

APPENDIX K

WAVERLEY BOROUGH COUNCIL

ENVIRONMENT & LEISURE OVERVIEW & SCRUTINY COMMITTEE 16 JUNE 2009

EXECUTIVE - 7 JULY 2009

Title:

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 ENFORCEMENT OF POWERS

[Portfolio Holder for Environment: Cllr John Sandy]
[Wards Affected: All]

Summary and purpose:

The purpose of this report is to set out the powers now available to the Council, under the Clean Neighbourhoods and Environment Act 2005 ('CNEA'), to address a wide range of activity and behaviour that is detrimental to the environment and/or is anti-social. The report sets out the implications for Waverley of exercising those powers.

The Environment and Leisure Overview and Scrutiny Committee considered this report at its meeting on 16th June 2009 and supported the recommendations as set out at the end of the report. The report is also being presented to the Meeting with Town and Parish Councils on 6 July 2009.

How this report relates to the Council's Corporate Priorities:

The report relates directly to two of the Council's five top priorities in the Corporate Plan viz; "1. Protecting and enhancing Waverley's unique environment" and "2. Improving the quality of life for all ...". The exercise of the powers available to the Council under the CNEA has a key role in delivering on these priorities.

Equality and Diversity Implications:

The exercise of the powers under the CNEA will be of equal benefit across the equality and diversity spectrum. Environmental crime affects the whole community.

Resource/Value for Money implications:

A robust and active enforcement mechanism i.e. a dedicated enforcement team, would have a significant resource implication for the Council. The nomination of officers delegated to exercise the powers will give the Council the ability to respond to serious breaches of the legislation without committing to major additional resource. However, if the Council commits to the issue of Fixed Penalty Notices for environmental and anti-social crime, it must have a process in place for pursuing

payment and must be prepared to resource Court action where payment is not forthcoming or breaches are serious or are repeated.

Legal Implications:

The Council has the powers under the CNEA but must nominate the officers that it delegates to exercise those powers. The Council may also set the rate of the Fixed Penalty Notices and the amount of discount for early payment.

Background

1. The Clean Neighbourhoods and Environment Act 2005 ('CNEA') has been introduced by the Government to provide a legislative framework for providing and maintaining a clean, safe and agreeable local environment. The CNEA supplements, extends, and in some cases, replaces, a multitude of existing environmental and anti-social behaviour Acts. It introduces a range of new offences and gives powers (not duties) to local authorities to issue Fixed Penalty Notices (FPNs) for commission of those offences. The CNEA comprises 272 Clauses in 108 Sections. This report sets out a summary of the main provisions of the CNEA and the key implications of those for this Council.
2. The ability to impose fixed penalties is intended to be part of a wider enforcement strategy designed to address all aspects of environmental crime and should not be used as an alternative to prosecution for more serious crimes. If the Council resolves to use these powers to issue Fixed Penalty Notices, (FPNs) it must be prepared to pursue the offender through the Courts where payment of the penalty charge is not forthcoming. The evidence for serving an FPN must therefore be sufficient to support a prosecution where required. If the Fixed Penalties are not paid and are not pursued through prosecution or recovery action, their use will be discredited.

Provisions of the Clean Neighbourhoods and Environment Act 2005 (CNEA)

3. The main provisions of the CNEA, that may have implications for Waverley, are set out more fully in Annexe 1 but a brief summary of those is produced below, referenced to the corresponding Sections of the Act shown in the Annexe.

3(a) Key Duty under the CNEA

The Council has a duty to "consider" low level anti-social behaviour and environmental crime, such as littering, graffiti, fly-posting, nuisance vehicles and fly-tipping in the composition of its Crime Reduction Strategy (Annexe 1: PART 1 – Section 1). Waverley's Crime Reduction Strategy (2005 – 2010), published in 2005, takes anti-social behaviour and environmental crime into account.

3(b) Key Powers under the CNEA

The Council has been provided with a range of powers and/or extension of powers under the CNEA, mostly supported by powers to issue Fixed Penalty Notices, as follows;

