

Appendix to Rossendale Borough Council Enforcement Policy

Introduction

The following pages give examples of how the overall policy can be interpreted in relation to specific services. They show examples only and do not cover all situations that may result in enforcement activity.

Council customer service standards

The Council's Customer Promise is:-

'To put customers first, at all times and at every point of contact'.

The Council's regulatory services will: -

- Work with individuals and businesses to assist them in complying with their legal duties and obligations.
- Ensure that staff are appropriately trained and apply the policy and standards professionally and consistently.
- Provide information about the policy and local standards and make available to public and businesses within the Borough.
- Monitor performance and regularly review the policy in consultation with all parties subject to its application.

Monitoring arrangements

Procedures will be implemented to monitor adherence to the policy and its appendix and reported annually. Lessons learnt through the monitoring arrangements will be incorporated in future amendments to the policy and Appendix.

Consultation

Consultation should be undertaken with the stakeholders relevant to each individual service.

Services:-

- A Private sector housing standards
- B Building Control
- C Development Control
- D Licensing
- E Neighbourhood Environmental Action Team (NEAT)
- F Food safety
- G Health & Safety
- H Pollution control
- I Public health
- J Land Drainage
- K Dogs
- L Abandoned vehicles

A PRIVATE SECTOR HOUSING STANDARDS

1. Overall purpose and aim of the service

- To ensure that residential properties which are rented out are free from unnecessary and avoidable hazards
- To ensure adequate protection from fire, provision of basic amenities and good property management for residents in houses in multiple occupation (HMOs)
- To encourage good practice and the provision of quality, well-managed rented accommodation throughout Rossendale.

2. Primary legislation enforced by this service

- Housing Act 2004 parts 1 to 4
- Environmental Protection Act 1990 section 79
- Building Act 1985 section 59

3. General enforcement decision making

The Housing Health and Safety Rating System deals with housing conditions and is a system of identifying faults in dwellings and evaluating the potential effect of any faults on the health and safety of the occupants or visitors. The principle behind the system is that every dwelling should provide a safe and healthy environment free from unavoidable and unnecessary hazards.

There are 29 housing hazards and during an inspection of a dwelling all 29 hazards will be assessed. If any of the hazards are assessed to be worse than average then the hazard is given a score. The score given will fall within a band A to J. If the hazard score falls within bands A to C this will be classed as a Category 1 hazard and the local authority will have a mandatory statutory duty to take the appropriate enforcement action. Any hazards scored within bands D to J will be Category 2 hazards and requirement to take enforcement action will not be mandatory.

The list of possible enforcement action available comprises:

- Serving an improvement notice
- Making a prohibition order
- Serving a hazard awareness notice
- Taking emergency remedial action
- Making an emergency prohibition order
- An amended version of the existing powers to make a demolition order
- An amended version of the existing power to make a slum clearance declaration

The first three enforcement options are available for both category 1 and 2 hazards. The remainder are applicable to category 1 hazards only.

When a hazard is identified the council must decide the most practical course of action. There is no longer a legal requirement for a prior warning notice to be served so the council will ensure that the landlord and tenant(s) have the opportunity to discuss the councils proposed action before a notice is served.

An improvement notice will be the most practical remedy for most hazards as repair or renewal is generally cost effective because of the high demand for rented properties.

However, prohibition notices may be required on part or all of a dwelling, for example, where there is inadequate natural lighting or there is no fire escape from the top floor.

B - BUILDING CONTROL

1. Overall Purpose and Aim of the Service

To secure the health and safety of persons in or around the built environment, by enforcing the building Regulations within the Council's administrative area

2. Primary legislation enforced by this Service

- The Building Act 1984

3. General enforcement decision making

Minor Contravention of Building Control legislation occurs when controllable work, commenced in accordance with the procedural requirements of the relevant legislation, is constructed differently from the approved plan and contravenes the Building Regulations on site.

When a Building Control Officer becomes aware of, or observes, a minor contravention the Officer will:

- notify the builder, applicant, owner, or other person as appropriate, of the contravention, verbally in the first instance where it is considered practical and safe to do so, and request that the work is rectified
- verify that the work has been rectified at the next site visit or within an agreed period
- If the matter is not satisfactorily resolved within an agreed period, the Building Control Officer will refer the matter to the Building Control Manager for evaluation to determine whether further action is necessary.

