

Environmental Enforcement Policy



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1 Introduction

Southend Borough Council is committed to maintaining a clean and safe environment for the benefit of everyone in the borough. This commitment recognises our responsibility to keep highways safe and the local environment clear of litter, obstructions and other local environmental quality issues.

The Council's Corporate Plan and the Community Strategy identifies that residents want safer & cleaner streets, less litter, less graffiti and more attractive parks, seafront and open spaces.

In further developing this commitment to maintain a safe and attractive borough the whole community has a part to play, through having "responsibility for our own actions" and "working together" we can all improve the local environmental quality across the borough and so ensure Southend becomes a better place to live. The presence of unmaintained highway, dumped waste, litter, graffiti and other environmental issues also contributes to people's fear of crime. A safer cleaner environment will, therefore, help improve the quality of life for all those who live in, work in and visit the town.

The Environmental Care Team has a responsibility to monitor the standards of Southend's highway infrastructure, including street cleansing standards and waste management across the borough.

Enforcement plays a vital role in maintaining a clean and safe environment by providing information and advice to individuals and businesses regarding regulations and duties. Enforcement ensures that those individuals and/or businesses that damage or spoil the environment are made accountable for their actions. In addition to the Highways Act 1980 and the Environmental Protection Act 1990, the Clean Neighbourhoods and Environment Act (CNEA) 2005 introduced new powers for local authorities to help tackle local environmental quality problems. The Act introduced effective powers and tools to tackle poor environmental quality and anti-social behaviour, such as litter, graffiti, waste and dog control.

The Environmental Protection Act 1990 (EPA) also provides local authorities with powers to tackle other environmental issue such as light pollution, air quality, smoke from bonfires and noise nuisance. The EPA is enforced by Officers within the Council's Regulatory Services Group.

This policy sets out how we will use these new powers alongside existing powers and our current enforcement work to ensure an effective, consistent and clearer approach to enforcement.

2 Aim and objectives

The policy sets out a robust and consistent approach to tackling local environmental quality issues across the borough. The policy is also in line with borough-wide priorities concerning tackling inequalities, improving highway infrastructure and public spaces and improving the quality of life for everyone in the borough. Enforcement work can, and in some cases will, extend beyond public land onto adjacent, private land when necessary.

The aim of the policy is to improve the local environmental quality by reducing environmental crime across the borough and protect the highway infrastructure. To meet this aim the Strategy has the following objectives:

- Raise awareness of good waste management, litter control, dog control, highway obstructions and damage and other local environmental quality issues to everyone across the borough.
- Educate residents, businesses and visitors about their relevant duties and responsibilities in terms of good waste management, litter control, dog control, preventing highway damage & obstructions and other local

environmental quality issues and what constitutes an offence.

- Undertake any enforcement action as necessary, in a reasonable, equitable and proportionate manner.
- In appropriate circumstances we will take enforcement action without education and advice when the severity of the situation dictates.

These objectives reflect the Enforcement Concordat, which is a set of enforcement principles adopted by central and local government and published by Central Government. The Concordat states that good enforcement practice should set clear standards be carried out in an open, helpful manner, and have a proportionate and consistent approach together with a clear complaints service.

This approach will ensure that;

- enforcement is carried out in a fair and equitable way;
- we assist businesses and others in meeting their legal obligations;
- we focus on prevention rather than cure;
- we take firm action against those who flout the law.

3 Scope

3.1 The scope of this policy covers waste, highways and local environmental quality issues experienced across the borough on both public and private land. These issues affect and damage the environmental, social and economic wellbeing of the borough, add to people's fear of crime and so have a major impact on the quality of life of those who live in, work in and visit Southend.

3.2 All of the issues highlighted in this policy are of great importance to maintaining a safe and clean Southend. We seek, however, to prioritise work on certain issues in order to approach enforcement work in a structured way, targeting the predominant issues affecting environment.

3.3 The policy priorities are driven by protecting the environment, highway infrastructure, open spaces and providing both quantitative (Local Environmental Quality Survey) and qualitative (community consultation and officer reports) information.

