undertaking enforcement action, in some cases, may require the Council to collect additional personal and special category data in order to gather sufficient evidence for a case. In all circumstances, the subject will be advised as to why this data is being collected.
- b) The Environmental Health Service will liaise with the Information Governance Team to review the data protection impact assessment(s) in place to ensure that they are current.

## 7.8 Climate and Environment

- a) There are no climate implications arising as a result of this report. Climate matters are not considered as a part of enforcement action undertaken in line with the revised policy.
- b) The Environmental Health Service's role includes investigating noise pollution, light pollution, bonfires / smoke and odour. There may be circumstances where individuals or businesses are subject to enforcement action, in line with the revised policy, in connection with one of the above.
- c) Climate and environmental matters may be public interest factors in considering whether non-compliance meets the public interest test for enforcement action.

## 8.0 Risks

- 8.1 Should the Council decide not to adopt the revised policy, or a modified revised policy, the Council would remain open to legal challenge in respect of any enforcement action undertaken by the Environmental Health and Licensing services. The Council is currently at significant risk of successful legal challenge against any enforcement action that the Environmental Health and Licensing services undertake, as that the existing enforcement policy is outdated.
- 8.2 By adhering to its own policy and the Regulators' Code, the Council shall ensure that it acts proportionately, transparently, and fairly.
- 8.3 Adopting the revised policy is likely to increase the amount of enforcement action undertaken by the Environmental Health and Licensing services. Each individual case will be subject to its own level of legal risk, which will be considered and managed by the Council's Legal Team and any appointed external legal advice.
- 8.4 There will be no significant changes in the services' processes or protocols arising from adoption of this report. However, authorised officers are likely to spend more time on enforcement matters if they have a policy that empowers them to do so. This is unlikely to cause any significant drain on resources but this will be kept under review by the Environmental Health Manager.

## 9.0 Consultation

- 9.1 The revised Environmental Health and Licensing Enforcement Policy has been reviewed by the Environmental Health and Licensing services, ensuring that those who will be undertaking action in accordance with the policy have had opportunity for comment and feedback.
- 9.2 The Council's Legal Team have also been consulted on the revised policy, to provide feedback and ensure legal accuracy.
- 9.3 Key departments within the Council have been consulted on the revised policy as it may have further implications for their services, i.e., Housing and Council Tax.

## 10.0 Communications

- 10.1 Once adopted, the Council's Environmental Health and Licensing Enforcement Policy will be published on the Council's website to ensure that the Council is transparent about how it deals with non-compliance.



10.2 The Environmental Health Manager will contact all social landlords to notify them of adoption of the policy, as it will have significant implications on them with regard to the service of notices.

<b>Agreed and signed off by:</b>		<b>Date:</b>
<b>Cabinet Lead:</b>	Cllr Lloyd	15/02/2024
<b>Executive Head:</b>	Alex Robinson	15/02/2024
<b>Monitoring Officer:</b>	Jo McIntosh	21/02/2024
<b>Section151 Officer:</b>	Steve Pink	26/02/2024