

# CITY AND COUNTY OF SWANSEA

## NOTICE OF MEETING

You are invited to attend a Meeting of the

## DEVELOPMENT CABINET ADVISORY COMMITTEE

**At:** Committee Room 5, Guildhall, Swansea

**On:** Wednesday, 17 August 2016

**Time:** 3.00 pm

**Chair:** Councillor Philip Downing

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### Membership:

Councillors: C Anderson, C R Doyle, R D Lewis, P Lloyd, P M Matthews, P B Smith, G J Tanner, C Thomas and T M White

## AGENDA

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|---|---|---------|
| 1 | <b>Apologies for Absence.</b>   |         |
| 2 | <b>Disclosures of Personal and Prejudicial Interests.</b><br><a href="http://www.swansea.gov.uk/disclosuresofinterests">www.swansea.gov.uk/disclosuresofinterests</a> |         |
| 3 | <b>Minutes.</b><br>To approve and sign the minutes of the previous meeting(s) as a correct record.  | 1 - 4   |
| 4 | <b>Open Spaces Strategy.</b>  | 5 - 10  |
| 5 | <b>Review of Flytipping.</b>  | 11 - 24 |
| 6 | <b>Chairs Update. (Verbal)</b>  |         |
| 7 | <b>Workplan.</b>  | 25      |

**Next Meeting:** Wednesday, 21 September 2016 at 3.00 pm



**Huw Evans**  
Head of Democratic Services  
Thursday, 11 August 2016

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**Contact: Democratic Services - (01792) 636923**

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE SPECIAL DEVELOPMENT CABINET ADVISORY COMMITTEE

HELD AT COMMITTEE ROOM 5, GUILDHALL, SWANSEA ON  
WEDNESDAY, 6 JULY 2016 AT 10.00 AM

**PRESENT:** Councillor P Downing (Chair) Presided

**Councillor(s)**

D W Cole  
P M Matthews

**Councillor(s)**

C R Doyle  
T M White

**Councillor(s)**

P Lloyd

**ALSO PRESENT:**

**Councillor(s)**

H Morris (observer)

**Officer(s)**

I Beynon	Development & Outreach Manager
S Cable	Children's Play Officer
A Lowe	Democratic Services Officer
M Russ	Park Services Manager

13 **APOLOGIES FOR ABSENCE.**

Apologies for absence were received from Councillors C Anderson, C Thomas, A McTaggart, Mapping and Spatial Data Officer and J Rees-Thomas, Play Development Worker.

14 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS.**

In accordance with the Code of Conduct adopted by the City & County of Swansea, no interested were declared.

15 **OPEN SPACES STRATEGY.**

Ian Beynon, Development & Outreach Manager presented the updated Draft Open Spaces Strategy document.

The following information had been added:

- Information on Promoting Biodiversity and Nature Conservation, however it was noted that the number of Wildlife sites was still to be clarified;
- How the Strategy would link to other Council Strategies and plans underpinned by the Council's Corporate Priorities and Values;
- Reference to the action plan (which would be a working document).

The Committee then discussed the process for consultation, which would need to take place prior to formal submission to Corporate Briefing and Cabinet.

The Development & Outreach Manager suggested commencing the consultation with the Friends of Parks Forum members. Councillors would also be consulted for areas where there were no Friends of Parks members.

Stephen Cable, Children's Play Officer explained that an Equality Impact Assessment was required for all new strategies. He had commenced this exercise and liaised with the Access to Services Team, who felt the strategy would impact on several different groups. It was hoped to utilise information from a range of consultation exercises that had taken place recently such as comments received during the Children's Play Strategy consultation.

Following consultation, the Committee would need to work with the Officers to evaluate any submissions and amend the Open Spaces Strategy as necessary.

The Chair thanked the Officers for all the work undertaken to draft the strategy.

**RESOLVED** that:

- 1) The report be noted:
- 2) The report, Equality Impact Assessment and proposed areas for consultation be reported to the Development Cabinet Advisory Committee scheduled for 17 August 2016.