A Major Contravention occurs when controllable work has been commenced (whether in accordance with the procedural requirements of the relevant legislation or not) and is constructed or executed contrary to:

- an approved plan and contravenes the Building Regulations; and
- has not been rectified to satisfy the Building Regulations, and the defective work is significant in terms of health and safety, energy conservation or the potential to encourage discrimination against people with disabilities;
- cannot be inspected due to the advanced nature of the works and is considered significant;
- requires extensive alteration to secure adequate standards of health and safety, energy conservation or equality for people with disabilities.

or is contrary to requirements set out in a properly written and served statutory notice.

When a Building Control Officer becomes aware of, or observes a major contravention the Officer will:

- notify the builder, applicant or owner, or other person as appropriate, of the contravention, where it is considered practical and safe to do so, and request them to rectify the works; and
- refer the matter to Building Control Manager for evaluation and to determine whether further action is necessary.

C – DEVELOPMENT CONTROL

1. Overall Purpose and Aim of the Service

To exercise powers to control unauthorised development.

2. Primary legislation enforced by this Service

- Town and Country Planning Act 1990

3. General enforcement decision making

Undertaking the initial investigation

Most investigations into breaches of planning control will result from the receipt of a complaint by members of the public, Ward Councillors, Town Council, Amenity Groups, Organisations and others.

The Council investigates all complaints about alleged breaches of planning control and will undertake a visit to confirm the circumstances. Written complaints are preferred as this avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation. However complaints will also be accepted by telephone or e-mail.

Where a complaint is made the Council will need information about the following:

- precise site location;
- the exact nature of the concern i.e. the potential breach of planning control;
- an indication of any harm caused.

In addition it can be helpful to provide information such as:

- the identity of the person/organisation responsible;
- the date (or time if relevant) that the breach commenced.

All complaints received from individual members of the public are treated as confidential. Complainants may need to be prepared to submit evidence to the Council or a Planning Inquiry at a later stage should an enforcement notice be issued and should the owner/occupier of the land in question decide to exercise his right of appeal.

Some complaints may be resolved without recourse to the owner/occupier of the land in question. However, the Council will notify owners or occupiers of land or property of its interest should the matter become the subject of a more detailed investigation. In this case, the person responsible for the breach of planning control will be advised of the requirements of relevant legislation and of the manner in which the matter might most appropriately be progressed.

Whilst much of the Council's enforcement work is generated from complaints by the public, an investigation may also arise from the Council's dealing with other work and becoming aware of potential unauthorised development.

Where access to land is required the co-operation of the owner will be sought. Where access is initially denied, officers will exercise the right of entry onto land conferred by the Planning Acts and will use their best endeavours to give the owner advance notice of the date and time of the intended visit.

Dealing with confirmed breaches of planning control

In all reported cases of unauthorised development an assessment is made as to whether planning permission is required, including whether development within the meaning of the Planning Acts has actually occurred, or whether it is permitted by a Development Order. Careful research of the need for planning permission to be obtained is often required, and the owner/occupier of a site will be afforded opportunity to discuss the situation before it is confirmed whether permission should have been obtained.

Where there is genuine doubt and the owner is actively pursuing an application for a Certificate of Lawful Use or Development in an attempt to establish the position, consideration of enforcement action may be deferred pending determination of such an application.

Where an owner/occupier is requested to make information available to assist in an investigation, and this is not forthcoming, the Council will issue a Planning Contravention Notice to the owner/occupier with a view to clarifying the position satisfactorily. This is a formal Notice which requires the recipient to provide information requested on any breach of control alleged by the Council.

The impact of some developments and activities are more harmful than others. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. The need to ensure that full and proper consideration is given to the matter, however, will often take several weeks, and occasionally months, prior to resolving whether a breach of control has occurred and further action is merited.

