

Three Rivers District Council

ENVIRONMENTAL PROTECTION ENFORCEMENT POLICY – ANIMAL WELFARE & LICENSING

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| TITLE: ANIMAL WELFARE ENFORCEMENT POLICY |
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INTRODUCTION

1. Scope and explanation of the policy

1.1 The aim of this policy is to determine good practice and to demonstrate clarity and consistency in the delivery of enforcement duties and powers relevant to the Council's Animal Welfare Enforcement Functions. The policy is available to interested parties in order to help ensure that the Council's approach to enforcement is as open and fair as possible. It will be published on the Council's website.

1.2 The Environmental Protection Department undertakes animal welfare enforcement work in the following service areas:

- I. Control of stray dogs, including dangerous dogs, dogs out of control in a public place.
- II. Complaints and enforcement of anti-social behaviour involving animals.
- III. Complaints and enforcement of animal welfare issues for all animals.
- IV. Noise nuisance caused by animals.
- V. Complaints and enforcement concerning horses unlawfully present in a public place or grazed on land without consent.
- VI. Complaints concerning dog fouling in public places.
- VII. Complaints concerning dogs causing a nuisance in public places.
- VIII. Complaints concerning accumulations of animal deposits likely to cause nuisance or be prejudicial to health.
- IX. Complaints concerning animal related nuisance.
- X. Enforce conditions and requirements necessary for the licensing of animal welfare establishments (selling animals as pets, dog boarding in kennels, dog day care, dog home boarding, boarding of cats, hiring of horses, breeding of dogs, keeping or training animals for exhibition, dangerous wild animals, zoos). **(See separate licensing enforcement policy)**
- XI. Enforce conditions and requirements necessary for the micro-chipping and collar and tag identification of dogs.
- XII. Enforce requirements of the Public Spaces Protection Order with restrictions relating to dog control.

XIII. Duties in the event of a rabies outbreak.

1.3 Authorised officers in accordance with this policy will carry out all enforcement action.

1.4 Associated documents to be considered

Other associated documents that should be read in conjunction with this policy are:

- Lone Working Procedure
- Rabies Contingency Plan
- Regulation of Investigatory Powers Act
- Animal Welfare Licensing Policy
- Written departmental animal welfare procedures

1.5 Statement of objectives

1.5.1 Three Rivers District Council has a number of unique demographic, geographic and social attributes that impact upon the way that the animal welfare service is delivered locally. This policy is designed to ensure that the broad objectives of the service underpin the detailed workings of the animal welfare service in its day to day contact with all service users.

1.5.2 This policy is implicit in the day to day work of many council departments. All of the service areas mentioned at 1.2 above contribute directly to its achievement, through the enforcement of statutory provisions.

1.5.3 All enforcement action taken will be primarily based upon an assessment of:

- The effect of the legislative breach upon the persons affected, and/or the damage being caused or likely to be caused to land.
- The risk to the health, safety and welfare of the animal(s) that may be affected.
- The future consequences of failing to address the breach at the present time.
- Any concurrent or potential action by other services and agencies and the suitability and effect of our action, as opposed to, or combined with theirs in addressing the issues.

1.6 Shared Enforcement

1.6.1 Many aspects of the Animal Welfare and Licensing Inspector's work interacts with other council services and outside agencies that carry out enforcement work. The work also interacts with non-enforcement council services and outside agencies that provide services that can provide an alternative form of resolution, or can complement or support our enforcement action. These include, but are not exhaustive:

- Hertfordshire Police Constabulary

- Other departments within Three Rivers District Council (e.g. Community Safety, Environmental Health, Planning, Housing)
- DEFRA
- Hertfordshire County Council Trading Standards Department
- Neighbouring Local Authorities
- Social Housing Providers
- Watford and Three Rivers Mediation Service (WA³RMS)
- R.S.P.C.A
- World Horse Welfare
- British Horse Society
- Redwings Horse Sanctuary
- All other Animal Charities/Organisations

1.6.2 The Animal Welfare and Licensing Inspector ('the Officer') attends the Anti-Social Behaviour Action Group (ASBAG) and information is shared with Community Safety, Police, Hertfordshire Fire and Rescue Service, Local Housing Providers and Health and Protection services.