The meeting ended at 10.23 am

**CHAIR**

## CITY AND COUNTY OF SWANSEA

### MINUTES OF THE DEVELOPMENT CABINET ADVISORY COMMITTEE

HELD AT COMMITTEE ROOM 5, GUILDHALL, SWANSEA ON  
WEDNESDAY, 20 JULY 2016 AT 3.00 PM

**PRESENT:** Councillor P Downing (Chair) Presided

**Councillor(s)**

C Anderson

P B Smith

**Councillor(s)**

D W Cole

C Thomas

**Councillor(s)**

P Lloyd

**Officer(s)**

Martin Bignall

Allison Lowe

Ian Whettleton

Frances Williams

Tree Services Unit Manager

Democratic Services Officer

Divisional Officer Waste Management

Team Leader Enforcement, Fly tipping and Litter

16 **APOLOGIES FOR ABSENCE.**

Apologies for absence were received from Councillors, C R Doyle, P M Matthews and T M White.

17 **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTERESTS.**

In accordance with the Code of Conduct adopted by the City & County of Swansea no interests were declared.

18 **MINUTES.**

**RESOLVED** that the Minutes of the Development Cabinet Advisory Committee held on 15 June 2016 be approved and signed as a correct record.

19 **REVIEW OF FLYTIPPING.**

Ian Whettleton, Divisional Officer Waste Management and Fran Williams, Team Leader Enforcement, Fly tipping and Litter updated the Committee in relation to the review of Fly tipping.

The Committee discussed the various courses of formal action that could be undertaken as well as legislation issues and the procedure for dealing with fly-tipping on private land.

**RESOLVED** that the following information be provided for the next meeting:

- 1) A list of how many cases had been received and how many prosecutions had taken place;
- 2) A sample of 5-6 different cases outlining how they had been dealt with.

20 **TREE POLICY.**

Martin Bignall, Tree Services Unit Manager presented the current Operational Policy of the Management of Trees under the Parks Service.

He explained that at present the Authority did not have a formal Tree Policy; however the current Operational Policy had been drawn up by officers.

A Tree Preservation Scrutiny Working Group had taken place with 9 recommendations being made. One of the recommendations was to develop a Tree Policy for the whole Council, which this Committee would now oversee. The Officer stated that a formal Tree Policy would require agreement from a variety of different departments, such as Planning and Countryside.

He clarified that as tree owners, our main objective was to ensure that our trees were inspected regularly and were as safe as practicable. He outlined details of the inspection regime and members discussed the criteria for pruning trees.

The Officer stated that the intention would be to move towards a more pro-active service rather than re-active as at present. A formal tree policy would be of benefit as it would be publically available and outline what the Authority would and wouldn't do (as outlined in sections 6, 7 and 8 of the current document).

The Chair thanked the officer for his report and explanation of the process.

**RESOLVED** that the Tree Services Unit Manager provide the following information for the meeting scheduled for 21 September 2016:

- 1) A formal introduction to the strategy be drafted;
- 2) A list of Trees with Tree Preservation Orders (TPO's) on Council land be provided;
- 3) The methodology for trees having TPO's made on them be provided and included in the Tree Policy.

21 **WORKPLAN.**

**RESOLVED** that the work plan be noted subject to the following amendments:

- 1) Remove Recycling – Pink Bag Trial from the work plan;
- 2) Second site visit to Morrision take place sometime between the next 2 meetings scheduled for 17 August 2016 and 21 September 2016

The meeting ended at 3.59 pm

**CHAIR**

## Development CAC – 17 August 2016

### Open Space Strategy for Swansea

#### Introduction

The variety of open space provision across Swansea provides opportunity for all people to play, exercise, socialise and enjoy contact with nature. As a focal point of any community, parks and open spaces can contribute to building community spirit and community cohesion and provide an environment where community action and involvement is encouraged. Parks and open spaces also have an important role as a home to wildlife and natural habitats. These roles may complement each other.

Swansea's diverse and extensive open space and green infrastructure network needs to be maintained, protected and enhanced to ensure that the extent, quality and connectivity of this multi – functional resource and the many valuable ecosystems are safeguarded and sustainably managed for the use and enjoyment of all residents and visitors into the future.

