

Warwick District Council: Enforcement Policy

Version 3: September 2018.

Contents:

1. [Introduction](#)
2. [What is this policy for?](#)
3. [When does this policy apply?](#)
4. [Our approach to dealing with non-compliance](#)
5. [Conduct of investigations](#)
6. [Decisions on enforcement action](#)
7. [Review of this policy](#)
8. [Comments and complaints](#)

1. Introduction

- 1.1** This policy was developed following a review of Warwick District Council's ('the Council') existing service-specific enforcement policies with a view to producing a single policy for all services, compliant with the Regulators' Code. It should be read in conjunction with the relevant service standards as published through the council's website. (Including but not limited to Statutory Service Plans, Employee Code of Conduct)

Some service areas of the council have powers, enforcement actions or considerations specific to their areas of work and therefore they have additional appendix documents to this policy.

- Appendix A – Health and Community Protection, Regulatory Section
- Appendix B - Development Services, Planning Enforcement

Business support organisations including Coventry and Warwickshire Chamber of Commerce, Federation of Small Businesses and the South Warwickshire Landlords Steering Group have been consulted in regards to this policy.

The policy sets out Warwick District Council's approach to dealing with non-compliance and a commitment to good enforcement practice informed by the principles of good regulation.

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the

specified functions include those carried out by our environmental health, licensing, waste, and private sector housing services.

The Council will exercise its regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

Regulators' Code

The Regulators' Code came into statutory force in April 2014 and provides a clear framework for transparent, open and accountable regulatory delivery. A copy can be found at:

www.gov.uk/government/publications/regulators-code

The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Data Protection Act 2018, General Data Protection Regulations (EU) 2016/679, Emerging Data Protection Bill

Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 2018 and General Data Protection Regulations and any superseding legislation

The Code for Crown Prosecutors

When deciding whether to prosecute the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

Evidential Test - is there sufficient evidence against the defendant?

When deciding whether there is sufficient evidence to prosecute, the Council will consider what evidence can be used in court and the strength of that evidence. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Section 6.1.

Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a Primary Authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

- 1.2** The Council is committed to avoid imposing unnecessary regulatory burdens, and to assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means.

- 1.3** This Enforcement Policy can be downloaded from our website www.warwickdc.gov.uk or copies can be obtained in person from the Council's main offices – Riverside House, Milverton Hill, Royal Leamington Spa CV32 5HZ.
- 1.4** The Council's accessibility statement requires us to maintain and update our website as necessary in plain English in terms of the W3C guidelines. We will ensure that our publications and press statements are accessible to all communities and we aim to provide information in accessible formats on request. The Council also has membership of Language Line to provide language support where required.
- 1.5** This version of the policy was approved by Warwick District Council on 31st October 2018 and was issued on 1st November 2018. Replacing all previous versions of the Enforcement Policy and its appendices.
- 1.6** In addition to the Council's Enforcement Policy, the council provides the following guidance on the Council's website. www.warwickdc.gov.uk .
How we communicate
- Corporate and Service Area approaches to communication
 - Service Areas approaches to the provision of advice
 - Service Areas approaches to interventions
 - Fees and Charges
 - How to comment, compliment or complain

2. What is this policy for?

- 2.1** This policy explains to anyone affected by the Council's regulatory activities what to expect in respect to its approach to dealing with non-compliance.
- 2.2** Authorised officers will act in accordance with the policy. All services are subject to internal audit to ensure actions are appropriate to the policy and performance data will be published on the Council's website through the relevant appropriate mechanisms. i.e. committee reports.

3. When does this policy apply?

3.1 This policy applies to the following regulatory services which are the responsibility of Warwick District Council

- Anti-Social Behaviour
- Dog Control and Fouling
- Environmental Protection.
- Food Safety
- Health and Safety
- Licensing
- Planning Enforcement
- Private Sector Housing
- Public Health
- Waste

Service-specific policies which sit under this generic policy can be found on the council's website www.warwickdc.gov.uk.

4. Our approach to dealing with non-compliance

4.1 Explanation of the approach to dealing with non-compliance

The general principle will always hinge around negotiation, advice guidance, education and support to ensure maximum benefit from minimum resource input, aiming to avoid imposing unnecessary regulatory burdens. Enforcement procedures will always follow statutory requirements and guidance. Whilst court proceedings including prosecution will normally be directed towards those who deliberately fail to comply there will also be occasions where proceedings are deemed to be appropriate in certain other circumstances (see 4.2)

We will clearly explain the non-compliance the actions required or decisions taken, with reasons for these.

We will provide an opportunity for dialogue in relation to the advice given, actions required or decisions taken in relation to non-compliance.

