

**Shadow Economic Prosperity Scrutiny Committee
Policy Review 2015 – 2016**

Approach to Environmental Enforcement - Draft Report

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1 Foreword

In setting its work programme at the beginning of the year, members agreed to conduct a short review into the issue of environmental enforcement. This reflected the high priority attached by our residents to maintaining a clean and attractive environment and the important role it can play in promoting the economic health of the city.

Our report has highlighted the importance attached by residents to the quality of the local environment and also the difficulties we face in maintaining the quality of service that our residents expect at a time of unprecedented reductions in local government funding. We consider it important for the Council to focus and prioritise the use of available resources while at the same time being willing to take robust and well publicised enforcement action against the most serious and persistent offenders.

Maintaining a clean and tidy environment will always be a balance between education and persuasion and the use of more robust enforcement measures such as fixed penalty notices. Clearly education and persuasion has a vital role to play in helping to secure a clean and attractive environment. However, we feel that it is equally important to recognise that we must be willing to adopt more robust enforcement measures when required; providing an effective and visible level of enforcement to discourage the growth of irresponsible attitudes to litter.

With this in mind, we feel that the time is right for a review of the Council's Enforcement Strategy in order to clarify our approach to environmental enforcement moving into the future. We feel that the Council should also look at the approaches being taken by other local authorities and assess their applicability to the situation in Sunderland.

With regard to the issue of illegally tethered horses, members again heard that there is a growing problem but one which was difficult to tackle given the ever increasing financial constraints within which the Council operates.

We would however suggest that mechanisms are put in place to gain a clearer understanding of the scale of the problem and any trends that may be emerging. We would also suggest that the Council develops a procedure in respect of the treatment of illegally tethered horses in order to bring consistency of approach and continue to develop working relationships with partners such as the Police and other local authorities in order to make the most of available resources.

In conclusion, we would like to thank our colleagues on the Committee and all of the officers and staff involved for their hard work during the course of the review.

2 Introduction

- 2.1 In July 2015 the Scrutiny Committee agreed that the City Services Scrutiny Panel undertake a short review into the approach being taken by the Council to the issue of environmental enforcement. This issue was highlighted as a policy review topic by members of the Panel during the Council's Annual Scrutiny Debate held in June 2015.
- 2.2 In choosing to look at the issue of environmental enforcement, the Panel recognised that this theme covered a wide range of services provided by the Council which were of a high priority for the residents of the city. Members agreed to begin the review by focusing on environmental issues relating to streetscene. Members then went on to look at the issue of illegally tethered horses and the approach being taken to tackle this problem in the city.

3 Aim of the Review

- 3.1 To consider the approach being taken by the Council to the issue of environmental enforcement.

4 Terms of Reference

- 4.1 Members agreed the following terms of reference for the review:-
- (a) examine the legislative framework within which the Council's environmental enforcement system operates;
 - (b) consider the environmental enforcement powers possessed by the Council;
 - (c) assess how far these powers are currently being used;
 - (d) consider the relative balance given to persuasion, education and enforcement.

5 Membership of the Panel

- 5.1 The membership of the Economic Prosperity Scrutiny Committee is outlined below:

Councillors Beck, Blackburn, Curran, Davison, M Dixon, Elliot, English, Essl, Forbes, Foster, G Galbraith, I Galbraith, E Gibson, Lauchlan, Kay, Marshall, Porthouse, Price, Scanlan, Scaplehorn, D Snowdon, Taylor, B Turton, M Turton, Wood

6 Methods of Investigation

- 6.1 The approach to this work included a range of research methods namely:
- (a) Desktop Research;
 - (b) Use of secondary research e.g. surveys, questionnaires;
 - (c) Evidence presented by key stakeholders;

6.2 Throughout the course of the review process, evidence was gathered from a number of key witnesses including:

- (a) Mark Speed (Head of Place Management)
- (b) Ian Richardson (Assistant Head of Streetscene)
- (c) Nicky Rowland (East Area Response)
- (d) David Gustard (Senior Surveyor)

7 Findings of the Review

Findings relate to the main themes raised during the panel's investigations and evidence gathering.

