

ENVIRONMENTAL CRIME ENFORCEMENT

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Summary

- i. Communities of Shropshire are demanding streets free of dog mess and litter and want those who continue to act in an antisocial way brought to book.
- ii. Any effective enforcement regime needs to be proportionate, consistent, transparent and targeted.
- iii. People need to understand what is expected of them and how they can comply with the law. This requires ongoing education and publicity.
- iv. There needs to be adequate infrastructure in place so that people can reasonably comply with the law, this includes litterbins, recycling and refuse collections.
- v. There are a number of options when enforcing environmental laws including; prosecution through the courts, issuing fixed penalty notices, cautions and warnings. All options have their place and should be used as appropriate.
- vi. All officers undertaking enforcement duties will have received the necessary training.
- vii. There will be a presumption for formal action (prosecution in court or the issue of a fixed penalty notice) where evidence supports it.
- viii. Where a fixed penalty notice remains unpaid there will be a presumption to prosecute in court for the original offence.
- ix. It is important that any monies raised via fines are seen to directly pay for environmental enhancements, eg. Britain in Bloom, Community Litter Picks etc.
- x. It is important to win hearts and minds and we should seek to work with schools and community groups and have a pro-active media strategy to emphasise the positive education message and create a sense of pride in place.

Recommendations

It is recommended that:

- A. An education and awareness programme be rolled out across the communities of Shropshire so that people will understand what is expected of them in order to comply with the law, what the penalties will be for non-compliance, how to complain if they are aware of someone committing offences and the response they can expect from Shropshire Council.
- B. Appropriately trained Shropshire Council staff and where possible those from town and parish councils who want to become more involved, will enforce the environmental laws detailed in Appendix A. Where there is sufficient evidence that an offence has been committed enforcement will take place. This enforcement will be proportionate. For more minor offences a fixed penalty notice will be issued, for major ones it will be prosecuted through the courts.
- C. Town and Parish Councils, Community Groups or Street Champions should be encouraged to work with council officers to tackle environmental crimes.
- D. Members agree that young offenders will be subject to the law, but it will be applied in accordance with our procedures for dealing with juveniles.
- E. That the level of penalty for offences where fixed penalty notices are used will be at the government set default levels.
- F. Members agree that any receipts from fine income be reinvested in environmental enhancements, eg. Britain in Bloom, Community Litter Picks, etc.

REPORT

Introduction

1. The Environmental Maintenance team is, with partners, responsible for providing clean and safe streets and public spaces. This directly aligns with our key Community Strategy priorities:
 - Enterprise and growth, with strong market towns and rebalanced rural settlements;
 - Responding to climate change and enhancing our natural and built environment; and
 - Healthy, safe, confident people and communities.

2. Members will also recognise that this is also the aspiration of the majority of residents, who cite litter, dog fouling and fly-tipping problems regularly at Local Joint Committees, PACT and Town and Parish Council meetings, and state that attitudes and behaviours towards the local environment must improve. It is essential that we get this right if we are to deliver our aim of a Shropshire which is a great place to live, work and visit.
3. Robust and effective enforcement, supported through education and the provision of the necessary infrastructure such as litterbins, allows there to be the behavioural change to reduce litter and dog mess. This leads to improved environmental standards, increased public satisfaction and may allow the council to review cleansing frequencies and seek further efficiencies.
4. The Government has extended and amended the powers available to local authorities to tackle environmental crime through the Clean Neighbourhood and Environmental Act 2005. In particular, the Act extends the use of fixed penalty notices across a range of environmental offences to enable local authorities to deal more efficiently with first-time offenders and those who commit offences at the more minor end of the scale.
5. Where there are major offences such as commercial scale fly-tipping then fixed penalties would not be appropriate or proportionate. In those situations prosecution should be sought through the courts where more severe penalties could be applied.
6. This report is based on guidance issued by Defra and suggests the approach that Shropshire Council should follow in tackling environmental crimes.
7. There are three tiers in having an effective enforcement regime, and these are:
 - i) Enforcement Statement
This is a high level document that sets out our environmental priorities and is a distilled version of the Enforcement Strategy. It is best practice to consult the public on any enforcement statement.
 - ii) Enforcement Strategy
This sets out the key objectives, the powers to be used, schemes of delegation, targeting of offences, budgets, delivery, training, management targets, reporting and reviews.
 - iii) Enforcement Operational Policy
This comes out of the strategy. It translates this into the framework within which authorised officers and managers work.
8. The use of enforcement powers brings with it a great deal of responsibility. They must be used correctly, proportionately and legally. It is envisaged that the best way to achieve compliance with the law is to

provide guidance and advice so that members of the public understand the nature and extent of their responsibilities so they can comply voluntarily. This will involve an on-going education programme as well as the enforcement regime.

