

EAST HERTS COUNCIL

ENVIRONMENT SCRUTINY COMMITTEE – 8 SEPTEMBER 2015

EXECUTIVE – 6 OCTOBER 2015

REPORT BY EXECUTIVE MEMBER FOR COMMUNITY SAFETY AND ENVIRONMENT

ANTI SOCIAL BEHAVIOUR, CRIME & POLICING ACT 2014 - ENVIRONMENTAL CRIME ENFORCEMENT IMPLICATIONS

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report provides details of the implications of the changes resulting from the Anti-social Behaviour, Crime and Policing Act 2014 on the Council's Environmental Crime Policy.
- To also seek approval to consult on the consolidation of our existing dog control powers within a Public Space Protection Order.

RECOMMENDATIONS FOR ENVIRONMENT SCRUTINY:

That the Executive be advised that this Committee recommend that:

(A)	the Draft Environmental Crime Enforcement Policy, as set out in Essential Reference Paper 'B' be referred to the Executive for approval, subject to public consultation; and
(B)	a consultation process to be undertaken on the replacement of the three existing dog control orders with one consolidated Public Space Protection Order;
(C)	a consultation process to be undertaken to consult on three potential new offences to be included in the order, namely, making it an offence to fail to pick up after your dog, making it an offence to fail to have the means to pick up after a dog, and to fail to put a dog on a lead when directed to so by one of our officers.

1.0 Background

- 1.1 The Council conducts all enforcement in accordance with its own corporate 'Enforcement Policy for East Herts District Council' which is based upon national best practice.
- 1.2 Enforcement is conducted by a number of Council Services, but primarily by Regulatory Services (Planning and Building Management, Community Safety and Health) and Customer and Community Services (by Environmental Services and Parking).
- 1.3 In 2006 the Council agreed an Environmental Crime Policy following the introduction of the Clean Neighbourhoods and Environment Act 2005. The policy covers the enforcement of activities that affect the streetscene and visual amenity of the environment. This mainly impacts upon the work of Environmental Services which deals with street cleansing and waste collection operations, dog control and enforcement, Development Control, which undertakes planning enforcement matters including flyposting, and Environmental Health, which deals with health, pollution and statutory nuisances such as noise, light and insects.
- 1.4 The Anti-social Behaviour (ASB), Crime and Policing Act 2014 was introduced to improve the way that the police, councils and social landlords deal with anti-social behaviour. Final statutory guidance was published in July 2014 and while some changes commenced from March 2014, others which affect East Herts have only been effective since 20th October 2014.
- 1.5 Many of the changes introduced by the new legislation affect the police and other agencies and a report detailing the powers available was agreed by the Executive on 2nd June 2015. This report focuses only on the parts of the legislation that will impact on the Council's Environmental Crime Enforcement Policy.

2.0 Report

- 2.1 The current Environmental Crime Policy was agreed in 2006 and covered the following items:
- Crime and Disorder Reduction Partnerships (now called Community Safety Partnerships)
 - Nuisance Parking Offences
 - Abandoned Vehicles

- Litter
- Distribution of Free Literature
- Graffiti and other defacement
- Deposit and Disposal of Waste
- Dog Control Orders
- Noise
- Nuisance from Light and Insects
- Fixed Penalty Notices
- Abandoned Shopping Trolleys

2.2 Since the policy was produced there have been a number of minor amendments following clarification of guidance. The Government has recently made several changes to existing legislation as part of an overhaul of offences relating to anti-social behaviour (ASB) and these include some activities linked to environmental crime.

2.3 This legislation amends a range of existing legislation including:

- Environmental Protection Act (1990)
- Clean Neighbourhoods and Environment Act (2005)
- Anti-social Behaviour Act (2003)

2.4 The new legislation will affect the following:

- Littering from cars
- Clearing litter and waste on land
- Graffiti and other defacement
- Controlling dogs

The implications on East Herts policy are explained below in more detail.

2.5 Littering from Cars

The ASB, Crime & Policing Act 2014 gives greater powers to Councils to combat the problem of littering from cars. Under the new legislation, it is proposed that s88 of EPA 1990 will be amended to allow a civil penalty to be issued to the registered keeper of a vehicle where there is reason to believe that a littering offence in England has been committed in respect of the vehicle.

