

Committee: ENVIRONMENT COMMITTEE

Agenda Item

Date: January 23, 2007

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Title: **ENFORCEMENT WITHIN STREET SERVICES
FOR ENVIRONMENTAL CRIME**

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Item for decision

Summary

1. This report advises members of the need to establish a policy and strategy to deal with Enforcement of Environmental Crime.

Background

2. The Clean Neighbourhoods and Environment Act 2005 offers new opportunities to deal with environmental crime. The establishment of an enforcement policy will aid officers to deal with offenders and make use of Fixed Penalty Notices (FPNs).

Recommendations

3. That the enforcement policy that follows this report is approved.
4. That officers are required to bring forward a Street Services Strategy for consideration.
5. That a programme of public awareness of environmental crime is progressed.
6. That members consider nominating a Member of Environment Committee to attend the training day.

Background Papers

7. Clean Neighbourhoods and Environment Act 2005 (summary attached at appendix 2).

Impact

8.

Communication/Consultation	The policy will be made available for public viewing on the website along with a table of offences and penalties. The policy will be made available to Parish Councils who
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	wish to use the powers available to them.
Community Safety	Dealing with environmental crime promotes community safety.
Equalities	Enforcement must be applied without discrimination of any kind. They must not be affected or influenced by pressure from any source.
Finance	Within existing budgets
Human Rights	Enforcement will be undertaken in accordance with the enforcement concordat.
Legal implications	Enforcement will be undertaken in partnership with our legal department.
Ward-specific impacts	All
Workforce/Workplace	Enforcement will be incorporated into nominated officers roles.

Situation

9. The Clean Neighbourhoods and Environment Act offers powers to deal with environmental crime. The act features many opportunities to use fixed penalties for offences and, when used effectively, acts as a deterrent to those who spoil our environment.
10. It is appropriate that a programme of education is undertaken to inform the community of the offences, the last two editions of Uttlesford Life have contained features on Litter & Fly tipping and Dog Controls. This series will continue and expand to website and posters in the community.
11. Officers from the Street Services Division will be developing their role to work with The Clean Neighbourhoods and Environment Act and the legislation it amends, predominantly the Environmental Protection Act 1990 in relation to this service.
12. The Clean Neighbourhoods and Environment Act training is to be provided for staff involved in Street Services on February 20 at Saffron Walden offices.

Options

13. Adoption of the enforcement policy will enable us to move forward and enforce where appropriate in accordance with the policy.

- 14. An alternative is to pursue a Zero Tolerance policy. This has been successfully adopted by councils to successfully tackle environmental crime.

Targets

- 15. Most people in our community behave responsibly; this legislation and the enforcement policy allow action to be taken against those who do not show respect for our community. Publicising the actions which can be deemed as an offence will act as a deterrent.

Pay-Offs/Penalties

- 16. Enforcement using the opportunities offered by CNEA will aid us to tackle some offences that until now have been difficult to deal with. Dealing with smaller but prolific items such as chewing gum and cigarette butts is now a real option through the fixed penalty; this will assist us to reduce the occurrence of this type of litter.
- 17. Many people express their frustration about litter in the community, particularly that thrown from cars on our main routes through the district. Subject to satisfactory evidence, our officers will now be able to deal with such occurrences.

Risk Analysis

- 18. The following have been assessed as the potential risks associated with this issue.

Risk	Likelihood	Impact	Mitigating actions
That the community may view enforcement as the council setting itself against them.	Low	Med	This move will deal with the minority of people who commit their offences at the cost of the local tax payer. More responsible behaviour will make our environment more pleasing and cost less to keep clean.
That expectations in the community will be more than our officers can achieve.	Low	Low	The enforcement policy recognises that there are priorities to deal with and some offences will not be dealt with.

Uttlesford District Council

Enforcement Policy for Environmental Crime within Street Services 2007

Our Street Services Division

Key tasks for this service are to collect waste from residential households, keep the streets clean and free from litter and fly tipped waste. There is also a role for education regarding responsible behaviour with regard to the areas covered by this service.

Our residents take interest and pride in the presentation of the district; they care about our environment. It is occasionally necessary to take action to deal with the few people who do not have the same respect for our environment. Clearing up after those that do not behave responsibly in our district incurs cost to the local tax payer as well as being unsightly. This can detract from the quality of life and contribute to degeneration.

