

REPORT OF THE ASSISTANT DIRECTOR (ENVIRONMENTAL HEALTH)
TO THE EXECUTIVE
7TH JULY 2006

Local Environmental Quality Enforcement Strategy

1.0 Introduction and Report Summary

- 1.1 This report recommends the adoption of a Local Environmental Quality Enforcement Strategy to guide the Council's enforcement work on envirocrimes. This will be a working document subject to consultation and finalization in September 2006. In pursuit of this, the report recommends the adoption of a charging regime for Fixed Penalty Notices (FPNs) and other actions to allow their implementation from September 2006 onwards. It also indicates the offences for priority action.
- 1.2 The report also recommends consolidation of already agreed envirocrimes policies into a consolidated Environmental Health Enforcement Policy for consultation and finalization in September 2006
- 1.3 The contact officer for this report is David Stevens, Assistant Director (Environmental Health) telephone 01235 540378

2.0 Recommendations

- (a) *that Members approve the draft Local Environmental Quality Enforcement Strategy attached at Appendix 1.*
- (b) *that Members recommend to Council the Charging Scheme for FPNs as attached at Appendix 3*
- (c) *that Members note the level of existing support for a Local Environmental Quality Enforcement Strategy outlined in Appendix 2 and agree that the proposed route for consultation and engagement should be to:*
- (i) *apply the draft Strategy as an interim strategy pending consultation*
 - (i) *address the outcome of public consultation over July and August 2006*
 - (ii) *finalise the Strategy in September 2006*
- (d) *that Members approve the approach to enforcement policy changes, namely to*
- (i) *consolidate previously agreed FPN criteria and Fly-Tipping prosecution presumption into the Environmental Health Enforcement Policy*
 - (ii) *consult on the consolidated Environmental Health Enforcement Policy*
 - (iii) *bring the Environmental Health Enforcement Policy to September Council*
- (e) *that Members note the proposed implementation and priorities for FPNs from September 2006 after a period of public awareness raising*
- (f) *that Members note that with existing resources it will be possible to provide a low level reactive response to incidents but not to extend this to patrolling or surveillance*

activities and that both the level of activity and related resource needs will be kept under review

3.0 Relationship with the Council's Vision, Strategies and Policies

This report supports the Council's overall aim of seeking the economic, environmental and social sustainability of the Vale, protecting and enhancing the vitality of our towns and villages. In particular this report helps to create a cleaner, greener, safer and healthier community and environment

4.0 Background

4.1 The Local Environmental Quality and thereby perception of quality of life of a neighbourhood, is significantly affected by the presence, absence or level of environmental crime or "envirocrimes" (a term identified by Government) in that neighbourhood. Envirocrimes may be taken to include activities which create or add to litter, graffiti, fly-posting, nuisance and abandoned vehicles, unauthorized distribution of literature on designated land, dog control, waste (including fly-tipping) and noise from dwellings and licensed premises. A comprehensive range of enforcement powers and duties are now available to the Council, particularly under the recent Clean Neighbourhoods and Environment Act 2005.

4.2 In order to ensure take effective action about local environmental quality, Defra recommends that authorities adopt a Local Environmental Quality Enforcement Strategy in order to promote better enforcement in their area. A draft Local Environmental Quality Strategy is attached as Appendix 1.

4.3 In pursuit of such a Strategy, various matters outlined in this report, need to be addressed. By gaining authorization for implementation of an initial enforcement phase, the Council would be able to take enforcement action on the whole range of envirocrimes, whilst concentrating on the priority issues. To achieve this, the following points are recommended for agreement.

5.0 Enforcement Policy Issues

5.1 Members have already agreed criteria for the use of Fixed Penalty Notices (FPNs) and a presumption for prosecution in fly tipping cases. These together with the overall principles of good enforcement practice recommended by the Enforcement Concordat may be brought together in a consolidated Environmental Health Enforcement Policy currently being developed for reporting following consultation to the November 2006 Council.

5.2 Issuing FPNs to Juveniles.

In law, a fixed penalty notice can be issued to anyone over the age of 10 years. However, recent Defra guidance recommends adoption of special procedures for issuing notices to young offenders (i.e. those below age 18 years). This will ensure authorities act in accordance with their duty under the Children Act 2004 which requires them to discharge their functions having regard to the need to safeguard and uphold the welfare of children.