7.1 Approach to Streetscene

7.1.1 As part of the review, Mark Speed (Head of Place Management), Ian Richardson (Assistant Head of Streetscene) and Nicky Rowland (East Area Response Manager) discussed with members the background to environmental enforcement across the streetscene service. This included the range of environmental crimes enforced by the Council, the legislation under which they are enforced, the approach being taken as part of the Council's Enforcement Policy and the challenges faced looking into the future.

7.1.2 At the outset, members stressed the high priority attached by local residents to the maintenance of a clean and attractive environment. This had been demonstrated in numerous resident satisfaction surveys and from the feedback received by members from local residents. The incidence of litter, rubbish and dog fouling are frequently cited as being a major contributor to quality of life. Furthermore, the condition of the local environment can also play an important role in promoting the economic health of the city by attracting greater footfall and investment.

7.1.3 However, the maintenance of a clean and tidy environment comes at a cost. Figures from Keep Britain tidy estimates that more than 30 million tonnes of litter is dropped and that nationally local authorities spend in the region of £1 billion picking it up.

7.1.4 Sunderland City Council prioritises a wide range of environmental crimes and has adopted various legislative powers to enforce against non-compliance. The main priorities include:-

- | | |
|----------------------------|------------------------------|
| Littering | Domestic Waste Fly tipping |
| Dog Fouling | Commercial Waste Flytipping |
| Dog Prohibited Zones | Vehicles on sale on highways |
| Illegal Deposits of Waste | Waste and litter on land |
| Illegal Transfer of Waste | Commercial Litter |
| Illegal Transport of Waste | Fly posting |
| Graffiti | |

7.1.5 Powers to enforce include:-

Refuse Disposal (Amenity) Act 1978 - which sets out how waste is managed and disposed of and creates an offence of waste abandonment.

Environmental Protection Act 1990 – a broad piece of legislation relating to a range of environmental crimes ranging from noise pollution to nature conservation. Significantly the Act provides powers relating to the storage, disposal of waste, duty of care, fly tipping, littering, transporting of waste. The Act was also notable for introducing Fixed Penalty Notices for a number of offences.

Dogs (Fouling of Land) Act 1996 – which made it an offence to fail to clear away dog waste.

Clean Neighbourhood and Environment Act 2005 – an update on the Environmental Protection Act 1990 for many offences and provided broader use of Fixed Penalty Notices. This Act also repealed the Dog (Fouling of Land) Act 1996 relating specifically to dog fouling, by introducing Dog Control Orders. In particular, it provided local authorities with increased powers to prosecute flytipping, dog fouling, litter and graffiti and issue fixed penalty notices.

Anti-Social Behaviour Crime and Policing Act 2014 – the Act aimed to once again rationalise previous legislation. It also introduced a number of new powers that have the potential to tackle issues of littering and dog fouling.

7.1.6 The Council's own approach to environmental enforcement is set out in its Enforcement Policy. Members heard that the key thread to the policy was to "ensure that enforcement decisions are consistent, balanced, fair, transparent and proportionate".

7.1.7 The approach taken in the Council's Enforcement Policy is based upon the good practice set out in the Government's Enforcement Concordat which sets out what people can expect from enforcement officers and the range of approaches and actions that can be used. The main principles include clear and generally understood standards, openness, helpfulness, proportionality and consistency.

7.1.8 A key theme of the Council's overall approach to environmental enforcement has been to, as far as possible, promote a voluntary adherence to standards; seeking firstly to educate, persuade, advise and assist people rather than taking an overtly authoritarian and heavy handed approach. However, the policy recognises that in certain cases more robust enforcement action will be required for more serious cases and for those people who deliberately and persistently flout the law.

7.1.9 Therefore the Council policy includes provision for a wide range of both formal and informal actions following an inspection or investigation with an emphasis on prevention. These actions include:-

Take no action – where compliance has been achieved or there is insufficient evidence to proceed

Take Informal Action – includes offering advice, issuing warnings and requests for action. Such informal action is taken where the act is not considered serious enough to warrant formal action or informal action is considered enough to achieve compliance.

