

## Overview & Scrutiny

February 2009



### Adoption of Clean Neighbourhood Act 2005 Enforcement Powers

---

**Report of Terry Collins, Corporate Director Neighbourhood Services  
(Cabinet Portfolio Holder Councillor Bob Young)**

---

#### **Purpose of Report**

1. To consider the adoption of a range of Clean Neighbourhood and Environment Act Powers, effective from 1<sup>st</sup> April 2009, to assist the unitary authority in taking action to secure clean neighbourhoods.
2. To consider the level of fine for the fixed penalty notices (FPNs) associated with these powers, including a discount for early payment.

#### **Consultation**

3. The proposals contained in this report have been developed by the Streetscene workstream, comprising environmental and enforcement officers drawn from across all eight Councils. The workstream has received legal advice, in particular relating to the Clean Neighbourhoods and Environment Act (2005) and has drawn on best practice through the Department of Environment Food and Rural Affairs (Defra), and Encams (formerly the Tidy Britain Group), whose valuable input is acknowledged..

#### **Background**

4. The condition of the local environment is of high importance to residents across County Durham, and a consistent feature of interest highlighted in public surveys. For example, the Local Area Agreement (LAA) Survey (2007, 7229 returns) found that clean streets were among the top 3 factors in making an area a good place to live. Not surprisingly therefore, the County Durham Partnership has responded to this by identifying LAA priority indicators (with associated improvement targets) for litter, detritus, fly-posting and graffiti and fly-tipping.
5. Under the Environmental Protection Act 1990 the new unitary Council (currently Districts in 2 tier areas) will have a duty to ensure that roads and open spaces under its control are cleaned if they become badly littered. There are no frequencies prescribed, but an associated code of practice defines the standards of cleanliness according to usage and response times by which the littering must be cleared away.

6. The new authority will have four methods at its disposal in meeting residents' expectations and its legal duties relating to clean neighbourhoods. These are:
  - **Education.** For example relating to schools , community groups and businesses in raise awareness and seeking (where necessary) changed behaviours, for example dog fouling and littering.
  - **Involvement.** Working with residents in fostering civic pride, reporting local issues and getting involved in local clean ups.
  - **Operations.** Effective street cleaning operations – well deployed and timely.
  - **Enforcement.** Often as a last resort, and a deterrent for those that wilfully spoil the environment.
  
7. The most effective strategies typically will have all four components identified above. The remainder of this paper allows consideration to the enforcement element of this approach.
  
8. A review of the current environmental enforcement across the 7 District Councils has revealed that whilst it occurs to some degree in all areas, the level of adoption of the most recent (and effective) legislation, namely the Clean Neighbourhoods and Environment Act (CNEA) 2005 varies, and so does the level of fixed penalty notice that is set. This is summarised in **Appendix 1**
  
9. As part of the preparation for unitary status, it is suggested that the powers utilised be consistent across the County, and furthermore that the levels of fixed penalty notice be the same. Failure to do this could result in challenge, or a delay in introducing the powers.

### **Clean Neighbourhoods and Environment Act 2005**

- 10 The CNEA was specifically introduced to improve the effectiveness of the legislative framework relating to clean neighbourhoods. It includes powers and provisions covering the following areas:
  - Abandoned Vehicles
  - Litter and Refuse
  - Graffiti and fly posting
  - Control of Dogs
  - Waste Receptacles
  - Transport of Waste
  - Deposit and disposal of waste
  - Shopping/ Luggage Trolleys
  - Nuisance vehicles
  - Free distribution of printed material
  - Audible intruder alarms
  - Noise from dwellings
  - Noise from licensed premises