3.4 Priority areas for the maintenance of a clean and safe Southend, which are driven by the elements described in 3.3 are:

- Preventing damage to highway infrastructure

- Domestic refuse bags deposited on streets out of collection times
- Commercial waste bags deposited on streets out of collection times
- Fly tipping of waste on public and private land (dumped waste)
- Litter in high street areas and other highways
- Graffiti on public transport infrastructure and in footpath areas
- Irresponsible dog ownership
- Fly posting
- Table & Chairs Licensing
- Advertising (A Board) Board management
- Highway Obstruction (goods for sale, etc)
- Highway Occupation Permits
- Skip & Scaffolding Licensing
- Illegal highway vehicle crossovers
- Noise nuisance – music, car alarms
- Air quality and smoke from bonfires
- Artificial light pollution
- Parking Enforcement
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3.5 Highway Occupation Permits:

The Council will issue a chargeable permit to developers who need to occupy part of highway land to undertake their development. The charge for the permit will be set at £200 for the first month then £50 a week thereafter and will be incorporated into the Council's Fees and Charges Schedule for 2013/14 and subsequent years.

4 Implementation

4.0 Implementation

This policy draws on a wide spectrum of personnel and resources to meet its aim. Environmental Care Officers will carry out a majority of enforcement action. Authorised officers from other Council departments, including Regulatory Services, seasonal foreshore inspectors, and the Police Safer Neighbourhood Teams will also be authorised to take enforcement action.

Only officers authorised by the Corporate Director of Enterprise Tourism and Environment may undertake the enforcement duties highlighted in this policy. This authorisation is in accordance with the Council's scheme of delegation as set out in the Councils Constitution.

Training will be provided to ensure all authorised enforcement personnel have the skills and knowledge required to undertake their enforcement duties and to ensure a consistent approach by enforcement officers.

4.1 Awareness Raising and Education

Awareness raising and education are fundamental to the operation of any enforcement work. The community must know and understand what standards are expected of them so that they can operate to these levels. We aim to carry out this element of enforcement by providing consistent advice and guidance about relevant duties and responsibilities through face-to-face operations, leaflets, the website, local press,

specific campaigning and work alongside our partners and stakeholders.

Over and above the targeted awareness raising and education work carried out by officers and partners, specific focused campaigns will be developed to highlight certain local environmental quality problems to a certain group or within a certain area. Through the policy we will support national LEQ campaigns run by the Keep Britain Tidy Group

4.2 Partnership Working

The approach of this Strategy relies on strong partnership working.

Through partnership working the aim of the policy can be met in a shared and efficient manner. In order to seek the most effective operation of this strategy we aim to work with, others, including partners such as the Police / PCSO's, the Environment Agency, the Tidy Britain Group, South Essex Association of Landlords, Southend Association of Voluntary Services, Turning Tides, etc.

The partners involved in this policy will help raise awareness, through consistent information and advice, to assist in the education of the community regarding their responsibility to help keep the town clean and safe.

4.3 Enforcement Action – general

Southend Council recognises the importance of ensuring that all enforcement decisions are consistent, proportionate, clearly explained and relate to common standards to ensure the public is adequately protected. Officers work to the Council's Customer Care Standards, which state that everyone must be given the same care and attention no matter what their age, religion, sex, disability, sexuality or ethnic background. This approach will help ensure that everyone is treated fairly. Having considered all the relevant information of a case the enforcement options open to the Council are, but not necessarily limited to, as follows:

Verbal Warning

Warnings are appropriate for advising offenders about contraventions that are easily remedied. Officers will issue suitable advice and guidance and set an appropriate timescale for remedial action. A verbal warning is noted in an authorised officer's pocket book.

Written Warning

Council officers have the option to serve the offender with a written warning regarding the offence stating the necessary future conduct. The warning will note that no formal action will be taken, but it will stay on file for 12 months and can be used as a factor in any future assessment where a similar offence occurs.

Simple Caution

A Simple Caution (previous known as a Formal Caution) is a non-statutory disposal for adult offenders. It may be used for cases involving first time, low-level offences where a Simple Caution can meet the public interest. An admission to

committing the offence is needed from an offender, which should be recorded by the Council officer. A Simple Caution forms part of an offender's criminal record and may influence how they are dealt with, should they come to the notice of the Council again. The fact of the Simple Caution may also be cited in court in any subsequent court proceedings. Simple Cautions are not covered under the Rehabilitation of Offenders Act 1974 and therefore, never become spent.

Fixed Penalty Notice (FPN)

Authorised Officers can offer FPNs for certain environmental crime offences (listed in Appendix 1). FPNs are used as an alternative to prosecution and the alleged offender being taken to court. See section 4.5 for further information relating to FPNs.

Serving a Statutory Notice

Some offences require the serving of a formal notice on individuals, businesses or other organisations requiring them to carry out specific legal requirements. Offences of this type include (but is not limited to) street litter control, wilful damage and obstruction of the highway and abandoned vehicles. The notice will explain what is wrong, what is required to put things right and what the consequences are if the notice is not complied with.

