

CABINET REPORT

1st June 2011

ENFORCEMENT ACTION & 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 continuing to improve 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.
- 1.4 This report seeks the approval of delegated authorities to nominated officers in order to carry out the relevant regulatory powers to tackle environmental crimes.

2. RECOMMENDATIONS

- 2.1 **That Cabinet formally resolve the in principle decision made on 2nd February 2011 to vire savings within Environment Services to fund the post of Environmental Enforcement Officer.**
- 2.2 **That Cabinet recommend to Full Council:-**
 - (i) **that members approve and adopt the Environmental Strategy at Appendix A in accordance with the powers for adoption as set out at Appendix A (i) together with the statutory powers to enable Fixed Penalty Notices to be issued as set out in Appendix B;**
 - (ii) **that members approve and adopt the delegations to officers set out in Appendix C and grant delegated authority to Head of Legal,**

Equalities and Democratic Services to make any consequential amendments to the Constitution;

- (iii) **that members approve and adopt the recommended levels for fixed penalty notices as set out in Appendix B, on the basis that these amounts will form part of the Councils Fees and Charges and will be subject to future adjustment by Cabinet as part of the annual review of fees and charges.**

3. BACKGROUND

- 3.1 In order to reduce crime and the fear of crime within a neighbourhood, signs of even low level crimes such as environmental crimes, need to be removed or reduced, as litter and dirty streets, graffiti, dumped rubbish and cars all give a feeling of unease whilst at the same time encouraging similar criminal behaviour. Environmental crimes have an adverse impact on the local environment and quality of life.
- 3.2 To mitigate against environmental crime, a comprehensive Environmental Enforcement 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 environmental crime.
- 3.3 Under the Environmental Protection Act (EPA) 1990, the Council has a 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.

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

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- 3.5 Historically the Council 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 and local business have been sent leaflets on fly-tipping through the annual business rates mailer. However education and enforcement need to sit hand in hand in order to give the advisory approach enough authority to become effective.
- 3.6 Limited enforcement activities have been undertaken including warning letters and 2 attempted prosecutions for fly-tipping. Other legislation can be used to deal with environmental problems, for example planning legislation relating to unkempt land and fly-posting will be used by Regulatory Services where officers will decide which is the best legislation to use and where necessary co-ordinate enforcement action.
- 3.7 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.
- 3.8 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.
- 3.9 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.
- 3.10 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 warning
Stage 3	Written warning
Stage 4	Fixed penalty notice
Stage 5	Court proceedings

- 3.11 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.
- 3.12 The flexible approach as laid out in 3.10 means that 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 reduces Council costs. The perpetrator will therefore bear the full cost of the clean up, whilst foregoing the prescribed FPN which can be higher than the associated FPN itself.
- 3.13 The graduated approach to enforcement reduces the likelihood of appeals being made. However an appeal can be made by using the Council's corporate complaints system. The Service manager will review and respond to each case with the case being referred to the Head of Service or Director where appropriate. Where a fixed penalty notice remains unpaid, cases will be referred to Legal Services in order that prosecution can be considered.

4. KEY ISSUES

- 4.1 Essential to the success of an 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 cleansing activities and enable thorough investigations of environmental crime as well as acting as a deterrent by having a presence in targeted locations.
- 4.2 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 in 3.10.
- 4.3 In particular the officer would pursue enforcement action relating to:
- general littering on both council and private open space
 - fly-tipping

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

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- dog fouling
 - abandoned cars
 - graffiti
 - fly-posting
 - waste offences such as bins left on streets and non compliance with the statutory notice
- 4.4 The officer would target particular hotspot areas as well as undertaking reactive investigations from across the district.
- 4.5.1 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, and other changes to the street cleansing service that will release the required resources.
- 4.6 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 as outlined in 3.10. 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. Fixed Penalty Notices should be adopted as an enforcement option as part of the 5 stage approach (see 3.10) as this will provide the Council with a full arsenal of appropriate enforcement measures to tackle environmental crimes.
- 4.7 The Community Safety Team also wishes to use the powers requested by this report, to compliment their existing delegated powers from West Mercia Police to combat anti-social behaviour (ASB). Incidents of anti-social behaviour and environmental crime are often overlapping; for example there are clear links between incidents of fly tipping and the risk of deliberate fires, graffiti and criminal damage, alcohol misuse in the street and litter. The CNEA powers within this report will allow the Community Safety Team to take an integrated approach to tackle ASB and environmental crime.
- 4.8 The Council currently employs two Neighbourhood Wardens and a third is funded through the Community Safety Partnership and joint working with this team will greatly enhance capacity to deal with environmental crime. Neighbourhood Wardens with additional CNEA powers will also have a positive impact in dealing with anti-social behaviour, as one example, an FPN may be issued to those who litter the streets and open spaces with

alcohol containers as well as having their alcohol confiscated. Neighbourhood Wardens already undertake enforcement activities as well as deliver interventions to prevent crime, raise awareness within communities and undertake community engagement. Wardens are well equipped, skilled and experienced in tackling ASB, tackling environmental crime would be a natural evolution in the service they provide to communities.

- 4.8 The environmental enforcement service will be introduced as a shared service with Redditch Borough Council.

5. FINANCIAL IMPLICATIONS

- 5.1 The cost of employing one full time environmental enforcement officer , including provision of a vehicle, publicity materials and on costs will be in the region of £40K.
- 5.2 Budgetary provision does not currently exist for this purpose, however funding for the new post will be met from existing staffing budgets, due to an anticipated vacancy within the street cleansing team in the new financial year (2011/12).
- 5.3 There is a potential amount of income generation through the issuing of FPNs, however, the amount is unknown and is unlikely to be significant. Any receipts made from FPNs are currently confined to being directed towards spend by the Council within the area of Environmental Crime.
- 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.

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.

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

7. POLICY IMPLICATIONS

- 7.1 A Joint Environmental Enforcement Strategy covering both Bromsgrove and Redditch is attached at Appendix A and 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 will benefit from the Council undertaking environmental enforcement as the environmental quality of areas will 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 where full coverage will be given to the environmental crimes covered and the new range of enforcements available to the Council.

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

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- 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.

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 against fly-tipping (formerly monitored by NI196) and also to show continuing improvement on the quality of street cleaning (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.

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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
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

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Appendix A Joint Environmental Enforcement Strategy for Bromsgrove and Redditch

Appendix A (i) Powers For Adoption

Appendix B Overview of Fixed Penalty Notices

Appendix C Scheme of delegations plus list of legislation

23. BACKGROUND PAPERS

None

24. KEY

**Clean Neighbourhoods and Environment Act
Environmental Protection Act
Fixed Penalty Notices
Redditch Borough Council
ASB
Behaviour**

**CNEA
EPA
FPN's
RBC
Anti**

Social

AUTHORS OF REPORT

Name: Sue Horrobin
E Mail: sue.horrobin@redditchbc.gov.uk
Tel: (01527) 64252 ext 3706

Name: Anna Wardell - Hill
E Mail: a.wardell-hill@bromsgrove.gov.uk
Tel: (01527) 64252 ext 3700 or 881715