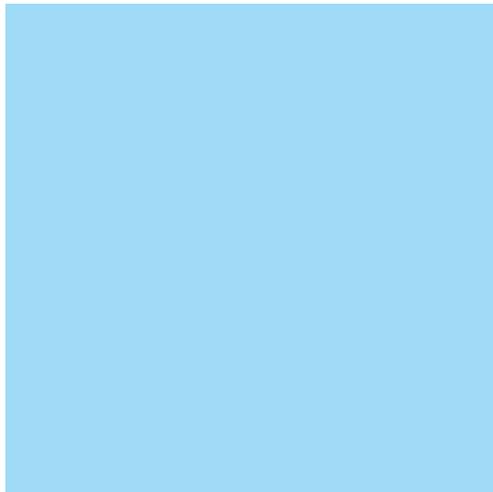




Highway Enforcement Policy

Traffic & Highways



June 2021

Highway Enforcement Policy

Version	Date	Author	Rationale
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1. Introduction

Southend-on-Sea Borough Council's shared ambition to transform the borough by 2050 is aligned to five themes, with related desired outcomes: -

- **Pride & joy** - By 2050 Southenders are fiercely proud of, and go out of their way, to champion what our city has to offer;
- **Safe & well** - By 2050 people in Southend-on-Sea feel safe in all aspects of their lives and are well enough to live fulfilling lives;
- **Active & involved** - By 2050 we have a thriving, active, and involved community that feel invested in our city;
- **Opportunity & prosperity** - By 2050 Southend-on-Sea is a successful city and we share our prosperity amongst all of our people;
- **Connected & smart** - By 2050 people can easily get in, out, and around our city and we have world class digital infrastructure.

This highway authority enforcement policy supports the more specific desired outcomes for each theme, including: -

- Our streets and public spaces are valued and support the mental and physical wellbeing of residents and visitors. People in all parts of the borough feel safe and secure at all times.
- A range of initiatives help increase the capacity for communities to come together to enhance their neighbourhood and environment.
- We are leading the way in making public and private travel smart, clean and green.

To help achieve these goals, our approach requires effective joined-up regulation and compliance.

This policy is intentionally at a high level as it cannot cover every eventually, especially where there are specific local or national standards which have to be met.

In doing so we will follow the principles of: -

- The Regulators Code www.gov.uk/government/publications/regulators-code;
- The Enforcement Concordant (Central and Local Government Enforcement Concordat, March 1998);
- Enforcement contained in the Legislative and Regulatory Reform Act 2006 (enforcement is proportionate, targeted, transparent consistent and accountable).

2. Background

This policy explains how Southend-on-Sea Borough Council prioritise the enforcement of encroachments, obstructions and unlawful interference with the highway to protect the use and enjoyment of the highway for the public.

Southend-on-Sea Borough Council is the Highway Authority for the purposes of the Highways Act 1980 (The Act). Section 130 of The Act puts a duty upon the Highway Authority to ***'assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it'***.

The Act contains provisions enabling a Highway Authority to deal with various encroachments, obstructions, and unlawful interferences. Each provision prescribes action that a Highway Authority may take where that provision applies. Common Law also exists to enable the Highway Authority to remove or reduce obstructions and nuisances under Section 333 of The Act.

3. Aim of this policy

The aim of the policy is to explain how we prioritise enforcement, and the actions that we will consider when undertaking enforcement. Where a defect of the highway (defined in this policy as meaning any encroachment, obstruction, or interference with the highway) has been discovered by Officers or where it has been reported by members of the public the provisions within this policy will be used to ensure the highway remains safe for the public. We believe that people should have the right to the safe use and enjoyment of the highway. The general approach we adopt is to educate and to enable compliance.

The desired outcome is always to ensure compliance through discussion and negotiation. Where it is not possible to make progress due to a lack of willingness on the part of the person/organisation to work with the Council, enforcement action will be commenced in order to ensure that highway users are not put at risk. We believe in firm but fair regulation. Underlying the commitment are the principles of:-

- **Proportionality** – all enforcement action will be proportionate to the interference and, or, risk posed;
- **Consistency** – the use of the prioritisation criteria will promote a consistency of approach to enforcement;
- **Transparency** – this policy makes it clear how we make decisions about enforcement, and helps set the expectations of residents;
- **Accountability** – for the enforcement decisions made.

4. Application of this policy

When deciding on the most appropriate action for an individual case, we will consider the following:-

Encroachment, obstruction or interference

Includes, but is not limited to, any disruption to the use of the highway, e.g.:-

- Vegetation overhanging the Highway;
- Things placed on verges and footways;
- Instances provided for by legislation;
- Interference with light.

Significant Interference

When deciding what constitutes significant interference, consideration will be given to the following, non-exhaustive, factors:-

- Amount of highway available for the use by the public;
- Location of the defect within the highway;
- Type of highway;
- Category of road;
- Amount of footfall;
- Amount of traffic;
- Nature of the interference.