The Open Space Strategy will set out a strategic vision and a series of aims and objectives for all types of open space in the ownership or management of City and County of Swansea Council. Based on these objectives and an assessment against the agreed standards a prioritised Action Plan will be produced. The Strategy will set out a vision up to 2025, providing a strategic framework for the protection, development and improvement of existing open spaces and to increase the provision of, or access to such facilities, where it is shown there are deficiencies against the agreed standards. In addition it will;

- Identify which open spaces will be included.
- Advise, as appropriate, on opportunities for rationalisation and change of use of current open space provision within the City and County.
- Highlight good practice and case studies from across the Country
- Detail how the Council can encourage greater community involvement and ownership in the management, maintenance and development of open spaces.
- Recommend how to maximise the effective use of physical and financial resources in improving the quantity, quality and accessibility of open space
- Establish a robust monitoring framework to assess the effectiveness of the Strategy

This Strategy should be understood and utilised in conjunction with a number of other strategies and plans currently in place or under development for the City and County of Swansea, including but not limited to: the Council's Corporate Plan; the

Local Development Plan and any associated Local Area Plans and Planning Guidance; the Cultural Development Framework, Tourism, Beaches and Destination Management Plan; Environment Strategy; Green Infrastructure Strategy; Tree Policy; Early Years and Poverty Strategies; Creating an Active and Healthy Swansea plan and the Council's actions in meeting its obligations under the Well-being of Future Generations (Wales) Act 2015.

Its aims and objectives are underpinned by the Council's Corporate Priorities for: a Vibrant and Viable City and Economy;  
Tackling Poverty;  
Building Sustainable Communities;  
Education Attainment;  
Safeguarding.

- and informed by the Council's values which will guide the way that we work, how we develop as an organisation and our decision making through the years ahead:

### **People focussed**

We need to focus on community needs and outcomes and on improving the lives of the people who live and work in Swansea. We will also respect, value and support our employees and demonstrate the highest standards of integrity.

### **Working together**

We need to promote a whole partnership approach, working across services to maximise resources and knowledge and joining forces with others outside the Council to ensure we prioritise our resources and get the best for our communities.

### **Innovation**

We promote and support a culture of innovation. We need to think and work differently to improve our ability to deliver and to meet the financial, demographic and societal challenges we face.

### **Definition of Open Space**

Open spaces are valued community assets which help improve public health, mental and physical well-being and quality of life, and which bring biodiversity and regeneration benefits to an area.

Open space is defined as land in public ownership that is regularly available for recreational or sporting use by the community and can also act as a visual amenity.

The following list illustrates the broad range of open spaces in Swansea that are of public value:

- parks and gardens – including urban parks, country parks, and formal gardens;

- outdoor sports facilities (with natural or artificial surfaces)– including tennis courts, bowling greens, sport pitches, golf courses, athletic tracks, school and other institutional playing fields;
- amenity green space (most commonly, but not exclusively in housing areas) – including informal recreation spaces, communal green spaces in and around housing;
- provision for children and teenagers – including play areas, kickabout areas, skateboard parks and outdoor basketball hoops;
- green corridors – including river and canal banks, amenity footpaths and cycleways;
- wetlands, heathland and grasslands (eg. meadows);
- beaches and foreshore
- local Nature Reserves and designated wildlife sites
- civic spaces, including civic squares and other hard surface areas designed for pedestrians.
- allotments and community gardens;
- cemeteries

### **Current Provision of Open Space in Swansea**

52 Parks  
 32 playing field sites  
 22 Bowls Greens  
 85 Children’s Playgrounds  
 9 Fitness and Trim trails  
 16 Multi Use Games Areas (MUGA)  
 16 Skate and BMX sites  
 12 Tennis Court sites  
 16 Allotments  
 5 Beaches  
 7 Cemeteries  
 4 All Weather Pitches  
 6 Local Nature Reserves  
 X no. Wildlife sites

### **Open Space standards and statutory duties**

The following standards have been adopted to determine whether Swansea meets nationally recognised guidelines in terms of Open Space provision;

Fields in Trust (FIT), formerly the National Playing Fields Association, has prepared ‘Benchmark Standards’ for outdoor sport and play. The standard recommends that in terms of overall provision per 1,000 population there should be 1.2ha of land for playing fields, 1.6 ha for all outdoor sports and 0.8 ha for Children’s playing space, with 0.25ha of the total provision relating to equipped playgrounds and with variations between rural and urban areas.