11. Defra Guidance emphasises that the powers and provisions in the CNEA should only be adopted where needed and when effective enforcement will follow. The approach taken in this report is that if an individual District Council has already adopted the power then this it is suggested for countywide adoption be made. This has resulted in all but one power being proposed for adoption, namely exposing vehicles for sale and repairing on the road. This is not considered to be a significant issue across County Durham and where it does occur it can be enforced by other means. Nevertheless, Members may wish to review this together with the full list of powers in **Appendix 2** ,and adopt only those that they feel required.
12. Members will note that the CNEA provides powers in relation to control of dogs. This has been dealt separately through the dog control order considered by Cabinet on 8<sup>th</sup> January 2009, and currently the subject of formal consultation.
13. There are a range of Fixed Penalty Notices (FPN's) provided by the CNEA and several give local authorities the option to set the level of penalty (within a prescribed range). For most of these FPN's local authorities also have the option to offer a discount for early payment of a FPN. It is proposed that this is utilized as it encourages early payment.
14. The standard period for payment of FPN's is set in legislation at 14 days and once a FPN has been issued, an authority cannot prosecute for the alleged offence if the FPN is paid in the period. Therefore, to avoid confusion DEFRA recommend that the discounted period should not be more than 10 days.
15. In the instances where a FPN is not paid, unless there is good reason the authority should typically commence prosecution. Failure to do this would undermine the FPN system. There are sometimes exceptional circumstances where a person is not able to pay the full FPN amount immediately, in these instances it is proposed ( as practiced already in some Co. Durham Districts) to allow payment by installments providing a written (and binding) undertaking to this effect is given.
16. In due course it will be important to consider a wider enforcement policy (currently in preparation), together with an assessment of Members appetite for application, and staff training in those areas currently not utilizing these powers. In the short term, subject to approval, it will be necessary to make the appropriate authorisation under delegated powers, which Members will be giving consideration to as part of the Councils constitution.

### **Recommendations:**

#### **Overview and Scrutiny Committee are invited to consider:**

1. **The range of powers proposed for adoption from the Clean Neighbourhoods and Environment Act 2005 as detailed in Appendix 2**
2. The levels of fixed penalty notices and discounts for early payment as set out in Appendix 3 of this report.

### **References**

Dog Control Order Cabinet 8<sup>th</sup> January  
LAA SSC Survey 2007 (County Durham Partnership)  
Defra – Guidance on the Use of Fixed Penalty Notices

### Proposed Powers for Adoption under the Clean Neighbourhoods Act

#### Abandoned Vehicles

The District Councils currently remove abandoned vehicles and have a legal responsibility to do so under the Refuse Disposal (Amenity) Act 1978.

The CNEA provides local authorities the power to remove abandoned cars from the streets immediately and also the power to dispose of the vehicle without waiting for its license to expire.

Research by the Home Office shows that abandoned vehicles have a higher risk of being arson targets and also being used for other criminal reasons early removal from the streets is a critical success factor.

This CNEA power also provides authorised officers the ability to issue fixed penalty notices for abandoning a vehicle. There is also the power for officers to require people suspected of abandoning a vehicle to give their name and address so that a notice may be issued and not to do so or give false/ inaccurate details is an offence and so prosecutable.

#### Litter clearing and street litter control notices

Litter and refuse can often build up on land and become a blight to the area and involve significant cost to the Councils in street cleansing operations.

**Litter clearing notices** can be issued to the occupier/owner of private land where litter/refuse is detrimental to the amenity of the area. These as with other notices served under the Environmental Protection Act 1990 are open to appeal and also prosecutable if the owner/ occupier fail to comply. The CNEA introduces the power to issue FPNs for failure to comply with a notice.

**Street litter control notices** are issued to businesses that generate litter/refuse from their activities. This is normally a retailing outlet and in particular hot food takeaways but would also apply to bank cash machines which generate receipts for the users. The notices require the business to take steps to minimise and clear up litter/refuse on any adjacent/ open land. The CNEA extends these controls to cover mobile vendors. It is an offence not to comply with a notice and is prosecutable. The CNEA introduces the power to issue FPNs for failure to comply with a notice.

#### Graffiti and fly posting

Graffiti and fly posting does blight communities and contribute to people's fear of crime and so it is imperative that every effort is made to make partnerships work and to tackle these incidents.

Town and Parish councils are now classified as litter authorities and have the powers to 'authorise' their officers to serve fixed penalty notices for the graffiti offence. Whilst currently not utilized in County Durham, this may be a matter that the Association of Town and Parish Councils would wish to explore.

The CNEA introduces a new power to serve 'defacement removal notices' on owner of structures and equipment on the street requiring the removal of graffiti and flyposters. Before using these powers, Local authorities are required to make reasonable attempts to enter into partnerships with property owners to remove and deter graffiti and fly posting on buildings. Some of the Districts have been active in this regard, and there is opportunity to pick up on this best practice throughout the County.

The Anti Social Behaviour Act 2003 provided District/Unitary Councils with the power to issue FPN's to anyone caught doing graffiti or flyposting. The CNEA allows us to specify the amount a penalty within the range between £50 and £80.

