



# Environmental Crime Enforcement Policy April 2016

## 1 Scope

1.1 This policy covers enforcement activities in support of the Council's duties and responsibilities for maintenance of 'streetscene' and the visual amenity of the local environment for:

- Street cleansing, control of litter and dog fouling.
- Sites which are detrimental to the amenity of a neighbourhood.
- Graffiti and flyposting.
- Proper management and disposal of domestic and commercial waste.
- Nuisance & abandoned vehicles.
- Stray dogs and nuisance dogs.

1.2 These functions are normally carried out by the Council's Environmental Services Team and the Development Management Service and where relevant in consultation with the Community Safety Team.

## 2 Objectives

2.1 The quality of the local environment has a significant impact on people's perceptions of wellbeing and quality of life. It also supports the work of the East Herts Community Safety Partnership, to keep East Herts a safe place to live, work and visit. The Council is committed to improving standards of neighbourhood management and to tackling environmental crime and anti-social behaviour. This policy sets out the approaches and issues that are considered when employing enforcement measures.

## 3 Other Relevant Policies

3.1 This policy conforms with the Council's 'Enforcement Policy for East Herts District Council'.

3.2 Enforcement action taken by Council officers on matters other than those covered in 1.1 above are covered by separate enforcement policies that

reflect specific legislative requirements and the nature of the activity. Examples of other Council Enforcement Policies are:

- Environmental Health Enforcement Policy, which includes action the Council will take in relation to environmental health and other statutory nuisances.
- Planning Enforcement Plan, which deals with enforcement action against breaches in planning matters.

## **4 Key Legislation**

The main legislation and guidance to which this policy relates (with reference to the scope in 1.1), but not exclusively so, is:

- Anti-social behaviour, Crime and Policing Act (2014)
- Town and Country Planning(Control of Advertisements) (England) Regulations 2007 (as amended)
- Clean Neighbourhoods and Environment Act (2005)
- Anti-social Behaviour Act (2003)
- Dog Fouling of Land Act (1995)
- Environmental Protection Act (1990)
- Control of Pollution (Amendment) Act (1989)
- Refuse Amenity Act (1978)
- Local Government Act (1972)

## **5 East Herts Council's Enforcement Policy**

- 5.1** The Council has an overarching 'Enforcement Policy for East Herts District Council' which lays down the rules and principles adopted when undertaking enforcement action to secure compliance with the law. It is based upon the 'Central and Local Government Concordat on Good Enforcement'. This is a nationally recognised standard for promoting best practice enforcement. A key aim is to ensure that all enforcement is proportionate, equitable and practicable and is delivered in a constant manner.
- 5.2** The Environmental Crime Enforcement Policy sits beneath the Council's Enforcement Policy and reflects these principles.

## **6 Shared Enforcement**

- 6.1** East Herts Council will work in partnership with other enforcement agencies with a shared enforcement role under legislation such as the

Police, Environment Agency, housing associations and other central and local government authorities and agencies. The Council is committed to partnership working to address Community Safety, Crime and Disorder and Environmental Crime issues. Where appropriate, particularly on emerging or more serious issues, we will liaise with other internal departments and/or partners, or through the Community Safety Partnership to ensure consistency and communication in enforcement action.

- 6.2** Where appropriate, enforcement matters will be referred to another body or agency. In these circumstances, officers will advise the complainant and/or the perpetrator where doing so will not compromise future enforcement action by the Council or another agency.

## **7 Authorised Officers**

- 7.1** The Council's responsible officer, as laid down in the Council's Constitution (Scheme of Delegations) will authorise officers in writing, specifying the limits of their authorisation. Persons other than East Herts Council employees may also be authorised, where it is legally permissible to do so, and the responsible officer considers that the Council's objectives, policies and procedures will be applied. Enforcement action will only be carried out by authorised officers who have received appropriate training and sufficient experience. The Council will also work with the Police through the Community Accreditation Scheme to designate powers to officers where relevant to the job role.
- 7.2** The designations of person(s) who may authorise a prosecution, enforcement notice or a formal caution within the scope of this policy are the Head of Operations, Head of Housing & Health and the Head of Planning & Building Control in consultation with the Head of Democratic & Legal Services. .