Seizure

Certain circumstances including wilful damage and/or obstruction of the highway can lead to seizure of the obstructing item(s) as well as prosecution. The item(s) are stored and as part of a prosecution a Forfeiture Order can be requested from the Magistrates' Court.

Prosecutions

Where the circumstances warrant it and the alternative actions mentioned in the policy are considered inappropriate for the offence, then prosecution may result. Consideration will be given to the facts leading up to the matter. The Council will also assess whether there is public interest in proceeding with the matter while taking into account the Enforcement Concordat and Crown Prosecuting Guidelines.

Anti-Social Behaviour Order

When there are situations where behaviour by individuals/companies causes significant harassment, alarm or distress to persons not of the same household of the perpetrator, the Council can consider the option of applying to the Magistrates' Court for an Anti-Social Behaviour Order, where it deems it necessary. Anti-Social Behaviour Orders are preventative. An order can contain conditions prohibiting an offender from carrying out specified acts or from entering defined areas and is effective for a minimum of 2 years. The orders can be made against anyone aged 10 years or more who has acted in an antisocial manner and where an order is needed to protect person(s) from further anti-social acts. A breach of an order constitutes a criminal offence.

Post conviction Anti Social Behaviour Orders can also be applied for.

Breach of an order is a criminal offence which is arrestable. The maximum penalty on conviction in the Magistrates Court is 6 months in prison or a fine not exceeding £5,000 or both; at the Crown Court the maximum penalty is 5 years in prison or a fine or both.

Acceptable Behaviour Agreements

An Acceptable Behaviour Contract (also known as Acceptable Behaviour Agreement) is an intervention designed to engage an individual in acknowledging his or her anti-social behaviour and its effect on others, with the aim of stopping that behaviour. It is a written agreement made between a person who has been involved in anti-social behaviour and their local authority, Youth Offending Team (YOT) landlord or the police where applicable. ABAs do not have any legal status but are a tool that can be used for a person of any age to address various types of anti-social behaviour. Any evidence of a breach may be used to support more formal enforcement methods."

Injunction

Where the Council considers it expedient for the promotion or protection of the interests of the inhabitants of the borough, the Council could make an application for Injunction. An Injunction could be applied for to stop certain actions or to force a person to perform certain actions.

Direct Action

The Council can in some circumstances take direct action to rectify the results of an offence.

Note: The listed enforcement actions should not be seen as a sequential procedural list and each case will be judged on its merits. Investigations will be carried out in line with the Police and Criminal Evidence Act 1984 codes of practice and agreed procedures. For the purposes of the Criminal Procedure and Investigations Act 1996 the Group Manager Waste Management & Environmental Care shall perform the function of Disclosure Officer. For the purposes of the Regulations of Investigatory Powers Act 2000, a designated officer has the delegated authority to authorise surveillance.

4.4 Human Rights Act

The European Convention on Human Rights is incorporated into domestic law by virtue of the Human Rights Act 1998. Waste and street scene Services recognises that the Act requires public authorities to operate in a way that is compatible with those rights, subject to occasions when interference is justified.

It is noted that the rights likely to be most affected by this policy are those under Article 1 (right to peaceful enjoyment of property and possessions), Article 6 (the right to a fair trial) and Article 8 (respect of privacy and family life). We will at all times seek to strike a fair balance between the needs to protect the rights of residents, businesses, and the public interest.

4.5 Fixed Penalty Notices

A number of offences listed in this policy can be dealt with through the use of FPNs. Approved offences and fines are shown in Appendix 1 attached.

FPN's may be issued when an authorised officer believes that an offence has been committed. The FPN gives the alleged offender an opportunity to avoid prosecution by payment of the penalty. It is essential, therefore, that FPN's are only issued where there is adequate evidence to support a prosecution if a

notice is not paid, and that unpaid notices are followed up. The use of FPNs will improve the effectiveness and efficiency of the enforcement process, resulting in officers being able to focus more detailed attention on more complex and involved cases.

Southend sees the issues covered by FPNs under the Highways Act 1980, Environmental Protection Act 1990, Anti Social Behaviour Act 2003 and Clean Neighbourhoods and Environment Act (CNEA) 2005 as important to individuals' quality of life and so wants to send out a strong message, through their usage, to those who deface the local environment.

FPNs are only issued where there is adequate evidence to support a prosecution if a notice is not paid. Unpaid notices will be followed up and considered for prosecution.

The Council offers a discount for early payment of an FPN. The discount period runs for 14 days from the date the notice was served. The FPN must be paid within 28 days of it being served. If the FPN is not paid the case will be considered for prosecution in the Magistrates' Court.