- (a) to make **Gating Orders** closing roads or footpaths in built-up areas in the interests of crime reduction (Annexe 1: PART 1 – Section 2);
- (b) to control the nuisance caused by the **maintenance or selling of vehicles on public highways** as part of a business activity (Annexe 1: PART 2 – Sections 3 & 4);
- (c) additional powers to **remove abandoned vehicles** (Annexe 1: PART 2 – Sections 10 – 12);
- (d) additional powers to control **littering** (Annexe 1: Sections 18, 20, 21, 22, 23 and 27);
- (e) to authorise others to issue Fixed Penalty Notices **for graffiti and fly-posting** e.g. Town/Parish Council officers. (Annexe 1: PART 4 – Section 30);
- (f) additional powers to control **Graffiti and Fly-Posting** (Annexe 1: PART 4 – Sections 28 and 30 to 34);
- (g) to control the licensing and regulation of **waste storage, transport, deposit and disposal** (Annexe 1: PART 5 – Sections 35 to 38, 40 to 45, and 48);
- (h) to require the production of **Site Waste Management Plans** for building and construction sites (Annexe 1: PART 5, CHAPTER 3 – Section 54);
- (i) to control the **nuisance caused by dogs** on public land (Annexe 1: PART 6 – Sections 55, 56, 59, 61 and 62);
- (j) to control the **nuisance of audible intruder (burglar) alarms** (Annexe 1: PART 7 – Sections 69 to 78);
- (k) to control **noise at night from licensed premises** (Annexe 1: PART 7 – CHAPTER 2);
- (l) to control **abandoned shopping and luggage trolleys** (Annexe 1: PART 9 – Section 99);
- (m) to control **nuisance from insects** emanating from industrial, trade or business premises (Annexe 1: PART 9 – Section 101);

- (n) to control **nuisance from artificial light** sources (Annexe 1: PART 9 – Section 102).

Enforcement of Clean Neighbourhoods and Environment Act Powers

4. The powers available under the CNEA, including the power to impose Fixed Penalties for breaches of many of its provisions, provide valuable tools to the Council to help it provide streets and open spaces that are clean, safe, and free of unsocial and environmentally damaging activity. The CNEA has provided the Council with the requisite powers; it does not need to formally adopt those powers. However, officers required to exercise the powers must be 'duly authorised' on behalf of the Council.
5. If it is resolved, initially, not to resource a dedicated enforcement officer or team, then there is a range of officers in the relevant services whose function might benefit by them having enforcement powers under the CNEA. The power to authorise named officers to exercise those powers can be delegated by the Council to specified senior officers of the Council. It is recommended that the Scheme of Delegation be amended to give delegated power to the relevant Heads of Service to authorise the appropriate officers in their services to enforce the provisions of the CNEA relevant to that service, as set out in Annexe 2.
6. Authorisation should be in the form of a card which identifies the officer and his/her post and states which statutes and/or Regulations that officer is authorised to enforce. The authorisation card should be signed and dated by the officer with the delegated power to authorise and should be signed by the officer being authorised. If cases proceed to Court, the Court may require evidence of the delegation and authorisation process for which the production of the Minute of the Council Resolution approving the delegation may be required.

Enforcement Policy

7. Waverley has a published general 'Enforcement Policy' which was formally adopted by the Council on 18th. February 2003 and which was constructed to be consistent with the 'Enforcement Concordat' produced by the Cabinet Office's Better Regulation Unit.

The Policy, reproduced at Annexe 4, states that "enforcement powers will be used as a means to support policy objectives and consistent regulatory control, rather than for their own sake". Exercise of enforcement powers under the CNEA would, therefore, be consistent with this policy in that this would support the delivery of the Council's key policy objectives of;

- "protecting and enhancing Waverley's unique environment"; and
- "improving the quality of life for all in the Borough".

8. However, the Enforcement Policy also states that;

“The emphasis will be on persuasion, influence and education, to secure the aims of legislation and local policies, but swift and firm action will be taken against those who deliberately flout or ignore the law”.

This is consistent with Waverley’s preferred approach to achieve its policy objectives by engagement with its community in informing, educating and promoting socially responsible behaviour. An example is Waverley’s partnership with Guildford BC in the Local Strategic Partnership project to promote a “clean, green and safe environment” in both Boroughs.

Enforcement Options

9. Where the Council cannot achieve its aims of a clean, safe and agreeable environment by community engagement it may need to exercise its powers under the CNEA, to enforce compliance with the provisions of the CNEA, by the imposition of Fixed Penalties on the offenders. It has a number of options to do this;