Some cases may justify higher priority being given to resolving the outcome of an investigation. Particular examples of where this might occur are:

- a development/activity which is the subject of widespread local concern;
- a development/activity generating annoyance to a large number of local residents, for example, by reason of noise and disturbance, particularly at

unsocial times;

a development/activity which is particularly harmful in terms of the policies of the development plan, and where failure to remedy the matter may set an undesirable precedent for the consideration of similar development elsewhere;

the construction of new building work where planning permission has neither been sought, nor obtained.

Building work which does not accord with approved plans

The Council takes care to ensure that the public has an opportunity to comment on planning applications. Often plans are amended to improve the content of a development proposal before planning permission is granted. The Council is therefore keen to see that development takes place in accordance with the detailed plans which have been approved.

Where building work takes place following the grant of planning permission but is not wholly in accordance with the approved plans, the District Council will support the view taken by the Local Government Ombudsman, i.e. that it is a developer's responsibility to ensure that development properly accords with the plans approved.

The Council must judge whether development, which is not undertaken in accordance with approved plans, is harmful before embarking on enforcement action. An assessment will be made when the full impact of any changes not previously notified to the Council is known. Such assessment will not take any special account of the fact that the development may have reached an advanced stage.

The developer concerned will be expected to stop work pending the submission of appropriate plans, normally in the form of a fresh planning application, in order that the planning merits of the development may be properly considered. Failure to follow this advice may lead to the owner undertaking abortive work which will either need to be modified or demolished and removed altogether, with all the cost that such work entails being borne by the owner.

Occasionally the Council will be prepared to consider proposals to introduce minor changes to approved plans without the submission of a further planning application. However it will be expected that such proposals will only be considered:

where they are likely to be acceptable in planning terms, and are considered not to impact materially on residential and visual amenity and accord with development plan policy.

Where any of these criteria are not met, it will be expected that a further planning application will be submitted.

Applications seeking the grant of planning permission retrospectively

Where there is a possibility that planning permission might be granted (in retrospect) for development undertaken without an appropriate consent, the owner/occupier will

be invited to submit an application for consideration. Enforcement action will normally not be taken whilst such an application is under active consideration.

Where written confirmation of an intention to submit an application to a satisfactory timescale is received, consideration of whether enforcement action is necessary will normally be suspended. Because unresolved breaches of planning control frequently cause distress and anxiety, particularly to the occupiers of neighbouring land, the Council will normally expect an application to be submitted within 28 days.

Where planning permission is granted retrospectively, the investigation will generally be closed. If it is decided that the breach of control can be made acceptable by attaching conditions to a planning permission, the Council will close the investigation on being satisfied that any conditions imposed have been satisfactorily complied with.

Where planning permission to retain unauthorised development is refused, it will normally follow that an enforcement notice will be issued, as the Council will have satisfied itself that there appears to be no other option available to satisfactorily resolve the matter.

The Borough Council will observe the Government's advice to local planning authorities in considering whether retrospective planning permission should be refused and/or enforcement action taken. The Council will satisfy itself that such action is **expedient and justifiable solely on planning grounds**.

Decisions on the taking of Enforcement Action

Consideration of whether enforcement action should be taken will be based on an assessment of the unauthorised development/activity against any relevant policies in the Development Plan, and Government advice in the form of its Planning Policy Guidance Notes or Departmental Circulars. Consideration of enforcement action is delegated to the Development Control Manager.

Where development the subject of an enforcement notice is particularly harmful and likely to cause distress and disturbance, the Council may issue a Stop Notice. Examples of where this might be used are in the case of a new building being erected without planning permission or where approved development commences without compliance with critical conditions precedent.

A Stop Notice might also be served where an activity, which is clearly in breach of planning control, is causing widespread disturbance to local residents. In such circumstances the Council may also issue an injunction requiring the activity to cease.

The Council will always be prepared to discuss alternative solutions to resolve an unauthorised development. Where this involves amendment to an activity or development which is harmful, it may still be necessary to issue an enforcement notice. Such action need not lead to an end of further discussion on finding an acceptable alternative solution.

A commitment to remove a building or cease an activity prior to consideration of enforcement action would need to be put in writing by the developer with a clear statement of the steps intended to be taken and a timescale for the work, if such action is to be avoided.

