

# **Thurrock Council Enforcement Policy**

 [thurrock.gov.uk](http://thurrock.gov.uk)

Version control sheet

Title	Thurrock Council Enforcement Policy
Purpose	To advise on how Thurrock Council uses its enforcement powers to conduct services required by a Local Authority
Owner	Corporate Services
Approved by	
Date	
Version number	1.0
Status	Final
Review frequency	Annually
Next review date	September 2025

Change history

Date	Change details	Approved by

## **1. PURPOSE/ OBJECTIVES**

This policy sets out the process required for authorised officers to act promptly, consistently and effectively in response to allegations of unlawful activities committed against the Council. This policy emphasises that all authorised officers with enforcement duties, functions and responsibilities should:

- a) Act at all times in good faith and within their powers of delegation.
- b) Apply standards of Proportionality, Consistency, Transparency (where we are legally able) and Accountability, while remaining professional and maintaining their ability to put in place effective resolution solutions when disputes occur.
- c) Comply with legislation relevant to the enforcement service area.

This policy aims to:

- a) Provide clear guidelines for the management of the Council's enforcement actions relating to unlawful activities;
- b) Provide a consistent approach to the investigation of unlawful activities and the effective resolution of matters that would otherwise give rise to civil and/or criminal enforcement action;
- c) Manage civil and criminal enforcement action in a consistent and transparent manner and through best practice operational procedures;
- d) Ensure the principles of procedural fairness and natural justice are followed;
- f) Determine whether complaints relating to unlawful activity require investigation;
- g) Determine whether enforcement action is required;

## **2. SCOPE**

This policy applies to all enforcement actions that the Council may take, with the following being the most common types of enforcement:

- Abandoned articles/ vehicles.
- Environmental protection.
- Food safety.

- Public health and safety.
- Pollution control and waste.
- Unauthorised development.
- Unauthorised use of premises and or land.
- Unauthorised works to Listed buildings.
- Unauthorised works to Preserved trees or trees in Conservation Areas.
- Breaches of Planning Conditions.
- Illegal parking.
- Illegal sales of alcohol/tobacco.
- Fraud and Theft Offences.
- Consumer protection.
- Food standards (allergens).
- Underage sales.
- Use of POCA civil investigations and confiscation.

Councils operate in an increasingly complex legal environment. Legislation that is the subject of enforcement by Council authorised officers or is otherwise relevant to the exercise of their delegated functions for the purposes of this policy, includes but is not limited to the following:

- Fraud Act 2006
- Bribery Act 2010
- Road Traffic Act 1998
- Regulation of Investigatory Powers Act 2000
- Investigatory Powers Act 2016
- Police and Evidence Act 1984
- Theft Act 1968
- Traffic Management Act 2004
- Consumer Protection Rights (Regulations) 2008
- Town & Country Planning Act (1990)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning and Compensation Act (1991)
- Proceeds of Crime Act 2002
- Consumer protection legislation

### 3. DEFINITIONS

**Authorised officer** means an officer exercising delegated authority from the CEO.

**CE** means the Chief Executive of the Council.

**Council** means Thurrock Council

**Delegation** means the legal instrument whereby powers are conferred on an authorised officer by the CE to act for and on behalf of the Council as its agent where the Council has been given those powers by legislation.

**Unlawful Activity** means any activity that has been or is being carried out in contravention of an Act constituting an offence within English & Welsh Law

### 4. UNLAWFUL ACTIVITIES AND THE COUNCIL'S RESPONSE

When undertaking enforcement action and undertaking administrative activities relating to such enforcement action, authorised Council officers are to adhere to the provisions of:

- a) Relevant Council policies, including the Code of Conduct;
- b) Guidelines issued by professional bodies.
- c) Legislative requirement and applicable Codes of Practice

#### 4.1 Referrals Process

Unlawful activities are generally identified through complaints received from members of the public or through routine inspections carried out by authorised officers.

Details about the unlawful activities are recorded onto the appropriate Council system that is used by the specific service area to manage the specific response. There is not one singular system for all enforcement activity within the Council.

Timeframes for responding to referrals about unlawful activities may vary. However, every effort will be made to ensure that all referrals about unlawful activities are actioned within a timely manner and that referrers are given sufficient feedback on the progress of their referral. Each specific service area will hold their own performance data and comply with their own timeframes set by their policies.

Priority will be given to complaints in accordance with the following categories across the Council to ensure the best use of the resources available. In simple terms there will be three 'categories' of complaints/referrals.

- Category 1:
  - Urgent and life-threatening matters will be actioned immediately following receipt of complaints or through proactive detection, such as unsafe building works, food poisoning, serious incidents where public health and safety are at risk, serious environmental matters including development, and serious planning breaches such as unauthorised works to listed buildings, protected trees or trees within Conservation Areas, and significant unauthorised building works or structures
- Category 2:
  - General compliance matters should be dealt with on a priority basis having regard to the seriousness of the matter. These can include operational and building works that significantly affect residential amenity; changes of use that significantly affect residential amenity; and, non-compliance with conditions or obligations that significantly affect residential amenity or Conservation areas.
- Category 3:

Minor matters, such as minor anti-social behaviour issues and or low-level legislative issues.