The use of FPNs is one of the powers we shall use to meet the strategy's aim in an effective and efficient manner.

4.6 Issuing Fixed Penalty Notices to Juveniles

A FPN can be issued to anyone over the age of 10. The Council's duty under the Children Act 2004 requires that we discharge our functions with regard to the need to safeguard and uphold the welfare of children. With this in mind different procedures will be followed when issuing FPNs to young people (10 years old to 17 years old). Any young person caught by an authorised officer committing an offence will be referred to the Youth offending Team (YOT) who can assist with monitoring the behaviour of young people who are causing concern. It advises on activities and interventions and can issue Acceptable Behaviour Agreements, Anti-Social Behaviour Orders and advise on the issuing of FPNs to young people as appropriate.

5 Complaints

If you are unhappy with any aspect of enforcement action then please contact us:

By post: Group Manager
 Waste Management & Environmental Care
 Enterprise Tourism and Environment
 12th Floor
 Civic Centre
 Victoria Avenue
 Southend-on-Sea
 SS2 6ER

6 Monitoring and Measurement

6.1 In order to assess the effectiveness of meeting the policies aim a number of evaluation tools will be measured and reported on. This evaluation will highlight the successes of the policy and also illustrate any gaps in the performance of the environmental enforcement function.

These evaluation tools are listed right;

- Improvements in cleansing standards
- Safer and improved highway infrastructure
- reduction in the level of fly-tipping
- improvements in resident satisfaction relating to a safe, clean environment;
- reduction in levels of abandoned vehicles;
- number of FPNs issued and the subsequent payment rate.

7 Evaluation and Review

7.1 The Waste Management & Environmental Care Team will undertake to review progress and evaluate enforcement action against those highlighted priority areas and their effectiveness in reducing the impact on local environmental quality.

This review will also seek to introduce where necessary any new powers granted to the Local authority in managing local environmental quality. The outcomes for progress will be linked to local environmental quality survey of results, which will help set annual priority areas.

Appendix 1 - Environmental Enforcement Strategy - Fixed Penalty Notice offences and/or fine levels

Description of Offence	Section and legislation	Amount	Early Payment Rate	Maximum fine in Court
Nuisance Parking	Section 6(1) CNEA 2005	£100	£60	£2,500
Abandoning a Vehicle	Section 2A(1) Refuse Disposal Amenity Act 1978	£200	£120	£2,500
Litter	Section 88(1) EPA 1990	£80	£50	£2,500
Breach of a Street Litter Control Notice or Litter Clearing Notice	Section 22 CNEA 2005(amends section 94A(2) EPA 1990)	£110	£60	£2,500
Unauthorised distribution of literature on designated land	Section 23 CNEA 2005(amends schedule 3A paragraph 7(2) EPA 1990)	£80	£50	£2,500
Graffiti	Section 43 ASBA 2003	£80	£50	£2,500
Fly posting	Section 31CNEA 2005(amends section 43 ASBA 2003)	£80	£50	£2,500
Failure to produce waste transfer notes	Section 45 CNEA 2005 (amends section 34 EPA 1990)	£300	£180	£5,000

Failure to present waste carrier's licence	Section 38 CNEA 2005 (amends sections 5B and 5C Control of Pollution Act 1989)	£300	£180	£5,000
Offences in relation to waste receptacles	Section 47ZA(2) EPA 1990 now inserted by section 48 of the CNEA 2005	£110	£60	£1,000
Breach of Dog Control Conditions	Section 59(2) CNEA 2005	£80	£50	£1,000
Damage to Highway Infrastructure (including grass verges)	Section 131a - Highways Act 1980	NA	NA	£1,000
Unlicensed Skip on the Highway	Section 139 - Highways Act 1980	£300	£250	£1,000
Mixing or Depositing Mortar etc to damage Highway	Section 170 - Highways Act 1980	£750	£625	£2,500
Unlicensed Scaffolding Offence	Section 169 - Highways Act 1980	£1,500	£1,250	£5,000

Appendix 2 Glossary of terms

ABA	Acceptable Behaviour Agreement
ASB	Anti-Social Behaviour
ASBA 2003	Anti-Social Behaviour Act 2003
ASBO	Anti-Social Behaviour Order
CNEA 2005	Clean Neighbourhoods and Environment Act 2005
EPA 1990	Environmental Protection Act 1990
HWA 1980	Highway Act 1980
FPN	Fixed Penalty Notice
LEQ	Local Environmental Quality