9. The Legislation and Regulatory Reform Act 2006 places the Hampton Report principles of good regulation on a statutory footing. The Act introduced a code of practice, which came into force on 8th April 2008. Defra believes in firm and fair regulation of the matters for which it has responsibility and have adopted fair enforcement principles for achieving this. These are:
 - i) **Proportionality**
Generally this takes into account the degree of the risk of harm caused by non-compliance. However, the principle may require enforcement action even though the risks may be uncertain.
 - ii) **Consistency**
We must take a similar approach in similar cases to achieve similar outcomes.
 - iii) **Transparency**
Helping people understand what is expected of them and detailing how they can comply or what to expect should they fail to comply, and where enforcement is necessary, then exactly what that is and complete details of the process, including any appeals.
 - iv) **Targeting**
The effective prioritisation and direction of regulatory effort. This means concentrating on those activities presenting most serious risks.

The Law

10. There is a wide range of legislation available to help deliver a cleaner, safer, greener Shropshire. The enforcement of these powers is delegated to various officers of the Environmental Maintenance Team. The relevant legislation and scheme of delegation is available on the council's Intranet.
11. Any enforcement of the law will be done in compliance with the enforcement statement. We have ensured that the necessary infrastructure is in place so people can comply and the vast majority do. We have also developed an education strategy, which we will deliver throughout Shropshire, so that everyone is aware of what is expected of them. Again, the vast majority already know this. With this in place, we will be prosecuting, in line with our policies, in all instances where environmental crime is committed and evidence supports that action. We will work towards zero tolerance. The clear message we seek to deliver is that the individual will be caught and that they will be prosecuted when they are.

12. Any Council or non-authority enforcement staff undertaking enforcement activity will have completed the necessary training to ensure they comply with the requirements of the law that they are enforcing and those of the Police and Criminal Evidence Act and the Regulation of Investigatory Powers Act 2000 as necessary.
13. Forty two council staff have undertaken the necessary training, including all our Civil Enforcement Parking Officers (CEOs), to deal with environmental crime issues. The CEOs will undertake both an environmental and parking enforcement role. These officers present the uniformed face of Shropshire Council in tackling antisocial activity. Authority to issue fixed penalty notices is delegated to: the Head of Environmental Maintenance, the Enforcement Manager, Street Scene Managers, Technical Support Officers, the Education and Enforcement Officer, Dog Wardens, Street Wardens, Civil Enforcement Officers (Parking Officers) and Police Community Support Officers.
14. The Council has also trained employees of Shrewsbury Town Council to undertake enforcement. Other town and parish council employees could also be trained and delegated to enforce certain provisions, by their respective councils, where there is a local will and need. This is provided for under the legislation and is something we wish to support and encourage. Where there is not the capacity within a local town or parish council to have a trained employee, we will still be able to take action if we receive witness statements, which would need to be supported in court where necessary. That action could take the form of issuing a fixed penalty notices by post or prosecution in the court. It has been agreed that where a town or parish council issue a fixed penalty notice, the back office, payment and legal support is provided by Shropshire Council.
15. Another initiative that Environmental Maintenance is piloting is that of Street Champions. A Street Champion is someone who takes pride in their local area and reports any problems that they see. It is hoped to develop this by encouraging them to undertake minor improvements, such as planting flower bulbs, occasional litter picks and removing fly posters. As this develops further, we could seek statements to support us in taking action against those committing offences, such as failing to clean up after a dog. We are also exploring the extension of the Neighbourhood Watch scheme to include environmental crime. Any information received from these sources will be correlated and used to target enforcement activities. In this way we will be sending officers to areas where they are most likely to catch offenders and bring about improvements.