5.3 It is therefore recommended that, in the initial phase of envirocrimes enforcement, FPNs are not issued to juveniles. Procedures and protocols will need to be developed in conjunction with the police and Youth Offending Teams, and will be incorporated into the Environmental Health Enforcement Policy.

6.0 Setting Fixed Penalty Levels

6.1 In respect of FPNs for envirocrimes, the Council has to decide what penalty levels to set for those where local discretion is allowed. It also has to decide what, if any, discount will be made available for early payment of the various FPNs and what the early payment discount period shall be.

- 6.2 Members are requested to recommend to full Council the levels of fixed penalties proposed in Appendix 3.
- 6.3 Whilst it is not the intention to proceed on the use of all the different FPNs initially, it is sensible to set all the penalties at this stage.
- 6.4 Income from the receipt of FPNs will be not be significant. The Council is allowed to keep such receipts which have to be spent on the specified functions. Such income will therefore be used to offset enforcement costs.

7.0 Prioritisation

There are 13 envirocrimes offences now covered by FPNs, and prosecution is available for various other offences. The following are the recommended priorities for enforcement action.

7.1 Fly tipping

This illegal depositing of waste is a considerable and growing problem for the Vale and nationally. Enforcement on fly tipping already forms part of the work of the Environmental Protection Team, and this work will continue. No fixed penalty notice is available, but the Government has increased the penalty to a maximum fine of £50,000 and possible imprisonment.

7.2 Litter

Litter is a universal problem and is a highly visible and public envirocrimes. A significant proportion of the street cleaning budget is spent essentially on picking or sweeping up litter. Use of the new fixed penalty notice with locally set penalty level and early payment discount is recommended.

7.3 Dog fouling

A fixed penalty notice of £50 for failure to clear up dog faeces is already currently available under the provisions of the Dogs (Fouling of Land) Act 1996. In 1997 the Council made an order designating, subject to certain statutory exceptions, all land to which the public have access. Many warning notices have been posted around the Vale. No new orders can be made under this Act.

7.4 The Council and Town and Parish Councils can declare Dog Control Orders under the new legislation, which can include making it an offence of failure to clear up dog faeces. The new fixed penalty notice with locally set penalty level and early payment discount could then be used.

7.5 In terms of choice of legislation, it is suggested the Dogs (Fouling of Land) Act 1996 provisions are used for enforcement for the time being, as they are already in force. They have been publicised over the years, reducing the need for more publicity.

7.6 The introduction of the new Dog Control Orders could then take a lower priority, allowing plenty of time for research and consultation as to any need for them

7.7 Graffiti and fly posting

These are universal problems and are highly visible and public envirocrimes. Enforcement on fly posting already forms part of the work of the Planning Enforcement team and this work will continue. Careful interpretation of the Town and Country Planning (Control of Advertisements) Regulations 1992 is required before any particular advertisement can be classed as an illegal Fly Poster (as there is no formal/legal definition of 'fly-posting') thus enabling prosecution under Section 224(3) of the Town and Country Planning Act 1990. Use of the new fixed penalty notice with locally set penalty level and early payment discount is recommended.

7.8 Failure of business to produce authority (waste transfer notes)

It is part of the existing requirements of the Environmental Protection Act 1990 section 34 legal "Duty of Care" in respect of waste for businesses to obtain and keep written transfer notes

when they transfer their waste to another party. This legislation has been in force for many years, contravention leading to prosecution. Lack of such transfer notes will often be an indication that the waste has entered the unregulated waste chain and is likely to be disposed of irregularly or fly-tipped.