Issue a Statutory Notice – the serving of a notice to require offenders to cease a contravention

Issue a Fixed Penalty Notice – payment of a fine. Where not paid legal proceedings will be implemented

Use a Formal Caution – to deal quickly and simply with less serious offenders

Prosecute – where the law has been flagrantly and/or frequently disregarded, meeting basic legal standards has been refused and the public has been put at risk

Carry out works in default – where work is carried out by the authority and cost recovered. Where immediate action is required and the work is unlikely to be done unless it is done by default

Seek an Injunction – used where there is a serious imminent risk to public health or the environment and immediate action is considered necessary

7.1.10 The policy stresses the importance of coordinating enforcement activity with relevant partners such as the Police in order to make the best use of available resources. The policy also sets out the high standards of behaviour expected of the Council's Environmental Enforcement Officers and the procedure for handling complaints and appeals.

7.1.11 As mentioned earlier, a key driver of the Council's approach to environment policy has been to work to promote respect and support among our residents for the maintenance of a clean and well maintained environment and thereby secure a long term and sustainable solution to problems of litter, flytipping and dog fouling.

7.1.12 Educational campaigns and promotions have therefore been an important feature of the Council's approach designed to win over the active support of local residents, businesses and schools.

7.1.13 Education programmes for young people have been of particular importance in trying to influence the long term attitudes and behaviour of people of school age and make them aware of the impact of litter on the local environment. The Council has sought to work with schools to encourage the teaching of environmental awareness and anti-litter campaigns and ensure that such messages are incorporated into the curriculum of local schools. In recent

campaigns in Diamond Hall Infant school and St Pauls Junior School in Ryhope, pupils were taught the values of caring for the local environment and the impact that individuals can have if a caring approach is not adopted. St Paul's pupils all designed anti-littering and anti-dog fouling posters which were displayed in local shops, libraries and public building to promote environmental responsibility.

7.1.14 As a Committee, we would highlight the important role of schools in ensuring that our young people are taught an awareness of their role in contributing to the maintenance of a clean and tidy environment. Unless young people are taught at a very young age about the importance of maintaining a clean and healthy environment, it is unlikely that sustainable long term progress can be made.

7.1.15 However, the promotion of a clean local environment is not just an issue or responsibility for young people but concerns all sections of the community. For this reason, it is important that publicity and promotional work is directed at all age groups ensuring that everyone is aware of the important role they have in maintaining a clean and tidy environment.

7.1.16 Over the years, the Council has undertaken a great deal of work to help galvanise community participation perhaps best exemplified more recently by the Love Your City community clean up campaigns which have seen a number of community and voluntary groups across each Ward come together to complete community clean ups and promote environmental awareness under the Keep Britain Tidy campaign 'Love Where You Live'.

7.1.17 As members, we feel that it is important that such community activity continues to take place at a local level, though we are fully aware that the intense financial constraints will make this increasingly difficult.

7.1.18 While the Council's Enforcement Strategy emphasises the importance of education and persuasion as a means of maintaining a clean and tidy environment, it also recognises that a more robust form of enforcement action is required for people who deliberately and persistently flout the law. This reflects the role that effective and visible enforcement can have in discouraging irresponsible attitudes to litter and dog fouling and in providing a deterrent to environmental crime.

7.1.19 As previously mentioned, a major tool for environmental enforcement is the use of Fixed Penalty Notices (FPN's) which can be issued for a range of environmental offences including graffiti, littering, dog control. The Council uses a range of fixed penalty notices for litter and dog fouling. Fines range from £75 for litter and dog fouling to £300 for waste management or transfer offences.

7.1.20 Where a fixed penalty notice is not paid or the infringement is severe the Council will look to prosecute. However, prosecution can be a costly approach and with little prospect of recovering the full cost of the prosecution. The Council also uses injunctions in the case of prolific offenders.