## **8 Enforcement Approach**

- 8.1** In accordance with the Council's Policy and the 'Enforcement Concordat' authorised officers will seek to ensure that all enforcement is fair and proportionate and gives due regard to the legal rights of others.
- 8.2** Where appropriate, enforcement investigations will be conducted at times of the day which minimise inconvenience to business and traders whilst ensuring that fair and representative evidence is obtained relating to any alleged offence.
- 8.3** Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection was being undertaken.

- 8.4** Authorised officers will have due regard to individuals legal rights and will conform to the Council's Diversity and Equalities Policy when conducting enforcement action, considering, for example, language and access difficulties.
- 8.5** In making an enforcement decision, officers will consider the following:
- seriousness and prevalence of offence;
  - the quality of available evidence and probability of the enforcement action under consideration being successful;
  - the perpetrator's past history and likelihood of re-offending;
  - the likely effectiveness of the deterrent that successful enforcement action would achieve;
  - the impact on the community (or part of).
- 8.6** Where there are failures to comply with the law, this Authority has a number of informal and formal approaches to secure compliance:
- to take no action (e.g. refer the matter to another agency or service, or where further action is not expedient);
  - to take informal action;
  - to issue a formal warning;
  - to use statutory enforcement notices;
  - to carry out work in default;
  - to use formal cautions;
  - issue fixed penalty notices;
  - to prosecute.
- 8.7** Informal approaches are the preferred method of enforcement for minor offences in the first instance, and particularly when dealing with vulnerable persons, the elderly and the young (persons under 16 years of age). The Council will aim to work in partnership with stakeholders such as businesses and landowners, and to seek joint approaches to resolving environmental crime problems, preferably through early and information interventions where possible, such as Community Protection Warning letters (see 11.4).

#### **Informal Action - Verbal Observation or Warning**

- 8.8** This is to be used for minor contraventions especially when they are isolated incidents that are remedied immediately with the full co-operation of the person responsible. All verbal observations or warnings will be recorded.

## **Environmental Crime Incident Tickets**

- 8.9** When an offence has been committed, but a warning needs to be issued on site, authorised officers may issue an Environmental Crime Incident Ticket.

These tickets will not in themselves be a Fixed Penalty or other notice, but will be used to record and check information and allow the offender to understand the actions to be taken. On checking the evidence and any previous logged offences in the office, officers can then decide if further action should be taken such as a fixed penalty notice to be issued.

## **Written Observation or Formal Warning**

- 8.10** This is appropriate for offences which are more serious, where it is not possible to issue a verbal observation or warning or where informal action has not been complied with satisfactorily. The written warning will include details of the offence, the relevant legislation, remedial action required, timescales for compliance, and the consequences of non-compliance. It could also be in the format of a voluntary agreement between the issuing organisation (Police/Council) and the individual.

## **Enforcement Notice**

- 8.11** This will be used where informal action has been unsuccessful in that there has been a failure to comply or resolve the matter relating to the offence, commitments given have not been honoured or timescales have been exceeded, or where the authorised officer believes that informal action is inappropriate. The Notice will also indicate how and to whom representations can be made.

## **Carry out Works in Default**

- 8.12** Certain legislation gives powers for the Council to carry out works in default when a Notice has not been complied with, for example, Community Protection Notices. The decision to carry out works in default will be made by the Head of Service. The officer will follow up such action by investigating the recovery of costs where the legislation allows this.

## **Formal Cautions**

- 8.13** These will be considered for prosecutable offences when the criteria in the Home Office Guidance are met. Typically, the reason for choosing this option would be that in considering prosecution, the public interest test is not fully met (see 'Prosecution' below), that the offence did not result in real harm or that there was full co-operation. A formal caution will not be used simply because the evidence is insufficient to give a reasonable prospect of prosecution success. If a formal caution is refused, prosecution will normally follow. The decision to issue a formal caution will be taken by the Head of Service in consultation with the Legal Services Manager.

