

Report to Executive

Agenda
Item:

A.4

Meeting Date: 19th October 2015
Portfolio: Environment and Transport
Key Decision: Yes: Recorded in the Notice Ref:KD.32/15
Within Policy and Budget Framework No
Public / Private Public

Title: Clean Neighbourhood Enforcement Policy 2015
Report of: Angela Culleton - Director of Local Environment
Report Number: LE 25/15

Purpose / Summary:

A report introducing a revised Enforcement Policy for tackling environmental crimes including dog fouling, fly tipping, littering and graffiti.

Recommendations:

That the Executive is asked to

- 1) consider therevised Clean Neighbourhood Enforcement Policy and appendix 1
- 2) Refer the Policy to the Economy and Environment Overview and Scrutiny Panel for scrutiny.

Tracking

Executive:	19th October and 16th November 2015
Overview and Scrutiny:	29th October 2015
Council:	NA

1. BACKGROUND INFORMATION AND OPTIONS

- 1.1. A good enforcement policy benefits both the regulator and those subject to potential enforcement. It clearly states what can be expected from the Council's regulatory service, in this case the regulation of environmental crimes such as dog fouling, waste disposal and graffiti. Proportional, fair and consistent enforcement is important to ensure that the Council retains the support of the community in undertaking its regulatory responsibilities.
- 1.2. Appendix.1 contains the draft Enforcement Policy for environmental crimes enforced by Local Environment. This Policy is an updated version of one that was considered by the Executive on the 6th August 2012. This revised version incorporates the Community Protection Notice options brought in through the Anti-Social Behaviour and Policing Act 2014.
- 1.3. The Principles of Good Enforcement are set out in the following guiding documents:
- Enforcement Concordat 1998
 - The Regulators Code April 2014, a code issued under the Legislative and Regulatory Reform Act 2006 in respect of certain specified Council regulatory functions
 - The Code for Crown Prosecutors January 2013 issued by the Director of Public Prosecutions under the Prosecution of Offenders Act.
- 1.4. The Policy outlines the principles of good enforcement and considers appropriate enforcement options. The issue of fixed penalty notices is covered and special consideration given to action against juvenile offenders. The key change in this version of the Enforcement Policy is the use of the Community Protection Notice process to deal with offenders in the 16 and 17 age range.
- 1.5. The policy will be available to interested parties in order to help ensure that the Council's approach to enforcement is as open and fair as possible. It will be published on the corporate website and copies made available upon request.

2. PROPOSALS

- 2.1. That the Executive is asked to:
- 1) Consider the revised Clean Neighbourhood Enforcement Policy and appendix 1
 - 2) Refer the Policy to the Economy and Environment Overview and Scrutiny Panel for scrutiny.

3. CONSULTATION

- 3.1. The revised Enforcement Policy has been circulated within the City Council and with Cumbria Constabulary.
- 3.2. The revised Enforcement Policy can be considered by the Economy and Environment Overview and Scrutiny Committee on the 29th October 2015.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1. The recommended key actions have been identified following consultation and reflect the resources available to the Environmental Health Service in the financial year 2015 to 2016.

5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 5.1. **Priority** Continue to improve the quality of our local environment and green spaces so that everyone can enjoy living, working in and visiting Carlisle

The published enforcement policy provides clear guidance for officers and the community on how the Council's environmental crime enforcement powers will be applied in deterring those whose actions spoil the quality of the local environment.

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 Manager
 Angela Culleton Director Local
 Environment

Appendices **The revised Enforcement Policy is attached to this Report.**
attached to report:

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's –

Deputy Chief Executive –

Economic Development –

Governance – Enforcement is a balance between education and formal enforcement action. Proper procedures must be in place regarding the gathering of evidence etc. As the enforcement Policy correctly points out, there are several checks and balances in place before formal action is taken, including the Code for Crown Prosecutors used by the Council's Legal Services Section. The Enforcement Policy is not part of the Council's reserved policy framework. It is appropriate to review the Policy to incorporate legislative changes since 2012, importantly the Anti-Social Behaviour, Crime and Policing Act 2014 as referenced in the Report.

Local Environment –

Resources - The delivery of the Clean Neighbourhood Enforcement Policy can be met from within existing base budgets with the income from the issuing of fines already included in the Medium Term Financial Plan. Charges which are levied are set by statute with the income generated from the fines being reviewed annually as part of the Corporate Charging Policy.

