

# ***Report to the Council***

**Committee: Cabinet**

**Date: 28 July 2009**

**Subject: Legal and Estates Portfolio**

**Portfolio Holder: Councillor Mitchell Cohen**

**Item: 6(g)**

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## **Recommending:**

**That the report of the Legal and Estates Portfolio Holder be noted**

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## **THE COUNCIL'S ENFORCEMENT ACTIVITIES**

1. Members will know from the Annual Meeting that my Portfolio responsibilities have changed slightly and I now have control of the Council's enforcement activities. Since much of this work goes on unnoticed and encompasses a wide range of corporate activity, I thought it would be helpful to provide Members with an initial overview of the scope of the Council's various enforcement roles. This is a timely exercise given that the Council's "Safer, Cleaner, Greener" strategy is close to formal adoption and the Council will shortly be asked to review and adopt a new Corporate Enforcement Policy as the overarching policy document for all of the enforcement activities within the Council's Directorates. In setting out the Council's enforcement activities I have taken a wide view of the term "enforcement" to include some of the Council's regulatory activities, particularly where enforcement of contraventions may follow.

2. These enforcement activities are undertaken by a wide range of the Council's professional officers. However, with the exception of the Health & Safety at Work Act 1974, where individual officers are authorised to act by virtue of their professional qualifications and positions, all other enforcement activity requires an officer to be specifically authorised by the Cabinet or Portfolio Holder in accordance with the Council's written Constitution. In many cases Directors are authorised in such a way that they can decide which officers within their directorates are professionally competent to undertake specific enforcement activities. In other instances an individual authority is required from the Cabinet or Portfolio Holder. There are also instances where the law dictates that specific professional qualifications must be held by an officer before they can be authorised to undertake certain enforcement roles, an example being inspections under Food Safety legislation. Finally, the Council may on occasions elect to authorise officers in other organisations to undertake enforcement roles on its behalf. Examples include the enforcement of dog fouling byelaws by park wardens and doctors within the Health Authority to deal with issues around infectious disease and filthy & verminous premises.

3. The Council is a signatory to the Government Cabinet Office "Enforcement Concordat". This lays down some core principles of how enforcement activities should be undertaken, including the Council being open, helpful, proportionate and consistent. In practice this means that the Council will always seek to avoid taking enforcement action, preferring in the first instance to advise and guide businesses and individuals to assist them to comply with the law rather than be in breach of it. However, where this approach does not

work, it is important that the Council exercises its powers to protect its local community, if necessary through formal enforcement activity.

4. Although the Council will always endeavour to deal with breaches without immediate recourse to the law, there will always be some circumstances where immediate action is required. Examples of this include breaches, whether they are offences in themselves or not, which can be of such serious consequence that taking enforcement action at the outset is a necessary and proportionate response. Indeed, in certain cases it is appropriate to take action to prevent a breach occurring in the first place if there are reasonable grounds for suspecting a breach is very likely to occur. For example, if there is evidence to show that works to demolish a listed building are likely to take place without Listed Building Consent it would be appropriate to seek an injunction to prevent that from happening.

5. This formal enforcement activity can take a number of forms, ranging from letter based requests for action, the service of statutory notices, the issue of penalty charge and fixed penalty notices, prohibition and stop notices right through to seeking injunctions in the High Court for the most serious and often harmful of matters. The Concordat, the corporate directorate based enforcement policies all require that the Council embark upon the level of enforcement activity which is relevant and proportionate to the nature of the offence, bearing in mind the effects upon others of the continued offence and the wishes of those who have been affected. This can sometimes present difficulties, with the Council's ability to act falling somewhat short of the public's expectation.

6. To complete this initial overview, I have set out below just a few examples of the type of enforcement activities undertaken across the directorates. This list could have been very much longer given the wide range of activities covered, but it should at least provide a flavour of what goes on a day to day basis

- food safety
- health & safety
- accidents
- animal welfare
- pollution control (includes noise)
- drainage and sewerage
- parking
- street scene (litter, fly tipping, illegal advertisements, fly posting etc)
- building control
- planning
- housing benefit and related fraud
- other financial related
- anti social behaviour orders and acceptable behaviour contracts
- licensing (premises, entertainment, taxis and private hire vehicles etc)
- parking control (on and off street)