## **Fixed Penalty Notices**

- 8.14** Fixed penalty notices (FPNs), offers offenders the option of paying a penalty charge to avoid being prosecuted for certain offences. Authorised officers will not issue a fixed penalty notice unless:
- The offence justifies prosecution.
  - It is believed by the authorised officer, at the time of issuing the Fixed Penalty Notice, that there is sufficient evidence to achieve a successful prosecution.
  - It will act as a sufficient deterrent against re-offending.
- 8.15** If any fixed penalty notice remains unpaid after expiry of the payment period, the file will be passed to the Legal Services Manager who will consider prosecution.
- 8.16** Enforcement action taken against young people will be carried out with due regard to the requirements of the Children's Act 2004 and to Defra Guidance "Issuing Fixed Penalty Notices to Juveniles" 2006.
- 8.17** The name, address, age and date of birth of the offender will be obtained together with the name and address of the parent or legal guardian. The offender will be advised that this information will be shared with the local Youth Offending Team.
- 8.18** Notices may be issued to 16 and 17 year olds using the same procedures as Adults. However, authorised officers will consider whether a written warning is appropriate for a first offence, depending upon the nature and seriousness of the offence.
- 8.19** In most circumstances a written warning will be issued to the parents of a child under the age of 16 in the first instance. If the offence occurs in school hours or in school uniform, an advisory letter will be sent to the Head Teacher.
- 8.20** If the child continues to offend despite this intervention, enforcement action, (including a Fixed Penalty Notice), may be taken following discussions with the Community Safety Team or relevant local agencies responsible for law enforcement and children' services (e.g. Police, Youth Service, Youth Offending Team). The Council will consult with partners to determine whether an FPN is the most appropriate measure for a person under 16 or if other measures (e.g. warnings, Acceptable Behaviour Contracts) are more appropriate.
- 8.21** In all circumstances the parent or legal guardian will be advised as soon as possible. Where a fixed penalty notice is to be served on a person aged 10 – 15, this should be done with the parent or legal guardian present.

## **Prosecution**

- 8.22** The Council recognises that most people wish to comply with the law and prosecution will generally be restricted to those who flout the law.
- 8.23** The Head of Service will authorise that prosecution is warranted and in these circumstances, an evidence file will be submitted to the Legal Services Manager who will determine whether the case will proceed to prosecution based upon standard evidential and public interest tests.

## **9 Diversity**

- 9.1** The Council is committed to equality of access to its services and has adopted a 'Comprehensive Equality Policy'. This policy will be followed by officers when carrying out their duties.
- 9.2** In respect of race equality, the Council has adopted the McPherson's definition of a racist incident 'a racial incident is any incident which is perceived to be racist by the victim or any other person'.
- 9.3** The Council follows the Codes of Practice of the Commission for Racial Equality and Equal Opportunity Commission, and it is committed to achieving the Equality Standard for local government.
- 9.4** We believe in the need to eliminate unlawful discrimination and to promote equality of opportunity in all that we do. We recognise the rich diversity of East Hertfordshire's population as a strength, and we aim to treat all people with dignity and respect, whilst recognising the value of each individual and the positive contribution they make to the diverse community and workforce.

## **10 Review**

- 10.1** It is recommended that this policy will be reviewed on an annual basis and in light of any changes in legislation, Codes of Practice or centrally issued guidance.

Policy officially adopted May 2006.

Reviewed and updated February 2016.

## APPENDIX A

### 11 List of Core Offences and Officers Guidance

#### 11.1 Nuisance Parking Offences

**Section 3** of the CNEA 2005 aims to prevent the selling of vehicles on the road. It is intended to target those people who run a business selling motor vehicles and use the road as a mock showroom. It is not intended to target individual private sellers of single vehicles, but the nuisance that is caused by the presence of numbers of vehicles being offered for sale by the same person or business.