Carlisle City Council

Clean Neighbourhoods Enforcement Policy

2015

CLEAN NEIGHBOURHOODS ENFORCEMENT POLICY

1.0 INTRODUCTION

Our aim is to ensure Carlisle is a clean, safe, healthy and welcoming place to live, work and visit. We are committed to ensuring regulatory compliance and this policy sets out what individuals, businesses and the community can expect from Carlisle City Council when enforcement becomes necessary.

- 1.1 The Council uses an 'Educate, Engage, Enforce' approach to delivering its Clean Neighbourhood objectives. In the first instance, the emphasis is on information, encouragement and support but if the Council is to have a realistic chance of achieving its aims then it will, in some circumstances, have to use its enforcement powers to fulfil this ambition. Environmental legislation has been introduced over the years to ensure that people can live together without adversely affecting one another or the environment. This policy seeks to ensure a fair, open, proportionate and consistent enforcement for individuals, businesses and the community.
- 1.2 This policy relates to offences in relation to: -
- a) Dog fouling
 - b) Dog off a lead either: in a designated area (generally within residential and shopping areas or within 5 m of a children's play area) or if asked to put a dog on a lead in any public area by an authorised officer.
 - c) Dog without a collar and tag
 - d) Depositing or contributing to litter
 - e) Inadequate trade and household waste disposal
 - f) Fly tipping
 - g) Fly posting
 - h) Graffiti
 - i) Abandoned Vehicles
- 1.3 Enforcement action taken against an individual or organisation will be proportionate and consistent with the Council's commitment to equality and diversity.
- 1.4 This enforcement policy has been produced having regard to DEFRA guidance on the use of fixed penalty notices under the provisions of the Clean Neighbourhoods and Environment Act 2005. Enforcement and the use of Fixed Penalties follow the guidance within the Enforcement Concordat, the Regulators Code and the Code of Practice for Crown Prosecutors (as applied by the Council's Legal Department).
- 1.5 The policy is available to interested parties in order to help ensure that the Council's approach to enforcement is as open and fair as possible. It will be

published on the corporate website and copies made available upon request.

2.0 GENERAL PRINCIPLES OF ENFORCEMENT

- 2.1 Enforcement is any formal or informal action taken to prevent or rectify infringements of legislation. The enforcement options may differ where different areas of legislation are used, but the principles of application should remain constant and consistent.
- 2.2 The Council aims to implement its Clean Neighbourhoods Enforcement policy in a firm but fair manner. The principles underlying firm but fair include;

1. Proportionality

The concept of proportionality is described as a balance of action to protect the public or the environment against the risks and costs. Any enforcement action taken or remedial action taken must be proportionate to the risks. The enforcement action taken by Carlisle City Council will be proportionate to the risks posed to the public or environment and the seriousness of any breach of law.

2. Consistency

Consistency means taking a similar approach in similar circumstances to achieve similar results. Whilst Officers exercise discretion, the Council will endeavour to ensure that enforcement decisions are consistent, balanced and fair and relate to common standards. Variables taken into account when making enforcement decisions include the seriousness of the offence, past history, confidence in management, the consequences of noncompliance, evidence of remorse, consideration of the offender and the likely effectiveness of the various enforcement options.

3. Transparency and Openness

Transparency is vitally important in maintaining public confidence in the ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from the Council. It also means making clear why an Officer intends to or has taken enforcement action. Information and advice will be provided in plain language without abbreviations or jargon and widely distributed as possible.

4. Targeting

Targeting means making sure that regulatory effort is directed primarily towards those whose activities that give rise to the most serious risks or community concern. Action will be primarily focused on those that break the law or those directly responsible for the risk and who are best placed to control it as set out in the appropriate legislation.

In respect to clean neighbourhoods the Council considers that dog fouling, littering and fly tipping generate the greatest level of community concern.

2.3 Enforcement Options Available

- i. Informal action and advice – written or oral (where appropriate)
- ii. Anti-Social Behaviour Contracts: Restorative Justice Options.
- iii. Simple caution
- iv. Formal statutory notice
- v. Execution of work in default i.e. required by a statutory notice where the recipient has not complied with a notice
- vi. Fixed penalty notices for specific offences
- vii. No action where there is insufficient evidence to pursue action, or where it may not be cost effective to continue, or in the public interest.
- viii. Prosecution

The method of enforcement used should be balanced to produce the highest reasonable standards of compliance within the least time.

