



Environment and Street Scene
Highway Services

Statutory Utility Company Operations Prosecution Policy

1. Introduction

Under the New Roads and Street Works Act 1991 local highway authorities have a duty to coordinate the works of statutory utility companies.

Under section 16 of the Traffic Management Act 2004 (the Network Management Duty) an authority must manage their road network with a view to achieving two objectives so far as may be reasonably practicable having regard for their other obligations, policies and objectives. These two objectives are:

To secure the expeditious movement of traffic on that network, and

To facilitate the expeditious movement of traffic on road networks for which another authority is the traffic authority.

In order to comply with these obligations it is essential that the London Borough of Enfield, as the highway authority, is fully aware of operations being undertaken on the road network and that information provided is timely and accurate and that those operations are undertaken having due regard to the safety and convenience of all road users.

This document sets out the London Borough of Enfield's policy for prosecuting statutory utility companies where infringement of a utility's legal requirements compromises the local authority's ability to coordinate and manage works or works are undertaken in an unsafe or unduly disruptive manner.

2. Enfield Council's Prosecution Policy

Enfield wishes to foster a spirit of partnership with all statutory utility companies and considers the resources required to instigate and progress court proceedings to be wasteful to both utility company and the Council. However, where utility companies operating within the Borough fail to perform their duties in accordance with the required standards the London Borough of Enfield will invoke prosecutions or issue Fixed Penalty Notices in order to ensure that all street works operations on the network are managed effectively and undertaken safely. This includes failure to observe the correct notification procedures or providing inaccurate notifications, insufficient or incorrect signing and guarding while the works are in progress and failure to comply with approved codes of practice.

This prosecution policy governs all statutory offences under the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004. It covers those offences which the Council will seek to take directly before a magistrates court and those offences for which Fixed Penalty Notices can be issued. Enfield Council will use the Fixed Penalty Notice System for offences covered by them. However, in all cases where the penalty remains unpaid at the end of the decriminalised period, prosecution through the Magistrates Court will be progressed.

Prosecution is seen as a final step either when all other efforts to compel the statutory undertaker to comply with the legislation have failed or when prosecution is considered necessary due to particular circumstances.

It is intended that a consistent and accountable approach is taken to prosecutions, however, there can be no prescriptive process applied and whilst every effort will be made to ensure this, offences that are ostensibly of the same type can have significantly differing levels of impact and therefore an element of judgement must be used to ensure that those offences that have a detrimental impact on any of the councils statutory duties under either the New Roads and Street Works Act 1991, Traffic Management Act 2004, or its efforts to improve highway condition or road safety targets are not penalised.

3. Statutory Provisions

Statutory provision for which the London Borough of Enfield as Highway Authority may prosecute or issue Fixed Penalty Notices are contained within the New Roads and Street Works Act 1991 as amended by the Traffic Management Act 2004 together with supporting regulations and orders..

Offences for which Enfield Council may prosecute are given in Appendix 1.

Offences for which Enfield Council may issue Fixed Penalty Notices in relation to noticing and permits (subject to approval by the Secretary of State to its permit scheme) are given in Appendix 2.

4. Enforcement Processes

Noticing Offences

Notices which are not submitted to the Council or are not submitted in the correct format can cause the council to use unnecessary resources to address the problem, this drain on resources could in turn lead to ineffective coordination work and poor network management. In these circumstances the issuing of a Fixed Penalty Notice will be considered.

Fixed Penalty Notices will be issued in accordance with The Street Works (Fixed Penalty) (England) Regulations 2007. The fixed penalty notice will be issued via EToN direct to the utility company in the first instance. If this is not possible for any reason, e-mail, fax or post will be used.

In all cases where the penalty remains unpaid at the end of the decriminalised period, prosecution through the magistrates court will be progressed.

A statutory utility company may appeal against the issuing of a FPN. This appeal will be heard by a nominated officer of Highway Services, London Borough of Enfield who has had no involvement in the issue of the original notice.

Permit Offences

Where works commence without a permit or permit conditions are broken a Fixed Penalty Notice will be issued.

Fixed Penalty Notices will be issued in accordance with The Traffic Management Permit Scheme (England) Regulations 2007. The fixed penalty notice will be issued via EToN direct to the utility company in the first instance. If this is not possible for any reason, e-mail, fax or post will be used.

In all cases where the penalty remains unpaid at the end of the decriminalised period, prosecution through the magistrates court will be progressed.

A statutory utility company may appeal against the issuing of a FPN. This appeal will be heard by a nominated officer of Highway Services, London Borough of Enfield who has had no involvement in the issue of the original notice.

Poor Performance of Statutory Utility Companies' Works on Street

Enfield Council Street Works Officers will monitor utility works on street.

If statutory utility companies carry out work, which is not to the required standard, a Defect Notice will be served. In conjunction with liasing with the utility company directly, this action will frequently have the desired effect of improving their performance to acceptable standards. However, where there is clear failure to perform their duties in accordance with the specification for the reinstatement of openings in the Highway, provide the required standards of signing and guarding whilst the works are in progress or fail to cooperate with the Council, the London Borough of Enfield will invoke a prosecution in order to ensure that all street works operations on the network are managed effectively and undertaken safely.