The offence may only be committed where there are two or more vehicles being offered for sale for the purposes of a business. The vehicles must be within 500 metres of each other.

**Section 4** of the CNEA 2005 is aimed primarily at those that act irresponsibly as part of a business and who are attempting to use the road as a mock workshop. It is not intended to target private individuals who are carrying out minor work to their vehicles (unless the repairs cause annoyance to persons in the vicinity), or those who carry out necessary work to vehicles by the side of the road in order to get them moving again after a breakdown or accident (such as breakdown organisations and mobile mechanics), provided the work is completed within 72 hours.

These offences apply to any highway or road to which the public have access. This includes roads through housing estates owned by Housing Associations. It covers both the carriageway and the footpath but not car parks.

- Hertfordshire County Council's Trading Standards Department may take action under the Trade Descriptions Act in some circumstances.
- The Town and Country Planning Acts can also be used where it can be demonstrated that there is a change in the use of the land. This can be very difficult as these activities are typically transient in nature.
- Where there is an obstruction of the Highway, the Highway Authority may also take action under the Highways Acts or, where there is an issue of highway safety, the Police can take action.
- In response to complaints the Environmental Health Service may ask people to move vehicles where it is considered that they are 'trading without consent' under the Local Government (Miscellaneous Provisions) Act 1982.

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- The Council will investigate these incidences and generally the first occasion will be dealt with informally.
- Authorised officers may issue fixed penalty notices to offenders as an alternative to prosecution.
- The Council will work with Trading Standards to undertake enforcement action against offenders who persistently sell vehicles on the highway.



## 11.2 Abandoned Vehicles

The Refuse Disposal Amenity Act 1978 lays down that it is a criminal offence to abandon a motor vehicle or anything that has formed part of a motor vehicle on any land in the open air or on any other land forming part of a highway.

There is no legal definition of an abandoned vehicle. However, statutory guidance suggests the following characteristics are generally common to abandoned vehicles and one or a combination of the following could assist a local authority officer in making a decision on abandonment:

- (a) Untaxed, **with**
- (b) No registered owner
- (c) Stationary for a significant amount of time
- (d) Significantly damaged, run down or un-roadworthy
- (e) Burned out
- (f) Lacking one or more of its number plates
- (g) Containing waste

*This is not an exhaustive list and a vehicle would not have to be displaying the full list to be abandoned.*

The Guidance states that a vehicle should not be considered abandoned solely on the grounds that it is untaxed (as checked on the DVLA website).

The CNEA 2005 removed the need to place a 24 hour notice on the vehicle in some circumstances. All abandoned vehicles can be removed immediately, however, councils must be reasonably satisfied that the vehicle **has been abandoned**. Vehicles cannot be removed if they are just untaxed under this legislation.

For certain types of abandoned vehicles, local authorities must take steps to trace the owner of a vehicle and, if successful, give them **7 days written notice** that the authority intends to dispose of the vehicle if it is not collected within that time. If the owner is traced, the local authority has the option to serve a fixed penalty notice as an alternative to prosecution. The success of this measure depends upon the ability to prove ownership. Local authorities can destroy vehicles at any time after collection if in very poor condition or if they are untaxed **and** have no number plates without there being a requirement to trace the owner.

Under current legislation owners can recover vehicles or proceeds from their sale (less collection, storage and disposal costs) up to a year after a vehicle is sold. The Council can also recover costs from owners where they are identified,

however nearly all vehicles collected are of a very low value, ownership cannot be proved and it is rarely possible to recover costs.

