

Enforcement Policy

Highways Licensing and Enforcement

Environment, Sustainability & Leisure

Introduction

The Highways Licensing and Enforcement team (HL&E) operate within the Road Network and Parking Department. The team licence temporary items that are placed on the public highway as well as temporary road closures for works and events on the highway. These activities mainly relate to business and building activities. The team also enforce a wide range of offences related to the illegal occupation or use of the public highway.

This policy details our approach to the enforcement powers available to Southwark Council under legislation whilst having regard to the principles set out under the Legislative and Regulatory Reform Act 2006 which are that:

- Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and;
- Regulatory activities should be targeted only at cases in which action is needed.

The policy demonstrates how the actions HL&E take will always be transparent, accountable, proportionate, consistent and targeted. This policy cannot be prescriptive as there are many and varied scenarios that will be dealt with using the legislation and the case specific evidence available in conjunction with this policy.

The policy will explain the types of enforcement action that can be carried out, the principles of enforcement as well as how resources will be focused to provide the best outcome for residents, businesses and stakeholders. All examples in this policy are for illustrative purposes and do not mean that those are only courses of action available in each case.

This policy supersedes any previous version of our enforcement policy.

1. The General Principles of Enforcement

1.1 Enforcement carried out by HL&E will be:

- Transparent and accountable;
- Proportionate;
- Targeted;
- Consistent;
- Appropriate;
- Fair;
- Helpful; and,
- In the public benefit.

1.2 Enforcement action carried out must:

- Encourage compliance with the law;
- Encourage public confidence in the work the Council carries out;
Ensure that we discharge the Council's duties with regard to the Equality Act 2010.

1.3 Transparency

1.3.1 Where a Council officer finds a breach of the law or regulations, it is expected that an explanation will be given to the business or person to allow them the opportunity to comply with the legislation. An explanation of the legislation that applies, along with their rights of appeal (where allowed under legislation) will be explained verbally and/or in writing before further enforcement action takes place.

1.3.2 If an officer of the Council finds a breach that endangers the public or has the potential to endanger the public if not resolved within a short timeframe (i.e. less than 7 days), an explanation will be given verbally and/or in writing as soon as practical. The removal of the danger must be the priority and is in the public interest. The business affected will be given a full explanation with regard to the action taken, the requirements to avoid further enforcement action and any routes of appeal that are available.

1.3.3 It will be made clear what the legal requirements are, and what is not a legal requirement but is felt necessary to resolve the specific situation to meet the needs of highway users. i.e. 1.5 metres of footway must be kept clear for street furniture in legislation, however due to high footfall 2.5 metres of clear space is required.

1.3.4 The complaints process detailed on the Southwark website will be referred to if anyone wishes to make a complaint or enquiry.

1.4 Accountability

1.4.1 Activities will be open to public scrutiny with clear justification for the action taken by officers of the Highways Licensing team.

- 1.4.2 Inspections will be carried out and logged for record keeping and audit. More detailed site meeting reports will be produced to ensure all parties involved understand what is required to comply with legislation.
- 1.4.3 Officers will present their staff pass before speaking to people about issues that need to be resolved so that the public are able to report or complain about staff conduct through the complaint's procedure if necessary.

1.5 Proportionality

- 1.5.1 Enforcement activities will reflect the level of risk or potential harm activities may cause. If a situation poses immediate danger, then immediate action must be taken to protect public safety, e.g. a blocked footway that is causing people to walk into the carriageway.
- 1.5.2 Warnings will be given where there is not immediate danger, an educational approach will be taken before formal enforcement action commences. e.g. a business has a licence to place tables outside but is using more space than has been permitted on their licence, but there is enough room for pedestrians to pass.