Citizens, organisations and agencies who report environmental crime expect us to investigate and take action to deal with offenders. The Police Authority and the Environment Agency will pass us cases to take forward.

It is necessary to have a policy for the enforcement of the legislation available to us so that our Enforcement Officers may take action against those who break environmental laws.

The policy describes how our staff will take enforcement action.

Key Legislative Powers Relating to the Street Services

- Environmental Protection Act 1990 – Litter and Waste
- Anti-Social Behaviour Act 2003
- Highways Act 1980
- Clean Neighbourhoods Environment Act 2005

Breaking the law – some examples

Here are some examples where people are breaking the law. Our staff can and will take enforcement action against the people who do these things.

- Dropping litter or chewing gum and not clearing it up
- Dumping a bag of rubbish on the pavement
- Letting a dog foul and not clear it up
- Having two or more vehicles for sale on a road (including private roads)
- Repairing a vehicle on a road (as a business)
- Abandoning a vehicle
- Unauthorised leaflet distribution
- Graffiti offences
- Residents/businesses who put out their refuse too early for collection

The Council and Police also have new powers to immediately seize vehicles caught fly-tipping and those that illegally dump rubbish will be risking fines of up to £50,000 and up to 6 months imprisonment.

Enforcement Options

Enforcement options available to the Council include prosecution, enforcement cautions, enforcement notices and fixed penalty notices. Although decisions will clearly vary with circumstances, a criminal prosecution will only be considered when there is no appropriate alternative.

When deciding upon the best course of action, regard will be had to the specific guidance on enforcement action contained in various Codes of Practice guidelines and Guidance Documents issued by the relevant co-ordinating bodies and the Crown Prosecution Service.

Where a criminal offence has been committed, in addition to any other enforcement action, the Head of Street Services Division (in consultation with the Assistant Chief Executive) will consider instituting a Prosecution or administering a Formal Caution.

Decisions about enforcement action

We cannot take action every time we find evidence of an offence. We have to use our judgement to decide when enforcement action is possible and necessary.

A number of factors will determine whether or not a particular prosecution is in the public interest and a balance in favour or against will be made between these factors, any of which might be present.

For prosecution

- Is it causing danger?
- Is the offence spoiling the local environment?
- Has the offender done it before?
- Is it likely that the offence will happen again?
- Would enforcement warn other people not to break the law?
- Is the court likely to impose a sentence rather than an absolute discharge?
- Was the offence committed deliberately or maliciously?

Against prosecution

- Whether a fixed penalty is more appropriate
- Willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed.
- Harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- Is the offender in a fit state to stand trial?

We consider other matters as well.

An offence may seem minor – like dropping one piece of litter or gum. But if the offence is often repeated by many people, the overall effect can be very damaging.

Sometimes there has to be give and take. For example, some builders might temporarily place building rubble or materials on the highway, but if the builders are considerate and quick we would not normally take fly tipping enforcement action against them.

What kind of enforcement action is taken?

We will take firm enforcement action to protect public safety and to help people enjoy the local environment. However, sometimes we decide that enforcement action would not be right. We can get the same result by giving a warning or advice.

We will use our judgement to decide what kind of enforcement action best fits the crime. Here are some examples of enforcement action.

- Seizing goods or vehicles, for example from an illegal fly tipper
- Prosecution in court
- A fixed-penalty fine
- A formal caution
- A written warning
- An informal warning or strong advice

Fixed-penalty fines are an option available to us. We would offer first-time offenders the option of paying a fine instead of being prosecuted. Formal cautions are another alternative to prosecution where a Fixed Penalty is not available or considered unsuitable.

We will not offer the option of a fixed-penalty notice or a caution when the offence justifies a prosecution. The evidence must be robust enough to put before a court if necessary. If an offender refuses the options of a fixed penalty fine or caution, the case will then go to court.

Enforcement Concordat

This policy will adhere to the principles of enforcement as described within the 'Enforcement Concordat'.

Openness and helpfulness

We will publicise the enforcement policy so people know what standards are expected. We will always explain what we are doing and why. We will explain the likely timetable for enforcement action and we will make sure people know about their rights of appeal. We will make sure people know how to complain and we will make an extra effort to help people who cannot read or speak English.

Targeting

We will deal with the worst first. We may have to ignore a petty offence if we need to deal urgently with a serious one. We may also concentrate all our efforts in one 'hotspot', rather than spread out what we do thinly across the whole district.