There is also the power for officers to require name and address to issue notice and not to do so or give false/ inaccurate details is an offence and so prosecutable.

#### Transport of Waste and Waste deposit and disposal

The CNEA improves the enforcement powers in relation to the **transportation of waste** and so tackle fly tipping by enabling a constable or authorised officer of a regulation authority (Environment Agency and Waste Collection Authority such as the District of Easington) to stop and search vehicles (other than on the highway) in order to check that all documentation regarding waste transfer is in place.

The CNEA updates the Control of Pollution (Amendment) Act 1989 and provides the Environment Agency and District of Easington with the power to issue a fixed penalty notice which is fixed at £300 for not being an authorised carrier of waste.

There is also the power for officers to require information and it is an offence where information is knowingly or recklessly false or misleading in a material way and this is prosecutable.

For **waste deposit and disposal** there are existing provisions in the Environmental Protection Act 1990 impose that there is a duty of care on businesses to take all measures reasonable to dispose of any waste they generate properly.

The CNEA updates the Environmental Protection Act 1990 and provides the Environment Agency and Waste Collection Authority the power to issue a fixed penalty notice which is fixed at £300 for failure to furnish documentation that would show the responsible disposal of waste. There is also the power for officers to require information which becomes an offence where information is knowingly or recklessly false or misleading in a material way and so prosecutable.

The law requires that businesses use registered waste carriers and documentation of waste transfer receipts are kept for between 2 and 5 years dependant on the type of waste as proof of correct disposal.

Many businesses will have adequate disposal arrangements in place; however, the provisions are important to help combat flytipping from those businesses that dispose of their waste illegally

Further powers are provided for by the CNEA to stop, search and seize vehicles and contents. A constable or 'authorised' officer of the Council have the power to seize vehicles where they reasonably believe that a contravention of sections 33 or 34 of the Environmental Protection Act 1990 such as fly tipping has occurred. There is also provision to apply to the court for the forfeiture of vehicles as part of a fly tipping prosecution.

#### Abandoned shopping and luggage trolleys

The CNEA enabled the council to charge the person it believes to be the owner of an abandoned trolley for its removal, storage and disposal. To do this a local authority must consult with those likely to be affected and advertise prior to implementing any charging regime. The authority does already have a partnership arrangement with one store in the district where, on notification, they will collect their trolleys, however this does not prevent problems arising.

It is proposed to develop a scheme for the collection of abandoned shopping trolleys and to charge for the recovery, storage and disposal where shops are not willing to enter into a partnership approach .

#### Free Distribution of printed material

Litter authorities have the power to restrict the distribution of free literature in 'designated' areas and a scheme is set up for the control and consent within these areas which can be charged for.

#### Alarm notification areas

The new adoptive powers requires an alarm scheme area to be designated, agreed and advertised requiring property occupiers/owners to nominate a key holder and notify the council of the same and to respond quickly where burglar alarms cause problems.

FPN's can be issued for any breach of these regulations and the local authority has the opportunity to set the level between £50 and £75. There are also powers of entry to silence an alarm.

#### Noise

The Environmental Protection Act 1990 places a duty on local authorities to take reasonably practicable steps to investigate noise emitted from premises to assess if it is prejudicial to health or a nuisance. Abatement notices can be served by an authorised officer and these powers are currently being used.

The CNEA provides authorised officers with the power under the Noise Act 1996 to issue FPN's for not complying with an abatement notice served for Noise.

Noise from licensed premises has the FPN fixed at £500 with no discretion to discount for early payment . With Noise from dwellings the FPN can be set between £75 and £110 with the discretion to discount the amount for swift payment.

#### Exposing vehicles for sale and repairing on a road (not suggested for adoption)

Some garages and other businesses which sell cars at times park them for long periods on the road. This can be a nuisance to local residents and under CNEA it has become an offence for a person to park motor vehicles on a road or roads, where the vehicles are parked merely in order to be sold. There must be two or more vehicles within 500 metres of each other for the offence to be committed.

The CNEA has also created an offence for a person to carry out 'restricted works' to vehicles on the road. This includes repair, maintenance, servicing or dismantling a motor vehicle or any part of it including accessories where it for gain or reward.

For these two new powers the CNEA provides authorised officers the ability to issue fixed penalty notices for 'nuisance parking' offences and is fixed at £100.

There is also the power for officers to require name and address to issue notice and not to do so or give false/ inaccurate details is an offence and so prosecutable.

