

ENVIRONMENTAL ENFORCEMENT POLICY

April 2024



**BOROUGH OF
BROXBOURNE**
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1. Introduction

This policy sets out clear guidelines for the enforcement officers working on behalf of the Council. It also sets out what individuals, businesses and the community as a whole can expect from the Council's Environmental Enforcement service and the key principles under which authorised officers will seek to achieve compliance with legislation. This includes how the Council will investigate, enforce and prosecute as part of its regulatory functions.

2. Principles of enforcement

Local authorities have a range of enforcement powers. Enforcement is any formal, or informal, action to prevent or rectify infringements of legislation. Whilst the enforcement options may differ where different areas of legislation are applied, the principles of application should remain consistent.

Enforcement includes visits, inspections, verbal and written advice on legal requirements and good practice, assistance with compliance, written warnings, the servicing of statutory notices, issuing fixed penalty notices, formal cautions, prosecution, seizure and detention, works in default, injunctions and liaison and co-operation with other enforcement authorities and organisations where appropriate.

The Council aims to carry out environmental enforcement in a fair, transparent, equitable and consistent manner.

All enforcement activities, including investigation and formal actions, will always be conducted in compliance with the Council's statutory obligations. Enforcement officers will act within the scope of their delegated authority.

The Council will engage with individuals, business or the community to educate and enable compliance. Securing compliance through legal process, by using all or any enforcement powers available may sometimes be necessary however.

If an individual, business or the community is not complying the Council will provide advice and guidance to help them do so. Where appropriate the Council will agree solutions and timescales for making improvements to secure necessary compliance. The use of formal enforcement powers or sanctions may well be necessary in the event of failure to comply with any regulated activity. In this regard the Council will make a proportionate response to the circumstances.

For the purposes of this policy the following definitions are given to the terms 'regulatory', 'enforcement' and 'officer':

'Regulatory' encompasses the Council's numerous powers and duties available.

'Enforcement' includes any action carried out under statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Statutory Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations and conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of cautions and the making of applications to the Courts for Orders to control the conduct of individuals or organisations.

'Officer' means any person within the employment of the Council, or contracted by the Council to carry out investigative or enforcement roles within any service with a regulatory function and includes any officer within the legal services section who advises on or carries out enforcement matters on behalf of the Council.

3. Objectives

The Council aims to provide clear information and guidelines on individual responsibility via its website, policies, and communication campaigns (which will be in the form of leaflets, posters, press releases, residents magazines and so on).

The Council will not hesitate to take robust enforcement action against those who refuse to work with it, flout the law, commit serious breaches and risk causing serious harm.

The Council aims to employ a clear policy and consistent approach in the delivery of waste management and environmental enforcement duties.

The Council's authorised enforcement officers will take appropriate enforcement action in accordance with this policy.

4. Scope of the Policy

This policy covers enforcement activities in support of the Council's statutory duties for the maintenance of the street scene and the visual amenity of the local environment covering, but not limited to:

- responsible control, management and disposal of commercial and domestic waste
- street cleansing, control of litter and dog fouling
- sites which are detrimental to the amenity of a neighbourhood
- fly tipping
- graffiti and fly posting
- waste carriers licence
- abandoned and nuisance vehicles
- illegal skips and scaffolding
- highway offences
- Public Spaces Protection Order breaches (for example dog fouling)

The Council has key legislation which guides its actions in dealing with environmental offences in relation to this document:

- The Environmental Protection Act 1990
- Refuse Disposal (Amenity) Act 1978
- Road Traffic Regulation Act 1984
- Removal and Disposal of Vehicles Regulations 2002
- Clean Neighbourhoods and Environment Act 2005
- Public Spaces Protection Orders
- Town and Country Planning Act 1990
- Highways Act 1980
- Local Government (Miscellaneous Provision) Act 1982
- Community Protection Notice Crime and Policing Act 2014
- Anti-Social Behaviour Act 2003

- The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016
- Controlled Waste Regulations (England and Wales) 2015
- and any other legislation relating to the environment.

These offer a wide range of powers to the Council. The method of enforcement used should be balanced to produce the highest reasonable standards of compliance within the least time.