Dialogue with the business or regulated person is available through all communication channels (face-to-face, telephone, letter, email) and access to translators is available if required.

Whilst dialogue and negotiation are encouraged, where a criminal offence is being investigated, conversations or correspondence may need to be undertaken in accordance with the requirements of the Police and Criminal Evidence Act and its associated codes.

The Council's Scheme of Delegation, gives the relevant Head of Service responsibility for managing investigations and making decisions on enforcement action. The Head of Service may authorise in writing other officers to act on his/her behalf.

Where it shares or has a complementary role with other agencies, the Council will consult those agencies, including Primary Authorities, before taking any formal enforcement action.

The Council will manage enforcement in relation to its own establishments and activities to ensure that decisions are free from any conflict of interest. For example, environmental health practitioners are free to investigate noise nuisance arising from a Council activity under the same protocols as any other investigation.

All staff must demonstrate commitment to equality in the performance of their regulatory duties and in their professional relationships with regulated persons to ensure fair and objective enforcement. The Council's Equalities and Diversity Framework can be downloaded at www.warwickdc.gov.uk/info/20623/equality_and_diversity

The Council will always aim to publicise successful convictions to reassure compliant businesses or regulated persons that economic competition is a 'level playing field'.

4.2 Explanation that the action that the local authority chooses to take depends upon the particular circumstances and the approach of the business or regulated person to dealing with the breach

Enforcement action will always be proportionate and follow statutory guidance. Formal court proceedings are usually a final step in a

programme of enforcement actions. Enforcement action will usually be graduated. However, the council will deal firmly with those that deliberately or persistently fail to comply. Where an absolute offence exists (for example non compliance with a notice, failure to obtain relevant permissions, consents or licences) prosecution may still be considered the most appropriate course of action regardless of aggravating circumstances or a previous history of non-compliance.

The Council encourages all of those regulated to request advice and guidance from Officers. Where incidents of non-compliance are revealed voluntarily and there is a willingness to resolve the issue the Council will provide support and seek to avoid the need for formal enforcement action.

4.3 Explanation of the factors that influence the local authority's response to breaches of the rules

The Council fully supports the principles in the Regulators' Compliance Code which sets out obligations in relation to enforcement. It sets out the need to consider a range of matters including economic progress, accountability, and risk assessment.

Where applicable, the Council will take note of the Primary Authority on responses to breaches.

The Council's approach to checking that non-compliances which were dealt with by providing advice or guidance have been rectified will generally be through the next scheduled visit. However, where significant improvement is required a revisit may be appropriate.

Where the Council considers that breaches should be investigated by another enforcement body, the details will be shared with that organisation.

4.4 Explanation of the local authority's approach to complaints of non-compliance

The Council will investigate all complaints of non-compliance and take action as appropriate. Any follow-up on anonymous complaints will be dependent on the circumstances of each report and the requirements of the relevant legislation.

5. Conduct of investigations

5.1 Explanation of the processes for investigating alleged breaches

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice. Most of this legislation provides the officers with powers of entry at all reasonable times with the associated offence of obstruction if entry is refused.

Where a business is allegedly in breach of relevant legislation and has a partnership agreement with a Primary Authority, early communication will take place with that authority.

When exercising its statutory power to seize items during an investigation, the Council will follow the relevant legal process. If there is reason to believe access will be denied, the Council will apply to the Magistrates' Court for a warrant to execute this process.

Any person suspected of committing an offence will be invited in writing to an interview under caution in accordance with the Police and Criminal Evidence Act at the Council offices and will be given the opportunity to be legally represented at the interview.

The Council will always endeavour to expedite investigations into non-compliance and in any case ensure that statutory time limits for investigations are achieved.

If the investigating officer prepares a case file for the issue of proceedings the case file and decision will be reviewed by both the Team Leader/Section Manager and Head of Service before being referred to the Council's solicitor.

5.2 A commitment to keep all parties informed on progress

The Council will where possible aim to keep alleged offenders and witnesses informed on the progress of investigations.

6. Decisions on enforcement action

6.1 The range of actions that are available to the local authority are set out in legislation and include

Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a Primary Authority, the Primary Authority will provide compliance advice and support, and the Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the Primary Authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, the Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. In accepting these voluntary undertakings the council will expect that these are completed within agreed timescales.

The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

Statutory (Legal) Notices

In respect of many breaches the Council has powers to issue statutory notices. These include but are not restricted to: 'Abatement Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default. IN some cases charges can be levied for the service of a statutory notice. Where applicable this is outlined on the council's website. www.warwickdc.gov.uk

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

Works in Default

Where statutory provision exists, the Council will consider carrying out works in default to remedy non-compliance. In such cases, the Council's reasonable costs are recoverable from the offender.