3.0 CLEAN NEIGHBOURHOOD INFORMAL ENFORCEMENT

- 3.1 The Council is conscious that some members of the public and the business community who have knowingly caused a problem for which they are responsible may be anxious to comply with their statutory obligations.
- 3.2 The Council will undertake educational campaigns to raise awareness of what constitutes offences for which enforcement action can be taken. **For most offences listed under section 1.2 the Council will progress formal enforcement**, however, If formal action is deemed not appropriate then suggestions or requirements will be given and the guidance stated will clearly identify the nature of the offence and any remedial action that is required. Officers will, with due regard to technical accuracy and scientific convention, express requirements or suggestions in a manner that is clear and readily understandable.
- 3.3 Any requirements made verbally or in writing will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a

timescale for compliance will be specified.

- 3.4 Informal written warnings may be issued to support messages that further breaches of legislation will be treated seriously and that these may be subject to formal enforcement action. Written advice on good practice, industry guidance or technical information may be provided where there is a need to assist the person in meeting these requirements.

4.0 CLEAN NEIGHBOURHOOD FORMAL ENFORCEMENT

- 4.1 Formal enforcement includes legal proceedings through the Magistrates Court (or for Civil offences the County Court), the issuing of Statutory Notices or the offer of a Fixed Penalty Notice or a simple caution. The Council would consider formal enforcement action where;
- a) An informal approach has already failed, and / or
 - b) The nature of the offence warrants the offer of a Fixed Penalty Notice and / or
 - c) The nature of the offence warrants legal proceeding being implemented.
- 4.2 Where there are rights of appeal against the issue of a notice, the service will, at the time the Authority takes action, issue clear written advice on how to appeal. Whenever possible, the type of advice or information will be issued with the enforcement notice.

5.0 FIXED PENALTY NOTICES

- 5.1 In certain circumstances it may be appropriate to offer a fixed penalty notice for the relevant offence. The fixed penalty will allow the offender to discharge responsibility for the offence and avoid action through the Courts.
- 5.2 Fixed Penalty Notices shall be issued in accordance with relevant legislation such as the Environmental Protection Act 1990, Control of Pollution Act 1989, Clean Neighbourhoods and Environment Act 2005 and the Anti-Social Behaviour and Policing Act 2014.

Carlisle City Council has three Dog Control Orders adopted in 2007, one relating to dog fouling and two relating to dogs being kept on leads. Fixed Penalty Notices can be offered for offences of these Orders. Dog Control Orders and their offences will be moved onto Public Space Protection Orders before October 2017.

5.3 Levels of Fixed Penalty Fine

Table 1 contains a list of all the various fixed penalty notices available for use

by the Council in relation to Clean Neighbourhoods offences. It includes details of the particular fixed penalty notice and present levels of fine.

TABLE 1			
Offence	Legislation	What is the Council trying to achieve by using fixed penalty powers?	Level of Fine
Depositing litter	S 87/88(1) Environmental Protection Act 1990	Cleaner streets and public places and increasing public awareness by publicity associated with fixed penalty scheme.	Up to £80
Failure to comply with a Community Protection Notice	Anti-Social Behaviour and Policing Act 2014 (S43 – 58)	Cleaner streets and public places. Preventing activities that are persistent and detrimental to the area. Can be used for a variety of offences including flyposting and graffiti.	Up to £100
Failure to produce authority to transfer waste	S 5B(2) Control of Pollution (Amendment) Act 1989	Reduce illegal waste disposal by targeting illegal waste carriers who may fly-tip their load or dispose of it unlawfully thereby preventing harm to the environment.	£300
Failure to produce waste documents	S 34A(2) Environmental Protection Act 1990	Identifying business operators and the public who transfer their waste irresponsibly which may lead to unlawful disposal or fly-tipping	£300
Failure to comply with a waste receptacles notice	S46 & 47ZA(2) Environmental Protection Act 1990, as amended by the Deregulation Act 2015.	Attempting to resolve waste storage and collection issues on domestic and commercial premises which can give rise to complaints. In the domestic situation encourage participation in the Council's recycling service	Up to £80
Abandoned Vehicle	Refuse Disposal (Amenity) Act 1978: S3ss2A, B & C The Clean Neighbourhood & Environment Act 2005 s.10	As the cost of clean-up can also be recovered the fixed penalty option can reduce the work involved by the City Council in instigating legal proceedings whilst enabling recovery of costs and deterring the abandonment of vehicles.	£200

Failure to comply with a dog control order*	Dog Control Order Regulations 2006	Increase awareness of the problems caused by dog fouling. Reduce the number of incidents of dog fouling in the district resulting in cleaner streets and public places. Reduction in serious health risk. Preventing nuisance and dangerous dogs by ensuring dogs are controlled on leads in public places.	Up to £80
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* See orders at :http://www.carlisle.gov.uk/environment_and_waste/environmental_health/dog_control_orders1.aspx or request a copy from 01228 817559

5.4 Where satisfactory evidence exists Fixed Penalties will be used for routine offences covered in Table 1 in this policy. In cases where the nature or extent of the offence is serious and that the issuing of a fixed penalty would bring the system into disrepute, then prosecution will be considered. Examples could include cases where there is evidence of widespread and systematic offending, non-co-operation or obstruction with enquiries, intimidation of witnesses or aggressive or violent conduct.