- 7.9 Obtaining sufficient evidence to prosecute for fly-tipping is extremely difficult and complex in most cases. However, checking whether or not a business has transfer notes is more simple and straightforward. By enforcing this aspect of the Duty of Care, it is likely that the amount of waste entering the unregulated waste chain will decrease, thus reducing fly-tipping of such waste.
- 7.10 Use of the new fixed penalty notice with locally set penalty level and early payment discount is recommended. Attention will be focused on businesses implicated in fly tipping cases, those considered high risk for not having suitable arrangements, or those businesses causing problems from litter and rubbish because of inadequate waste storage and management arrangements.
- 7.11 Householder Duty of Care
Householders have been exempt from the Environmental Protection Act 1990 section 34 legal Duty of Care. However, new regulations now require householders to take reasonable measures to ensure waste from their property is passed on to an authorised person. Much small-scale local fly tipping unfortunately is carried out by some irresponsible householders. Also waste from home improvements, gardening and driveway construction is also found in fly tips from unscrupulous traders. Householders should check such traders are registered waste carriers. Attention will be focused on those householders implicated in fly tipping.

8.0 Community Engagement

The Defra guidance on envirocrimes recommends that it is good practice to consult on, and promote to, the public the contents of a local environmental quality enforcement strategy, particularly if FPNs have not been previously used, or used widely.

- 8.1 However, public concern about envirocrimes has existed for some time, and has been shown to be a priority. Therefore there is no need to go out to yet further consultation at this stage to demonstrate this concern or support for moving forwards. Appendix 2 provides supporting information
- 8.2 Details of the draft environmental enforcement strategy and information on envirocrimes will be published on the Council's website, with the facility for feedback. Some questions on local environmental quality enforcement have been included in a forthcoming consultation with the Vale Voice Panel
- 8.3 It is intended to take account of feedback on the draft strategy and finalise it during the September 2006 reporting cycle.
- 8.4 As FPNs have not previously been used, a publicity campaign should be undertaken to further raise public awareness on envirocrimes, the impending expansion of enforcement activities (particularly FPNs) and to seek continuing feedback. However, this should be fairly "short and sharp" to again avoid undue delay. The aim will be to inform those who live, work and visit the Vale what constitutes an offence and what penalties can be expected.
- 8.5 The Assistant Director, Environmental Health, in discussion with the Head of Communications will devise a public awareness campaign. It will be carried out over the summer so use of FPNs can start in September 2006.

9.0 Resources

The authority to use FPNs relating to envirocrimes has already been delegated by the Executive. All Officers in the Environmental Health Service and the Planning Enforcement Team (with regard to Fly Posting and Nuisance Parking) will be authorised to serve them in addition to their existing duties. However, the focus will be the Environmental Protection Team, who are already dealing with fly tipping enforcement, with the main enforcement officer being the Environment Warden.

- 9.1 Within these existing resources it will be possible to provide a low level reactive response to incidents but not to extend this to patrolling or surveillance activities.
- 9.2 At this low level, it is considered that the necessary work involved in administration of FPNs, and prosecution in cases of non- payment, can also be carried out within existing resources.
- 9.3 If the level of activity for enforcement, community engagement were to be extended it would be necessary to fortify staff resources. It is therefore proposed that both the level of activity and related resource needs are kept under review

DAVID STEVENS
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Appendix 1

DRAFT LOCAL ENVIRONMENTAL QUALITY ENFORCEMENT STRATEGY

Scope

This Strategy covers all areas of enforcement work affecting Local Environmental Quality (LEQ), which includes the topics of litter and waste, graffiti, fly-posting, nuisance and abandoned vehicles, unauthorized distribution of literature on designated land, dog control, waste (including fly-tipping) and noise from dwellings and licensed premises.

The principles and policies for taking effective enforcement action will be set out in a series of linked Enforcement Policies, which will cover general principles and more detailed requirements as necessary.

This strategy links to other strategies and policies including those covering community safety, licensing, planning control, food safety, health and safety and pollution control.

Aim

This Strategy aims to achieve improvements in Local Environmental Quality through effective regulation and enforcement.

Objectives

To use all available powers and duties in an appropriate manner.

To ensure that the principles of the national Enforcement Concordat are applied to regulation and enforcement.

To work effectively with other service providers and regulators to maximize effectiveness and efficiency and avoid duplication.

To provide clear guidance to the community on the Council's powers and duties, and in what circumstances they will be used.