- (i) the employment of a dedicated uniformed mobile enforcement officer or officers engaged directly by the Council on a full or part-time basis. This would be the most effective mechanism for enforcement of the provisions of the CNEA as the Council would have a trained and dedicated resource available at all times, which is both visible, and therefore would have a deterrent effect, and recognisable by the public as a legitimate enforcement operation. However, this would be the most expensive option at an estimated £50,000 per annum per officer and van;
- (ii) a number of agencies specialise in providing enforcement officers trained in the provisions of the CNEA and in serving Fixed Penalty Notices. The service outlined in (i) could be provided by the use of agency staff. An indicative cost of £25,000 per officer per annum has been quoted. Agency staff could be employed for fixed terms or on a full-time or part-time basis. They would require more management and control to ensure that they delivered the right balance of education, deterrence and enforcement to meet the Council’s needs;
- (iii) a neighbouring District has a dedicated enforcement officer and vehicle. This service area may provide an opportunity for joint working, and economies of scale, particularly where levels of environmental and anti-social misbehaviour are not thought to justify a dedicated full-time operation in Waverley. If it is resolved to fund a dedicated enforcement service, discussions with neighbouring Districts should be entered into to explore the opportunity for joint working;
- (iv) the Council currently employs NSL Services (formerly NCP) to deliver its parking enforcement service. The Civil Enforcement Officers (CEOs) could be authorised to also issue Fixed Penalty Notices for

environmental crime under the CNEA. However, Civil Parking Enforcement is a different process requiring only photographic evidence of a parking regulation contravention and a Vehicle Registration Number. The registered keeper of the vehicle, obtained from DVLA records, is liable for the penalty. CEOs are not trained in obtaining evidence of environmental crime, and identifying offenders, sufficient for enforcement under the CNEA. In addition, the parking enforcement operation is economically resourced for that service alone such that any dilution of the parking enforcement activity would be detrimental to the service and to the revenue protection in off-street car parks;

- (v) the least-cost option would be to authorise relevant officers in the services where the CNEA provides enforcement powers to exercise those powers relevant to their services; e.g.,
- A Housing Management Officer would enforce nuisance vehicle offences on housing estates;
 - a Countryside Ranger would enforce dog control, littering and graffiti measures on the Countryside estate;
 - the Street-Cleaning monitoring officer would enforce littering on streets;
 - Parks and Landscape staff would enforce littering and graffiti/flyposting on the recreation grounds;
 - Parking staff would enforce the 'distribution of free literature' (leafleting of cars) in the off-street car parks.

e.t.c.

If there became a need for significant enforcement activity in any particular service it would have a resource implication which would need to be addressed in the particular circumstances.

Where significant numbers of Fixed Penalty Notices are issued, under any of the delivery mechanisms, a significant 'back-office' resource will be needed to identify and trace those liable for payment, pursue payment and instigate debt recovery, and/or instigate Court action in the event of non-payment of the FPN or for persistent or serious breaches of the CNEA. It is estimated that the 'back-office' resource would equate to 0.5 full-time equivalent administration post, plus legal support where Court action is required.

Need for Enforcement

10. The level of environmental crime and anti-social behaviour in Waverley is low. The National Indicators for littering, graffiti, fly-posting and abandoned vehicles are "good" or "satisfactory" and are well within national targets. We

work with our partner agencies in the Safer Waverley Partnership to manage anti-social behaviour and environmental crime. The Police has chosen not to exercise the littering and graffiti enforcement powers of the Act through its Police Community Support Officers, as it is empowered to do under the CNEA, as it feels this would detract from their community engagement role. Similarly, the Council might consider enforcement as a last resort to be used for serious or serial offences.

11. There are isolated instances in Waverley where persistent littering e.g. around a school or retail premises, or serial dog-fouling on particular recreation areas, occur. These could best be addressed by targeted enforcement by 'authorised' officers from the relevant existing service resource.
12. The making of Orders (e.g. Dog Control, Gating), designation of areas (e.g. Litter Control, Alarm Notification, prohibition of distribution of printed matter), the seizure of waste-carrying vehicles, and the inspection and monitoring of Site Waste Management Plans would need significant administrative, legal and operational support, which is beyond the resources available to the Council. It is not proposed that the Council would, or should, exercise these powers except in extreme circumstances.
13. Other powers, relating to abandoned vehicles, littering, graffiti, fly-posting, nuisance vehicles, nuisance dogs, nuisance insects, nuisance lighting and abandoned shopping trolleys, would be useful tools for the Council and could be exercised by the relevant service officers to tackle serial or serious anti-social or environmental misbehaviour that could not be remedied by education, persuasion or community advocacy.

Government Recommendations

14. The Government has recommended that;
 - (a) the use of Fixed Penalty Notices (FPNs) for low level environmental crime be encouraged.
 - (b) Fixed Penalties should be part of a wider enforcement strategy designed to address all aspects of environmental crime. They should not be used as an alternative to prosecution for more serious crimes (e.g. large or hazardous fly-tips).
 - (c) If FPNs are to be issued, it is essential that the authority has in place a system whereby a prosecution will ensue if the penalty is not paid and the evidence supports prosecution. If Notices are not paid and then not pursued, their use and value will be discredited.
 - (d) It is essential that local authorities intending to:
 - issue fixed penalties for the first time;
 - make 'Gating' Orders;

- designate Litter Control areas;
- make Dog Control Orders; or
- designate Alarm Notification Areas

publicise the intentions widely to raise public awareness and to gain public support for that action.