1.6.3 Information of allegations outside the remit of this service may be referred to other Local Authorities or Enforcement Agencies which will include written statements, evidence, background information and witness contact details (if witness agrees), to enable that agency to investigate the allegation.

1.6.4 In determining the most appropriate form of enforcement action the Officer must have regard to any on-going or potential action of other council services and agencies and the suitability and effect of our action, as opposed to, or combined with their action in addressing the issues.

1.6.5 Where issues are identified by the Officer that are the enforcement responsibility of another council service or other agency the person reporting the matter(s) will be referred to the relevant agency or service. The Officer should then refer the matter to the relevant agency or service.

1.6.6 Where enforcement action is being taken by another council service or outside agency, the Officer will provide all assistance that is reasonably requested, including the production of witness statements, collection and sharing of evidence etc.

1.6.7 Where there is a shared enforcement role with another council service or outside agency, the Officer will carry out joint visits where it is appropriate and beneficial to those involved.

1.7 Commitment to the Policy

1.7.1 The Council is committed to ensuring that all authorised officers carrying out animal control / welfare enforcement work are trained and fully acquainted with the requirements of this policy. All authorised officers must abide by this policy when making decisions on enforcement. Any departure from this policy will be exceptional, documented, justified and approved by the line manager unless the delay in decision making would result in a significant risk to the public and/or unnecessary animal suffering.

1.7.2 Enforcement is any formal or informal action to prevent or rectify infringements of legislation. The enforcement options may differ where different areas of legislation are used, but the principles of application should remain constant and consistent.

1.7.3 Enforcement includes visits, inspections, verbal and written advice on legal requirements and good practice, assistance and compliance, written warnings, the issue of statutory notices, fixed penalty notices, simple cautions and formal notices such as Community Protection Notices, prosecution, seizure and detention, works in default, injunctions and liaison and co-operation with other enforcement authorities and organisations where appropriate (see point 1.6).

2. Authorisation

2.1 Authorisation of officers is of paramount importance in confirming the effectiveness of animal welfare/control functions of Three Rivers District Council. The 'proper officer' who has the delegated responsibility for authorising enforcement officers is the Director of Community and Environment.

2.2 No officer will carry out enforcement duties unless suitably trained, experienced and authorised. This will be by relevant qualification and/or experience and necessary delegated authority. Training will be provided for all enforcement officers, as required, to meet changes in legislation and enforcement procedures.

2.3 The designation of person(s) who may authorise a prosecution or a simple caution is the Solicitor to the Council.

3. Enforcement Approach

3.1 This Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions which concern enforcement action, including prosecution.

3.2 The Council aims to carry out its animal welfare enforcement policy in a fair, equitable and consistent manner.

3.3 The Officer will, subject to their statutory duties, act in accordance with the Council's procedures when approaching individual cases or complaints and will initiate the type of enforcement action warranted by the nature and severity of the offence.

3.4 The officer will seek to help all members of the public and business community to understand their rights and obligations to comply with relevant legislation.

3.5 Whenever an enforcement decision needs to be made fair regard shall be made to the normal hours of trading of any business premises under investigation.

3.6 Whenever enforcement investigations require the attendance of a translator, interpreter, signer or other person to assist with written or verbal communications with the person(s) under investigation, such reasonable provision will be made.

3.7 In making an enforcement decision, we will consider a number of factors. These include seriousness of offence; the perpetrator's past history, where a business is involved - confidence in management; the consequences of non-compliance; effect of the defect on the person(s) / animal(s) affected and the likely effectiveness and consequences of the various enforcement options.

- 3.8 Where there are failures to comply with the law, the Council has a number of informal and formal approaches to secure compliance: -
- to take no action (possibly refer the matter to another service or agency)
 - to take informal action
 - to issue Fixed Penalty Notices (FPN's)
 - to use statutory notices (such as Abatement Notices)
 - to use formal notices (such as Community Protection Warning/Notices, Microchip Notices)
 - to use simple cautions
 - to prosecute
 - to carry out work in default
- 3.9 Any of the above options can also be undertaken alongside appropriate action – enforcement or otherwise – by other Council Services or outside agencies (see shared enforcement section 1.6).