Financial Penalties

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid within the specified timescale in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Warwick District Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

Injunctive Actions, Enforcement Orders etc.

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

Simple Caution

The Council may issue Simple Cautions (previously known as 'Formal Cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the Simple Caution. Where a Simple Caution is offered and declined, the Council will give consideration to prosecution.

A Simple Caution has the same standing as a previous conviction and forms part of the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a Simple Caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Currently the simple caution details are held by the council and are not recorded on a central criminal database.

Simple cautions will be considered and used in accordance with current Government Guidance.

Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) How serious is the offence committed?
- b) What are the circumstances of and the harm caused to the victim(s)?
- c) Is prosecution a proportionate response?

A successful prosecution will result in a criminal record. The court may impose a range of sentences depending upon the nature of the offence and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. I.e. use Proceeds of Crime Act proceedings to recover financial gain arising from criminal activity.

Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

Refusal/Suspension/Revocation of Licences

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a

business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, the Council may take previous breaches and enforcement action into account. A person convicted of a relevant offence may be judged to be no longer a 'fit and proper person' and their application refused. Further details with regard to this area of work can be found on the council website.

6.2 Explanation of how decisions are made on enforcement action

The Council follows the principles set out in the Macrory Review, which expect policies to:

- a) Aim to change the behaviour of the offender;
- b) Aim to eliminate any financial gain or benefit from non-compliance;
- c) Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- d) Be proportionate to the nature of the offence and the harm caused;
- e) Aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) Aim to deter future non-compliance.

The Council will consider risk at every stage of their decision-making progress, choosing the most appropriate type of enforcement action including taking note of the compliance record of those being regulated.

The Council recognises the statutory requirement under Primary Authority to notify proposed enforcement action.

The Council will keep under review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

6.3 Explanation of how decisions are communicated to those affected

Where a right of appeal exists to any regulatory action, the Council will include full details of the appeal process at the time of taking the action. Regulated persons will be advised of their rights to representation at the time of being invited to any formal interview or hearing.

7. Review of this policy

7.1 Details of when and how the policy will be reviewed

This policy will be reviewed following any new Government guidance or as a result of feedback received from local businesses or regulated persons as appropriate. It will be refreshed as a minimum of two years.

8. Comments and Complaints

8.1 Details of processes for complaints and appeals

An appeal against a regulatory decision can in the first instance be directed to the relevant Head of Service. If the action is subject to a formal appeal process (e.g. through the Magistrates' Court), the appellant should be aware of the statutory deadlines and may wish to proceed immediately with this approach.

Complaints about the conduct of local authority staff can be made through our website at www.warwickdc.gov.uk, by email to complaints@warwickdc.gov.uk or by post to Committee Services, Warwick District Council, Riverside House, Milverton Hill, Royal Leamington Spa CV32 5HZ.

8.2 Contact details for comments or complaints about the policy

Any comments or complaints about this policy should be sent to Head of Health & Community Protection, Warwick District Council, Riverside House, Milverton Hill, Royal Leamington Spa CV32 5HZ.

**APPENDIX A
REGULATORY SERVICE
(Food Safety, Occupational Safety and Health and Licensing)
Revision 3 (2018)**

1. Introduction

- 1.1 This Regulatory Service Appendix is intended to be read in conjunction with Warwick District Council's published [Enforcement Policy](#). It will provide specific details that relate to the enforcement of matters with respect to food safety, occupational safety and health and licensing.

2. Background

- 2.1 As a **food authority** in the terms of the [Food Safety Act 1990](#), Warwick District Council has a duty to enforce food safety legislation, and a responsibility to follow associated [Codes of Practice](#) under the Act. It is required to enforce the legislation in pursuit of the particular interests of consumers within the authority's area including members of the public, employees and business owners by:
- § protecting public health, and
 - § ensuring a fair trading environment for local businesses.
- 2.2 Hygiene inspections are targeted in accordance with the risk assessment parameters set by the Food Standards Agency and the corresponding inspection frequencies.
- 2.3 The Council has a shared enforcement role with the County Council in respect of food labelling requirements. This situation is managed by case by case communication between the two authorities and by regular meetings of the Warwickshire & Coventry Food Liaison Group.
- 2.4 Food safety and quality is determined on inspection or sampling and by the investigation of complaints made to the Department.
- 2.5 Local authorities have statutory responsibilities to make adequate arrangements for the enforcement of **health and safety** law in relation to specified work activities- including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises. Health and Safety Executive (HSE) inspectors also enforce health and safety law in workplaces allocated to them.
- 2.6. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that

those who have duties under it may be held to account for failures to safeguard health, safety and welfare. In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published in the [National Enforcement Code](#), and the need to maintain a balance between enforcement and other activities, including inspection.

