

BROMSGROVE DISTRICT COUNCIL

CABINET

2nd February 2011

ENFORCEMENT & FIXED PENALTY NOTICES FOR ENVIRONMENTAL SERVICES

Relevant Portfolio Holder	Mike Webb
Relevant Head of Service	Guy Revans
Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 This report outlines the opportunities for improving environmental enforcement within Bromsgrove District. With the addition of an Environmental Enforcement Officer, Bromsgrove District Council will be in a position to continue improving Street Cleansing performance
- 1.2 Comparisons with neighbouring Councils and in particular with Redditch Borough Council identify the importance and effectiveness of environmental enforcement.
- 1.3 This report draws attention to the shift in environmental enforcement issues being dealt with at a local level within local authorities and moving away from the jurisdiction of the local police force through the amendments to legislation in the Clean Neighbourhoods and Environment Act (CNEA) 2005 and the Dogs (Fouling of Land) Act 1996.

2. RECOMMENDATIONS

- 2.1 **Members note and approve the utilisation of savings within the Environmental Services Department to fund an Environmental Enforcement Officers Post.**
- 2.2 **Members note the benefits of introducing a fully integrated enforcement strategy and task officers with writing and presenting the same to Cabinet and Full Council in due course for adoption.**
- 2.3 **Members note the need for the adoption of that the range of powers relating to environmental enforcement available through the CNEA 2005 and the Dogs (Fouling of Land) Act 1996 and the need for these to be detailed in the aforementioned Strategy.**
- 2.5 **Members note the need to draft and approve a scheme of delegation that will enable the issuing and enforcement of fixed penalty notices**

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and task officers with determining the extent of this scheme and presenting the same for approval in due course.

3. BACKGROUND

- 3.1 In order to reduce crime and the fear of crime within a neighbourhood, it is imperative that signs of even low level crimes such as environmental crimes, are removed or reduced, as litter and dirty streets, graffiti, dumped rubbish and cars all give a feeling of unease whilst at the same times encouraging similar criminal behaviour. Environmental crimes ultimately have an adverse impact on the quality of the local environment and residents' quality of life.
- 3.2 To mitigate against environmental crime, a sound environmental strategy is required which focuses on not only the traditional aspects of environmental management, such as litter picking and sweeping and enforcement but also the softer elements such as advice giving and education (including both perpetrators and observers). However, by ensuring cases which do lead to enforcement are well publicised, a clear message will be sent out to other potential perpetrators of crime environmental crime.
- 3.3 Under the Environmental Protection Act (EPA) 1990, the Council has a legal duty to keep streets and public spaces clean and clear of litter and refuse. A range of powers for local authorities came into effect under the Clean Neighbourhoods and Environment Act (CNEA) 2005. The CNEA has extended local authority powers to deal with issues that are considered environmental crime.
- 3.4 There is increasing expectation from residents regarding enforcement against environmental crime. This is particularly pertinent as other Worcestershire¹ authorities have been using Fixed Penalty Notices (FPNs) for some years and the expectation to provide a similar level of same service within this District is not unreasonable.
- 3.5 Historically Environmental Service has taken a line of no enforcement and instead relied on educating residents where the opportunity arose with positive messages through the press. Awareness campaigns on dog fouling and litter have been carried out using local school children to produce imagery for posters and leaflets and local business have been

¹ Redditch Borough Council, Wyre Forest District Council, Wychavon District Council, Worcester City Council and Malvern District Council

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sent leaflets on fly-tipping through the annual business rates mailer. Education and enforcement however need to sit hand in hand in order to give the advisory approach enough authority to become effective. Limited enforcement activities have been undertaken including warning letters and 2 attempted prosecutions for fly-tipping. The Council has other legislation it can use to deal with environmental problems. For example Planning legislation relating to unkempt land and fly-posting will be used by Regulatory Service where officers will decide which is the best legislation to use and where necessary co-ordinate enforcement action.

- 3.6 An environmental enforcement strategy needs to be transparent, making clear what is acceptable and unacceptable and the consequences of non compliance ensuring consistency and proportionality across all offences.
- 3.7 A graduated 5 stage approach is proposed as a fundamental principle when applying any enforcement activity ranging from stage 1 for less serious offences, through to stage 5 as detailed below;

Stage 1	Advice given
Stage 2	Verbal caution
Stage 3	Written caution
Stage 4	Fixed penalty notice
Stage 5	Court proceedings

The Environmental Enforcement Officer would be given complete discretion towards the severity of the penalty. It should also be noted it is not necessary to progress through the stages and offences can be taken to stage 5 on a first account if this is considered appropriate.