4. Informal Approach

- 4.1 Many persons, having had an issue for which they are responsible drawn to their attention, will be anxious to comply with their statutory obligations. In such cases the Animal Welfare and Licensing Inspector's role will be to guide and support. In most cases the first contact with a person reported to the council or believed to be causing or permitting an offence, will be by advisory letter or verbal communication.
- 4.2 Informal action to secure compliance with legislation can be by a variety of means including giving advice, verbal warnings, sending informal letters, issuing inspection reports, etc. This advice will be put clearly and simply. If written observations, suggestions or requirements are appropriate such written guidance will clearly identify the nature of the complaint or problem and any remedial works that are required.
- 4.3 Any requirement made verbally or in writing will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a timescale for compliance will be specified.
- 4.4 Informal written warnings may be issued to make clear that any further breaches of legislation will be treated seriously and that these may be subject to enforcement action. Written advice on good practice, statutory compliance and information may be provided where there is a need to assist the person/ company in meeting requirements.
- 4.5 These methods of informal action will continue to be used by the authorised officers as long as they believe that these methods will result in compliance within reasonable timescales. These methods can be used alongside other council services or outside agencies action where appropriate.
- 4.6 Informal action may be used in the following circumstances: -
- The breach is not serious enough to warrant formal action.

- The keeper's / owners / managers / responsible person's past history shows that it can be reasonably expected that informal action will achieve compliance.
- Confidence in the keeper's / owner's / manager's / responsible person's management is high.
- In the first instance when dealing with vulnerable persons, the elderly and youth's (14 – 18 years of age), voluntary and charitable organisations.
- Where formal action may result in unproductive consequences.

4.7 When an informal approach is adopted to secure compliance with any animal welfare, nuisance or other relevant legislation, it is important that any letter issued explains: -

- The remedial action needed to achieve compliance, why it is necessary and within what timescale.
- Offers the opportunity for discussion or for the owner to make representations, including contact point(s) and name(s).
- Provides the details of any other council services or outside agencies that may be able to provide assistance or related services to the keeper / owner / responsible person / manager / occupier.

5. Formal Approach

5.1 Enforcement may be used where the Council has exhausted all informal enforcement provisions or in circumstances where any breach is considered so serious the Council goes directly to formal action. This may include the issue of a statutory enforcement warning/notice of some description which may oblige the recipient to undertake a certain course of remedial action in order to avoid legal proceedings.

5.2 The Council would consider formal action where:

- An informal approach has already failed.
- A statutory or formal notice (such as an Abatement Notice, Community Protection Notice, Microchipping of Dogs (England) Regulations 2015 Notice), section 10 Animal Welfare Improvement Notice) has not been complied with.
- The legislation specifies that the Council must serve a notice and the offence is of a serious nature.

5.3 Where there are rights of appeal against the issue of a notice, the service will, at the time the Council takes action, issue clear written advice on how to appeal. Whenever possible, the advice or information will be issued with the enforcement notice

5.4 The Animal Welfare and Licensing Inspector is trained to carry out recorded interviews under Caution in accordance with PACE (Police and Criminal Evidence Act 1984). Where possible interviews are conducted in an interview room at Three Rivers House but can also be conducted in an interview room at a police station or other suitable venue.

6. Notices

- 6.1 The use of a formal notice must be considered when there are significant contraventions of the legislation and the action is proportionate to:
- The effect of the legislative breach upon the animals, persons affected, and/or the damage being caused or likely to be caused.
 - The risk to the health of persons that may be affected.
 - The risk to the welfare of all animals that may be affected.
 - The future consequences of failing to address the breach at the present time.
- 6.2 We may serve statutory notices and orders under various Acts that:
- Require a person or business to take specific actions to remedy an identified problem.
 - Require a person or business to desist from particular activities that may not comply with legal requirements.
 - Require a person or business to take action to improve or stop nuisances being caused by their actions.
- 6.3 Notices may require immediate action where, for example, there is an immediate risk to animal welfare and safety, to public safety or environmental damage. In other circumstances, a reasonable amount of time, depending on the circumstances, will be given to rectify the problem.
- 6.4 A formal notice will be served when:
- An informal approach has been tried but has not been successful or the officer believes an informal approach would not succeed.
 - In the case of a new business or new requirement, the officer assesses that the owner/occupier/manager is unwilling or unlikely to comply.
- 6.5 Only an authorised officer may sign the Notice if satisfied on reasonable grounds that there has been a breach of the relevant legislation.
- 6.6 Any Notice that is served will contain all the content requirements detailed in the legislation and in any case will state:-
- The legislation, including regulation, section, subsection or paragraph that has been contravened.
 - In the opinion of the officer, the reason there has been a contravention and what the person responsible needs to do.
 - The timescale and the mechanisms for appeal.
- 6.7 A revisit will be made to a premise as soon as practicable after expiry of a Notice.