The Use of Fixed Penalty Receipts

15. The Council may retain the income from Fixed Penalties but the Regulations generally prescribe the use of those receipts. They may generally only be used to help defray the cost of the enforcement operation or to help fund the authority's statutory functions in relation to the particular legislation under which the Penalty Notice has been issued. However, where a local authority is categorised as 'good' or 'excellent' under the Comprehensive Performances Assessment (now CAA), it may spend penalty receipts on any of its functions. The Fixed Penalty Notice provisions are set out in more detail at Annexe 3.

Resource Implications

16. The magnitude of the resource implications will be dependant on the approach taken by the Council to the implementation of the powers provided by the CNEA. The level of enforcement needs to be proportionate to the level and extent of environmental crime in the Borough, at any given time, and to be consistent with the philosophy of the Council that seeks first to achieve its ambition of enhancing its environment and improving the quality of life for its residents and visitors, by engagement with its community rather than by confrontational enforcement action.
17. The Regulatory Impact Assessment (RIA) of the CNEA, produced by DEFRA, states that the majority of the measures provide local authorities with additional powers, rather than duties, which it expects will only be used where there is a net benefit in so doing in the local context. The RIA concludes that the benefits of the measures outweigh the costs but those costs are not quantified or funded by DEFRA or Government. If the Council resolved to actively exercise the extensive and numerous provisions of the CNEA, across all of the relevant service areas, it would need significant resources in both those services, and in legal support for prosecutions and finance support for collection of penalties and pursuit of debts.
18. There is some opportunity to defray the costs of enforcement through receipt of fixed penalty notice (FPN) income (e.g. £75 discounted to £50 for littering) but this is not expected to cover the cost of enforcement and recovery of the penalties, unless FPNs are to be issued in significant numbers on an on-going basis.
19. Officers authorised to enforce the provisions of the CNEA will need to have successfully completed an approved training course in the application of the relevant legislation relating to the offences for which they are to issue FPNs

and in gathering evidence under the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000 and other relevant enforcement and Court processes. Training must be successfully completed before authorisation. There will be costs for initial and refresher training.

Summary and Conclusion

20. The Clean Neighbourhoods and Environmental Act provides the Council with a wide range of additional powers that would be valuable in helping to maintain a safe, clean and amenable environment in the Borough. The most effective way of exercising these powers would be by way of a dedicated mobile enforcement officer or officers with a dedicated 'back-office' resource to manage the enforcement and provide the infrastructure for collection of fixed penalty payments, recovery of debt, and pursuit of Court action where penalties are unpaid or offences are serial, serious or persistent.
21. That enforcement structure would have significant financial implications that might only be justified when environmental crime and anti-social behaviour is at a significant level. This is not currently the case in Waverley. Any enforcement activity needs to be proportionate and consistent with the Council's primary aim to work with the community in addressing environmental issues. However, it would be valuable if the Council was able to take appropriate enforcement action where environmental crime and nuisance activity occurs and other measures have failed to resolve it.
22. Some provisions of the CNEA, where partner agencies have parallel powers e.g. waste transport offences and Site Waste Management Plan monitoring, might more appropriately and effectively be enforced by those agencies, in this example, the Environment Agency. Other provisions e.g. enhanced powers to control littering, graffiti, fly-posting, dog fouling, noise, flies and nuisance vehicles, would be valuable for the Council to be able to enforce, or threaten to enforce, where conciliatory approaches have failed. The relevant officers should therefore be authorised to take enforcement measures where required.

Recommendation

It is recommended that:

1. the Council's Scheme of Delegation be amended so that the relevant Heads of Service be delegated to authorise their nominated officers to enforce the relevant provisions of the Clean Neighbourhoods and Environment Act 2005 in accordance with the schedule at Annexe 2;
2. the option to employ a dedicated enforcement team be kept under review and reconsidered should the incidence of environmental crime and/or anti-social behaviour escalate to a level that might justify that investment;

3. the Council adopts the default level of Fixed Penalty Charges set out in Annexe 2 and the discounts for early payment as set out in Annexe 3; and
4. officers investigate the opportunities for joint working, on the enforcement of the provisions of the Clean Neighbourhoods and Environment Act 2005, with neighbouring District Authorities.

Background Papers (CEX)

Clean Neighbourhoods & Environment Act 2005.

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