The Council's enforcement measures contribute to the Council's corporate priorities and objectives for a beautiful Broxbourne, enhancing the quality of life by helping to:

- maintain a clean and tidy Broxbourne
- reduce waste and increase recycling
- enhance the quality of life in local neighbourhoods

5. Enforcement Options

There are a number of options available to the Council:

Informal

5.1 Advice and guidance

Officers will seek to help individuals, existing and prospective businesses and other organisations to comply with legal obligations. This will be achieved by providing information and guidance to help resolve potential problems.

5.2 Informal warnings

Informal warnings may be issued to reinforce advice and guidance where minor breaches of the law have been discovered but where it was thought appropriate to not take formal action. These warnings can be verbal or written. Follow-up visits may be made to ensure that steps have been taken to rectify the problem. Warnings issued in respect of significant breaches of legislation will include time scales within which the breaches should be rectified and will always result in follow-up visits to ensure compliance.

Formal

5.3 Statutory notice

Some legislation provides for the service of statutory notices, which require a person, business or organisation to comply with specific legislation. The notice will explain what is wrong, what is required to put things right, the timescale in which to put things right, and what will happen if the notice is not complied with. In some circumstances, where a formal notice has been served, there may be a right of appeal against the Council's decision. In such cases, an explanation of the method of appeal will be provided at the time the notice is issued. In general, it is the Council's policy to either formally caution or prosecute individuals, business, or organisations who do not comply with a properly written and served statutory notice.

5.4 Fixed Penalty Notice (FPN)

FPNs can be issued for certain offences and allow individuals or businesses to discharge their liability for an offence, avoiding prosecution and a criminal record. Issued only when an offence has been committed, an FPN is a proportionate response where there is evidence to support prosecution if the offender fails to pay the fixed penalty. Payment of the FPN prevents any further action; no record of the FPN is kept except by the Council for up to three years. There is no formal appeal process for a FPN. If you disagree that you have committed an offence, you can decide not to pay the Fixed Penalty Fine and the matter will be decided by a Court.

5.5 Formal Caution

Under certain circumstances a formal caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. A formal caution is a serious matter and it will be recorded. In addition, it may be used to influence any decision on whether or not to prosecute should the individual, business, or organisation offend again. Formal cautions remain on record for a period of three years.

Formal cautions are intended to deal efficiently with certain offences, avoiding unnecessary appearances in court, and reducing the chance of re-offending. Before issuing a caution, there must be sufficient evidence of guilt to give a realistic prospect of conviction; and the offender must understand the significance of the formal caution and sign a declaration admitting the offence.

5.6 Prosecution

The Council will use discretion in deciding whether to initiate a prosecution and generally will only bring proceedings when it is considered to be in the public interest. A decision to prosecute will only be taken when there is sufficient evidence for a realistic prospect of conviction, and will take into account any statutory defence available to the defendant and any contributory factors which may preclude a successful prosecution. The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors. Advice will be sought from the Council's Legal Team.

5.7 Execution of Works in Default (where the recipient of a statutory notice has not complied with the notice)

Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary in execution of that notice and recover the costs of doing so from the person responsible.

6. Juvenile Offenders

In law, a local authority can issue a FPN to anyone over the age of 10 if they appear to have committed an offence. The parents or guardians of offenders below the age of 10 can however be contacted to make them aware of their child's behaviour. Enforcement officers should use special procedures for offenders between the age of 10 and 17, working with the Community Development team, Community Safety team, and children's services.

7. Authorised enforcement officers

The Council's responsible officer, as laid down in the Council's Constitution will authorise officers in writing, specifying the limits of their authorisation. Persons other than Council employees may be authorised to act on its behalf, where it is legally permissible to do so, and the Council's responsible officer considers that the Council's objectives, policies and procedures will be applied. The identity or warrant card provided by the Council must be carried at all times whilst on duty, and should be made available for inspection upon request. Enforcement action will only be carried out by authorised officers who have received appropriate training and who have sufficient experience in environmental enforcement action. The Council will also work with the Police through the Police Accreditation Scheme to designate powers to officers where relevant to the role.

8. Appeals and complaints

If there is an option to appeal the process will be outlined on the notice.