Although nuisance parking may occur the number of reports received is very low and there is not perceived to be a problem in the county consequently it is proposed not to proceed with these powers currently, although this can be kept under review.





**Appendix II Offences created by CNEA Act 2005 for which fixed penalties or formal notices are available for purposes of enforcement and proposed Fixed Penalty Notice / Early Payment amount.**

Section/Legislation	Offence	FPN	Formal Notice	FPN Amount
<b>S.6(1)</b> Clean Neighbourhoods and Environment Act 2005	<b>Nuisance parking</b>	YES	NO	Amount fixed at <b>£100.</b> Early Payment Amount – £60
<b>S. 2A(1)</b> Refuse Disposal (Amenity) Act 1978	<b>Abandoning a vehicle</b>	YES	NO	Amount fixed at <b>£200</b> Early Payment Amount – £120
<b>S.87/88</b> Environmental Protection Act 1990	<b>Deposit/Leave Litter</b>	YES	NO	Can be set at local level (between £50-£80). Default £75 <b>Set at £80</b> Early Payment Amount – £50

Section/Legislation	Offence	FPN	Formal Notice	FPN Amount
<b>S. 92/93/94</b> Environmental Protection Act 1990	<b>Street litter control notices, and</b>	YES	YES	Can be set at local level (between £75-£110). Default £100 <b>Set at £110</b>
	<b>Litter clearing notices</b>	YES	YES	Early Payment Amount – £75
<b>Schedule 3A,</b> para.7(2) Environmental Protection Act 1990	<b>Unauthorised distribution of literature on designated land</b>	YES	NO	Can be set at local level (between £50-£80). Default £75 <b>Set at £80</b> Early Payment Amount – £50
<b>S.43</b> Anti-social Behaviour Act 2003  Police Reform Act 2002	<b>Graffiti and fly-posting</b>	YES	YES	Can be set at local level (between £50-£80). Default £75 <b>Set at £80</b> Early Payment Amount – £50

Section/Legislation	Offence	FPN	Formal Notice	FPN Amount
<b>S.34A</b> Environmental Protection Act 1990	<b>Failure to furnish documentation (waste transfer notes)</b>	YES	YES S34(5) – Notice to produce	Amount fixed at <b>£300</b>  Early Payment Amount – £180
<b>S.5B</b> Control of Pollution (Amendment) Act 1989	<b>Failure to produce authority (waste carriers licence)</b>	YES	Yes S34(5) – Notice to produce	Amount fixed at <b>£300</b>  Early Payment Amount – £180
<b>S.47ZA(2)</b> Environmental Protection Act 1990	<b>Offences in relation to waste receptacles</b>	YES	YES – S46 & S47	Can be set at local level (between £75-£110).  Default £100  <b>Set at £110</b>  Early Payment Amount - £75

Section/Legislation	Offence	FPN	Formal Notice	FPN Amount
<b>S. 59</b> Clean Neighbourhoods & Environment Act 2005	<b>Offences under Dog Control Orders</b>	YES	NO	Can be set at local level (between £50-£80). Default £75 <b>Set at £80</b> Early Payment Amount – £50
<b>S.71/73</b> Clean Neighbourhoods & Environment Act 2005	<b>Failure to nominate keyholder (within an alarm notification area) or to notify local authority of nominated keyholder's</b>	YES	NO	Can be set at local level (between £50-£80). Default £75 <b>Set at £80</b> Early Payment Amount – £50
<b>S. 8</b> Noise Act 1996	<b>Noise from dwellings</b>	YES	YES	Can be set at a local level (between £75-£110) Default £100 <b>Set at £110</b> Early Payment Amount - <b>£75</b>

Section/Legislation	Offence	FPN	Formal Notice	FPN Amount
<b>Sch. 4</b> Environmental Protection Act 1990 ( ADOPTIVE )	<b>Power to seize and remove shopping trolleys,etc</b>	NO	YES	N/A but need to establish charge for recovery, storage and return of item.
<b>S.79/80/82</b> Environmental Protection Act 1990	<b>Statutory nuisance arising from insects &amp; artificial light</b>	NO	YES	N/A
<b>S48-52</b> Anti-Social Behaviour Act 2003  Town & Country Planning Act 1990	<b>Defacement of property with fly- posting or graffiti</b>  <b>Illegal fly-posting</b>	NO  NO	YES  NO	N/A