The Council will issue an enforcement notice as soon as is possible following a decision by the Development Control Manager to do so and all complainants who have previously written to the Council will be notified.

At this stage the issue of an enforcement notice will rarely be withheld, even in the event of an undertaking by the owner/occupier of land to remedy the breach to submit an application for retrospective planning permission or to submit an application for a more appropriate form of development. The Council will already have made such an opportunity available and advised whether there is any prospect of planning permission being granted.

Enforcement action will not be taken where a breach of planning control is of a technical nature and does not cause sufficient harm for such action to be justified in planning terms. However, it is in the owner's interest to properly regularise the matter through the submission of a planning application. This avoids anxiety in the local community and also any unnecessary delay which might otherwise be caused in the future disposal of land in circumstances where the prospective purchaser becomes aware of unauthorised development on the property.

Appeals against enforcement action

There is a right of appeal against an enforcement notice. Anybody who receives an enforcement notice is advised how to lodge an appeal with the Secretary of State for the Environment, if they so wish. The appeal is determined in accordance with procedures administered by the Planning Inspectorate on behalf of the Secretary of State.

Anybody who has previously written to complain about development the subject of an enforcement notice will be notified when an appeal is lodged against an enforcement notice, together with any arrangements made for the matter to be heard at a public inquiry or hearing.

Complainants will also be notified of the outcome of an appeal. If the appeal is successful and the enforcement notice quashed, the investigation will be closed.

Securing compliance with an Enforcement Notice

An offence occurs where an owner/occupier fails to comply with the requirements of an enforcement notice.

The Council will take firm action where the terms of an enforcement notice have not been complied with. Such action may involve:

- prosecution in the local Courts;
- the issue of an injunction through the High Court;

direct action.

The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts. If found guilty of failing to comply with the terms of an enforcement notice a fine may be imposed. If the Notice is still not complied with a further prosecution may be brought and this is likely to continue until the Notice is complied with.

The Council will not necessarily withdraw from taking action in the Courts, once commenced, and this will apply even where the breach of planning control may be rectified before the case is heard.

In the case of a persistent offence against an unauthorised activity an injunction may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.

In exceptional circumstances the Council will consider taking direct action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove unauthorised building work. Such circumstances are likely to arise, for example, when the breach of planning control has not been remedied despite the imposition of successive fines by the Courts. In such cases the Council will seek to recover its costs.

If development the subject of an effective notice becomes the subject of an appeal to the Secretary of State for the Environment (for example, on an application for planning permission, listed building consent etc., submitted after a notice has taken effect), the outcome of such an appeal may be awaited prior to the taking of further action to secure compliance with the enforcement notice. Where the Secretary of State has previously considered the matter, however, compliance with the requirements of a Notice will be rigorously pursued.

When the Council believes that an enforcement notice has been complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity.

Other planning enforcement powers

Some breaches of planning control are the subject of separate legislative codes.

These include:

- listed buildings;
- advertisements;
- trees.

Where the legislative requirements are the same, this policy will form the basis for any action taken by the Council on these matters.

The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. Because the undertaking of work to a listed

building is a criminal offence if undertaken prior to the obtaining of any necessary consent from the Council, the owner of a listed building may be prosecuted by the Council if works are undertaken in these circumstances, irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. This may also apply to a contractor undertaking the work for the owner or any person having an interest in the building in question.

Subject to available resources, the Council will pursue pro-active initiatives which would either improve the environment and built heritage, safeguard the amenities of the area or support the policies of the development plan. Examples of such work may include the seeking of an Article 4 Direction to withdraw rights of permitted development granted by a Development Order.

The level of resources required to undertake enforcement work will be monitored and kept under review by the Council.

D – LICENSING

1. Overall Purpose and Aim of the Service

THE LICENSING OBJECTIVES (Licensing Act 2003)

- the prevention of **crime and disorder**
- **public safety**
- the prevention of **public nuisance**; and
- the **protection of children** from harm

THE LICENSING OBJECTIVES (Gambling Act 2005)

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- Ensuring that gambling is conducted in a fair and open way and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

2. Primary Legislation Enforced by the Service

- a. Licensing Act 2003
- b. Gambling Act 2005
- c. Local Government Miscellaneous Provisions Act
- d. Town and Police Clauses Act
- e. Lotteries and Amusements Act
- f. Gaming Act 1968
- g. House to House Collections Act
- h. Street Collections Act
- i. Rossendale Borough Council Byelaws
- j. This list is not exhaustive

3. Enforcement Decision Making

The decision making process will be described in relation to the various and specific legislative requirements.