Natural Resources Wales has developed a toolkit to ensure everyone in Wales has access to Accessible, Natural Green Spaces(ANGS) It recommends that provision should be made for at least:

- 2ha of accessible natural greenspace per 1,000 population



- That no-one should live more than 300m from their nearest natural green space That there should be at least one 20ha site within 2km of all homes
- That there should be one accessible 100ha site within 5km
- That there should be one 500ha site within 10km

The current provision in Swansea against these standards is;

The City & County of Swansea has a statutory responsibility to assess Play every 3

Ward	Bishopston	Bonymaen	Castle	Clydach	Codlett	Cumbwria	Dunvant	Fairwood	Gorseion	Gower	Gowerton	Killay North	Killay South	Kingsbridge	Landore	Llangyfelach	Llansanlet	Lower Loughor	Mawr	Mayals	Morriston	Myrddbach	Newton	Oystermouth	Pencawdd	Penderyn	Penltergaer	Pennard	Penyheol	Pontardulais	Sketty	St. Thomas	Townhill	Uplands	Upper Loughor	West Cross
FIT Provision	5.1	4.3	0.2	2.1	2.5	1	2.5	10.6	2.2	2.3	5	0.34	29.2	3.4	5.4	0.4	2.3	3.4	1.4	46.1	3.1	3	2.7	2.2	2.4	2.3	2.5	1.3	3.1	1.5	11.5	1.9	4.4	1.4	7	1.2
RANK	6	9	36	27	18	33	20	4	26	23	7	35	2	12	5	34	24	10	29	1	13	15	17	25	21	16	19	31	14	11	3	28	22	30	8	32
ANGS Provision	51.9	55.4	7.9	19.6	10.2	2	11.4	121.9	11.5	1550.8	20.6	12.3	32	27.2	8.1	86.7	19.5	4.8	1285.3	217.9	5.6	7.6	27.1	31.7	191	6.2	60.8	158.7	23.5	73	21.7	25.6	1.9	5.9	4.5	32.3
RANK	11	10	28	22	26	35	25	6	24	1	20	23	13	15	27	7	21	33	2	3	32	29	16	14	4	30	9	5	18	8	19	17	36	31	34	12

Figure 17 – Traffic light analysis of open space provision within wards

years to ‘ensure sufficient play opportunities as far as is reasonably practicable’.

The City & County of Swansea has also embedded the United Nations Convention on the Rights of the Child (UNCRC) into its practice, therefore all policies and procedures must give due regard to children’s rights.

Under the Small Holdings and Allotments Act 1908 (section 23), the Local Authority has a statutory duty to provide a sufficient number of allotment plots.

### Environment Act 2016

#### Biodiversity and resilience of ecosystems duty

Section 6 of the Act places a duty on public authorities to ‘seek to maintain and enhance biodiversity’ so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to ‘promote the resilience of ecosystems’. The duty replaces the section 40 duty in the Natural Environment and Rural Communities Act 2006 (NERC Act 2006), in relation to Wales, and applies to those authorities that fell within the previous duty.

### Strategic Vision

‘By 2025 the City & County of Swansea will have a vibrant and diverse range of quality parks and open spaces, well distributed across the County. Sites will reflect local needs and historical, recreational and natural characteristics. The spaces will form a network which maximises opportunities for everyone to enjoy and interact within their local community and the wider area whilst also attracting people into the City and County’

### Strategic Objectives

- To address deficiencies in open space provision across the County in order to improve opportunities for local people to access a variety of open space environments
- To create, develop and sustain safe open space environments which can be enjoyed by all sections of the community;

- To involve the whole community: residents, public, private and voluntary organisations to ensure that parks and open spaces contribute fully to the development of sustainable and cohesive local communities;
- To develop the educational role of open space, particularly for young people, in order to promote greater knowledge and understanding of the importance of being active in the outdoors and of the natural environment;
- To provide a range of opportunities and facilities for active and passive recreation which can contribute to improved mental and physical health and wellbeing;
- To manage and develop parks and open spaces in order to promote social inclusion and usage by all of the County's diverse communities;
- To develop and promote an increased range of opportunities for people to enjoy cultural experiences and activities;
- To promote biodiversity and the conservation, protection and enrichment of species and habitats and to protect and enhance ecological connectivity and ecosystem resilience.