Consistency

The facts of each case will be unique. Some offences are much worse than others. Our enforcement priorities will change from area to area. But we will train staff to apply the law and this policy in a consistent way as far as possible.

Here are some examples on how we will use this Enforcement Policy:

Smoking related litter from premises

A complaint that cigarette butts regularly occur on the pavement outside a business premises. An enforcement officer will make contact with the Manager and warn him that it is an offence and he should make provision for his staff and warn them that they are committing an offence. A poster and covering letter will be issued to the premises. Surveillance will be carried out and if an offence is witnessed we will tell them that they could be prosecuted but because it is a first offence we give him a chance to pay a fixed-penalty fine instead.

Litter dropped in a public place

An authorised officer will ask an offender to pick up the litter and dispose of it responsibly. If there is compliance, no offence has been committed, but if the request is ignored or refused we will tell them that they could be prosecuted but if it is a first offence we give him a chance to pay a fixed-penalty fine instead.

Commercial shop not having provision to dispose of their waste

The owner of a newsagent's shop in the district. He has not provided a means to have his waste disposed of legally but he keeps putting his rubbish out on the pavement. We tell him that unless he engages a licensed waste company to deal with this commercial waste he will be prosecuted. He states that he will get a waste contract in place and dispose of the waste correctly. We issue him a chance to avoid prosecution by paying a fixed-penalty notice. We will regularly visit to ensure that he has a valid waste disposal contract.

Departure from the Enforcement Policy

All authorised officers will abide by this policy when making enforcement decisions. Any departure from the policy will only be accepted in exceptional circumstances, capable of justification and only after full consideration and authorisation by the Director of Operations or a designated alternative officer in consultation with the Assistant Chief Executive.

Reporting incidents

Should you wish to report an incident that relates to an environmental crime such as littering, graffiti, dog fouling, abandoned vehicles or fly tipping please contact us on 01799 510510.

You can get a free copy of this policy from:

The Director of Operations
Council Offices
London Road
Saffron Walden
Essex CB10 4ER

Phone: 01799 510580
Email: dburridge@uttlesford.gov.uk

This policy is also available on our internet site at www.uttlesford.gov.uk

Clean Neighbourhoods and Environment Act 2005

The Government has granted new powers to local Authorities to help them deal with issues such as litter, graffiti, fly tipping and nuisance vehicles, it has also extended some of these powers to other bodies like Town and Parish Councils.

The Act:

1. **Crime & Disorder**

The Crime & Disorder Act 1998 is amended to ensure that Crime and Disorder Reduction Partnerships include when developing strategies, It also gives Local Authorities new powers to gate nuisance alleys.

- ensures that local Crime and Disorder Reduction Partnerships will take anti-social behaviour affecting the local environment into account in developing crime and disorder reduction strategies.
- gives local authorities new, more effective powers to deal with alleyways affected by anti-social behaviour.

Fixed Penalty Notices (Fines)

- makes greater use of fixed penalties as an alternative to prosecution, in most cases giving local authorities the flexibility to set their own rates.
- gives parish councils the power to issue fixed penalties for litter, graffiti, fly posting and dog offences.

2. **Vehicles**

Local authorities are given significant new powers to deal quickly with abandoned and nuisance vehicles, we will be able to immediately remove any abandoned vehicle from a road. We will no longer have to wait until a valid licence expires before disposing of a vehicle and will also be able to immediately dispose of any vehicle not displaying a licence and registration mark. There also two new offences to address the problem of business or individuals using the road as a showroom or workshop for the

- gives local authorities the power to remove abandoned cars from the streets immediately.
- creates two new offences to help local authorities deal with nuisance parking: offering for sale two or more vehicles, or repairing a vehicle, on the road as part of a business.

3. Litter and Refuse

The offence of dropping litter will be extended to any land open to the air, regardless of ownership, whilst clarifying that chewing gum and smoking related materials are litter. There is a new power to issue litter-clearing notices; this replaces the previous Litter Control Powers. These can be issued in relation to most land for which there is no duty to clear litter and refuse, including most private land. Existing provision on street litter control notices will now specifically include mobile vendors and all principal litter authorities will have the power to restrict distribution of leaflets (flyering) in designated areas.