E. – NEIGHBOURHOOD ENVIRONMENTAL ACTION TEAM

1. Overall Purpose and Aim of the Service

The service acts as an enforcement agency for a range of legal duties and powers applied by Acts of Parliament, and the regulations and orders made under them, which have an effect on the state of the environment and street scene.

2. Primary Legislation Enforced by the Service

The Environmental Protection Act 1990 that covers Waste both domestic and commercial, fly tipping, littering and the issuing of fixed penalty notices for litter.

Other legislation used include:

The Prevention of Damage by Pests Act 1949

The Dog Fouling of Land Act 1996 that covers the leaving of dog faeces on public open space.

Refuse Disposal & Amenity Act 1978 & Road traffic Regulation 1984 (Abandoned Vehicles)

The Clean Neighbourhoods and Environment Act 2005

Town and Country Planning Act 1990 (sec 215)

3. Enforcement Decision Making

The decision making process will be described in relation to the various and specific legislative requirements.

F – FOOD SAFETY

1. Overall Purpose and Aim of the Service

The purpose of the Food safety function is to strive to ensure that food intended for sale, which is produced, stored, handled or consumed in this Borough, is without risk and is safe. The primary objective is to achieve compliance in the most effective way possible.

2. Primary Legislation Enforced by the Service

The Food Safety Act 1990

The European Communities Act 1982

3. Enforcement Decision Making

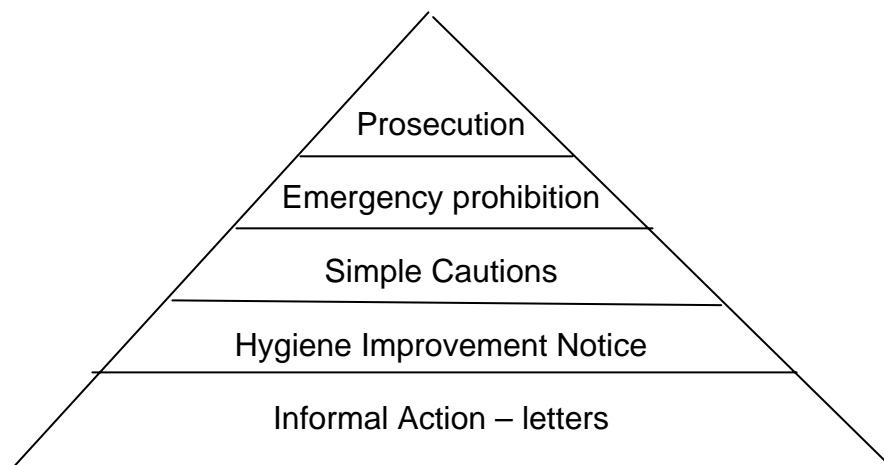
Authorised Officers should take account of the full range of enforcement options. All enforcement action should be based on risk to public health – the probability of harm to health arising from non compliance with food safety law.

Reference to the following will be made in order to maintain a balanced, fair and consistent approach:-

- Food Law Code of Practice (England)
- LACORS guidance
- Food Standards Agency guidance

Except in circumstances which indicate significant health risk, Officers should operate a graduated approach starting at the bottom of the pyramid below – advice

and education, informal action, and only move to more formal action when informal action does not achieve the desired effect.



Criteria for emergency Prohibition notice

Hygiene prohibition procedures are used when a health risk condition exists. This is described in Regulation 7 of the Food Hygiene (England) (No.2) Regulations 2005.

The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary) namely:-

- a) the use for the purpose of the business of any process or treatment;
- b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
- c) the state or condition of any premises or equipment used for the purposes of the business.