In the event of complaints concerning the conduct of an officer please refer to the Council's complaints policy: <https://www.broxbourne.gov.uk/council-council-information/complaints-procedure>

9. General information

Equal and fair treatment

Enforcement practices are monitored, and reviewed, to ensure they remain fair and equitable.

All enforcement action and investigations will be carried out in a manner that complies with the requirements of legislation and codes of practice governing the collection of evidence and investigatory powers.

This will include any surveillance activity which will comply with the Regulation of Investigatory Powers Act 2000, the Data Protection Act 2018, Information Commissioner's Office Guidance and the Surveillance Camera Commissioner's Guidance.

CCTV, photographic or video evidence

The Council employs both overt and covert CCTV use in its effort to protect public open spaces. The key aims and objectives are to encourage responsible use of facilities and to deter and detect crime.

Publicity

Whilst not a direct form of enforcement, the Council will seek to raise awareness and increase compliance levels by making public details of evidence of unlawful practice and any legal action taken where in their opinion it is appropriate to do so.

Policy review

This policy will be reviewed as and when new legislation comes into effect which may introduce new powers or actions for environmental enforcement.

APPENDIX 1

Definitions of environmental offences and legislation

Fly tipping

There is no precise definition of fly-tipping other than the offences set out in section 33 of The Environmental Protection Act 1990, i.e. the illegal disposal of controlled waste. The Litter and Refuse Code of Practice published by DEFRA in 2006 notes that a single plastic sack of rubbish should usually be considered fly-tipping rather than litter.

The Hertfordshire Fly-tipping Group (HFTG) seeks to rationalise the definition of a fly-tip county wide for the purpose of reporting.

The recommendation is for example that, sacks placed next to wheeled bins on collection day should not be identified as fly tipping whereas sacks left out on non-collection day could be considered to be fly tipping. This aims to take account of common knowledge that a significant proportion of fly tipping incidents recorded each year stem from individuals acting in what they believe to be a reasonable manner and for Hertfordshire authorities to record this consistently.

Plastic bags left by a wheeled bin where it cannot reasonably be determined to originate from the same premises however could be considered a fly tip as could repeat offenders leaving side waste as a result of not engaging with the comprehensive recycling services now offered.

Waste duty of care (domestic and commercial)

The duty of care legislation makes provision for the safe management of waste to protect human health and the environment.

The duty of care applies to anyone who imports, produces, carries, keeps, treats, disposes of, or are a dealer or broker that has control of controlled waste.

Section 34 (2A) of the Environmental Protection Act 1990 makes it a legal obligation or Duty of Care, for the occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it. More detail on this duty of care is set out in section 5 of the Waste Duty of Care Code of Practice.

For the purpose of applying this duty of care, household waste is generally considered to be any waste produced within a domestic property. This is not just regular black bin waste, but other material to be disposed of from a property such as old mattresses, furniture and household appliances.

Where waste comes from multiple individuals in the household, the duty of care applies to the individual occupier of the property who is arranging the transfer of household waste produced in that property.

It is a criminal offence if all reasonable measures are not taken to ensure an individual meets their duty of care. An individual could face prosecution and, on conviction, a fine and criminal record.

The Council may take the decision to issue a FPN for breaching the duty of care as an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. If an individual chooses to pay within the specified period, they cannot then be prosecuted for the offence.

Section 34 (1) of the Environmental Protection Act 1990

All businesses have a legal duty of care to manage waste correctly. This duty is not voluntary; all businesses are bound by statutory duty of care on waste requirements attached to the Environmental Protection Act 1990, section 34. Businesses are responsible for ensuring their waste is stored, managed and recovered or disposed of according to agreed guidelines.

The waste carrier must be authorised to take the waste for disposal.

All businesses must have two years' evidence of their waste management arrangements; this is known as a Waste Transfer Note or Duty of Care Certificate. Failure to provide this can result in a FPN or prosecution, where an unlimited fine can be imposed.