Individual Service areas must consider a range of factors when determining whether the matter warrants further and/or detailed investigation. This process will be defined within the service areas specific Enforcement Policy document.

#### 4.2 Investigating unlawful activities.

When deciding whether a complaint requires investigation, authorised officers ought to consider the following factors:

- Is the matter within the jurisdiction of Council or of a civil or private nature?
- Is the matter premature, e.g. is the complaint about something that the individual 'thinks' will happen?
- Is the activity being complained about allowed in the circumstances?
- Is there another body that is more appropriate to investigate or deal with the matter?

As the appropriate regulatory authority, the Council can act in relation to any matter which it has power to regulate or enforce under legislation.

All complaints regarding unlawful activities (criminal, civil or regulatory breaches) will be investigated by the Council unless:

- a) The matter has been actioned and resolved before an investigation could commence, or
- b) The matter sits outside the Council's enforcement purview, or
- c) The matter is not expedient to take action, or not in the public interest, or
- d) The matter is submitted via an anonymous complaint, and there is no ability to qualify, update or seek further information from the complainant which is require, or
- e) The matter submitted has been investigated repeatedly or submitted vexatiously, or
- f) The activity complies with the governing legislation/code and does not warrant investigation.

#### 4.3 Determining the need for enforcement action

The enforcement options that are available to the Council depend on the service area taking the action forward, however these options include:

- Issue a notice;
- Issue an order;
- Issue a Fixed Penalty Notice (FPN)
- Issue a Penalty Charge Notice (PCN)
- Commence legal action (Civil/Criminal).
- Engage into mediation.
- Removal of appropriate Licenses
- Statutory Notices
- Seizure

#### 4.4 Civil and Criminal proceedings

Civil enforcement action can be taken in respect of an alleged breach of an Act or Regulation that is dealt with by the Council. The most common examples where this type of action is taken relates to:

- Debt Recovery
- Building Control Matters
- Confiscation Proceedings

- Civil investigations conducted under POCA 2002

The Council, when appropriate, can also bring criminal proceedings against individuals or companies. In these circumstances, the Council will adhere to the legislation that is being utilised to bring the criminal proceedings as well as the legislation that is required in its pursuit of an investigation. A number of these legislative acts are noted in section 2 (Scope)

It is critical when prosecuting a matter in either a Civil Court or a Criminal Court, that the Council has sufficient prima facie evidence to prove each of the elements of the offence and that the evidence is in admissible form.

The decision to commence civil or criminal proceedings is to be discussed with the Manager of individual service areas and advice provided by Council's Legal Services where full consideration will be given to the complexity of the legal issues raised by the breach and the cost of any potential litigation.

This includes adverse costs orders awarded to the respondent/ defendant in the event the matter is unsuccessful. Any litigation conducted in relation to enforcement must be undertaken in accordance with Council's Legal Services Policy.

#### 4.5 Criteria for undertaking criminal prosecutions

When exercising its discretion to take action, particularly when considering whether to commence criminal proceedings (summary enforcement) for unlawful activities, the Council must have due regard to the following.

- the Human Rights Act.
- the Crime and Disorder Act.
- Equal rights and anti-discrimination legislation.
- Service-specific legislation.
- all other relevant legislation applicable from time to time.
- internal procedures and processes as applicable.

The Council are also required to determine if the action being taken is in the interests of the Boroughs inhabitants under Section 222 Local Government Act, which allows the Council to instigate/defend in any legal proceedings.



Additionally, to the above requirements, those prosecuting individuals for illegal activity must also consider two other 'tests' known as the 'Prosecutors Tests', which are 'The Evidential Test' as well as the 'Public Interest Test'.

There are many factors which authorised officers should consider when exercising their discretion to enforce the law. The relevant factors include, but are not limited to the following:

- a. The risk to the public
- b. The actual or potential harm to the environment including visual harm.
- c. The availability of other alternatives to taking enforcement action; preventative or disruption activity.
- d. Whether the activity is continuing.
- e. The prevalence of the alleged offence or breach and the need for deterrence.
- f. The effectiveness of proposed legal action.
- g. Any precedent set if legal action is not taken in a particular instance.
- h. The existence of mitigating circumstances.
- i. Previous warning, breaches, convictions etc.
- j. The public interest served by action being taken.
- k. The seriousness of the alleged breach or offence

Any decision to take criminal enforcement action must be based on proper grounds. Some key considerations include the following:

- i. Does the available evidence establish an initial (prima facie) case for action?
- ii. Will the public interest be served by bringing such an action?
- iii. Does the Council have a duty to act?

Decisions regarding criminal prosecutions should not be influenced by:

- The alleged offender's political, business or community affiliations;
- The alleged offender's status in the community;
- Any aspects of discrimination; or
- The political, social; or other affiliations of those officers responsible for exercising the enforcement powers.

#### 4.6 Recovery of costs and penalties

The recovery of legal costs and penalties is always dependent upon the discretion of the court in either civil or criminal matters. It is Council's aim to recover costs if successful via available proceedings on a fair and reasonable basis.

#### **THIS POLICY HAS BEEN DEVELOPED IN CONSULTATION WITH**

- Legal Services
- Enforcement Board
- Review from Senior Leadership Team (SLT) after Scrutiny