In addition, the health risk condition is fulfilled if:-

- the consequence of not taking immediate action is unacceptable
- the health risk can be demonstrated
- we have no confidence in an offer by the proprietor to voluntarily close/cease the use of the equipment/premises
- the proprietor is unwilling to confirm in writing an offer of voluntary action.

Examples of health risk conditions would be:-

- infestation by rats, mice, cockroaches, birds or other vermin serious enough to result in actual contamination of food or significant risk of contamination;
- very poor structural condition/equipment or poor cleaning/maintenance
- serious accumulations of rubbish posing a significant or actual risk of contamination of food;
- drainage defect/flooding serious enough to result in significant risk of/or actual contamination of food;
- premises or practices which seriously contravene food law and have been or are implicated in an outbreak of food poisoning;
- any combination of above or cumulative effect which taken together represent fulfilment of health risk condition.

Examples of when the prohibition of equipment is appropriate:-

- use of defective equipment e.g. pasteuriser incapable of reaching correct pasteurisation temperature;
- grossly contaminated equipment use din processing high risk food.

Examples of when prohibition of a process is appropriate:-

- serious risk of cross-contamination
- failure to achieve sufficiently high processing temperatures
- operating outside critical control point limit.

Criteria for voluntary procedures

Voluntary procedures to remove health risk conditions may be used when an operator agrees that a health risk condition exists. An Officer can suggest this plan but must be in a position to use emergency prohibition procedures if necessary..

This is not appropriate if there is a risk of operating without the officer's knowledge, or the person offering the voluntary procedure does not have the authority to do so.

Criteria for Prosecution and Simple Caution

This is a very significant decision and would be made in accordance with the main enforcement policy.

Criteria for Hygiene Improvement Notice

A Notice would be served when one or more of the following criteria apply:-

- health risk condition fulfilled
- significant contravention of legislation
- lack of confidence in proprietor to respond to an informal approach
- history of non compliance to informal action
- standard of management poor
- serious consequences of non compliance to public health.

This is not appropriate where:-

- minor contraventions where no risk to public health
- failure of good hygiene practice but no failure to comply with legislation
- transient situations e.g. one day festival
- continuing contravention e.g. cleanliness of staff or premise where a notice would only result in improvements at one point in time.

Criteria for a Remedial Action Notice

When an establishment has been approved under Regulation 853/04 is found in breach of Food Hygiene (England) Regulations 2006i.e. failure of any equipment or part of establishment to comply with hygiene regulations, a Remedial Action Notice (RAN) may be served on the operator. It can prohibit the use of equipment or process or any part of the establishment. It may impose conditions or require detention of food.

Criteria for informal action

This comprises offering advice, verbal warnings/requests for action, letters and inspection reports.

This approach is suitable if:-

- the act/omission is not serious enough to warrant formal action
- from past history it can be reasonably expected that informal action will achieve compliance
- there is high confidence in management
- the consequence of non compliance will not pose significant risk

Informal correspondence must indicate what is a legal requirement or a recommendation, what works are required in order to achieve compliance and a name and contact point within the Council.

G – HEALTH & SAFETY AT WORK

1. Overall Purpose and Aim of the Service

The aim of the health and safety service is to ensure that offices, shops and warehouses as well as cultural, entertainment and leisure premises are safe for employees, the public and others who visit or work on any of these types of premises.

The Council's dedicated Health and Safety Team is responsible for ensuring these workplaces are safe by:

- Providing advice to businesses, employees and members of the public
- Investigating accidents in the workplace
- Investigating and responding to complaints
- Regularly inspecting businesses on a priority basis, ie higher risk premises (such as warehouses) get inspected more frequently compared to low risk premises (small shops & offices)

2. Primary Legislation Enforced by the Service

In satisfying the aim of the service, the health and safety team enforce the Health And Safety At Work Etc Act 1974. In addition the section also enforces a variety of secondary legislation in the form of regulations. The main regulations are explained in more detail on the Council's web site at:

http://www.rossendale.gov.uk/site/scripts/documents_info.php?categoryID=66&documentID=106

The section also enforce legislation in connection with animal welfare and the keeping of pet shops, boarding kennel, riding schools and similar.