2.7 HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. The decision-making process which inspectors will follow when deciding on enforcement action will be set down in writing, and made publicly available. The judgements will be made in accordance with the principles of Philip Hampton's report '[Reducing administrative burdens: Effective Inspection and Enforcement](#)'.

2.8 The **Licensing** function of the Regulatory Team covers the following areas:-

- Licensing Act 2003
- Gambling Act 2006
- Sexual Entertainment Venues
- Private Hire driver, vehicle and operator's licences
- Hackney Carriage driver and vehicle licences
- Street Trading Consents
- Small lotteries
- Street Collections
- House to House collections
- Scrap Metal Dealers

2.9 This policy should be read in conjunction with codes of practice and guidance issued by the following:- Food Safety Act 1990 [Code of Practice](#); [Approved Codes of Practice \(ACOPs\)](#); [HSE](#) and [HELA guidance](#); [Home Office](#), [Institute of Licensing](#), [National Association of Licensing Officers](#) and [Gambling Commission](#).

2.10 All actions will be taken only by duly authorised officers in accordance with the [Council's Scheme of Delegation](#).

3. Enforcement Options

3.1 In making a choice of action, the appropriate subject guidance below will be followed:- Food Safety Act 1990 [Code of Practice](#); [Approved Codes of Practice \(ACOPs\)](#); [HSE](#) and [HSE's Enforcement Management Model \(EMM\)](#) and [HELA guidance](#); [Home Office](#), [Institute of Licensing](#), [National Association of Licensing Officers](#) and [Gambling Commission](#).

3.2 Any significant choice of action which might be considered to be inconsistent with such guidance, advice and views will be made in consultation with the Warwickshire & Coventry Food, Safety and Licensing

Liaison Group, LACORS, the Food Standards Agency, HSE and the Primary Authority. It is recognised, however, that only the Courts can make decisions on matters of legal judgement.

- 3.3 In most instances no action will be taken where the offending circumstance has been occasioned by inadvertence and is proactively in the process of being remedied, however, each case will be considered individually.

4. Informal Action

- 4.1 Informal action is the issue of verbal advice (always confirmed in writing on the visit report or by letter), written advice with no date for action requested, written advice with a date specified for completion, and written warnings that future offences may result in prosecution.
- 4.2 Recommendations are necessary in order to assist the duty holder in taking all reasonable precautions and exercising all due diligence to avoid offences. Such recommendations will be clearly differentiated from legal requirements which will be identified by statute and regulation or section number.
- 4.3 Action Plans including timescales for completion are agreed by all parties including where necessary, the Licence Holder, Designated Premises Supervisor and other relevant Responsible Authorities (e.g. Police, WDC Environmental Health Officers and Planning Officers).

5. Statutory Notices

- 5.1 **Food - Hygiene Improvement Notices** will be served by authorised Inspectors and Officers in circumstances related to risk to health, in accord with [Code of Practice](#) guidance, in one or more of the following circumstances:
- i. There are such significant contraventions of the legislation that it is anticipated that a prosecution would be successful in the Magistrates' Court if the evidence were placed before them.
 - ii. There is a justifiable lack of confidence in the food business operator to respond to an informal approach.
 - iii. There is a history of non-compliance with informal action.
 - iv. Standards are generally poor with little duty holder awareness of statutory requirements.
 - v. The consequences of non-compliance could have negative implications for public health or fair trading.

- vi. Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy continuing contraventions.
- 5.2 The time limit for compliance with the requirements of the notice will be made clear verbally with the food business operator, or appropriately negotiated. Regard will be had in the negotiations to consistency and feasibility. The food business operator will be advised that any unforeseen circumstances which arise in the time period, which may cause it to overrun, must be drawn immediately to the attention of the Regulatory Section (Food and Occupational Safety Team). On written application, the originating officer will have regard to the following criteria in granting an extension of the time period, or otherwise:
- i. The risk to public health associated with the fault if an extension was granted;
 - ii. The reason for the request;
 - iii. The remedy involved;
 - iv. The past record of compliance of the food business operator; and
 - v. Any temporary action which the food business operator proposes to take to remedy the defect.
- 5.3 As a rule, failure to comply with a Hygiene Improvement Notice will be reported for prosecution. Only unavoidable circumstances, or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation of this policy.
- 5.4 **Food - Hygiene Emergency Prohibition Notices** will be served by authorised Environmental Health Officers in one or more of the following circumstances:
- i. He/she is satisfied that there is an imminent risk of injury to health.
 - ii. Not taking immediate and decisive action to protect public health is unjustifiable.
 - iii. There is no confidence in the integrity of an offer made by a food business operator to close the premises voluntarily and to keep the premises closed until the risk is removed.
- 5.5 **Occupational Safety and Health – Improvement Notices**
- i. Paragraphs 5.1 I – vi and 5.2, apply.
 - ii. As a rule, failure to comply with a Health and Safety Improvement Notice will be reported for prosecution. Only unavoidable circumstances, or mitigating information coming to light