To obtain community support for this Enforcement Strategy

To work with the community to achieve implementation of this Enforcement Strategy

Achieving the Objectives

The Council will ensure it has the ability to take enforcement action on any offence falling within the remit of this Strategy. However, this will be subject to:-

Allocation of Resources

Resources, including capacity to prosecute for offences and non-payment of FPNs served on behalf of the Council by its own officers and other agencies, will be matched to the enforcement outcomes set by the Council. These enforcement outcomes include:-

- The ability to take enforcement action on any detected offence, including service of FPNs, in accordance with the Enforcement Policy principles.
- The ability to take timely prosecution where appropriate for offences or non-payment of FPNs.
- The contribution enforcement actions make to the overall vision and aims of the Council.

Prioritization

- Attention and resources may be focused on priority areas for enforcement

Balance

A balance will be maintained between education, awareness raising, managing public expectation and enforcement. Similarly there will be a balance maintained across the various areas of enforcement e.g. between resources devoted to FPNs and time spent on prosecutions. Both these will be pursued in the interest of good enforcement practice and high quality, efficient service delivery

Choice of legislation

For many offences, there may be a range of different pieces of legislation which could be used to take enforcement action. Consideration will be given to the most appropriate choice for any particular case. In addition, it may be decided that generically certain pieces of legislation will not be used, e.g. where the Council has discretion, because other legislation is considered more appropriate and useful, or to allow proper assessment of the impact and benefits of new legislation and experience of its use elsewhere.

The Enforcement Strategy and associated enforcement policies will be publicized, along with details of legislation and an explanation of why the Council intends to use its powers. The Council will consult with other enforcement agencies, with stakeholders and with the general public. Working protocols will be established with other enforcement agencies.

General

All Enforcement Officers will be given adequate and appropriate training. Standardized policies and procedures will be developed to achieve consistency in enforcement, coupled with compliance with relevant legislation e.g. on human rights, surveillance and interviewing of suspects

Appendix 2

Local Environmental Quality Enforcement Strategy

Existing Support for more formal action on Environmental Crime

The National Picture

Local Environmental Quality has been a major theme for the Government over the past few years. They have consulted widely, it is now a priority subject for Defra, and much new legislation has been produced on “envirocrime” (i.e. those offences which affect local environmental quality), culminating in sweeping new powers (particularly use of FPNs) with the Clean Neighbourhoods and Environment Act 2005 and much associated detailed guidance.

It should be noted that there are close links with the anti-social behaviour theme, which is also a Government priority and resulted in legislation such as the Anti Social Behaviour Act 2003. Envirocrimes can be considered as acts of anti-social behaviour. Anti-social behaviour enforcement measures, such as Anti Social Behaviour Orders, have been used around the country in respect of persistent envirocrime offenders.

Vale of White Horse Community Safety Strategy

Under the Crime and Disorder Act 1998, the Police, the Police Authority, Local Authorities (County, District, Town and Parish Councils), Fire and Rescue Services and Primary Care Health Trusts have a statutory responsibility to work together to tackle crime and disorder. Other public sector and voluntary organisations are required to cooperate with the statutory authorities.

The statutory partners have to conduct an audit of crime and disorder, consult the public on the findings of the audit, and produce a strategy for tackling the issues identified.

The input from the statutory partners therefore represents a considerable body of opinion from those organisations that have the protection and well-being of the public as a core responsibility.

A comprehensive audit was carried out in 2004, with the volume and quality of data far exceeding that of previous audits. Key issues from the audit formed the basis of a consultation exercise.

Analysis of the audit data revealed environmental crime as one of the key issues, to quote:-

*“**Environmental crime** This includes litter, graffiti, nuisance dogs, nuisance vehicles, fly-tipping, fly posting, nuisance neighbours and abandoned shopping trolleys. It scored highly in the survey, and the emergence of new legislation and new empowerments for local authorities will almost certainly see it assume a high profile over the strategy period.”*

Subsequently environmental crime showed as a high concern in the public consultation exercise. As a consequence, environmental crime formed one of the 5 themes under which the Strategy is presented:-

*“**Environmental Crime** A significant local concern which is assuming more importance nationally and upon which the district council will lead.”*

The target for the Environmental Crime Action Group, set up to progress work on this theme, most relevant to enforcement includes *“Reduce the number of reported fly tipping incidents.....”*

Reflecting the comments under the National Picture, Anti-Social Behaviour is also a significant local concern, and a theme of the Community Safety Strategy. There are close links between the 2 themes and their respective Action Groups.