5.5 Defra have offered guidelines, for dealing with young offenders. These include keeping parents or guardians involved throughout the process and letting them know as soon as possible when an offence has been committed. Defra advise working closely with the Police and schools, including going into schools to talk to pupils about litter, dog fouling etc.

Issuing fixed penalty notices to young people under the age of 15 is difficult. Primarily, this is because it is hard to ensure payment as the Fixed Penalty Notice's do not have any parental liability, if a fine is not paid the matter would be referred through the youth courts, which can be difficult, time consuming and not always in the public interest.

5.6 The Council does not wish to subject young people to criminal proceedings unnecessarily. Fixed Penalty Notices will not be served on juveniles aged 15 or under, instead we aim to use an holistic approach to the problem of young offenders, including education, work through the schools and on the streets, use of young volunteers e.g. litter picking, and the use of civil remedies such as acceptable behaviour contracts which will be carried out in partnership with Cumbria Constabulary. We will endeavour to adopt reparation and restorative justice approach in appropriate circumstances.

5.7 Appendix.1. details the process for dealing with young offenders aged 15 or under. Initially a warning letter will be sent to the individual and their parents,

should the juvenile be in school uniform a letter will also go to the school. The Police and Youth Offending Team will be copied the letter for them to decide if the matter should be dealt with under the “It’s Your Choice” programme. A repeat offence will receive another warning letter and the matter referred to the Local Problem Solving Group for further action within the existing Juvenile structure.

The Anti-Social Behaviour and Policing Act 2014 introduce the Community Protection Notice process. Under this process if an individual’s conduct is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and that this conduct is unreasonable a warning letter can be served. Failure to comply with a warning letter can lead to the issuing of a Community Protection Notice and then the issuing of a fixed penalty notice. **This process will be used for juveniles aged 16 to 17** for those offences such as dog fouling and littering which would otherwise attract an immediate fixed penalty. It is hoped that the formal warning process will encourage immediate and future compliance.

- 5.8 If there is any doubt in the enforcements officer’s mind that the person who has committed an offence is not capable of understanding what they have done, or are seriously mentally impaired, clearly unable to pay e.g. homeless, or otherwise the issue of a fixed penalty would not be in the public interest, then on-the-spot education will be considered. This could include asking the person to rectify their actions or explaining the consequences of their actions. In any event, the evidence should be brought to a line manager for discussion before a decision on issuing a fixed penalty is made.

6.0 FORMAL ENFORCEMENT– PROSECUTIONS

- 6.1 A decision to prosecute is a serious matter which we will only take after full consideration of the implications and consequences. The decision will have regard to the evidential and public interest tests set down by the Director of Public Prosecutions in the Code for Crown Prosecutors.

Prosecutions will not be commenced or continued unless we are satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction. Where a case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Where it is considered that the public interest test may not be satisfied but sufficient

evidence of the offence exists to instigate legal proceedings the Council may consider the option of issuing a Simple Caution to the offender.

We will consider the following public interest factors in deciding whether or not to prosecute.

- **Effect** of the offence or action – **for offences listed in 1.2 the presumption is in favour of formal enforcement.** Community Impact Assessments will be used to support prosecutions so that Magistrates and the media are aware of the consequences of environmental crimes.
- **Foreseeability** of the offence or the circumstances leading to it
- **Intent** of the offender, individually and/or corporately – for offences listed in 1.2 the presumption is in favour of formal enforcement.
- **History** of offending– for offences listed in 1.2 the presumption is in favour of formal enforcement
- **Attitude** of the offender– for offences listed in 1.2 the presumption is in favour of formal enforcement.
- **Deterrent** effect of a prosecution, on the offender and others– for offences listed in 1.2 the presumption is in favour of formal enforcement.
- **Personal** circumstances of the offender

These factors are not exhaustive and those which apply will depend on the particular circumstances of each case.