Waste receptacle notice

Section 46 Environmental Protection Act 1990

It is considered good practice to inform households about any issues related to the presentation of their waste either in the form of a letter or information notice. Where householders persist in failing to comply with the Council's waste policy and their actions cause, or is likely to cause a nuisance or is likely to have a detrimental effect on local amenities, the Council may follow three stages:

- a written warning (detailing how the rules have been broken, the impact of this action, what the householder is required to do and within what timeframe, and what will happen if they don't comply)
- a notice of intent (they may receive a fixed penalty and why, the cost of the fixed penalty, and that they have 28 days from the date of the notice to explain why they shouldn't have to pay a penalty)
- final notice (issued 28 days after the date on the notice of intent; advising why the fixed penalty has been issued; how they can pay, deadline for payment, if there is a discount for early payment; what happens if they do not pay; the appeal process).

Litter

The offence of leaving litter, defined in section 87 of the Environmental Protection Act 1990 as 'if any person throws down, drops or otherwise deposits in, into or from any place to which this section applies (which is any place in the open air to which public have access without payment and any covered place open on one side to a highway maintained at the public expense), and leaves it'.

Dog Fouling

Permitting your dog to foul and failing to remove the faeces in public open spaces.

Public Spaces Protection Order Section 3

A Public Spaces Protection Order (PSPO) is one of a number of tools and powers introduced by the Antisocial Behaviour, Crime and Policing Act 2014, used to address a range of anti-social behaviours in the particular area to which they apply.

PSPOs are aimed at ensuring that public spaces can be enjoyed free from anti-social behaviour. Failure to comply with either a prohibition or requirement of the order is an offence which carries criminal sanctions. Breaches of the order will be discharged by issuing a FPN set at £100 (with no discounted payment option). Persistent breaches may result in a summary conviction with a fine of up to £1,000.

The PSPOs cover dog control offences, alcohol related breaches, and nuisance vehicles.

Abandoned vehicles

Section 2 The Refuse Disposal (Amenity) Act makes it an offence to abandon a motor vehicle, or any part of a motor vehicle, on a highway or any land in the open air. This includes any trailer intended or adapted for use as an attachment to a motor vehicle.

There is no statutory definition of an abandoned vehicle and factors to be taken into account include, but are not limited to, current tax, MOT status, length of time at location and damage to or condition of the vehicle. The officer will assess the vehicle, taking the above into account, to decide whether it is abandoned.

The Council is under a duty to remove an 'abandoned' vehicle on any land in the open air, and can recover the costs of removal, storage, or destruction from the owner.

Nuisance Vehicles

Section 3 of the Clean Neighbourhoods and Environment Act 2005 makes it an offence to expose vehicles for sale on a road and a person is guilty of an offence if at any time they leave two or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale.

Section 4 of the Clean Neighbourhoods and Environmental Act 2005 makes it an offence for a person to carry out repairs to a vehicle on a road unless they have been in an accident within the last 72 hours, or have broken down and repairs are necessary.

Community Protection Notice

An authorised officer may issue a Community Protection Notice (CPN) to an individual aged 16 or over, or a body if satisfied on reasonable grounds that the conduct of the individual or body is having a detrimental effect of the quality of life of those in the locality, and that the conduct is unreasonable.

A CPN requires the individual or body to stop doing specified things; a requirement to do specified things; or a requirement to take reasonable measures to achieve specified results.

Untidy land notices

Section 215 of the Town and Country Planning Act 1990 – a local planning authority may use a maintenance notice (section 215) where the condition of land or buildings is considered to adversely affect the local amenity of an area.

NB: This is not an exhaustive list but is designed to provide an awareness of the types of environmental offences and legislation the Council will enforce.

APPENDIX 2

Fixed Penalty Levels

The Council can set penalties for certain offences within specified limits and can demand payment within 14 days.

Offence	Penalty	Discounted penalty (if paid within 10 days)
Littering	£150	£100
Breach of Public Space Protection Orders	£100	N/A
Fly-tipping	£400	£300
Waste duty of care	£400	£300
Failure to produce a waste carriers Licence/transfer note	£300	£200
Failure to comply with a waste receptacle notice	£100	N/A
Abandoning a vehicle offence	£200	£120
Nuisance parking	£100	N/A
Graffiti	£100	£75
Fly-posting	£100	£75
Breach of Community Protection Order	£100	N/A

APPENDIX 3

Issuing Fixed Penalty Notices

Environmental Enforcement Officers should only issue a Fixed Penalty Notice (FPN) when all of the following apply:

- 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
- the offender understands why the FPN is being issued
- it is believed that the name and address offered by the offender are correct.