### **East Herts Policy**

- The Council aims to inspect vehicles reported as abandoned within 24 hours.
- Officers make enquires with the DVLA and local residents and carry out an HPI check where appropriate to identify an owner.
- Authorised officers will give instructions to the Council's contractor for the immediate removal of vehicles which are hazardous or in poor condition. (Note that this does not include vehicles that present a traffic hazard or obstruction by way of position on the highway. This is the responsibility of the Police.)
- Authorised officers will give instructions to the Council's contractor for the removal and destruction of vehicles that have no tax **and** no registration plates, or no tax **and** no current keeper on the DVLA database.
- Where a vehicle appears to be abandoned but not dangerous a white 'is this your vehicle' notice is attached and the Council writes to the last registered keeper to ascertain the status of the vehicle. If there is no response from the last registered keeper within 7 days, a second letter is sent proposing the removal date before the vehicle is removed for destruction.
- Where a vehicle is on land that is occupied, the Council is required to give the land owner 15 days notice that they propose to remove the vehicle. Officers work closely with housing associations to progress the removal of abandoned vehicles from their land.
- Vehicles that are burned out or in very poor condition are destroyed within 24 hours. Officers will also contact the Police to determine if the vehicle was stolen.
- Other vehicles are stored by the council's contractor until such time as it is deemed that they are abandoned and are then either destroyed or sold at auction.
- Officers liaise with the Fire Service on potentially abandoned vehicles with a view to immediate removal of vehicles likely to pose a fire hazard or where it is considered that there is an imminent danger of an arson attack upon the vehicle.
- Under the current arrangement for dealing with abandoned vehicles, officers comply with the criteria laid down in legislation to determine whether or not a vehicle has actually been abandoned. This ensures that the Council is not drawn into vexatious complaints or neighbour disputes over parking spaces.

- The responsibility for dealing with untaxed vehicles that are not abandoned rests with the DVLA. East Herts has chosen not to adopt DVLA powers as there is a low level of abandoned vehicles in the district and the effect on costs and staff resources would be disproportionate to the problem.
- Fixed penalty notices for abandoned vehicles may be used by authorised officers but are considered to be of limited use.

### **11.3 Litter**

Under Section 87 of the Environmental Protection Act (1990) it is an offence to drop and leave litter. The CNEA 2005 makes it an offence to drop litter anywhere in the open air including private land and on water. It also clarifies the EPA (1990) such that 'litter' includes cigarette butts and chewing gum.

A litter offence can be prosecuted through a magistrates' court and carries with it a maximum fine of level four on the standard scale (currently £2,500).

Fixed Penalty Notices (FPNs) can be used as an alternative to prosecution for dropping litter. It is an offence not to provide, or to give a false name and address to an authorised officer.

#### **East Herts Policy**

- East Herts has a low level litter problem compared with many areas and a relatively high standard of measured cleanliness. The Council will take action where littering has been witnessed or there is other firm evidence and the presumption will be to issue the FPN in lieu of prosecution.
- The Council will undertake campaign based exercises with the Police which included the use of FPNs for littering as part of targeted public education and awareness campaign work and subject to the offence being sufficient to warrant prosecution.
- The Council will continue to work with the Police to develop the range of skills of East Herts Accredited Staff and Police Community Support Officers including allowing both to issue Fixed Penalty Notices for litter offences.
- On a case by case basis, authorised officers may, in accordance with the principles of the Enforcement Policy choose to consider the placing of bags of rubbish (where evidence can be found) as littering.
- Generally, offences may be seen by officers on overt patrol or in vehicles whilst following other road users during the course of their normal duties. The Council will also accept witness statements from members of the public or officers for investigation. Offences observed on overt CCTV will be pursued where identity can be obtained.
- Where littering from vehicles takes place, accredited officers will seek to identify registered vehicle details from the police, and will write to the vehicle owner.

- When passed by the Secretary of State, the Council will adopt new powers under s88 of the EPA 1990 where the registered keeper can be issued with a FPN as a result of litter being deposited from a vehicle.

#### **11.4 Community Protection Notices**

The Anti-social Behaviour, 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.