concerning factors outside the control of the duty holder, will justify a variation of this policy.

5.6 **Occupational Safety and Health – Prohibition Notices** will be served by authorised Environmental Health Officers when there is a requirement to stop work to prevent a serious risk of personal injury.

- i. Prohibition Notices will be issued to have immediate or deferred effect.
- ii. There does not have to be a breach of any statutory requirements before a prohibition notice is issued, but an officer who thinks there has been will specify it in the Prohibition Notice.

5.7 Primary authorities, will be notified of any statutory notices served.

6. Prosecution

6.1 The decision to prosecute rests with the Council and/or Duly Appointed Inspector (in the case of Health & Safety cases) and is delegated to the Head of Health and Community Protection in consultation with the appropriate elected Member. See [Warwick District Council's Scheme of Delegations](#).

6.2 The recommendation to prosecute, based on the available evidence and professional judgement, comes from the Team Leader and Regulatory Manager by way of formal report to the Head of Health and Community Protection and in consultation with a Solicitor of the Legal Services Unit.

6.3 Prosecutions will be related to risk and will not be used as a punitive response to minor breaches of legislation.

6.4 The objectives of any prosecution must be:

- i. To concentrate the mind of the duty holder /food business operator / Licence holder on the necessity to be duly diligent and to take all reasonable precautions to ensure food safety and hygiene/health and safety and public safety (licensing)
- ii. To demonstrate to the public that their interests are being protected; and
- iii. To demonstrate to other duty holders/licence holders/food business operators that the law is being evenly applied.
- iv. To enable the Courts to decide the appropriate punishment.

6.5 **Before deciding whether a prosecution should be taken one or more of the following factors will be considered:**

- i. The seriousness of the alleged offence.
- ii. Whether death or personal injury resulted from the alleged offence.
- iii. The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
- iv. The previous history of the party concerned.
- v. The likelihood of the defendant being able to establish a statutory defence e.g. 'due diligence' or 'so far as is reasonably practicable defence'
- vi. The availability of any important witnesses and their willingness to cooperate.
- vii. The willingness of the party to prevent a recurrence of the problem.
- viii. The probable public benefit of a prosecution, the importance of the case (e.g. whether it might establish a legal precedent) and satisfaction of the tests in the [Code for Crown Prosecutors](#).
- ix. Whether other action, such as issuing a simple caution in accordance with [Guidance - Ministry of Justice - Simple Caution for Adult Offenders – 13 April 2015](#) or a Hygiene Improvement Notice (H.I.N.), Improvement Notice (I.N.) or imposing a prohibition, would be more appropriate or effective.
- xi. Any explanation offered by the affected company.
- xii. False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to a significant risk.
- xiii. Inspectors have been intentionally obstructed in the lawful course of their duties.

These considerations will be detailed in all reports recommending prosecution.

- 6.6 Before a decision is made to prosecute, the duty holder will be invited to an interview under the [Police and Criminal Evidence Act 1984](#) in order to make representations before a decision is made as to the appropriate course of action to be taken. The duty holder will have an opportunity to be accompanied by a legal representative at the interview. This is the duty holder's opportunity to present any facts or views he considers pertinent to the decision-making process.
- 6.7 The circumstances where prosecution is warranted are one or more of the following:

- i. The offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk, or fair trading is prejudiced.
 - ii. The offence involves a failure to correct an identified serious potential risk to safety having been given a reasonable opportunity to comply with requirements.
 - iii. The offence involves a failure to comply with a statutory notice.
 - iv. There is a history of similar offences.
- 6.8 If it is then considered by the Team Leader and Regulatory Manager that prosecution is appropriate the file of evidence will be presented to the Head of Health and Community Protection with a Report by the Regulatory Manager recommending prosecution. If the Head of Health and Community Protection agrees with the recommendation in the report, it will be presented to the Council's Solicitor for review, and, if the evidence is considered sufficient for there to be a realistic prospect of conviction, and the public interest test is satisfied, then legal proceedings will normally be instigated.
- 6.9 Where there is a risk of injury to health the Solicitor will, in the course of the hearing, draw the Court's attention to its duty to impose a Prohibition Order.
- 6.10 Primary, Home and Originating authorities will be notified of the results of prosecutions.
- Primary Authority: A legal partnership between business and a local authorities which provides a means for businesses to receive assured and tailored advice on meeting regulatory standards through a single point of contact. This is a chargeable service
 - Home Authority: A partnership without legal standing of a business operating within the district boundary at a regional or national level with a local authority. The business is assisted through the provision of advice, guidance and information. Home Authority predates Primary Authority and as a result new Home Authorities are unlikely to be arranged. There are only a few existing arrangements.
 - Originating Authority: The local authority within whose boundary a business which manufactures a food product is located.

7. Simple Cautions

- 7.1 Simple Cautions in accordance with [Guidance - Ministry of Justice - Simple Caution for Adult Offenders – 13 April 2015](#) will only be issued by the Council in the following circumstances:
- i. There is evidence sufficient to give a realistic prospect of conviction;
 - ii. The duty holder admits the offence;

- iii. The duty holder understands the significance of the simple caution and gives informed consent; and
- 7.2 If a duty holder refuses the offer of a Simple Caution then a prosecution will be instituted.
- 7.3 Primary, Home and originating authorities will be notified of Simple Cautions issued. The Caution will be cited in any subsequent proceedings as a previous offence.
- 8. Revocation of Approvals/Licenses/Permits/Consents & Registrations**
- 8.1 Premises, people and vehicles can be approved and/or licensed by the Council. The Council will exercise its power of revocation, suspension or refusal to grant in the circumstances dictated by the appropriate regulations, and where it has not been possible to secure compliance by less draconian means.

APPENDIX B
Development Services
Revision 2 (2018)

1.0 Background

- 1.1 This policy has been prepared in accordance with paragraph 207 of the National Planning Policy Framework 2012 which advises Local Councils to consider publishing a local enforcement plan to manage enforcement activity proactively in an appropriate manner within their area and to set out how that activity will be undertaken.
- 1.2 The Framework advises that enforcement action is discretionary and that Council's should act proportionately in responding to suspected breaches of planning control.

2.0 Planning Enforcement at Warwick District Council

- 2.1 The District Council's Development Services area includes a dedicated planning enforcement team which investigates alleged breaches of planning control and works to remedy unacceptable unauthorised development.
- 2.2 In order to ensure the effective use of that resource directed at the most harmful unauthorised development first, a scheme of prioritisation is in use which is included at Appendix 1. That scheme is also intended to assist members of the public to understand the priority that will be given to issues with which they may be concerned.

3.0 What is a Breach of Planning Control?

- 3.1 The following list sets out the main scenarios in which a breach of planning legislation may be considered to have occurred:-
 - a. Building and engineering works undertaken without planning permission.
 - b. Material changes in the use of land or buildings undertaken without planning permission.
 - c. The undertaking of works that are materially different from the planning permission granted or which do not comply with either the

conditions imposed on a planning permission or the requirements of a legal agreement relating to that permission.

- d. Unauthorised works to Listed Buildings.
- e. Unauthorised works to trees protected by Tree Preservation Orders (TPO) trees; trees in Conservation Areas and rural agricultural hedgerows.
- f. The unauthorised display of advertisements.
- g. The poor condition of land impacting on the visual amenities of the wider area.

3.2 It should be noted that in addition, the unauthorised works listed at d, e and f also comprise a criminal offence.

4.0 What isn't a Breach of Planning Control?

- a. Buildings or extensions which do not require planning permission: planning legislation makes provision for a wide range of building works which can be undertaken using what are known as *permitted development rights*.
- b. Changes in the use of land and buildings which are not so significant that they comprise a *material change of use* or which fall within the same use class category.
- c. The display of advertisements which do not require consent: the regulations relating to advertisements allow the advertiser to display certain types of advertisements without the need to make an application to the Council.
- d. Where development has been carried out more than four years ago it is immune from enforcement action.
- e. Where a change of use has existed for more than 10 years it is immune from enforcement action
- f. Where there has been a residential dwelling unit in existence for more than four years it is immune from action.
- g. Issues relating to waste disposal and tipping which are handled by Warwickshire County Council who can be contacted by following this link: [Warwickshire Direct - Residents and click Report It.](#)
- h. Issues within or relating to the adopted highway including for example advertisements displayed within the Highway or on street

furniture which are handled by Warwickshire County Council who are the Highways Authority and can be contacted by following the above link.