Fixed Penalty Notices

16. There is a wide range of offences for which fixed penalty notices can be used. These are detailed in Appendix A. It is proposed that Shropshire Council set the levels of fine at the default levels and to adopt the proposed discount if the penalty is paid within 10 days of its issue. This is different to the levels of penalty agreed in the past, which were set at a level higher than the default level. If setting levels other than default

levels, we must take into account the deterrent effect and local people's readiness to pay. The default values and ranges which could be imposed are included in Appendix A. The use of default values also makes it easier to maintain appropriate signage, as there is not a need to replace all signs, at considerable expense, should the level of penalty change.

17. Fixed penalties should be paid within 14 days of issue. Should a fixed penalty notice not be paid then prosecution for the original offence in the Magistrates Court will be pursued. It is understood that there will be occasions when payment within 14 days presents a severe problem, for example for someone on limited income. In genuine cases of this nature, the Head of Environmental Maintenance (Central) would have discretion to agree either to payment by instalments, or deferred payment although the full amount would still need to be paid. Should anyone default on such an agreed plan then prosecution for the original offence would be pursued in the courts.
18. To maximise payment of fixed penalty notices, reminders would be sent at 15 days and final demands before laying information in the Magistrates Court.
19. The processing and management of fixed penalty notices will be carried out using the Chipside database, which is currently used to manage civil parking Penalty Charge Notices.
20. There is no statutory requirement for an appeals process; however, it is felt to be good practice to offer an appeal option. Such a process will allow concerns expressed by members of the public to be heard and provide an assurance check on the enforcement system, to ensure it remains fit for purpose.
21. Any appeal should be in writing to the Head of Environment Maintenance (Central) and be within 14 days of the issue of the notice. (If made within 10 days then the early payment discount would still apply, dependent on the outcome of the appeal).
22. Performance targets should be set for payment rates for fixed penalties but not for the number of notices issued. The proposed target is a payment rate of 80%. Defra guidance suggests authorities should be aiming for a minimum of 75%.
23. The use of enforcement powers is to bring about behavioural change. It must not be considered to be or allowed to be perceived by the public as a "money making" scheme. Authorities of a similar nature to Shropshire with active enforcement policies issue 100 or so Fixed Penalty Notices per year. The income would therefore be approximately £7,500 per annum. As a strongly performing authority, we are able to use any fine receipts on any function we wish. However, it is proposed that any fine income be used to support the provision of additional environmental enhancements, eg. litter and dog waste bins, educational materials, community litter picks, Britain in Bloom, etc.

Enforcement and Juveniles

24. Preliminary : In all cases, information relating to the application of enforcement powers to those aged 16 or under will be shared with the local Youth Offending Team for the administration of justice in accordance with the Data Protection Act 1998.
25. 17 Year Olds : Once the age of the offender has been ascertained, fixed penalty notices will be issued to this age group using the same procedure as for adults. If there are doubts as to whether the offender is 17, the procedures for 10 to 16 year olds should be followed.
26. 10 -16 Year Olds : Fixed penalty notices will not normally be issued to any person 16 years of age or under for a first offence. However, suspects aged 16 and under will still be asked their name and address to enable contact with their parents or guardian. If on enquiry it is decided that a fixed penalty notice is suitable, it is recommended that the fixed penalty notice be issued to the offender personally with a parent or legal guardian present. If for any reason it is sent by post, a responsible adult will be notified at the same time.
27. In all other cases the Environmental Maintenance officer will discuss with the Youth Offending Team and other children's services for the area where the child lives what steps should be taken.
28. In deciding whether a fixed penalty notice is appropriate, the issuing officer will consider whether the offender has received a fixed penalty previously (wherever possible no more than one fixed penalty notice should be issued to anyone under 16, but a Reprimand, Warning or other sanction should be considered instead), his or her family circumstances and whether he or she suffers from other vulnerabilities.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Human Rights Act Appraisal

The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998.

Environmental Appraisal

The recommendations contained within this report will significantly improve the environmental quality of Shropshire's streets and open spaces.

Risk Management Appraisal

N/A

Community / Consultations Appraisal

Communities are demanding environmental enforcement and the adoption of this policy will address these concerns.

Cabinet Member:

Councillor Martin Taylor-Smith

Local Member

All

Appendix

A Fixed Penalty Notices – Legislation and Levels of Penalty