2.6 It is hoped that this will make it easier for Councils to take action on the increasing problem of litter on the highway verges. A date for commencement is however yet to be confirmed, but officers

would be keen to use this when the powers are available.

2.7 Clearing litter and waste on land

Under the section 92 to 94A of CNEA (2005) local authorities could issue Litter Abatement Notices, Litter Clearing Notices and Street Litter Control Notices to landowners and businesses who allowed land to become littered.

2.8 The object of these notices, were to deal with accumulations of litter that reduce the quality of the local environment within a neighbourhood. These Notices have now been repealed and replaced with Community Protection Notices as detailed in section 2.11.

2.9 Graffiti and other defacement

The Anti-social Behaviour Act (2003) as amended by the CNEA (2005), enabled local authorities to issue notices requiring the removal of graffiti and fly posting to 'statutory bodies' and others responsible for street furniture and other "relevant surfaces" where these are defaced by graffiti or fly posting in a manner that is detrimental to the amenity of the area or is offensive. If a graffiti removal notice is not complied with, the local authority can remove the graffiti itself and reclaim the cost of doing so.

2.10 These Notices have now been repealed and replaced with Community Protection Notices as detailed in section 2.11.

2.11 Community Protection Notices

The ASB, Crime and Policing Act 2014 introduced Community Protection Notices as a means to tackle a wide range of ongoing problems or nuisances which negatively affect a community's quality of life.

2.12 CPNs have been introduced to simplify legislation and have fewer restrictions than the legislation that they replace. They are useful in dealing with ongoing problems especially where there are more than one issue that need resolving.

2.13 A CPN can be issued where we are satisfied that the behaviour -

- is having a detrimental effect on the quality of life of those in the locality;
- is persistent and continuing in nature;
- is unreasonable;

2.14 A fixed penalty notice can be issued of up to £100 if appropriate.

Breach is a criminal offence with a £2,500 fine for individuals or £20,000 for businesses. CPNs can allow the council to carry out works in default on behalf of a perpetrator.

- 2.15 CPNs deal with a wider range of behaviours than the legislation that they replace. For example:
- accumulation of litter on private land or land belonging to a statutory body;
 - a large amount of graffiti on private premises;
 - litter left on land as a result of the operations of a business;
 - irresponsible dog ownership such as dogs straying.
- 2.16 CPNs do not discharge the council from its duty to issue Abatement Notices where the behaviours constitute a statutory nuisance under EPA 1990, however the Council will consider using all relevant powers in tandem before reaching a decision.
- 2.17 The Council would only use these for areas where we have existing responsibility and will not be taking on issues which could be classed as neighbour disputes.
- 2.18 It is anticipated that the number of reported dog related problems may increase due to public awareness of the new powers, particularly to the Police. However it is not possible to estimate by how much.
- 2.19 Before considering using a CPN process, the case will be discussed with the Community Safety team and logged on SafetyNet, which is a web based case management system that Police, Housing Associations and East Herts have access to.
- 2.20 Controlling Dogs
The Dog (Fouling of Land) Act 1996 allowed local authorities to designate land under its control where it is an offence to permit dog fouling. Under this legislation all footpaths, amenity areas on housing estates, and public open spaces in East Herts have been declared designated areas.
- 2.21 If a dog defecates on designated land it is an offence if the person in charge of the dog fails to pick up the faeces. Any person found guilty of this offence could face a fine of up to £1,000 or could be given a FPN of £50.
- 2.22 The Clean Neighbourhoods & Environment Act 2005 gave Councils the option to replace this and the previous system of

byelaws with Dog Control Orders.

2.23 The Councils three existing dog control orders (DCOs) make it an offence to:

- allow your dog off a lead at Hertford Castle Grounds, Bishops Stortford Castle Gardens, and all Council owned allotments;
- to allow your dog in designated East Herts children's play areas, games areas, bowling greens and marked playing pitches when there is a match in play;
- for one person to take more than 4 dogs on to any East Herts land at any one time.