3. Enforcement Decision Making

The Enforcement Management Model (EMM) is a framework that helps Inspectors make enforcement decisions that are in line with the Rossendale Borough Councils Enforcement Policy Statement (EPS) specifically in relation to health and safety

The EMM also ensures that the decision making process is in accord with other local authorities and HSE. This is to ensure that all businesses are treated equally, fairly and any formal action is proportional to the seriousness of the alleged offence.

The EPS sets out the principles inspectors should apply when determining what enforcement action to take in response to breaches of health and safety legislation.

When Is It Used?

Inspectors apply the principles of the EMM in all their regulatory actions but they will only formally apply the EMM and record the outcome in certain circumstances, e.g. following the investigation of fatalities, to review decisions or serious breaches of the act or regulations.

Examples of services and the conditions found which would result in specific enforcement action are:-

Accident in the workplace for which a injury or potentially serious injury has occurred or a lesser risk of injury which may affect several people has occurred. - **Improvement/prohibition Notice**

Or

A machine which is unguarded and dangerous part are exposed. The absence of the guard is known by managers who may condone the activity as it makes the job quicker. **Prosecution**

H POLLUTION CONTROL

1. Overall Purpose And Aim Of The Service

To remove the presence of pollution and nuisances that affect health and wellbeing

2. Primary Legislation Covered By This Legislation

Environmental Protection Act 1990

Clean Air Act 1993

The Control of Pollution Act 1974

The Pollution Prevention and Control Act 1999

The Clean Neighbourhoods and Environment Act 2005

3. Enforcement Making Decision

A statutory nuisance can be caused by noise, dust, fume, odour, light and others. When assessing whether a statutory nuisance exists or is likely to occur the officer will have to assess the nature, frequency, duration and intensity of the problem and how it interferes with the use and enjoyment of the complainants' property.

If after informal action a statutory nuisance exists or is likely to occur a statutory nuisance abatement notice will be served. The notice is served on the person causing the nuisance requiring them to take action to abate the nuisance.

An example of when a statutory nuisance notice would be served is on a person playing loud music, frequently, after 11pm.

The whole of Rossendale is a smoke control area, which means that only smokeless fuel can be burned unless the appliance is an approved appliance. It is also an offence to emit dark smoke and action will be taken against persons who breach the Clean Air Act.

I PUBLIC HEALTH

1. Overall Purpose And Aim Of The Service

To remove and deal with situations and conditions that affect health and wellbeing

2. Primary Legislation Covered By This Legislation

Local Government (Miscellaneous Provisions) Act 1982
Public Health Act 1961
Environmental Protection Act 1990

3. Enforcement Making Decision

A notice will be served on the owner/occupier of properties if there is a blocked or defective drain or private sewer if the person/s responsible do not carry out the required work.

If a vacant domestic property is open to access a notice will be served on the owner giving them 48 hours to make the property secure.

If a property is filthy or verminous a notice will be served on the person responsible if the council is satisfied that the necessary work will not be carried out.

J – LAND DRAINAGE

1. Overall Purpose And Aim Of The Service

To ensure compliance by landowners of their obligations under the legislation.

2. Primary Legislation Covered By This Legislation

Land Drainage Act 1991

3. Enforcement Making Decision

Section 25 of the Land Drainage Act 1991 states that “where any ordinary watercourse is in such a condition that the proper flow of water is impeded then the Council MAY’, by serving a notice, require any person ‘to remedy that condition”.

Where a land drainage problem causes nuisance only to an adjacent neighbour and where no other parties are involved, the Council will take no action on the basis that the injured party has recourse to action at common law.

Where a land drainage problem causes nuisance to two or more properties the Council has powers to act under the Land Drainage Act 1991 and that all costs incurred shall be recovered either from the landowners or, where no landowner can be identified, as a charge upon the land.

K – DOG CONTROL

4. Overall Purpose And Aim Of The Service

To enforce legislation and resolve problems of dog fouling .

5. Primary Legislation Covered By This Legislation

Dogs (Fouling of land) Act 1996

6. Enforcement Making Decision

Legislation and subsequent enforcement are a part of the solution to this issue, leafleting, education and awareness campaigns are essential in partnership with the local press, schools and communities to foster a culture of intolerance amongst the public towards this type of anti social behaviour and to encourage responsible dog ownership.