7.1.21 During our review, Members were presented with figures for recorded enforcement action undertaken by the RLS Customer Relationship Officers, as reported formally to Defra between April 2015 and the end of October 2015. These included:-

- Investigation of 1110 reports of fly-tipping;
(‘Fly-tipping’ includes waste left in rear lanes, unlawful deposits on public and private land, and unauthorised commercial waste disposal);
- 5 locations were cleared and charged for;
- 40 Statutory Notices have been served relating to the correct disposal of refuse;
- 16 formal written warnings were issued regarding a ‘Duty of Care’ in respect of commercial waste management, all followed up and resolved;
- 1477 formal written warnings were sent out for littering, refuse disposal or rear lane waste deposits;
- 1 Fixed Penalty Notice has been issued for littering;
- 1 Fixed Penalty Notice has been issued for dog fouling;
- 1 Fixed Penalty Notice has been issued for advertising cars for sale on the highway;
- 2 prosecution cases for fly-tipping offences have been prepared and are currently with legal services pending a court date.

(NB One prosecution case for a littering offence has been prepared and is currently with legal services pending a court date).

7.1.22 Members heard that this level of formal enforcement action is replicated among most other local authorities in the UK. Indeed one third of Council’s did not issue a single fixed penalty notice for dog fouling in 2014/15 despite a large number of complaints. However some authorities have taken more robust action such as Barnsley MBC who issued 187 FPN’s for dog fouling in that period.

7.1.23 The Council currently has four Customer Relations Officers performing enforcement duties across the city; down from the previous six of 2 years ago. The duties of these officers cover a wide range of environmental offences including litter, dog fouling, dog control, illegal deposits of waste, waste on land, fly-tipping, trade waste contracts, vehicles for sale on highways, waste abandonment, household waste disposal and illegal waste carriers.

- 7.1.24 During our discussion around the Council's approach to environmental enforcement, a number of issues have emerged, including the proper balance that should exist between education and persuasion as against more robust forms of enforcement action such as the issuing of Fixed Penalty Notices.
- 7.1.25 Clearly this is a somewhat contentious area with a range of arguments supporting either approach. Overall, we would support the principle that the key to securing and maintaining long term improvements in environmental standards is through encouraging the voluntary support of the people of Sunderland.
- 7.1.26 However, the Committee would also contend that education and persuasion on its own is not always enough and that we need to back this up with robust enforcement where necessary. We feel that such an approach together with greater press coverage of enforcement action taken by the Council would go some way to allay the perception among some residents that the Council does not do enough to enforce environmental issues.
- 7.1.27 The Committee would therefore suggest that the Council look to undertake a review its Enforcement Strategy and that such a review include full consultation with Council members, partners and take into account the views of the public.
- 7.1.28 A further issue raised during our discussions was the capacity of the Council to undertake environmental enforcement as we move into a period of even greater financial constraints.
- 7.1.29 During the review we heard that the cost of staffing and implementing enforcement was not realistically recoverable from the revenue generated from fines. The level of fines that the Council is able to apply remains relatively low and is often difficult and expensive to collect. This is compounded by the cost associated with the investigative process which tends to be resource intensive. There are also the difficulties associated with having sufficient resources to identify offenders due to the difficulty of having an enforcement officer at the right place at the right time.
- 7.1.30 It is therefore important to strike a balance between enforcement action and the resources available and to be realistic over what can be achieved. For this reason it is likely that the Council would need to increasingly prioritise its enforcement action to areas of greatest impact while also looking at new and more innovative ways of identifying offenders. With Council funding so severely constrained we would suggest attempting to focus available resources on areas of greatest impact such as a high profile crackdown on a specific areas of the city.
- 7.1.31 The Council also needs to promote the efforts being made to keep our streets clean and seek to maximise the use of publicity to send out a message to offenders and the general public that persistent flouting of rules on litter and dog fouling will not be tolerated.

