

Meeting:	Cabinet
Meeting date:	Thursday 18 January 2018
Title of report:	Single overarching enforcement & prosecution policy
Report by:	Cabinet member for transport and regulatory services

Classification

Open

Decision type

Non-key

Wards affected

All wards

Purpose and summary

Following the adoption of a single enforcement and prosecution policy by Cabinet in 2012, the purpose of this report is to improve and update this with a revised overarching enforcement and prosecution policy for all regulatory activities undertaken by or on behalf of Herefordshire Council, together with specific supplementary policies.

Recommendation(s)

That:

- (a) the single overarching enforcement and prosecution policy (attached at appendix 1) and the following policies forming appendices to that policy (attached at appendices A to F) be approved and implemented with immediate effect:**

- i. Parking Supplementary Enforcement & Appeals Policy,**
- ii. Building Control Supplementary Enforcement Policy,**
- iii. Planning Supplementary Enforcement Policy,**
- iv. Environmental Health (Housing) Supplementary Enforcement Policy,**

- v. **Code of Conduct for Issuing Penalty Notices for Child Absenteeism, and**
- vi. **Environmental Enforcement – Fixed Penalty Notice Operational Policy.**

Alternative options

1. Do not revise the 2012 overarching policy nor its supplementary policies and instead retain the existing policies. This is not recommended because it would mean that the current policies are not as up to date as they could be and that the council would lack supplementary policies for parking and fixed penalty notices. This could be challenged as and when the council fulfils its statutory regulatory role.
2. Return to individual enforcement policies for each discipline, with no overarching policy to unite them all. This is not recommended because it would mean that the council's procedures and policies would be more complex and less consistent, increasing the risk of legal challenge to decisions taken under the policies, and could be perceived to be less transparent.

Key considerations

3. A single overarching enforcement policy reduces bureaucracy, simplifies rules and regulations and supports business by being more business friendly.
4. Enforcement policies and procedures have a significant effect on the way enforcement activities are undertaken across a varied range of services throughout the county. This policy and its supplementary documents benefit those who both live and work in Herefordshire through openly publishing the council's policy on all enforcement matters, therefore improving public awareness and openness.
5. Being transparent about how we approach enforcement and, where necessary, prosecute individuals and/or businesses who contravene the rules which the council is empowered to regulate, gives assurance to those who have duties to comply with the law and those who are protected by the law. It also ensures a level playing field to businesses who operate in the county.
6. Whilst there is a wide ranging spectrum of enforcement activity across the organisation, there is a need to ensure that the principles that apply to all enforcement remain visible and are applied appropriately and consistently across the county.
7. All of the council's enforcement activities operating to and within one single policy is not only in line with good practice but will help boost confidence amongst the public, business and members.
8. The various policies have been reviewed to take into account changes required through legislation or guidance since 2012, as well as to take into account of any organisational changes to either partner agencies or the council itself.
9. The policies will be communicated to all council staff in regulatory, planning and parking services and their release shall be advertised through our communications team. The documents shall also be placed on the council's website so that the public, businesses and any other agencies can access them.

Community impact

10. It is envisaged that greater openness will result from the revision of the single policy and its supplementary policies. In addition, any such improvement in openness should facilitate greater adherence to a better 'level playing field' for business regulation and support.
11. The policies complement the council's corporate plan in that they:
 - a. Enable residents to live safe and healthy lives,
 - b. Keep children and young people safe,
 - c. Support the growth of our economy through ensuring a level playing field, and
 - d. Secure better value for money council services.
12. The policies also complement the code of corporate governance, as they require the council to behave with integrity, demonstrate a strong commitment to ethical values and respect the rule of law.

Equality duty

13. Updating this single overarching policy improves transparency, consistency and will reduce the risk of not fulfilling our public sector equality duty.
14. Section 149 of the Equality Act imposes a duty on public authorities and other bodies when exercising public functions to have due regard to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This decision will not impact on the council's ability to discharge its equality duty. There are no equality implications arising from this report, other than that this policy and its supplementary documents will continue to ensure that all people and businesses are treated equally and fairly within Herefordshire.

Resource implications

15. There will be no additional costs associated with the revision and implementation of this single enforcement and prosecution policy and the adoption of its supplementary documents. It will therefore remain 'business as usual'.

Legal implications

16. It is best practice for all local authorities to adopt a single enforcement and prosecution policy and to periodically update these. Such a policy shall be used when making any regulatory decisions that might impact upon businesses or individuals.

Risk management

17. There are no risks associated with supporting the recommendations that have been identified. Conversely, not to update the policy would leave the council open to challenge when performing its regulatory function.

Consultees

18. Other than consultation with the police on the parking supplementary enforcement and appeals policy, consultation has not been necessary with external bodies as the overarching policy simply updates the existing one. The supplementary policies have been drafted by the specific service areas for which they serve and take into account the various updates required by legislative changes and/or new guidance.

Appendices

Appendix 1 – Overarching Enforcement and Prosecution Policy

Appendix A - Parking Supplementary Enforcement & Appeals Policy

Appendix B – Building Control Supplementary Enforcement Policy

Appendix C – Planning Supplementary Enforcement Policy

Appendix D – Public Sector Housing Supplementary Enforcement Policy

Appendix E – Code of Conduct for Issuing Fixed Penalty Notices

Appendix F – Environmental Enforcement – Fixed Penalty Notice Operational Policy

Background papers

None identified