Criminal proceedings will be taken against those persons responsible for the offence. Where the offence has resulted from the Company's activities we will usually prosecute the Company. We will also consider any part played by the officers of the Company and may take action against those officers as well as the Company. This will usually be where it can be shown that the offence was committed with their consent, due to their neglect or that they 'turned a blind eye' to the offence or the circumstance leading to it.

Where there is sufficient evidence we will normally recommend prosecution in any of the following circumstances.

- Incidents which have significant consequences – e.g. fly tipping related offences.
- Failure to pay a Fixed Penalty Notice
- Carrying out operations without a relevant licence
- Excessive or persistent breaches of regulatory requirements
- Failure to comply or to comply adequately with formal remedial requirements
- Failure to supply information without reasonable excuse or knowingly or

- recklessly supplying false or misleading information
- Obstruction of officers in the course of their work

7.0 TRAINING AND QUALIFICATIONS OF ENFORCEMENT OFFICERS

- 7.1 No officer will carry out enforcement duties unless suitably trained, experienced and authorised under the Council's delegated powers.
- 7.2 Prosecution will only be authorised by the legal department following review of the case prepared by the Investigating Officer/appropriate Senior Manager.
- 7.3 Training will be provided for all enforcement officers, as required, to meet changes in legislation and enforcement procedures.
Officers will always show their City Council Authority Cards when instigating formal enforcement action.

8.0 COMPLAINTS ABOUT THE SERVICE

- 8.1 Carlisle City Council has an effective complaints procedure and will endeavour to resolve any complaint as quickly as possible via its official complaints procedure. Complaints can be made by:

Telephone – 01228 817000

In writing – Free post YGCX – YEYB – Carlisle City Council, Civic Centre, Carlisle, CA3 8QG

Email – complaints@carlisle.gov.uk

9.0 EQUAL AND FAIR TREATMENT

- 9.1 Enforcement practices will be constantly monitored and reviewed to ensure that they are fair, equitable and in accordance with the Equality Act 2010. The Enforcement Policy will not be adopted differently for race, gender, religion or beliefs. A variation to formal action against juveniles is outlined in section 5. Subject to any specific statutory exemptions, a person's disability will be considered for each individual circumstance when deciding whether to pursue formal action or to pursue other means to seek corrective behaviours or practices.
- 9.2 The policy will be available on the City Council's website and at the Civic Centre offices and copies of the policy will be available upon request. On request, this policy will be made available on tape, in Braille, large type, or in a

language other than English.

10.0 MONITORING OF POLICY

- 10.1 The implications and effectiveness of the performance of this policy will be constantly monitored and the policy reviewed every two years.
- 10.2 Enforcement decisions that warrant exception from the policy will be recorded and considered during future reviews of the policy.
- 10.3 This will also be true of new legislation coming into effect, which may introduce new types of powers and possible actions which enforcement officers may be able to take.
- 10.4 All cases resulting in a decision to prosecute will be reviewed both by the investigating officer and the nominated officer in charge of the investigation prior to any file being referred to the Legal department. A further review of the file will take place by the Council's Solicitor when further evidence, or advice, may be sought or given.

11.0 HUMAN RIGHTS

- 11.1 All enforcement action and investigations will be carried out in a manner that complies with the requirements of legislation and codes of practice governing the collection of evidence and investigatory powers.
- 11.2 This will include any surveillance activity which will comply with both the Regulation of Investigatory Powers Act 2000 (as amended) and also the Data Protection Act 1998. The Council will comply with the recommendations of the Local Government Association and only consider the use of covert surveillance for fly tipping offences. Covert surveillance is not permitted and considered disproportionate for littering and dog fouling investigations.
- 11.3 Consideration will be given to ensure that any actions do not contravene rights conferred by The Human Rights Act 1998 or any other legislation.

12.0 REFERRALS AND JOINT ENFORCEMENT

- 12.1 The Council will routinely consult and work with other agencies in respect of this policy, including:
 - Cumbria Constabulary on issues concerning, littering, fly tipping and dog

fouling offences.

- The Environment Agency on issues concerning fly tipping, waste management and a range of other environmental issues.
- The County Council in respect of littering and waste management
- Other Council departments

12.2 Information or allegations outside the remit of this service may be referred to other Local Authorities or Enforcement Agencies which will include written statements, evidence, background information and witness contact details (if the witness agrees), to enable that agency to investigate the allegation.

Appendix.2

Process for Dealing With Juvenile Enviro-Crime