- 3.8 Redditch Borough Council allow flexibility in the approach as laid out in 3.7 whereby the perpetrator of the crime may be allowed to pay for a contractor to clean up the resulting litter or fly posting etc. This allows the Council to direct resources where they are required and the incident in question to be dealt with at no cost to the Council. The perpetrator will therefore bear the full cost of the clean up, whilst foregoing the prescribed Fixed Penalty Notice (FPN) which can be higher than the associated FPN itself. (See Appendix A for a breakdown of enforcement activities for RBC)
- 3.8 Essential to the success of any environmental enforcement strategy is an enforcement officer post that will be responsible for applying proportionate enforcement action for environmental crimes where necessary. An environmental enforcement officer position would compliment street

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cleansing activities and enable thorough investigations of environmental crime as well as acting as a deterrent by having a presence in targeted locations.

- 3.9 The environmental enforcement officer would follow up on environmental crimes and carry out full investigations including gathering evidence, taking witness statements, undertaking PACE² interviews, preparing case files and attending court proceedings. Outcomes from all investigations will fall into one of the 5 categories outlined about in 3.7.
- 3.10 In particular the officer would pursue enforcement action relating to flytipping, general littering dog fouling, abandoned cars and graffiti and fly-posting. It is envisaged the officer would target particular hotspot areas as well as undertaking reactive investigations from across the district. Hotspot areas for fly-tipping have been included in Appendix C for reference.
- 3.11 The creation of the new environmental enforcement officer post will be reliant upon the deletion of an existing street cleansing post which is concerned in the main with fly-tipping clearance; the work of which will be covered by other street cleansing staff. Both posts in question fall within a grade 5 banding (subject to job evaluation) and therefore the new post will be funded through existing resources.
- 3.12 It is understood that the community safety team also wishes to use the powers requested by this report, in undertaking duties against antisocial behaviour.
- 3.13 Many local authorities have chosen to use FPNs as an enforcement mechanism in combating environmental crimes. The use of FPNs is considered to be an effective deterrent against environmental crime providing they are used as part of a wider environmental approach. The CNEA extends the range of offence that FPNs may be issued for as well as allowing local authorities discretion to agree the level to be charged.
- 3.14 Redditch Borough Council has employed the use of FPNs and 2 environmental enforcement officers since 2005. The officers have used enforcement actions to support operational activities and deter and penalise accordingly for litter and fly-tip offences, dog fouling and offences relating to waste receptacles. (See Appendix A for a full

² Police and Criminal Evidence Act Interview as outlined in the Police and Criminal Evidence Act, 1984

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breakdown of category and number of actions from 2006 to date for RBC.)

- 3.15 In particular, fly-tipping is a crime which is of significant concern for Bromsgrove District. During 2006-2010 5,164 incidents were recorded and responded to; this is the highest level within the county. For all other authorities in Worcestershire there is an overall decreasing trend in the number of reported fly-tips, conversely for Bromsgrove the figures show an upward trend. (See Appendix C.)

4. KEY ISSUES

- 4.1 The employment of one full time Environmental Enforcement Officer to address environmental crime within the District is essential to ensure an improvement in litter, flytipping and waste related crimes.
- 4.2 Fixed Penalty Notices should be adopted as an enforcement option as this will provide the Council with a full arsenal of appropriate enforcement measures to tackle environmental crimes.
- 4.3 Since 2002 a review of the legislative framework for providing and maintaining a clean and safe local environment has been carried out to accompany the cross-Government report *Living Places - Cleaner, Safer, Greener*. The issues of giving people clean, safe and green places to live are defining issues not only for communities, but also for local government. There is an increasing commitment of Central Government to these issues and this is reflected in the Clean Neighbourhoods Act 2005 which offers a wide range of new powers relating to waste/cleansing enforcement including:
- *Offence of dropping litter*
 - *Litter clearing notices*
 - *Street litter control notices*
 - *Free distribution of printed matter*
 - *Nuisance and Abandoned Vehicles*
 - *Graffiti and fly-posting*
 - *Extension of graffiti removal regime to fly-posting*
 - *Deposit and disposal of waste*
 - *Use of fixed penalty receipts*
 - *Abandoned shopping trolleys*

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5. FINANCIAL IMPLICATIONS

- 5.1 In employing one full time environmental enforcement officer the standard associated costs of employment will need to be taken into account plus an annual salary commensurate with approximately Grade 5 (£27k) (subject to Job Evaluation).
- 5.2 There is a vacancy anticipated within the street cleansing team in 2011/12. It is proposed that the funding associated with the vacant post is allocated to meet the costs relating to the enforcement officer. Officers are satisfied that the work of the enforcement officer will mitigate the impact of reducing the operatives within the street cleansing service and make the role more pro-active within the community.
- 5.3 It is assumed that the level of income relating to the provision of the service be relatively small. In addition any receipts made from FPNs are currently confined to being directed towards spend by the Council within the area of Environmental Crime and cannot be utilised to offset the general costs of the Council.
- 5.4 No monies are required to be vired across into the Street Cleansing budget, however the establishment list will need to be brought into line with any change in staffing structure to reflect staffing cost requirements.
- 5.5 Officers will consider ways in which the environmental enforcement service can be delivered as a shared service with Redditch Borough Council.