As a result of the introduction of CPNs the following powers were repealed:

- Litter Clearing Notices
- Litter Abatement Notices
- Street Litter Control Notices
- Defacement Removal Notices for graffiti and flyposting

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 is more than one issue that need resolving.

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

- a) is having a **detrimental effect on the quality of life of those in the locality**
- b) is persistent and **continuing** in nature
- c) is **unreasonable**

A written warning must be issued first given a reasonable timescale to remove.

The Notice can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again.

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.

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. Before issuing a CPN advice should be taken from other relevant council departments to ensure that the restrictions or requirement imposed do not conflict with any other notice, permit etc.

Section 215 under the Town and Country Planning Act 1990 could be used as an alternative to a CPN. They can be used to deal with land owners who allow land to become unsightly in such a way that it has an effect on public amenity.

Detail on the use of these powers in relation to dogs can be found in section 11.7.

## **East Herts Policy**

- Where possible informal action will be undertaken in the first instance with residents and businesses to prevent ongoing environmental problems.
- Where graffiti is on Council property it will be removed on a programmed basis. We aim to remove or obscure offensive or racist graffiti within 24 hours.
- Where there are high concentrations of graffiti in areas where it may encourage further anti-social behaviour specific initiatives will be undertaken with partners. Agencies that are responsible for street furniture are notified of graffiti on their property.
- Prior to graffiti removal on private land an indemnity form must be completed by the landowner or managing agent to protect the Council from litigation and claims for any 'damage' caused as a result of removal.
- The Planning Enforcement Section deal with fly posting. The current approach is to remove posters or placards or to request the perpetrator to remove them (backed up by the threat of prosecution under the Town and Country Planning Act).
- CPNs deal with a wider range of behaviours than the legislation that they replace. The types of behaviour that East Herts would use this for are:
  - accumulations 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 strayingNB: List is non exhaustive and for example only but behaviours must meet the tests above.
- 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.
- 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.

### **11.5 Distribution of free literature**

The CNEA (2005) amended the EPA (1990) to give local authorities the power to control distribution by designating areas of their own land or highways where distribution is only allowed with their consent. Doing so without consent is an offence. Distribution of materials for political, charitable or religious purposes is exempt. It does not include material put through letter boxes.

Local authorities may charge a fee for granting consent, may impose conditions on the distribution and may seize materials that are being distributed without consent.

Fixed Penalty Notices may be issued as an alternative to prosecution for distributing without consent.

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- East Herts owned car parks, open spaces and shopping centres in the five main town centres are designated as areas where consent must be sought to distribute free literature to help reduce littering. Maps of the areas are available from the Council's website.
- The Head of Housing, Community Safety and Health is authorised to consider requests for consent, applying appropriate conditions to prevent litter e.g. that discarded materials be collected within 100m of the distribution point on the same day or where distributors are mobile, the whole town centre.
- The Council will charge a fee to cover administration costs of authorising distribution. This fee may be waived for 'not-for-profit' organisations at the discretion of the Head of Housing, Community Safety and Health.
- The Head of Operations is authorised to take enforcement action for non-compliance. Authorised officers are permitted to issue Fixed Penalty Notices and seize material being distributed without consent.

### **11.6 Deposit and Disposal of Waste**

There is no specific definition of fly tipping other than that set out in section 33 of the Environmental Protection Act (EPA)1990, which says it is an offence in general terms, to treat, keep or dispose of controlled waste other than in accordance with an environmental permit or in a manner likely to cause pollution of the environment or harm to human health. The maximum penalties for the illegal disposal of waste are £50,000 and/or 1 year imprisonment.

Householders have a 'Duty of Care' to ensure that their waste is passed on to an 'authorised person', and can be prosecuted with a fine of up to £5,000 if they cannot prove that they took reasonable steps to prevent their waste being fly tipped.

It is an offence for anyone who is not a registered carrier of controlled waste to transport such waste to or from any place in Great Britain in the course of any business of his or otherwise with a view to profit. Fixed Penalty Notices can be used for failure to provide evidence that they are a licensed waste carrier.