7.1.32 Members discussed how far a more robust approach to enforcement could be accompanied by adverse publicity for the Council. It was felt that such bad publicity needed to be weighed against the positive response it could receive from many residents. Use publicity well and we can get across the message that the Council will use robust enforcement action when it is necessary and in the interest of the public.

7.1.33 However, there is clearly considerable potential for robust enforcement to generate negative publicity around the perceived use of draconian measures. The Committee heard of instances where robust enforcement had resulted in adverse local publicity centring on the claim that the local authority was using Fixed Penalty Notices as a means of generating income and that people are being unfairly targeted.

7.1.34 We would also suggest that the Council monitor the approaches being taken among other local authorities to determine the effectiveness of enforcement action and applicability to need of Sunderland.

7.2 Approach to Illegally Tethered Horses

7.2.1 As part of the review, Members also looked at the approach being taken by the Council to the issue of illegally tethered horses. To this end, Members met with David Gustard (Senior Surveyor) in order to consider the background to this issue, the scale of the problem in Sunderland and the approach currently adopted.

7.2.2 We heard that like many other local authorities, Sunderland Council has a history of problems involving with the tethering of horses on open land in the city. These horses are subject to numerous complaints from residents to the Council and police.

7.2.3 The illegal tethering of horses presents many problems for the Council, including:

- Neglect of horses by owners (lack of food/water/shelter/care/medical attention);
- The danger of loose horses straying in public places and on to roads;
- Unlawful grazing on public or private land;
- The potential of horse related personal injuries (bites/kicks/charges);
- Damage to fields allotments and public and private property

7.2.4 These problems may arise individually but often they are in combination and most often require a multi-agency approach to deal with them.

7.2.5 During our discussions we heard that there are a number of legislative powers available to deal with horse related problems – some in the capacity of an enforcing authority and others as a landowner.

Animals Act 1971

7.2.6 This Act allows the owner or occupier of land to detain horses which stray onto their land and to claim expenses for damage done by the livestock to the land and the costs of keeping the livestock until such time as the horses are restored to the owner or sold. The land occupier becomes responsible for the reasonable care of the horses while being detained.

Highways Act 1980

7.2.7 This Act makes it an offence for horses to stray or lay near the side of a highway. The Police have powers to remove horses straying on the highway and either return them to the owner or to remove them to a pound. A person found guilty of an offence can be liable for paying the expenses incurred in removing and pounding the horses. This is the principle tool for removing horses straying on the highway.

Animal Welfare Act 2006

7.2.8 This Act creates an offence if a person with responsibility for an animal causes it suffering or fails to ensure its welfare. Allowing a horse to stray and potentially suffer harm is likely to be an offence under the Act.

Environmental Protection Act 1990

7.2.9 The provisions of this Act provide powers to a local authority to investigate and deal with statutory nuisance. The powers are primarily used by environmental health practitioners and allow the service of a legal notice.

Horse Passport Regulations 2009

7.2.10 These regulations require horses to have an identification document (passport) and micro-chip which are issued by and registered with an authorised Passport Issuing Organisation.

Control of Horses Act 2015

7.2.11 This piece of legislation aims to deter people from illegally grazing or abandoning horses on public and private land by allowing horse owners to be dealt with more quickly and effectively. Whereas under the Animals Act 1971 an abandoned horse could only be disposed of after 14 days, the new Act means that fly grazing horses have to be reported to the Police within 24 hours and the owners have four days to claim the animals. Under the Act, local authorities now have the power to detain horses. The law gives private landowners the same powers as local authorities to take quick action to remove tethered horses and fly grazing.

7.2.12 During our discussion it was stressed that the Council does not have a statutory responsibility for either animal welfare or the danger posed to the community by animals. Such matters remain the responsibility of the RSPCA and the Police respectively. Essentially, the Council's duty was that of a

landowner and involved managing any trespass on its land and issuing notices to inform owners that their animal should be removed.

7.2.13 Where the animal is not removed then further action could be taken though, in practice, this process is complicated and expensive. This involves procuring a suitable contractor who can, initially try and identify the owner through scanning for a microchip, then impound and hold the animal and ultimately re-home or dispose if it is not claimed in a defined period (subject to recovery of costs etc.).