5. Prosecution Processes

The Street Works Officers of Highway Services have responsibility for producing the correct evidence, which will be reviewed and checked by either the Senior Street Works Officer or Principal Street Works Officer.

The decision to prosecute will be taken by Legal Services after reviewing all reports and evidence supplied by Highway Services. Legal Services will, where it considers it is in the public interest to prosecute will, in liaison with Highway Services, commence legal proceedings on behalf of the London Borough of Enfield.

Appendix 1 - Offences for which Enfield Council may prosecute

Provision specifying fine (NRSWA 1991)	Brief description of offence or offences to which the fine relates	Maximum Fine
Section 51(2)	Offences under s. 51(1) (prohibition of authorised street works)	Level 5
Section 54(5)	Failure to comply with duties under s.54 (advance notice of certain works, etc.)	Level 4
Section 55(5)	Beginning to execute works in contravention of s. 55 (notice of starting date of works)	Level 4
Section 56(3)	Execution of works in contravention of direction under s. 56 (directions as to timing of street works)	Level 5
Section 57(4)	Failure to give notice in accordance with s. 57 (notice of emergency works)	Level 4
Section 58(6)(a)	Carrying out works in contravention of a restriction imposed under s. 58 (restriction on works following substantial road works)	Level 5
Section 60(3)	Failure to comply with duty under s. 60(1) (general duty of undertakers to co-operate)	Level 5
Section 65(4)	Failure to comply with s. 65(1) or (2) (safety measures)	Level 5
Section 65(6)	Interference with safety measures taken by undertaker	Level 5
Section 66(2)	Failure to comply with s. 66(1) (duty to carry on and complete certain street works with all reasonably practicable dispatch)	Level 5
Section 67(3)	Failure to comply with s.67(1), (2) or (2C) (duties relating to the use of qualified supervisors and operatives)	Level 5
Section 68(2)	Failure by undertaker to afford street authority with reasonable facilities for ascertaining whether he is complying with his duties under Part 3	Level 4
Section 69(2)	Failure to comply with s. 69(1) (requirements relating to street works likely to affect another person's apparatus in the street)	Level 4
Section 71(5)	Failure to comply with duties under s. 71 (prescribed requirements as to materials and workmanship and performance standards for reinstatements)	Level 5
Section 79(4)	Failure to comply with duties under s. 79(1) to (3) (records of location of apparatus)	Level 5
Section 80(4)	Failure to comply with s. 80(1) (duty to inform other undertaker of location of certain apparatus) or requirements imposed under s.80(2) (duties applicable where ownership of certain apparatus cannot be ascertained)	Level 4
Section 83(3)	Failure by authority to comply with s. 83(2) (requirements relating to certain road works likely to affect apparatus in the street)	Level 4
Section 92(2)	Failure to comply with a special requirement as to the displaying of lights imposed by a transport authority under s. 92(1)	Level 5
Schedule 3, paragraph 5(3)	Failure to comply with obligation under paragraph 5 (obligations to give notice to street authority)	Level 4
Schedule 4, paragraph 6	Execution of works in street with special engineering difficulties in contravention of paragraph 2 (requirement for agreed plan and section before executing works) or paragraph 3 (requirement to furnish plan and section after emergency works)	Level 5
Schedule 4, paragraph 12(5)	Failure to execute works in such a street in accordance with a direction under paragraph 12	Level 5
Schedule 4, paragraph 13(2)	Failure to comply with paragraph 13(1) (requirement to execute works in such a street in accordance with plan or agreed modification)	Level 5
Provision specifying fine (Permit Scheme Regulations 2007)	Brief description of offence or offences to which the fine relates	Maximum Fine
Section 19	Undertaking works without a permit	Level 5
Section 20	Breach of permit condition	Level 5

Appendix 2 - Offences for which Enfield Council may issue Fixed Penalty Notices

Offence (NRSWA 1991)	Brief description
An offence under section 54(5)	Failure to comply with duties under s. 54 (advance notice of certain works, etc.)
An offence under section 55(5)	Beginning to execute works in contravention of s. 55 (notice of starting date)
An offence under section 55(9)(a)	Failure to give notice in accordance with s. 55(8) (notice to be given on s. 55 notice ceasing to have effect)
An offence under section 57(4)	Failure to give notice in accordance with s. 57 (notice of emergency works)
An offence under section 70(6) consisting of a failure to comply with subsection (3) or (4A)(b)	Failure to comply with requirements to give notice of completion of reinstatement
An offence created by regulations made under section 74(7B)	Failure to give a notice required by regulations under s. 74 (charge for occupation of the highway where works unreasonably delayed)
An offence created by regulations made under section 74A(11)	Failure to give a notice required by regulations under s. 74A (charge determined by reference to duration of works)
Offence (Permit Scheme Regulations 2007)	Brief description
An offence under section 19	Undertaking works without a permit
An offence under section 20	Breach of permit condition