All FPNs must be issued in a manner proportionate to the situation and in accordance with this policy. A reasonable approach should be taken which may result in giving a warning rather than issuing a FPN. Warnings should be recorded detailing the reasoning behind the decision taken.

The Council's policy rules out the issuing of FPNs to persons believed to be suffering mental or physical ill health and disabled people with clear mobility difficulties.

In the case of offenders under the age of 18, details should be taken in order to monitor persistent offenders, and advice offered with regards to responsible disposal of litter.

Detailed information on the issuing of FPNs can be found at:

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

APPENDIX 4

Table of Environmental offences, legislation and enforcement options

Offence	Offence	Legislation	Relevant Section	Level of Penalty (Individual)	Level of Penalty (Commercial)
Fly-tipping	Illegal depositing of controlled waste	Environmental Protection Act 1990	Section 33	£150 Littering FPN (low level) £400 Fly-tipping FPN Prosecution unlimited fine	Prosecution
		Refuse Disposal (Amenity) Act 1978	Section 2	Prosecution	
Waste duty of care (domestic and commercial)	Failure to comply with duty of care (legal requirement) for householders and business	Environmental Protection Act 1990	Section 34	£400 FPN	FPN or Prosecution
				Prosecution unlimited fine	
Waste carriers' Licence	Businesses not having correct permissions to carry/store/dispose/transport of waste	Environmental Protection Act 1990	Section 34	£300 FPN	FPN or Prosecution
Commercial and domestic containerage offences	Residential and businesses not having correct storage/containerage facilities	Environmental Protection Act 1990	Section 46 & 47	£100 FPN	FPN or Prosecution
Commercial and domestic land condition offences	Land detrimental to local amenity	Environmental Protection Act 1990	Section 59	Prosecution	Prosecution
		Town and country Planning Act 1990	Section 215	Prosecution	Prosecution
		Community Protection Notice Crime and policing Act 2014		£100 or prosecution	Prosecution

Offence	Offence	Legislation	Relevant Section	Level of Penalty (Individual)	Level of Penalty (Commercial)
Community Protection Notices	Land detrimental to the local amenity/ anti-social behaviour	Community Protection Notice Crime and Policing Act 2014		£100 FPN or prosecution	£100 FPN or prosecution
Litter	Depositing litter	Environmental protection Act 1990	Section 87 & 88	£150 FPN, prosecution for non-payment	
		Clean Neighbourhoods & Environment Act 2005 (CNEA)	Part 3	As above	
Dog Fouling	Failing to clear up after your dog	Public Space Protection Order (PSPO)	Section 3	£100	
Graffiti	Caught in the act	CNEA 2005	Part 4	£100	
		Anti-Social Behaviour Act 2003	Section 43		
Fly-posting	Fly-posting found on the highway	Town & Country Planning Act 1990		Prosecution	
		Highways Act 1980	Section 132 (1)	£100 FPN	
Abandoned vehicles		Refuse Disposal (Amenity) Act 1976	Section 2	£200 FPN or prosecution	
		Road Traffic Regulations Act 1984			
		Removal and Disposal of Vehicle Regs 2002			
		CNEA	Part 2		
Nuisance vehicles	Cars for sale, commercial car repairs	CNEA 2005		£100 FPN or prosecution	
Illegal skips and scaffolds	Unlicensed	Highways Act 1989	Section 139		£100 or prosecution
Illegal Scaffolds	Unlicensed	Highways Act 1990	Section 169		£100 or prosecution
Highway offences	Builders' material, waste, projections, encroachment, contamination, obstructions of the highway.	Highways Act 1990 Part IX Lawful and Unlawful Interference with highways and streets	Various sections	Various levels of fines and prosecution	Various levels of fines and prosecution
Removing traders from the highway	Unauthorised traders/sellers on the highway	Local Government(Misc. Prov) Act 1982		Prosecution	



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