- i. Issues relating to noise and disturbance; smell nuisance and light pollution which are investigated by the District Council's Environmental Health Team (¹). Further information can be found at:

ehpollution@warwickdc.gov.uk

or by telephoning 01926 456725

- j. Issues relating to the manner in which buildings or extensions have been constructed or concerning potentially dangerous structures which are handled by the District Council's Building Control Team who can be contacted via this link
https://www.warwickdc.gov.uk/info/20375/building_regulations/581/contact_building_control or in relation to dangerous structures by telephoning 07881 787528.
- k. Issues relating to compliance with covenants or other legal restrictions which are private civil matters.

5.0 Key Considerations in the Investigation of Alleged Breaches of Planning Control

- 5.1 In the circumstances where an enforcement investigation identifies that unauthorised development has taken place, the decisive issue for the Council in considering whether it is expedient to continue with the investigation is whether the development in question is unacceptable in planning terms such that planning permission would not be granted?

The fact that a development does not benefit from the required planning permission is not in itself sufficient justification for pursuing the matter.

- 5.2 Where enforcement action is taken, it must be proportionate to and commensurate with the breach of planning control to which it relates. For example, whilst clearly harmful breaches of planning control should be addressed by appropriate means, it is not expedient to pursue minor or technical breaches which cause no planning harm or where unauthorised development is acceptable in planning terms.

¹ In certain circumstances such issues may be controlled by planning legislation, for example where they are the subject of a condition imposed on a planning permission.

6.0 The Investigation Process

- 6.1 The speed with which an investigation can be undertaken varies between straightforward cases which can often be concluded quickly and more complex investigations which can take considerably longer.
- 6.2 Upon receipt of an investigation request, we will check that the issue in question is a planning matter. If it isn't we will tell you as quickly as possible and where appropriate forward the concern onto another relevant Council team or external organisation. At this stage, we may also request further information from you to help with the investigation, for example keeping a record of activity in respect of the use of land or buildings over an appropriate period.
- 6.3 Before we begin an investigation, we will also ask you to provide your name and contact details in confidence so that we can update you on progress. **Your details will remain confidential at all times during the initial investigation ⁽²⁾.** This is because we need to ensure that we use our resources as effectively as possible and in order to prevent the investigation of spurious issues, anonymous complaints are not usually investigated.
- 6.4 All investigations are prioritised in accordance with the Council's scheme of prioritisation which is included at Appendix 1. If we are unable to investigate an issue that you have raised we will tell you the reason for this. Where an investigation is commenced, after an initial site inspection and assessment has been made, we will tell you what will happen next.
- 6.5 There are a number of potential outcomes of an enforcement investigation which are principally:-
- i. Where there is no breach of planning control or a minor breach: no further action will be taken.
 - ii. Where it is considered that planning permission would be likely to be granted for the unauthorised development, we will request that an application is made. However, if no such application is submitted, no further action will be taken.
 - iii. Where there is a breach of planning control which is unacceptable in planning terms, we will offer the responsible parties **one** opportunity to resolve the matter voluntarily. Where the matter is

² Where an investigation results in enforcement action being taken which is the subject of an appeal or prosecution, it is sometimes necessary for 3rd party details to be disclosed.

not satisfactorily resolved by that means, if it is expedient to do so, formal enforcement action will be taken.

7.0 Voluntary Resolution

In encouraging you to voluntarily resolve a breach of planning control for which you are responsible, we may:-

- i. Offer you written or verbal advice.
- ii. Give you a verbal or written warning.
- iii. Provide you with **one** opportunity to remedy the issue within a proportionate time period prior to the consideration of the use of formal action.

The majority of breaches of planning control which require remedy are resolved in this manner without the need for formal action. However in the circumstances where a breach of planning control is so serious that it merits immediate action, where necessary the Council will take formal action without offering an opportunity for the matter to be resolved voluntarily.

8.0 Formal Action

8.1 Formal planning enforcement action may be taken where:-

- i. The matter is so serious that it merits immediate action;
- ii. There is a lack of confidence that the matter will be resolved voluntarily;
- iii. There is a history of non-resolution of issues by a voluntary means;
- iv. The matter has not been satisfactorily resolved on a voluntary basis.

8.2 Such action can take a number of forms including but not limited to issuing:-

- i. Enforcement Notices and Listed Building Enforcement Notices requiring the actions specified in the Notice to be undertaken within the time period specified. There is a right of appeal against these Notices.
- ii. Breach of Condition Notices to require compliance with conditions imposed on a grant of planning permission. There is no right of appeal against these notices.