- 6.8 Where appropriate, the officer will inform all interested bodies or agencies, including residents; managers; freeholders; leaseholders of the action taken and its outcomes.

7. Follow Up Visits

- 7.1 Officers of the Council will undertake follow up visits to ensure that progress has been made to rectify contraventions of legislation. The criteria to decide whether a follow up visit is necessary will be the seriousness of the offence and the likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection should carry out the revisit if there are significant breaches of legislation.

8. Powers of Entry Seizure/Confiscation

- 8.1 Officers are given various powers of entry, for the inspection of animals, and to seize animals, equipment or documents.
- 8.2 Enforcement investigations may involve obtaining a Warrant of Entry from the Court in accordance with provisions contained in relevant legislation.
- 8.3 Powers of entry, search and seizure will be fully and clearly justified before use, and officers will consider if the necessary objectives can be met by less intrusive means. In all cases authorised officers will:
- exercise their powers courteously and with respect for persons and property; and
 - in circumstances where a warrant has been obtained and is appropriate, only use reasonable force when this is considered necessary and proportionate to the circumstances.
- 8.4 Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection is to be undertaken.

9. Works in Default

- 9.1 A number of statutory enforcement procedures enable the council to carry out 'works in default', if necessary, following the expiry of the term stated in a Notice. The purpose of the works in default process is to enable the council to effect an early remedy to the particular situation that has given rise to service of a Statutory Notice (generally prior to prosecution). Work may generally be carried out by the council, or at the council's instruction – the cost of such works (plus administrative charges) being recovered either as a civil debt or by virtue of a 'charge' being placed on a subject property. The council will effect works in default where there is a significant risk to public health and following consideration of there being a reasonable chance of recovering the costs of the works. The council will make best attempts in each circumstance to advise the recipients of Notices before works in default are carried out.

10. Simple Cautions

- 10.1 In certain circumstances, officers of the Council will issue a simple caution.
- 10.2 The matters which will be taken into account when deciding whether a simple caution is appropriate, include:-

- The seriousness of the offence, as a caution is not suitable for serious offences.
- There must be sufficient evidence to obtain a realistic prospect of conviction if the offender were to be prosecuted.
- The offender must admit the offence AND agree to accept the caution as an alternative to prosecution
- The offender's attitude to the offence, in particular the wilfulness in which it was committed and their subsequent attitude, including willingness to rectify the matters constituting the offence.
- The previous history of the party concerned.

10.3 The Officer shall ensure that decisions to issue a simple caution are notified to all interested bodies.

11. Fixed Penalty Notices

11.1 In certain circumstances it may be appropriate to issue a fixed penalty notice for the relevant offence. The fixed penalty will allow the offender to discharge responsibility for the offence and avoid action through the Magistrates Court. These should be issued in accordance with relevant legislation

11.2 In the case of youths aged between the ages of 10 and 15 they will in the first instance be issued with a written warning which will be kept on file or 6 months. A copy of the warning will be sent to the parents or guardian of the youth.

11.3 A person issued with an FPN has 14 days from the date of issue to pay the fixed penalty notice. However if they pay within 7 days they may pay a reduced rate. Fixed Penalty Notices can be paid by calling 01923 776611 or online payment at: <https://www.threerivers.gov.uk/page/pay-for-it> .