Under the EPA (1990), section 46 & 47 Notices can be served on householders and businesses specifying, for example, that they must put their waste receptacles in a certain place to facilitate waste collection. Noncompliance with section 46 is a

civil penalty with a FPN of £80, while section 47 is a criminal offence with a maximum fine of £1,000.

### **East Herts Policy**

- The Council takes action against anyone found to be fly tipping on public highways or 'relevant land' with a view to prosecution. We may also investigate instances of fly tipping on private land but it will be the responsibility of the landowner to remove the waste. Officers utilise witness statements, investigate sources of illegal dumping and carry out covert surveillance. The Council will deal with fly tips up to one tipper load. Larger tips and those resulting from organised crime tend to be dealt with by the Environment Agency.
- East Herts Council regularly conduct stop and search exercises to ensure that vehicles that carry waste are aware of the law, subject to support from partner agencies (Police, DVLA, VOSA, Trading Standards, Environment Agency, Dept. of Works & Pensions).
- FPNs may be used where residents and businesses put out waste at the wrong time or in the wrong place which cause a nuisance or is detrimental to the amenity of the locality. The objective is to prevent obstructions or unsightly waste being left on the street which attracts vermin and causes litter. They would be used primarily for persistent offenders who have failed to respond to informal action.

### **11.7 Dogs**

There are a range of measures that can be used to encourage responsible dog ownership and deal with irresponsible dog owners failing to pick up after their dogs, letting their dog stray or causing a nuisance.

Under the ASB, Crime and Policing Act (2014), Community Protection Notices (CPNs) and Public Space Protection Orders (PSPOs) can be used for a range of dog related problems.

The ASB, Crime and Policing Act (2014) amended the Dangerous Dogs Act (1991) to extend the offence of dangerously out of control to all places including private property.

The Council has a duty under the EPA1990 to appoint an officer "for the purpose of discharging the functions for dealing with stray dogs found in the area of the authority". The CNEA 2005 removed the responsibility for stray dogs from the police placing this solely with the local authority. This means that outside office hours local authorities will be expected, where practicable, to provide a place to accept stray dogs.

The Microchipping of Dogs (England) Regulations will come into effect from 6<sup>th</sup> April 2016. From this date all dogs over 8 weeks must be microchipped and keepers details be up to date. The only exemption is where a veterinary surgeon

certifies, on a form approved by the Secretary of State, that a dog should not be microchipped for reasons of the animal's health.

An authorised officer may serve a notice on the keeper of a dog to have the dog microchipped within 21 days. Failure to comply with the notice could mean a fine.

**Community Protection Notices** provide a statutory tool that can be used in cases of irresponsible dog ownership. They can be used where an Acceptable Behaviour Contract, or other non-enforcement measures, has not worked or where the threshold had been met but a statutory notice is more appropriate. They can address behaviour that has a negative effect on anyone in the community. For example dogs out of control in a park, alarming visitors to the home, straying and causing damage or even a dog that causes distress or injure other animals.

A written warning must be issued first providing the opportunity to rectify behaviour.

**Public Space Protection Orders** specify an area where activities are taking place that are or may likely be detrimental to the local community's quality of life. PSPOs impose conditions or restrictions on people using that area.

The council can make a PSPO if it believes the activities are detrimental to the local community's life and that the negative impact is so much to make the restrictions reasonable.

However the behaviour being restricted has to:

- be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;
- be persistent or continuing nature; and
- be unreasonable.

Breach is a criminal offence punishable by a fine of up to £1,000. Alternatively a fixed penalty notice can be issued of up to £100.

### **East Herts Policy**

The Council will use the above legislation to encourage responsible dog ownership working with partners through early engagement and education work to prevent problems becoming more serious. This may include early intervention measures such as letters, joint visits and Acceptable Behaviour Contracts.

Where an incident relates to a dog that is identified as being dangerously out of control this matter will be referred to Police.

Officers will use CPNs after liaison with the Community Safety team where the appropriate tests are met.