Prioritisation criteria: -

- a) the degree of risk arising from the non-compliance;
- b) the seriousness of the contravention;
- c) the different technical means of remedying the situation;
- d) the particular circumstances of the case and likelihood of its continuation or recurrence;
- e) the general attitude of the offender to his or her responsibilities;
- f) the past history of the person(s), company or premises involved;
- g) the willingness of owners of new businesses to carry out required work;
- h) the impact of the enforcement choice in encouraging others to comply with the law;
- i) the likely effectiveness of the various enforcement measures;
- j) any legal imperatives;
- k) any legal guidance;
- l) any guidance or protocols issued by Local Authority Co-ordinators of Regulatory Services, the Department for Environment or any other Government Department or Agency.

Risk assessment

This assessment quantifies the **impact** of a risk should it occur, against the **probability** of the risk actually occurring. Both assessments are on a scale of 1 – 4, where 4 is the highest impact or probability

Risk impact

Relates to assessing the extent of damage likely to be caused should the risk become an incident:

1. = minor or low impact
2. = noticeable impact
3. = major, high or serious impact
4. = extremely high or dangerous impact

Risk probability

Assessing the probability of a risk occurring

1. = low probability (up to 40%)
2. = medium probability (41 to 60%)
3. = high probability (61 to 80%)
4. = very high probability (over 80%)

Considerations that we will take into account when making the risk assessment will include but are not limited to, the type of highway; the category of road; the amount of footfall; and the location of the defect within the highway.

5. Enforcement actions

We take a balanced approach when looking to enforce against those that have caused a defect on the public highway. We believe that education and liaison are preferred to formal action and that our role therefore involves actively working to advise and assist with compliance.

Any enforcement action we will take will be proportionate to the interference and/or, risk to the use of the Highway. Where the provision of The Act provides for a Notice to be served, it usually allows for the Notice to be served either on the owner/occupier of the land adjoining the defect (or any other person having control of it) or on any person who caused the defect to occur.

Enforcement actions can take several forms: -

- a) **No Action** – where the investigation reveals no offence has occurred, the offender makes a ready admission of the breach and takes immediate steps to remedy it, there are strong mitigating circumstances or where there is no jurisdiction to act.

- b) **Advice and education** – where informal action can effectively be used to secure compliance with legal regulations or where the offence is considered as minor/technical and not serious enough to warrant formal action.
- c) **Warning Letter** – where a formal letter is appropriate to explain the legal requirements for compliance and what action will be taken in the event of non-compliance.
- d) **Statutory Notice** – where there is a clear breach of legislation, a history of non-compliance despite advice having been provided, and/or where there is potential harm to the community, public or environment. Where there is a statutory power to serve a Notice requiring remedial action to be taken and/or for a particular course of conduct to cease, this can be an effective mechanism to remedy conditions that are deteriorating or already serious. Where there is a right of appeal, advice on the appeal mechanism will be set out in writing. Failure to comply with a statutory Notice can lead to prosecution.
- e) **Fixed Penalty Notice** – where there is statutory authority to issue a fixed penalty notice as an alternative to bringing a prosecution.
- f) **Simple Caution** – where an offender admits to committing a criminal offence and it is considered to be in the public interest to offer a formal caution in place of a prosecution. A Simple Caution may be cited in the case of any future offending. Home Office Guidance Circular 16/2008 will be followed when administering a Simple Caution.
- g) **Prosecution** – where there is sufficient evidence, and it is in the public interest to prosecute. In determining whether it is in the public interest, guidance set out in the Code for Crown Prosecutors will be considered.

The list above is not intended and does not constitute a step-by-step escalation process; it is an illustration of the options available to the Council.

In some circumstances, a less formal response may escalate into formal or legal action. In such circumstances the principles set out in the Police and Criminal Evidence Act 1984, and associated regulations and codes of practice will be applied. Where appropriate, we will work with other regulatory bodies, including the Health and Safety Executive, Building Control, Planning and Development Control, and the Police.

Surveillance

On rare occasions we may consider it necessary to monitor organisations and individuals to gather evidence in support of potential enforcement action. In such circumstances, we will do so in line with the Council Policy and Regulation of Investigatory Powers Act 2000.

Publicity

To maintain public confidence, we will publicise details of any successful prosecutions as they happen to draw the public attention to the action and promote compliance with the policies and legislation. We will also report all enforcement action annually.

6. Policy Review

This policy is a living document and will be reviewed and updated if/when statute or national standards or best practice requires it. This policy will be reviewed after 12 months of operation and then every 3 years.

Legislation

New Roads and Street Works 1991

Traffic Management Act 2004

Highways Act 1980

Refuse Disposal (Amenity) Act 1978

Clean Neighbourhoods Act 2005 (Parts 2,3,4,5, and 6)

Environmental Protection Act 1990 (Parts 2,3 and 4)

Anti-Social Behaviour, Crime and Policing Act 2014 (parts 1 and 4, these relate to PSPO (Public Space Protection Order) and CPW (Community Protection Warning/Community Protection Notice)

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