1.6 Targeting

- 1.6.1 Resources will be targeted to produce the most benefit to the public and to ensure our duties under the Equality Act 2010 are met. The priority list is as follows:
- 1) Dangerous activities on the highway or dangerous breach of conditions.
 - 2) Unlicensed activities.
 - 3) Non dangerous breach of conditions
 - 4) Expired licences that require renewal
 - 5) Non dangerous requests for enforcement (e.g. removal of commercial waste bins)

The level of danger or risk will be a decision for the officer carrying out the inspection or site visit. Training is provided to enable officers to make reasonable decisions based on the situation they are presented with.

1.7 Consistency

- 1.7.1 Each scenario encountered by officers will differ in regard to the problem that needs to be rectified, the on-street conditions and the audience the enforcement would be taken against. To provide consistency, officers will use this policy to assess the appropriate action as well as assessing the previous actions taken against a particular business, street, area or type of business.

1.8 Appropriateness and Fairness

- 1.8.1 Officers will use judgement and consider the Equality Act 2010 to make sure that actions are appropriate for the situation and the audience. Enforcement action will be based on the individual circumstances of each case once the facts have been taken into account. Officers

will carry out inspections and investigations with a balanced and open mind to minimise the risk of unconscious bias.

1.9 Helpfulness

- 1.9.1 In many cases education will rectify problems without the need for enforcement action. Where a situation can be resolved without enforcement, officers will explain and work with people to create positive working relationships that build trust between the Council and businesses.

1.10 Public Benefit

- 1.10.1 Where officers encounter issues that cause minimal disruption and would not create danger, an assessment can be made to defer enforcement action in the public benefit. e.g. a household has had an emergency and have put items out on the highway temporarily whilst the situation is fixed.

Alternatively, when there is gathering evidence of residents or businesses having a desire for the rectification of a particular issue, these issues can be prioritised in the public benefit to show the Council is committed to improving the road network in line with the [Streets for People](#) initiative.

2. The Law and Legislation

- 2.1 Highways Licences are issued under the Highways Act 1980 and Business and Planning Act 2020. There are also Highways Act 1980 offences the team can enforce. There are many of these offences and therefore they are not possible to list in this document, an example is Section 16 where a notice can be issued if a person is driving across a footway that does not have a dropped kerb and is not constructed to carriageway standard.
- 2.2 The London Local Authorities and Transport for London Act 2003 provides enforcement powers in relation to removal of items.
- 2.3 List of primary legislation:
- Highways Act 1980
 - London Local Authorities Act 2004
 - London Local Authorities and Transport for London Act 2003
 - Business and Planning Act 2020
 - Road Traffic Regulation Act 1984
 - Traffic Management Act 2004
 - New Roads and Street Works Act 1991

3. Enforcement Options

- 3.1 The type of enforcement action planned and undertaken should produce an effective result that protects public safety, produces compliance with the law and increases public confidence in the actions the Council carries out.

3.2 The following factors will be considered when assessing the most appropriate course of enforcement action:

- the seriousness of compliance failure;
- current business practices which includes responses to previous advice;
- the degree of risk from the situation and whether it could lead to further danger or non-compliance by the same business or others;
- the particular circumstances of the case and likelihood of its continuation or recurrence;
- whether any harm was caused or is likely to be caused;
- views of any victim/injured party, financial gain or benefit from a non-compliance;
- the general cooperativeness of the offender;
- the past history of the person(s), company or premises involved and whether the defendant has previous convictions or cautions which are relevant to the present offence;
- the likely effectiveness of the various enforcement options;
- any relevant legal provisions, policy or official/professional guidance or advice;
- whether there has been a blatant and reckless disregard for the law;
- whether the matter is of local and or national interest;
- whether the cumulative effect of such breaches would be serious even if the breach was not;
- local priorities of the service and the Council;

3.3 A process of escalation will be used in normal cases where compliance can be sought with less intensive enforcement action. The level of enforcement action that may be taken varies from no action through to formal action resulting in court action.