Existing Service Area activity

The Council receives many complaints, service requests and comments from the public and other organisations about envirocrime, and already takes enforcement action on many issues. To quote some examples:-

The Planning Enforcement Service

- This Team has always dealt with contraventions of advertising regulations, including fly posting on non-highway land
- Use of land and premises without proper planning permission, or dereliction of land, can give rise to envirocrime issues, such as pollution, offensive accumulations of materials, fly tipping

Services responsible for land and premises

- All such services are affected by envirocrime, such as litter, graffiti, Fly posting, fly tipping, and dog fouling. These generate complaints about the appearance of Council land and property.

The Environmental Health Service

- The Waste Management Team is responsible for the cleanliness of the public highways and various relevant land. Most of the rubbish they deal with results from litter and fly tipping, and considerable numbers of complaints and service requests are received on these issues. Dog fouling is another major topic of complaint about street cleaning.
- They receive complaints about early presentation of domestic waste for collection, which results in litter and reduction in amenity.
- They deal with abandoned vehicles, which often have associated problems of rubbish and oil pollution, as well as representing a safety hazard.
- The Environmental Protection Team has always dealt with a variety of complaints and requests for service on environmental quality issues. It has broadened its role into environmental crime enforcement, and consequently now receives many complaints on envirocrime. It has concentrated efforts to date on fly tipping enforcement and its successful prosecutions and formal cautions have received favourable comment. Public interest has been high, resulting in 2 television appearances by team members to talk about fly tipping.
- Dog fouling enforcement and stray dog control attract lots of complaints and service requests.
- The concern over fly tipping led the Council to adopt a policy of prosecuting offenders wherever practicable, because of the seriousness of the issue.

Local media Interest

- The local media reflect the interest and concern of the local community on envirocrime. As well as some topics reaching television, the national and local press, community newsletters etc. have all run articles on various aspects and incidents of envirocrime.

Appendix 3

FPNS FOR ENVIROCRIMES – SERVICE OF NOTICES, SETTING LOCAL PENALTY LEVELS AND DISCOUNTS FOR EARLY PAYMENT

Background

There are 13 offences listed in Table 1. For 5 of these, the amount of fixed penalty has been set by the Government. For 8 offences the various Acts enable the Council to use its local discretion and specify the amount of a fixed penalty. If the Council does not make use of this power, the Acts provide that a standard default amount applies. These offences are highlighted in grey in Table1. Where the Council does decide to set its own fixed penalty amounts, these must fall within certain ranges which are also indicated below.

In addition, for all the offences listed (with the exception of noise from licensed premises) the Council may offer a discount for early payment of a FPN. The amount below which the discounted penalty must not fall is also shown in the table.

Setting the penalty levels

Defra guidance offers the following advice on setting penalty levels:-

'In determining the level for a fixed penalty, local authorities will need to take into account the deterrent effect of different levels and also peoples' readiness to pay and the levels of fines imposed locally for the relevant offence in magistrates courts. Fixed penalties that are too high for local conditions, and lead to substantial non-payment rates, will be counter-productive as will penalties that are higher than the likely fine in the event of non-payment'

However, the offences listed have generally not been pursued in the Courts in Oxfordshire, so local information on levels of fines is not available. Similarly there is no information on people's readiness to pay.

The Defra guidance strongly recommends consulting the police when setting penalty levels. This has been done, and a response received suggesting use of the default penalty levels. There was also support for consistency across Oxfordshire. It had been suggested that neighbouring authorities of similar nature set similar penalty levels for consistency. However, it can be argued this goes against the principle in the legislation of allowing local discretion. To date, no information has been received from the other Oxfordshire authorities as to any penalty levels they have set or are considering setting.

The Council's Community Safety Team have also been asked for their views. In the absence of available information on these topics, they have also suggested use of the default penalty levels.

