

9th March 2016

Environment and Housing Management Committee

Litter and Graffiti Enforcement

Report of: Gordon Glenday, Head of Planning & Environmental Health
Roy Ormsby, Head of Street Scene & Environment

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 At the Ordinary Council meeting on 27th January 2016 a notice of motion was carried unanimously which stated:

‘As part of an ongoing campaign and commitment to keeping Brentwood clean, this Council resolves to explore powers at its disposal to take action against private land owners who fail to remove litter or graffiti from their land or property. A full report with proposed action will come forward to the Environment and Housing Committee’.

- 1.1 This report sets out the powers available to the Council to deal with removal of litter and graffiti on private land where land owners fail to carry this out.

2. Recommendation(s)

- 2.1 **Members agree to define the roles and responsibilities of officers so that a comprehensive and effective response is made to deal with issues relating to litter or graffiti.**
- 2.2 **Officers are instructed to investigate complaints of litter or graffiti on private property in accordance with the table in section 4 of this report**

3. Introduction and Background

- 3.1 Litter and graffiti have a detrimental effect on the character and amenity of an area. The Street Cleansing team currently arranges for removal of

graffiti from Council owned land and property through an online reporting system on the Council website.

- 3.2 The Clean Neighbourhoods and Environment Act 2005 (CNEA) introduced new provisions for dealing with litter. Litter Clearing Notices and Street Litter Control Notices were introduced and provision was made for issuing Fixed Penalty Notices (FPNs) for environmental offences.
- 3.3 The Principal Litter Authorities (PLAs) were empowered to deal with litter on 'relevant land', which is land that is open to the air, under their control to which the public have access. The offence of leaving litter under s.87 of the Environmental Protection Act 1990 applies to any place in the area of a PLA and a PLA is a litter authority for the purposes of issuing FPNs for leaving litter, under s.88 Environmental Protection Act 1990.
- 3.4 At the meeting of the Policy Board on 21st June 2006 (Min 115) Members adopted the powers under the CNEA 2005.
- 3.5 A report was submitted to Environment Panel on 5th November 2008 (Min. 368) which considered the possibility of employing Litter Wardens to discourage littering in the Borough and the use of FPNs. In all of the Essex authorities who have responded (11/13) the enforcement of litter and graffiti on private land is carried out by Street Scene Enforcement Officers.
- 3.6 The Register of Delegated Powers dated June 2010 gave delegations to the Head of Planning and Regulation and the Head of Sustainable Communities and Public Places to take action under CNEA (PO4/2).
- 3.7 The Street Scene Strategy 2012-2017 adopted by Members (Min 187) undertakes to 'use appropriate enforcement action to safeguard our environment' where required.
- 3.8 A report considering the Council's approach to dealing with graffiti was made to the Policy Board on 14th March 2007. This report explained that complaints to the Council about graffiti on Council land and property are normally dealt with by the service responsible for that asset. Accordingly, graffiti in the street is dealt with by Street Care and Waste Management Services; graffiti on council housing is dealt with by Housing Services; and graffiti on play areas is dealt with by the Parks and Countryside Department'.
- 3.9 The Anti-social Behaviour Act 2003 provided for Graffiti removal notices which could be served where a 'relevant surface' had been defaced by

graffiti; a 'relevant surface' includes the surface of any street or of any building, structure, apparatus, plant or other object in or on any street. This required the owner to remove the graffiti within 28 days.

- 3.10 Graffiti can also be considered as criminal damage under the Criminal Damage Act 1971 with a maximum fine of £5000.
- 3.11 The Council adopted Fixed Penalty Notices to deal with these offences, covering graffiti, fly-tipping, fly-posting, litter, dog fouling, leaflet distribution and waste registration breaches.
- 3.12 The Anti-Social Behaviour, Crime and Policing Act 2014 (ASBC&PA) superseded the CNEA and the former Litter Control Notices, Street Litter Clearing Notices and Graffiti/Defacement Removal Notices were replaced by the Community Protection Notice procedure.
- 3.13 The power available to the Council now to deal with both litter and graffiti on private land is contained within the Community Protection Notice. This notice is intended to replace current measures such as litter clearing notices, defacement removal notices and street litter control notices. It is not meant to replace the statutory nuisance regime – and where the behaviour is such as to amount to a statutory nuisance under section 79 of the Environmental Protection Act 1990 (EPA), it should be dealt with as such.

3.14 **Community Protection Notice**

A CPN can be issued to an individual aged 16 or over if an authorised person is satisfied that –

- a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and
- b) the conduct is unreasonable.

Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice or prosecution.

- 3.15 A report was made to the Business and Town Centre Committee on 16th December 2014 to authorise the Heads of Street Scene, Borough Health, Safety and Localism, Housing and Planning and nominated officers to issue FPNs under s. 53 of the ASBC&PA.

4. Issue, Options and Analysis of Options

4.1 The options available are to:

1. To investigate complaints of litter and/or graffiti received and to take appropriate enforcement action in accordance with the Council's Regulatory Services Enforcement Policy which incorporates Anti-Social Behaviour.
2. To define roles within Council services such that issues relating to litter and graffiti are effectively dealt with. It is intended that the table below will determine the service with primary responsibility for each area, but that officers will liaise with other services if appropriate.

The primary responsibilities are as set out in the table below:

Abandoned vehicles		Street Scene	
Early presentation of waste		Street Scene	
Flytipping	Environmental Health		
Flyposting		Street Scene	
Litter (e.g. cigarette, gum, fast-food)		Street Scene	
Shopping trolleys		Street Scene	
Transport of waste	Environmental Health		
Untidy Land			Planning
Waste receptacles		Street Scene	

3. Provide appropriate training to staff to enable the effective use of Community Protection Notices and Fixed Penalty Notices where issues arise.

4. Options for enforcement should be considered having regard to the Council's Regulatory Services Enforcement Policy, taking into account the seriousness and nature of the offence.

5. Reasons for Recommendation

- 5.1 To better target issues of litter and graffiti in the Borough and to deal effectively with problems on private land.

6. Consultation

- 6.1 Consultation on the use of the powers within the Anti-Social Behaviour, Crime and Policing Act 2014 has already been undertaken.

7. References to Corporate Plan

- 7.1 Environment and Housing Management - Encourage more people to become involved in the environmental aspects of their community
Encourage residents to work with us to take responsibility for the environment, and improve the cleanliness of our streets
Enable communities to take a more active role in delivering a cleaner and safer environment
- 7.2 Community and Health - Work with partners to reduce anti-social behaviour and ensure that Brentwood is a safe place to live

8. Implications

Financial Implications

Name & Title: Ramesh Prashar, Financial Services Manager

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- 8.1 All costs will be met from existing budgets.

Legal Implications

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- 8.2 The legal implications are contained in the body of this report.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.3 None identified

9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

- 9.1 Brentwood Borough Council Regulatory Services Enforcement Policy
2015
Brentwood Borough Council Anti-Social Behaviour Strategy 2005

10. Appendices to this report

None.

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