- iii. Untidy Land Notices to require the improvement of land or buildings in order to remedy their visual impact on the amenities of the surrounding area. There is a right of appeal to the Magistrates Court against such notices.
- iv. Improvement or Repairs Notices in respect of Listed Buildings which are falling into disrepair.
- v. Where it is considered expedient to do so a Temporary Stop Notice may be issued.
- vi. In appropriate circumstances involving potentially serious and/or irreversible unauthorised development the issue of an injunction.

8.3 Non-compliance with the Notices listed above within the required timescale is an offence which the District Council will normally seek to pursue by means of a prosecution.

9.0 Prosecution

- 9.1 In addition to non-compliance with formal Notices, the unauthorised display of advertisements; the alteration of Listed Buildings without consent and the unauthorised undertaking of works to trees protected by a Tree Preservation Order or within a Conservation Area is a criminal offence.
- 9.2 For that reason, except in exceptional circumstances, we will require that any such works cease immediately and that unlawful advertisements are removed within 5 days. Where that cessation or removal does not occur and/or where such unauthorised works result in material harm to protected buildings or trees, legal action will usually be taken.
- 9.3 Decisions to proceed with legal action will take account of the Crown Prosecutor's Guide and in particular will be made with reference to:-
 - i. The availability of sufficient evidence to provide a realistic prospect of conviction; and
 - ii. Whether it is in the public interest to proceed with such action.

10.0 Direct Action

- 10.1 There may be circumstances, where by reason of the nature or extent of the unauthorised activity or development, non-compliance with a notice

may result in the District Council arranging for appropriate remedial works to be undertaken in default of the responsible party doing so. With the exception of the circumstances described below, this approach will only be used where appropriate. In most cases, the Council will seek to recover the cost of undertaking those works from the responsible parties including for example by means of the imposition of a charge on the land in question.

- 10.2 In the circumstances where an informal request to remove an unlawful advertisement has not been complied with, the District Council will consider the use of its powers to remove the advertisement.

11.0 High Hedges

Background

- 11.1 Under planning and related legislation, the planting of hedges does not require permission and there are no restrictions on the height to which they can be grown. However, the Anti Social Behaviour Act 2003 and associated regulations introduced a power for Councils to investigate and where appropriate remedy complaints about high hedges where there is a significant impact on nearby properties.
- 11.2 Guidance on what you need to do if you are concerned about the impact of a hedge on your property or if you are the subject of a complaint about a high hedge can be obtained by following these links:-
- i. The Department for Communities and Local Government website:-

<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>
 - ii. Over the garden hedge
<https://www.gov.uk/government/publications/over-the-garden-hedge>
 - iii. High Hedges: complaining to the Council

<https://www.gov.uk/government/publications/high-hedges-complaining-to-the-council>
 - iv. High Hedges complaints: prevention and cure

- 11.3 Prior to requesting that the Council investigate a potential high hedge issue, a process which carries a fee, you must provide evidence that you have exhausted all alternative forms of negotiation and mediation with the hedge owner.

12.0 Publicity

- 12.1 In order to seek to raise public awareness of the risks associated with undertaking unauthorised development and thereby reduce the incidence of such development, where appropriate the Council will publicise the outcome of cases in the local press and by other means.

13.0 How You can Help

- 13.1 If you have reported a breach which the Council is investigating, please be aware that we will do so as quickly as possible and that in order to ensure that the investigation is undertaken as comprehensively as is necessary this may take longer than you might expect. We will aim to keep you updated at regular intervals as the investigation progresses.
- 13.2 When you initially tell us about the issue of concern, please provide as much information as you can to help us to investigate the matter as quickly as possible. At this or a later stage, we may also request further information from you to help with the investigation, for example keeping a record of activity in respect of the use of land or buildings over an appropriate period.
- 13.3 If you are the subject of an investigation, your co-operation in assisting us to undertake that investigation will in many cases enable us to advise that there is either no breach of planning control or no remedial action to be undertaken. If a breach is identified and you are requested to undertake works to voluntarily resolve the matter, your co-operation in doing so within the timescale given will in most circumstances prevent the consideration of the use of formal action.
- 13.4 Whilst it is understood that you may wish to know where the complaint about your property has come from, all such complaints are treated confidentially and we will not be able to provide you with that information.

14.0 Contacts

14.1 If you would like to contact us to report a potential breach of planning control please do so by either:-

- Completing our online form: [Report A Possible Breach Of Planning Control](#)
- E mailing planningenforcement@warwickdc.gov.uk
- Or by writing to us: Planning Enforcement
 Warwick District Council
 Riverside House
 Milverton Hill
 Leamington Spa
 CV32 5QH