3.4 The actions that may be carried out are as follows:

a) No action

This is appropriate when it is a minor/technical non-compliance that is rectified immediately. Any details recorded about non-compliance may be used as a basis for judgement on future enforcement action. e.g. a scaffold company does not have the correct colour of lights attached to the scaffold.

b) Advice, Education and Warning Letters

This sort of action will be appropriate where the degree of risk from any given situation is minor but cannot be rectified immediately. The breach of legislation is often technical but significant enough to warrant a written letter of warning. Formal action may be taken if similar infringements are found in the future. The person responsible would have no recent history of non-compliance and the officer would have good reason to expect them to put right the matters in question without the need for further intervention. An example would be a business that has a licence but is using an 'extra' area of highway that is not agreed on the licence, they would be informed of the breach, advised how to rectify it and warned not to do it again.

Informal action will be recorded on file and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

(c) Statutory Notices

In certain circumstances, the law allows an officer to serve a notice requiring action to be taken or, that certain operations/activities be stopped immediately. In some instances, the service of a statutory (legal) notice may be compulsory or may be followed by an investigation into the cause of the breach. Further enforcement action, including prosecution, may result, particularly where there is a deliberate failure to comply with the notice. Failure to comply with a legal notice will usually be taken as a disregard for the law and appropriate action will be taken.

Legal notices are normally used where:

- A serious threat to public health, safety, the environment or to amenity will arise or a situation deteriorate, if a breach is not remedied quickly; or
- An informal approach has failed, or in the opinion of the officer, is likely to fail to achieve the necessary improvements.

Where there is a right of appeal, advice on the appeal mechanism will be set out in writing, usually included on the back of a notice.

An example would be when a premises or company is found not to have a licence and have not removed the items or applied for a licence following a warning letter or advice from a Council officer.

(d) Fixed Penalty Notices ('FPN')

Where the law allows an offence to be dealt with by way of an FPN we may choose to administer one on a first occasion without issuing a warning.

FPNs may be issued to offer the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by paying a penalty. Any action required by a notice would still have to be completed.

FPNs are followed up with criminal prosecution if the penalty is not paid.

We are only able to issue penalty notices when we have specific powers to do so for specific offences (listed in Appendix 1). In some circumstances, e.g. where breaches are recurrent, a prosecution may be more appropriate than a penalty notice. If a FPN is not paid, we will enforce the penalty.

e.g. if a skip company continually breaches the same condition in several different locations an FPN can be issued.

(e) Removal of items from the highway

Once a notice (see paragraph 3.4(c) above) has been issued, items can be removed from the highway using the London Local Authorities and Transport for London Act 2003 or Business and Planning Act 2020. Perishable items are not able to be stored and will be disposed of.

Nonperishable items will be stored for up to 3 months to allow owners to reclaim the items, once the cost of removal and storage is paid by the offender.

Removals will take place if warnings have not been adhered to and there is an obstruction on the highway that causes inconvenience to the public or there is a persistent breach of licence conditions. Immediate removal may take place when danger is caused to the public and items need to be removed to rectify the dangerous situation.

e.g. an unlicensed display of vegetables next to a bus stop that causes the footway to be too narrow for pedestrians and wheelchairs to pass.

(f) Prosecution

The Council has the power to prosecute offenders for a range of criminal offences and a successful criminal prosecution can result in a severe punishment. Additionally, any successful prosecution may result in an application for a claim for the full recovery of costs incurred in the investigation and prosecution of the offender.

Prosecution can be used when the offence constitutes a serious breach of the law or safety practices or where compliance has consistently been sought but has not been forthcoming.

e.g. a company carries out works on the highway despite the Council giving advice of the correct procedures and permissions that were required.

(g) Injunctive Actions

An injunction may be sought from the Courts where the circumstances of any case cause a significant problem or threat to health of an individual or group of individuals, and the normal process of law (statutory notices, prosecution or work in default) is likely to be ineffective because the perpetrator has shown a careless disregard for earlier similar requirements, or where the process of law would take an unacceptable period of time, having regard to the particular circumstances. Injunctions may be sought as an alternative, or in addition to other enforcement mechanisms such as prosecutions.