6. LEGAL IMPLICATIONS

- 6.1 The Environmental Protection Act 1990 is a key piece of legislation with regards to waste and the Council's responsibilities on dealing with it.
- 6.2 The Clean Neighbourhoods and Environment Act, 2005 is fundamental to allowing authorised officers of the Council to serve Fixed Penalty Notices on perpetrators of environmental crimes.
- 6.3 The Dogs (Fouling of Land) Act 1996 underlines the offence of a person in charge of a dog failing to remove the faeces from footpaths, footways and carriageways.

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6.4 The Refuse Disposal (Amenity) Act, 1978 is the legislation that governs the correct disposal and abandonment of vehicles.

7. POLICY IMPLICATIONS

7.1 If the recommendations are upheld Environmental Services will develop an enforcement strategy including operational procedures for undertaking enforcement activities. This strategy will require Council approval prior to implementation.

8. COUNCIL OBJECTIVES

- 8.1 One Community
- 8.2 Value for Money
- 8.3 Town Centre

9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS

9.1 The main risks associated with the details included in this report are:

- Increasing Environmental Crime
- Unsafe communities (real and perceived)
- Negative Impact on street cleanliness and associate National Indicators³

9.2 Currently the risks identified in are not addressed by any risk register and will be added to the Environmental Services risk register in due course.

10. CUSTOMER IMPLICATIONS

10.1 Residents of the District will benefit from the Council undertaking environmental enforcement as the environmental quality of areas will subsequently improve.

10.2 Publicity will be undertaken to raise awareness of environmental crimes through the activities of the environmental enforcement officer. This will be particularly pertinent at the launch of the new enforcement activities

³ NI195 as a measure of litter, detritus, graffiti and fly posting is currently under review.

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where full coverage will be given to the environmental crimes covered and the new range of enforcements available to the Council.

- 10.3 The press will be fully utilised to ensure enforcement actions receive a high profile. This itself acts as effective promotion of the activities being undertaken and as a deterrent to potential perpetrators.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

- 11.1 The recommendations should not have an impact on equalities; however, all the procedures will take into account an assessment of issues around equality.

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

- 12.1.1 Through using enforcement to tackle environmental crimes it is envisaged the amount of time spent reacting to situations such as fly-tipping will decrease. This will enable the street cleansing team to concentrate efforts on the general day to day tasks of cleansing and away from these environmental crime elements; as such costs for reactive street cleansing tasks may reduce over a period of time.

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

- 13.1 The recommendations should not have an impact on climate change, carbon implications or biodiversity directly; however, any procedures will take into account any issues around climate change.

14. HUMAN RESOURCES IMPLICATIONS

- 14.1 The creation of the new Environmental Enforcement Officer Post will be overseen by Human Resources and will be governed by relevant policies and procedures (see appendix D for an example of job description and person specification as used by RBC).

15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS

- 15.1.1 In undertaking enforcement activities for environmental crime, Environmental Services will be able to improve performance on actions

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against fly-tipping (formerly monitored by NI196) and also to show continuing improvement on monitoring street cleaning activities (formerly NI195).

15.1.2 With the introduction of enforcement activities, over time there should be a marked reduction in environmental crimes as outlined in 4.3.

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998

16.1 There are significant innate links with community safety and environmental crime. In tackling environmental crime issues there should be a positive influence on community safety matters in the District.

17. HEALTH INEQUALITIES IMPLICATIONS

17.1 None.

18. LESSONS LEARNT

18.1 In using enforcement actions, other Local Authorities have brought about a reduction in the level of environmental crimes experienced. It is envisaged that on introducing enforcement within Environmental Services a similar level of reduction will be attained. .

19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

19.1 None

20. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	Yes
Executive Director (S151 Officer)	Yes
Executive Director – Leisure, Cultural, Environmental and Community Services	Yes

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Executive Director – Planning & Regeneration, Regulatory and Housing Services	Yes
Director of Policy, Performance and Partnerships	Yes
Head of Service	Yes
Head of Resources	Yes
Head of Legal, Equalities & Democratic Services	Yes
Corporate Procurement Team	No

21. WARDS AFFECTED

All Wards

22. APPENDICES

Appendix A Details of RBC offences FPN's issued 2006 to Sep 2010

Appendix B Overview of FPN's

Appendix C BDC Total Flytips by location 2010 to date

Appendix D Environmental Enforcement Officer Job Description and Person Specification

Appendix E Powers for Adoption

23. BACKGROUND PAPERS

None

24. KEY

**Clean Neighbourhoods and Environment Act
Environmental Protection Act
Fixed Penalty Notices**

**CNEA
EPA
FPN's**

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Redditch Borough Council

RBC

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