In drawing up the relevant legislation, the Government has consulted widely over the past few years, and has drawn on a wealth of research and expert opinion. It can therefore be argued that, in the absence of local information to the contrary, the default levels they set are fair and reasonable. It is therefore suggested the default penalties be adopted.

The use of FPNs will develop nationally over the next few years following the implementation of the clean Neighbourhoods and Environment Act 2005. It would therefore be sensible for the Council to review the penalty levels after a reasonable time, and 3 years is suggested.

Setting early payment discounts.

There is a standard period for payment of fixed penalties, set in the legislation at 14 days. Once a fixed penalty notice has been issued, an authority cannot prosecute for the alleged offence if the fixed penalty is paid within this period. For this reason, the period during which a discount for early payment

is offered must be less than 14 days and, to avoid confusion, Defra recommend that it should not be more than 10 days and it is suggested this period be adopted.

It is considered important to offer a reasonably large early payment discount for a fixed penalty notice. This will encourage prompt payment and help achieve high payment rates. The Government has set the amounts below which the fixed penalty levels may not fall. Again, in the absence of local information to the contrary, these offer reasonably large discounts so it is suggested these are adopted.

Table 1

Offences for which fixed penalties are available

The table below lists the fixed penalty notice issuing powers covered by Defra guidance. The shaded rows represent those FPNs where the local authority may use its discretion to set its own penalty levels within the specified range. If the local authority does not set its own penalty levels, the default penalty which applies is shown.

The local authority may also set an early payment discount for all the fixed penalties listed, unless otherwise indicated. The amounts below which the discounted penalties may not fall are:-

- For offences with a default rate of £75, £50.
- For offences with a default rate of £100, £60.
- For offences with a default rate of £200, £120.
- For offences with a default rate of £300, £180.

Section & Legislation	Description of Offence	Penalty Amount for fixed penalty notice set in legislation	Amount below which discounted penalty may not fall	Recommended VOWHDC local penalty	Recommended Discounted level for early payment of fixed penalty notice
s. 6(1) Clean Neighbourhoods and Environment Act 2005	Nuisance parking	Amount fixed at £100.	£60	Not applicable	£60
s. 2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a vehicle	Amount fixed at £200	£120	Not applicable	£120
s. 88(1) Environmental Protection Act 1990	Litter	Can be set at local level (between £50-£80). Default £75	£50	£75	£50

s. 94A(2) Environmental Protection Act 1990	Street litter control notices and litter clearing notices	Can be set at local level (between £75- £110). Default £100	£60	£100	£60
Schedule 3A, para.7(2) Environmental Protection Act 1990	Unauthorised distribution of literature on designated land	Can be set at local level (between £50- £80). Default £75	£50	£75	£50
s. 43 Anti-social Behaviour Act 2003	Graffiti and fly- posting	Can be set at local level (between £50- £80). Default £75	£50	£75	£50
s. 5B(2) Control of Pollution (Amendment) Act 1989)	Failure to produce authority (waste transfer notes)	Amount fixed at £300	£180	Not applicable	£180
s. 34A(2) Environmental Protection Act 1990	Failure to furnish documentation (waste carrier's licence)	Amount fixed at £300	£180	Not applicable	£180
s. 47ZA(2) Environmental Protection Act 1990	Offences in relation to waste receptacles	Can be set at local level (between £75- £110). Default £100	£60	£100	£60

s. 59(2) Clean Neighbourhoods and Environment Act 2005	Offences under Dog Control Orders	Can be set at local level (between £50-£80). Default £75	£50	£75	£50
s. 73(2) Clean Neighbourhoods and Environment Act 2005	Failure to nominate key holder (within an alarm notification area) or to notify local authority in writing of nominated key holder's details	Can be set at local level (between £50-£80). Default £75	£50	£75	£50
s. 8 Noise Act 1996	Noise from dwellings	Can be set at local level (between £75-£110). Default £100	£60	£100	£60
s. 8 Noise Act 1996	Noise from licensed premises	Amount fixed at £500	Not applicable (NOTE NO DISCOUNT AVAILABLE ON THIS PARTICULAR PENALTY FOR EARLY PAYMENT)	Not applicable	Not applicable