This would be used when the same company or business commits offences repeatedly and other enforcement options have been used but have not been effective.

e.g. a scaffold company that does not apply for licences on a continued basis at different locations and does not rectify dangerous occurrences on the highway.

(h) Amendment or revocation of licences

Where problems can be rectified by adjusting the conditions on an existing licence, those licences can be amended at the discretion of the highways licensing officer. If there are repeated breaches of the licence conditions, the Council officer may revoke the licence and request that the highway is cleared of any items.

(i) Liaison with other Council departments and other enforcement agencies

Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement.

We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but is not limited to) other Council Services and Local Authorities, Government Agencies, Police Services and Fire Authorities.

(j) Time Limited, Event Specific Powers

Where circumstance dictates, 'time-limited' powers may be introduced by central Government to help control certain events or issues. An example of this would be the emergency powers introduced to help limit the spread of coronavirus during the COVID-19 pandemic.

4. Appeals and Complaints

- 4.1 Where there are rights of representation or appeal mechanisms against enforcement decisions, these will be communicated in accordance with the relevant statutory obligations. In the absence of such obligations these will be communicated at the same time as the action is taken, or, if that is not possible, as soon as is reasonably practicable afterwards.
- 4.2 An appeal against enforcement action is distinct and separate from a complaint against the conduct of an officer or a service. If the recipient of enforcement action or someone affected by that enforcement action is aggrieved by its imposition, they should seek remedy by way of appeal to the relevant authority/court/tribunal, where they are legislatively allowed to do this. If anyone is dissatisfied with the conduct of Council officers/service or believes there has been a failure to follow this policy, any related codes, or to meet service standards, a 'complaint about service' can be made using the Council's corporate complaints procedure.

5. Publicising enforcement actions

- 5.1 Enforcement actions outcomes may be published in accordance with the council's communications protocol.
- 5.2 Officers will follow the advice of both legal and communications representatives with regards to press releases and other publicity, particularly where details of a particular person, group or business are to be identified. This to ensure the prevention of any data protection non-compliance by the council and to ensure any press releases align with corporate objectives.
- 5.3 Enforcement actions and outcomes will only be published with the intention of:
- Reassuring community stakeholders that legislative non-compliance is taken seriously and dealt with,
 - providing public information on the standards of acceptable conduct and thus to deter others from undertaking similar non-compliant activities,
 - promoting and increasing intelligence about similar issues, and
 - to act as a deterrent to offenders or potential offenders from offending or repeat offending.

- 5.4 In all cases the rights of victims, witnesses, and those against whom action has been taken, shall be taken into account.

6. Authorisation of Officers

- 6.1 Only officers who are competent by training, qualification and/or experience will be authorised under the Environment Sustainability & Leisure Scheme of Delegation to take enforcement action.
- 6.2 Officers will also have sufficient understanding of this enforcement policy to ensure a consistent approach to their duties.
- 6.3 Due regard will be given to the qualification requirement framework applicable to each professional area of enforcement expertise.
- 6.4 Officers will always identify which service area they represent. They shall show their official identification or authorisation whenever exercising statutory powers and on request.

7. Policy status, feedback and review

- 7.1 This enforcement policy has been approved in line with the Council's constitution.
- 7.2 This enforcement policy will be monitored by the Council's Legal Services and reviewed in March 2026. This may be brought forward if new legislation is enacted, or current legislation is repealed that impacts significantly on the operation or status of this enforcement policy. If a review of the policy indicates that a significant change is required then consultation will be carried out.
- 7.3 Feedback on this enforcement policy may be given at any time via corporate complaints.

Contact details and obtaining copies of this policy

This policy will be published on the Southwark Council website and will be available to download. Hard copies are available on request.