11.4 There is no right of appeal against the issue of a Fixed Penalty Notice, however, the Council will consider written representations on an informal basis in the interest of fairness. All representations must be made by the company or person that was issued the FPN in writing to Three Rivers District Council, Three Rivers House, Northway, Rickmansworth, Herts, WD3 1RL or email enquiries@threerivers.gov.uk

11.5 Failure to pay a fixed penalty notice issued by the council may result in prosecution.

11.6 Where there are cases of persistent or serious offences including multiple Fixed Penalty Notices (paid or unpaid) the Council may take legal action in the form of a prosecution.

11.7 The income from the Animal Welfare FPN's is used to fund promotions, education and equipment to reduce animal welfare crime.

12. Prosecution

12.1 The Council will exercise discretion in deciding whether to initiate a prosecution. Other approaches to enforcement may promote compliance with legislation more effectively (as previously detailed).

- 12.2 However, where the particular circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.
- 12.3 Consideration will be given to Best Practice guidance and advice offered by the Council's Legal Department, Government Departments and Agencies and other Local Authorities.
- 12.4 The following circumstances are likely to warrant prosecution: -
- The alleged offence involves a flagrant breach of the law such that public health, safety or animal welfare is or has been put at risk.
 - The alleged offence involves a failure by the suspected offender to correct potential risk to public health, safety or animal welfare; the offender having been given a reasonable opportunity to comply with the requirements of an officer.
 - The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
 - There is a history of similar offences.
- 12.5 Regard will be had to the Code for Crown Prosecutors issued by the Crown Prosecution Service.
- 12.6 When considering whether or not to bring a prosecution, the Council will apply a two stage test: the 'evidential stage' and the 'public interest stage'. The Council will only start or continue a prosecution if a case has passed both stages.

12.7 The Evidential Stage

- 12.7.1 This is the first stage in the decision to prosecute. The Council's Legal Department must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge. They must consider whether the evidence can be used and is reliable. They must also consider what the defence case may be and how that is likely to affect the prosecution case.
- 12.7.2 A "realistic prospect of conviction" is an objective test. It means that a jury or a bench of magistrates, properly directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. If the case does not pass the evidential stage, it must not go ahead, no matter how important or serious it may be.

12.8 The Public Interest Stage

- 12.8.1 If the case does pass the evidential stage, the Council must then decide whether a prosecution is needed in the public interest. The Council will balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.
- 12.8.2 A prosecution will usually take place however, unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour.

13. Publicity

- 13.1 We will draw media attention to factual information about convictions, simple cautions and FPN's that could serve to draw attention to the need to comply with animal welfare and environmental law.

14. Targeting

- 14.1 The Council's animal welfare enforcement resources are limited and where appropriate should be focused on those persons premises, companies or locations whose activities give rise to the greater risks, which are most serious or least well controlled.
- 14.2 Enforcement is informed through intelligence gathered or arising from investigation of complaints and planned projects, special surveys, training and enforcement initiatives – some may result in departures from the programme of inspections.

15. Equal and Fair Treatment

- 15.1 Enforcement practices will be continually monitored and reviewed to ensure that they are fair and equitable.

16. Review

- 16.1 This policy will be regularly monitored and reviewed as necessary and in light of any changes in legislation, Codes of Practice or centrally issued guidance which may introduce new types of powers and possible actions which enforcement officers may be able to take.
- 16.2 Any cases where decisions are made on the merits of the case, but which may fall outside of the current policy, will be recorded and taken account of in subsequent reviews of this document.

Health and Safety Implications:

1. Reference should be made to the Lone Working Procedure. It is imperative when undertaking enforcement action to follow these procedures due to the higher risk nature of this aspect. Where an officer anticipates problems, then additional measures should be undertaken e.g. visit with another officer.

Human Rights Implications:

1. Individuals have the right to their possessions or property (which includes a business) unless interference is justified except in accordance with the law, and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This will include any surveillance activity which will comply with the Regulation of Investigatory Powers Act 2000, Data Protection Act 2018, Information Commissioner's Office and the Surveillance Camera Commissioner.
2. Consideration will be given to ensure that any actions do not contravene rights conferred by the Human Rights Act or any other legislation.

Data Protection implications:

1. Only publicly available information is within the notice register.
2. Information may be disclosed to Police, Customs and Excise, other Council Services etc. about an individual if they are investigating a specific offence in which that individual may be involved.

| Review date | Reviewed by | Reason for Review e.g. annual/change in legislation etc |
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