2.24 It is generally considered that the three DCOs have been effective in promoting responsible dog ownership. However, officers continue to struggle to catch the minority of dog owners who persist in allowing their dogs to foul and to catch and deal with dog owners who fail to properly control their dogs.

2.25 At the time, it was decided not to adopt the order for failing to remove dog faeces as the current legislation under the Dogs (Fouling of Land) Act 1996 worked satisfactory. However officers now find this legislation confusing for the public and authorised officers to enforce. Additionally it only covers certain land as it excludes land alongside highways over 40mph, moorland, heathland, woodland and areas where animals graze. The fixed penalty of £50 is felt to be too low when the penalty for littering is £80.

2.26 The ASB, Crime & Policing Act 2014 provides local authorities with the power to create a Public Space Protection Order (PSPO) where they are satisfied that activities carried out in a public place are having a detrimental effect on the quality of life of those in the locality and the effect of those activities are likely to be persistent or continuing in nature and justifies the restrictions imposed.

2.27 It is proposed to consolidate the existing DCOs into a single PSPO and also replace the order under the Dogs (Fouling of Land) Act at the same time. It will be proposed that the new offences will consist of:

- Dogs on lead by direction
- Failing to have the means to pick up after a dog

Further explanation of these proposals can be found in **Essential Reference Paper 'D'**.

- 2.28 The existing DCOs were introduced in 2007 following consultation with the public and many interested bodies. The final DCOs were amended following concerns about the order to restrict dogs on marked playing pitches. There are minor changes to locations of some play areas but it is not anticipated that the re-introduction of the existing DCOs will receive anything other than support for the proposals.
- 2.29 It is recognised that the additional powers which form part of this consultation have the potential to be controversial. However dog fouling continues to be a major concern for East Herts residents and each year the Council receives more than 70 complaints about dog attacks and 230 complaints about dog fouling.
- 2.30 The consultation process will be conducted in accordance with Cabinet Office Guidelines. In order to ensure that parishes can consider these proposals within their meeting cycle, the consultation period will be conducted over 12 weeks. The proposals will also be circulated to a wide variety of interested parties including residents groups, dog clubs and bordering authorities.
- 2.31 Because of the wide remit of the new Act, officers are in the process of consulting with the police and partners on issues which impact on wider community safety. As a result there might be a couple of additional questions relating to community safety and Anti-social Behaviour PSPOs that are added to the consultation outlined in this report in order to avoid the need further consultation at additional cost.

The final draft set of PSPOs will be available to all members, prior to consultation, as part of the report to the Executive on the 6 October 2015.

- 2.32 The results of the consultation exercise will be used as the basis for a further report to the Executive.
- 2.33 Fixed Penalty Notices
Under the ASB, Crime & Policing Act 2014 fixed penalty notices of up to £100 can be issued for both Community Protection Notices and Public Space Protection Orders. The maximum amount is set at £100 for these offences but Councils can decide whether to set

it at a lesser amount and/or give a discounted rate if paid within 14 days.

- 2.34 The suggested amounts for the new offences are based on similar offences that they replaced, but still high enough to show the Council's commitment to reduce these problems.
- 2.35 Subject to training and arranging agreements, it is proposed that Town & Parish Council designated officers can be authorised to issue FPNs or incident tickets for littering, dog fouling and other offences agreed by Director of Neighbourhood Services on the Council's behalf.
- 2.36 An updated Environmental Crime Policy is provided in **Essential Reference Paper 'B'**. The objective of this document, which sits beneath the Council's Corporate Enforcement Policy, is to ensure that resources are focused on priority areas and appropriate and proportional action is taken in different circumstances. Members are asked to consider and comment on the draft document prior to making recommendations for the Executive to approve.
- 2.37** FPN charges will be set by the Council and subject to variation by Director of Neighbourhood Services in consultation with the portfolio holder. A full list of FPNs for Environmental Crime and the discounted payments can be found in **Essential Reference Paper 'C'**.
- 3.0 Implications/Consultations
- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Please refer to the reports:

Environmental Crime Enforcement, 30 May 2006

Anti-social Behaviour, Crime & Policing Act 2014

Environmental Crime Enforcement Implications, 11 November 2014

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