Southwark Council's [Accessibility Statement](#) is published on the website:

<https://www.southwark.gov.uk/about-council/transparency/accessibility-statement> | [Southwark Council](#)

Contact details:

By letter: Southwark Council
PO Box 64529
London, SE1P 5LX

By telephone: 020 7525 200

By email: highwayslicensing@southwark.gov.uk

APPENDIX 1 – FIXED PENALTY NOTICE OFFENCES

Offence Code	Offence	Legislation	Level of Charge	Early payment reduction	Maximum Penalty upon conviction
HL1	Depositing builder's skip on highway without permission	London Local Authorities and Transport for London Act 2013 S.9(3)(a) This is a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007	£200	£100 if paid within 14 days	£1,000.00
HL2	Failure to secure lighting or other marking of builder's skip	London Local Authorities and Transport for London Act 2013 S.9(3)(b)(i) This is a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007	£200	£100 if paid within 14 days	£1,000.00
HL3	Failure to secure marking of builder's skip with name and address	London Local Authorities and Transport for London Act 2013 S.9(3)(b)(iii) This is a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007	£200	£100 if paid within 14 days	£1,000.00

HL4	Failure to remove or reposition builder's skip	London Local Authorities and Transport for London Act 2013 S.9(3)(c) This is a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007	£200	£100 if paid within 14 days	£1,000.00
HL5	Failure to secure removal of builder's skip	London Local Authorities and Transport for London Act 2013 S.9(3)(b)(iv) This is a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007	£200	£100 if paid within 14 days	£1,000.00
HL6	Failure to comply with conditions of permission	London Local Authorities and Transport for London Act 2013 S.9(3)(b)(v) This is a penalty charge provision for the purposes of section 61 of the London Local Authorities Act 2007	£200	£100 if paid within 14 days	£1,000.00
HL7	Wilful obstruction of highway	Highways Act (1980) S.137(1), FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00
HL8	Erecting a building, fence or hedge on highway	Highways Act (1980) S.138, FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00
HL9	Using of stall etc. for road side sales in certain circumstances	Highways Act (1980) S.147A(2) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00

HL10	Depositing material etc. on a made-up carriageway	Highways Act (1980) S.148(a) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00
HL11	Depositing material etc. within 15 feet from centre of made-up carriageway	Highways Act (1980) S.148(b) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00
HL12	Depositing anything on highway to the interruption of user	Highways Act (1980) S.148(c) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00
HL13	Pitching of booths, stalls or stands or encamping on highway	Highways Act (1980) S.148(d) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00
HL14	Failure to comply with notice requiring removal of projection from buildings	Highways Act (1980) S.152(4) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£200.00
HL15	Depositing things on highway which cause injury or danger	Highways Act (1980) S.161(1) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00

HL16	Erecting scaffolding or other structure without licence or failing to comply with terms of licence or perform duty under subsection (4)	Highways Act (1980) S169(5) , FPN provision by Schedule 4 of the London Local Authorities and Transport for London Act 2003	£100	£50, if paid within 14 days	£1,000.00
HL17	Painting or otherwise inscribing or affixing picture etc. upon the surface of a highway or upon a tree, structure or works on or in a highway	Highways Act 1980 S132(1) Painting or otherwise inscribing or affixing picture etc upon the surface of a highway or upon a tree, structure or works on or in a highway.	£100	£50, if paid within 14 days	£1,000.00
HL18	Failure to comply with notice requiring works to prevent soil or refuse escaping onto street or into sewer	Highways Act 1980 S151(3) Failure to comply with notice requiring works to prevent soil or refuse escaping onto street or into sewer.	£100	£50, if paid within 14 days	£1,000.00
HL19	Failure to comply with notice requiring alteration of door, gate or bar opening outwards onto street	Highways Act 1980 S153(5) Failure to comply with notice requiring alteration of door, gate, or bar opening outwards onto street.	£100	£50, if paid within 14 days	£1,000.00