- makes it an offence to drop litter anywhere, including private land and rivers, ponds and lakes.
- gives local authorities new powers (litter clearing notices) to require businesses and individuals to clear litter from their land.
- strengthens existing powers for local authorities to require local businesses to help clear up litter they generate (street litter control notices).
- enables local authorities to restrict the distribution of flyers, hand-outs and pamphlets that can end up as litter.
- confirms that cigarette butts and discarded chewing gum are litter.

4. Graffiti and other defacement

The Act includes stronger powers to address graffiti and fly-posting by extending graffiti removal notices to include fly-posting. The fly-posting offence is strengthened to make it more difficult for the beneficiaries of fly-posting (venue, record company, artist, etc) to evade prosecution. Local authorities will also have the powers to recover the cost of removing fly-posters and enforce the ban on the sale of spray paints to under 18's. Parish and community powers will empowered to issue Fixed Penalty Notices (FPN's) for graffiti and fly-posting.

- extends graffiti removal notices (as introduced by the Anti-social Behaviour Act 2003) to include fly-posting.
- improves local authorities powers to tackle the sale of spray paints to children.
- strengthens the legislation to make it harder for beneficiaries of fly posting to evade prosecution.
- enables local authorities to recover the costs of removing illegal posters.

5. Waste

This part of the Act provides stronger powers, penalties and deterrents to enforce against individuals, businesses and criminal gangs caught fly-tipping or disposing of waste illegally or irresponsibly. Local authority and the Environment Agency Officers will be able to issue FPN's for a range of waste offences and will have new powers to immediately search, seize and impound a vehicle involved in fly-tipping. New guidance to Magistrates will increase the penalties and costs awarded for fly-tipping. Authorities will be able to issue FPN's to householders and businesses not complying with waste collection regulations. Landowners as well as occupiers will have responsibility for clearing fly-tipped waste from their land.

- amends provisions for dealing with fly-tipping by:
 - removing the defence of acting under employer's instructions
 - increasing the penalties
 - enabling local authorities and the Environment Agency to recover their investigation and clear-up costs
 - extending provisions on clear up to the landowner in the absence of the occupier.
- gives local authorities and the Environment Agency the power to issue fixed penalty notices (and, in the case of local authorities, to keep the receipts from such penalties):
 - to businesses that fail to produce waste transfer notes
 - to waste carriers that fail to produce their registration details or evidence they do not need to be registered
 - for waste left out on the streets (local authority only)
- introduces a more effective system for stop, search and seizure of vehicles used in illegal waste disposal; and enabling courts to require forfeiture of such vehicles.
- introduces a new provision covering the waste duty of care and the registration of waste carriers.
- introduces a new requirement for site waste management plans for construction and demolition projects.
- repeals the divestment provisions for waste disposal functions to provide greater flexibility for local authorities to deliver waste management services in the most sustainable way.
- reforms the recycling credits scheme to provide increased local flexibility to encourage more sustainable waste management.

6. Dogs

The Act will transfer registration of stray dogs from the police to local authorities, subject to an agreed transfer of resources. The Act will also scrap the existing dog byelaw system and replace it with a new Dog Control Order, giving local authorities and parish councils the power to designate areas where dog fouling, letting a dog off the lead, excluding dogs from designated land and walking more than a set number of dogs will all be offences.

- replaces dog byelaws with a new, simplified system which will enable local authorities and parish councils to deal with fouling by dogs, ban dogs from designated areas, require dogs to be kept on a lead and restrict the number of dogs that can be walked by one person.
- gives local authorities, rather than police, sole responsibility for stray dogs.

7. Noise

The Act gives local authorities a new power to designate an area as an alarm notification area, with a requirement to register key-holders with the local authority. Officers will also have new powers to enter a premises and to silence an alarm. The Act also gives local authorities the power to issue FPN's for noise nuisance at night to operators of licensed premises. A warning notice would be issued in the first instance, with a FPN (set at £500 for nuisance from licensed premises) available for further offences.

- reduces nuisance caused by noise by giving local authorities to:
 - deal with burglar alarms
 - impose fixed penalty fines on licensed premises that ignore warnings to reduce excessive noise levels
- gives local authorities greater flexibility in dealing with noise nuisance.
Architecture and the Built Environment
- establishes the Commission for Architecture and the Built Environment (CABE) on a statutory basis.

Miscellaneous

- enables local authorities to recover the costs of dealing with abandoned shopping trolleys from their owners
- extends the list of statutory nuisances to include light pollution and nuisance for insects