7.2.14 We heard that there are a very limited number of bona fide contractors who provide such a service and therefore the costs are high (in excess of £5,000 per animal depending on the individual circumstances).

7.2.15 In practice the Council therefore adopts a risk based approach to when the enforcement powers should be used, and this is only likely to be in circumstances where the animal poses an immediate nuisance to the public or where the trespass is repeated.

7.2.16 Members recognised that the issues of illegally tethered horses was a difficult area particularly given the very tight financial constraints under which the Council operates.

7.2.17 During our discussions members noted that there was a perception that the issue of illegally tethered horses was a growing problem and that it was therefore important to ensure that data is collected in order to provide a fuller picture of the problem and any emerging trends.

7.2.18 It was also noted that the Council did not have a formal procedure for dealing with the problem of illegally tethered horses and that issues were therefore being dealt with on an ad hoc basis. It was also suggested that the value of introducing such a procedure should be investigated in order to clarify and bring consistency to the Council's approach.

7.2.19 Reference was made to improving the procurement process with contractors in order that action could be taken more quickly and flexibly. The option of identifying specific grazing areas within the city was recognised as being costly; however it was felt that there was scope for developing relationships with other local authorities such as Durham who have better infrastructure for grazing.

8 Conclusion

- 8.1 Our report has highlighted the importance attached by residents to the quality of the local environment and the problems associated with litter, dog fouling and fly-tipping. It has also highlighted the increasing difficulties we face in maintaining the quality of service that our residents expect at a time of unprecedented reductions in local government funding.
- 8.2 We consider it important for the Council to focus and prioritise the use of available resources while at the same time being willing to take robust and well publicised enforcement action against the most serious and persistent offenders.
- 8.3 Maintaining a clean and tidy environment will always be a balance between education and persuasion and the use of more robust enforcement measures such as fixed penalty notices.
- 8.4 Clearly education and persuasion has an important role to play in helping to shape our environment. Education plays a major role in changing people's attitudes and increasing respect for the local environment. We have heard about the education work being carried out in schools and local communities. We have also heard that severely strained resources means that it will be hard to maintain this kind of work into the future.
- 8.5 However, it is important to recognise that education and persuasion itself is sometimes not enough and that we must be willing to adopt more robust enforcement measures when required; providing an effective and visible level of enforcement to discourage the growth of irresponsible attitudes to litter.
- 8.6 With this in mind, we feel that the time is right for a review of the Council's Enforcement Strategy in order to clarify our approach to environmental enforcement moving into the future.
- 8.7 We feel that the Council should also look at the approaches being taken by other local authorities and assess their applicability to the situation in Sunderland.
- 8.8 With regard to the issue of illegally tethered horses, members again heard that there is a growing problem but one which was difficult to tackle given the ever increasing financial constraints within which the Council operates.
- 8.9 We would however suggest that mechanisms are put in place to gain a clearer understanding of the scale of the problem and any trends that may be emerging. We would also suggest that the Council develops a procedure in respect of the treatment of illegally tethered horses in order to bring consistency of approach and that the Council should develop working relationships with partners such as the Police and other local authorities in order to make the most of available resources.

9 Recommendations

9.1 The Panel's recommendations are as outlined below:-

- a. That the Council undertake a review of its existing environmental enforcement policy for streetscene and that this review involve full consultation with members and other interested parties;
- b. That the Council should seek to focus its resources on areas of greatest impact with regard to environmental enforcement action;
- c. That where such action is taken every effort be made to publicise it in the local media to ensure that residents are aware importance attached to a clean and well maintained local environment;
- d. That the Council continues to monitor new developments and pilots in relation to litter enforcement and dog fouling;
- e. That the Council looks to establish a procedure in relation to the approach taken to illegally tethered horses;
- f. That the Council work with other local authorities in the region and other agencies such as Police, RSPCA and Gentoo in order to make the most of available resources.