PSPOs will be used when the tests are met and following consultation which will be carried out in conjunction with the Community Safety team and the Police.

The PSPOs will make it an offence to:

- allow your dog off a lead at places designated in the order;
- 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;
- failing to place a dog on a lead when requested to do so;
- failing to pick up after your dog;
- failing to have the means to pick up after your dog.

Where the offence of failing to have the means to pick up after your dog takes place officers would approach dog owners and request them to produce bags, containers or other means by which they will pick up after their dogs. If the owner fails to produce this on request then provided the offence is on designated land and the offender is not exempted, by for instance being registered blind, an offence is committed for which a fixed penalty fine of up to £100 may be issued. Failure to pay the fine may result in legal proceedings with a potential fine of up to £1,000 in the Magistrates' Court.

Enforcement on dog fouling can be difficult as offences often take place at night or early in the morning. Action taken by the Council will try and highlight the problem to residents of the area, and encourage them to provide information to help officers target patrols and catch the offenders.

Where the Council receives a report of dog fouling it may undertake all or some of the following actions (depending on the severity of the problem):

- Increase education and awareness through putting up various signs
- Highlighting the issue through spray painting and stencils on the ground
- Encourage reporting of offenders through leafleting park users and nearby residents
- Encourage community involvement through parish newsletters, press release and social media
- Carry out patrols based on evidence given by residents

Action taken will be in proportion to the amount of fouling, the use of the area and the number of complaints. For example, dog fouling outside a primary school will therefore take priority over a rural footpath.

The Council will promote microchipping as a permanent means of identification and to make reuniting lost dogs easier. When the micro chipping regs come into effect the Council will use the powers available to ensure owners comply with the legislation. As part of this strategy all stray dogs will be microchipped before being returned to owners or rehoming.

The Council does not provide a 24hr stray dog collection service as this is not practical in a large district. In the evenings and weekends the public can take stray dogs to acceptance points at local kennels where the dog will be scanned for microchip and/or kept until the owner contacts the council.

### **11.8 Fixed Penalty Notices**

Fixed penalty Notices (FPNs) are a way of dealing with low level environmental crime and are more cost effective than prosecutions.

#### **East Herts Policy**

- FPNs are part of a wider enforcement strategy and targeted at priority areas.
- FPNs are only issued when there is sufficient evidence to warrant a prosecution should the penalty not be paid.
- The Council will work with the Police for joint enforcement campaigns for litter and waste carrier offences and PCSOs are equipped to issue FPNs.
- FPNs are used in a responsible and proportionate manner in accordance with the Council's Enforcement Policy.

### **11.9 Abandoned Shopping Trolleys**

#### **Legislation**

The EPA allows a local authority to seize, store and dispose of abandoned shopping and luggage trolleys found in its area. This is an adoptive Schedule under section 99. The provisions allow for costs to be recovered from the owner of the trolleys, and the CNEA (2005) has improved the ability for local authorities to reclaim these charges.

Local authorities must retain seized trolleys for a period of six weeks before selling or disposing of them.

A notice must be served on the apparent owner.

The trolley must be delivered to the owner if it is claimed within the six week period (upon payment of the charge).

Collection, storage and disposal costs may be recovered even if the trolley is not claimed provided the owner can be identified.

### **East Herts Policy**

- East Herts has a low level of problems with the abandonment of shopping trolleys.
- On the first occasion the Council will normally advise retailers of their location and request that they are collected. Occasionally, Council inspection staff will remove trolleys if they are deemed to be causing a hazard.
- The powers to remove and recover costs for abandoned trolleys were adopted in 2006 and retailers were advised that the Council will charge for recovery, return, storage or disposal of shopping trolleys if retailers do not take appropriate measures to deal with this problem.
- Charges for recovery, and return are set at £50 per trolley; £2 per day for storage and £30 for disposal.

Officers' guidance will be automatically amended by Officers from time to time as legislation changes.

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