Brief Outline of the Act

Rossendale BC has designated **ALL LAND IN THE BOROUGH**, therefore the Act applies in relation to any land open to the air to which the public are permitted to have access. (This does not cover private gardens or land to which the public has no right of access)

The Act excludes from the designation: -

- Carriageways with a speed limit of over 40mph and verges or land alongside them.
- Land used for agriculture or woodlands.
- Land which is predominantly marshland, moor or heath.
- Rural common land.

The Act creates the offence of failing to remove **immediately** dog faeces from designated land.

An offence cannot be committed if: -

- The person in charge of the dog is a registered blind person.

- The person in charge of the dog places the faeces immediately into a bin situated on the land.
- The person who controls the land has consented to the faeces being left on the ground.
- The person in control of the dog has a reasonable excuse.

The Act is clear that being unaware of the fouling or not having a means of cleaning up is not a reasonable excuse.

It will be impossible for Enforcement Officers to patrol all areas of the borough. Therefore, the community can be encouraged to play a part in the enforcement of this legislation by giving evidence in the form of witness statements.

This course of action represents a more direct approach to enforcement and will include the use of fixed penalty fines for dog fouling together with the gathering and placing of evidence before court.

We will use publicity campaigns to remind people of their responsibilities regarding environmental crime.

This will include liaison with local communities, Schools, other Council services and outside agencies to highlight issues regarding environmental legislation at both a local, Neighbourhood and Borough wide level.

L – ABANDONED VEHICLES

1. Overall Purpose And Aim Of The Service

The purpose of the function is to address current concerns regarding abandoned vehicles and their impact on anti social Behaviour, The Health, Safety and Welfare of the general public and the quality of life expected by local Community.

2. Primary Legislation Covered By This Legislation

Refuse Disposal and Amenity Act

3. Enforcement Making Decision

The policy aim is to remove abandoned vehicles in a short a time as possible, and within 24 hours maximum (working Days) to the approved contractors vehicle pound.

After receiving complaints and / or requests for service regarding abandoned vehicles the Officer concerned will take the following action.

On Site Risk Assessment

The officer concerned will visit the site and carry out a risk assessment. The risk assessment will consider and include:

- Is in the opinion of the Authorised Officer the vehicle an imminent danger to the general public, their Health, Safety or Welfare or does it have an impact on the quality of life for the local residents.
- Does the vehicle have any dangerous parts.
- Does the vehicle display a current tax disc
- Does the vehicle have any broken glass or windscreens
- Is the vehicle insecure.
- Does the vehicle have dangerous parts inside
- Is the location of the vehicle such as it would be a danger to the local community or would it attract any form of anti social behaviour

When the above risk assessment is carried out the officer will prioritise the vehicles as follows.

Priority 1 - Immediate Pick up and Destruction

All vehicle which fail the risk assessment will served with a notice (in principle) and will then be removed immediately to the approved contractors yard and destroyed

The details will be phoned through to the contractor by the case officer requesting immediate removal and destruction.

This will be followed by a confirmation order and entered onto the 'Flare' system

Priority 2 - Pick up and Destruction

Vehicles which appear sound and pass the risk assessment will be removed within 24 hours after a notice is served (in principle) and a P.N.C. check is carried out via the Community Safety Police Officer.

If the keeper is local we will give them 48 hours to remove the vehicle if they do not remove it we will remove the vehicle and recharge the current registered keeper.

Priority 3 - Pick up and Store

On the rare occasions a vehicle which is in good condition and has some intrinsic value is reported the P.N.C. will be checked to establish ownership / keeper. If no registered keeper the vehicle will be removed immediately to the contractors vehicle pound for further investigation / disposal.

Vehicle Amnesty

From time to time when certain hot spot areas are targeted we may wish to offer a voluntary surrender of vehicles scheme. This would allow us to remove vehicles which could possibly become abandoned in the near future free of charge.

Voluntary Vehicle Surrender

Anyone wishing to dispose of a vehicle may do so by contacting the abandoned vehicle officer who will arrange for the vehicle to be removed and recharged at the current rate which we pay the contractor.