### **Key Priorities**

To deliver the vision and objectives we will focus on the following five key priorities:

#### **Increasing accessible open space and people's access to it**

##### **To achieve this we will;**

Identify a City & County of Swansea access standard  
 Encourage and promote opportunities for greater diversity of use  
 Facilitate additional usage of open space  
 Facilitate and develop safer routes to enable access  
 Promote and encourage social inclusion  
 Enhance the quantity and quality of existing provision  
 Develop the educational role of open space  
 Develop closer relationships with schools  
 Develop and promote the use of open space for improved health and well-being  
 Develop the role of open space for cultural experiences and play  
 To increase the opportunities available to learn about the natural environment and biodiversity  
 Ensure opportunities are designed in consultation with partners and target groups.

#### **Delivering new developments - Based on LDP sites**

##### **To achieve this we will:**

Improve Co-ordination of planning for open space involving all relevant services and stakeholders  
 Ensure accessible open space is included in all developments  
 Ensure new developments contribute to any deficiencies in open space assessment standards

Ensure development proposals will maintain, enhance and create new green infrastructure, where appropriate.

Consider improvement of existing local provision in the locality or the creation of new on site facilities

Create safer and more accessible open space environments

Improve community safety through design

Maintain and improve ecological connectivity and healthy functioning ecosystems

### **Designating and protecting open space**

#### **To achieve this we will:**

Retain Fields in Trust designation for existing sites and consider new opportunities

Retain Green Flag status for existing sites and consider new opportunities

### **Encouraging Community involvement/management**

#### **To achieve this we will:**

Actively encourage and support community engagement and ownership of open spaces.

Encourage, support and facilitate appropriate self-management or Community Asset Transfer

Facilitate and extend community involvement in the management and development of open spaces

Develop and expand the number of Friends of Parks groups

### **Promoting biodiversity and nature conservation**

#### **To achieve this we will:**

Manage the County's Tree Stock

Actively support the protection, retention and enhancement of biodiversity and natural open space

Facilitate the improvement of existing habitats for Biodiversity

Facilitate the creation new habitats and features for biodiversity

To publicise and promote the importance of nature conservation and biodiversity

To ensure nature conservation and biodiversity issues are fully taken in to account in a new developments

### **Action Plan**

Following the adoption of the Open Space Strategy an Action Plan will subsequently need to be developed to identify areas for prioritisation, together with level of priority and recommended action. The Action Plan will be a working document with the priority actions regularly monitored and updated.

## Report of the Director of Place / Cabinet Member for Environment and Transportation

Development Cabinet Advisory Committee – 17 August 2016

### REVIEW OF FLYTIPPING Current Protocols and Procedures in place within the City and County of Swansea

<b>Purpose</b>	This document is not intended to be a policy document, it is a summary of the current procedures in place to deal with fly tipping.
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#### FOR INFORMATION

## 1. Introduction

- 1.1 The Waste Management Section has a duty to enforce a wide range of legislation including the Environmental Protection Act 1990 and the Clean Neighbourhood Act 2005. This covers aspects such as waste management duty of care, (flytipping) litter and dog fouling. Waste Management regards prevention as better than cure, it offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy and excessive cost. The 3 E's, Education, Engagement and Enforcement.
- 1.2 The purpose of this protocol and procedure document is to promote the enforcement message and to secure efficient compliance with legislation whilst minimising the burden to Parks & Cleansing, individuals, organisations and businesses. The information within this document is intended to be applied in a wide range of situations and it explains in general terms the approach adopted by Waste Management when carrying out the Council's enforcement duties.

## 2. Good Enforcement Practice

- 2.1 The City and County of Swansea, Waste Management section has adopted the Enforcement Concordat and looks to promote good standards of enforcement.
- 2.2 In addition, all officers will consider and follow the Code of Practice for Crown Prosecutors, issued by the Crown Prosecution Service, when taking decisions on whether to prosecute.

### **3. Human Rights Act 1998**

- 3.1 In deciding to instigate enforcement action, particularly prosecution, officers will consider the rights and freedoms given to individuals under the Human Rights Act 1998, in particular taking account of Article 6, the right to a fair trial and Article 8 the right to respect for private and family life, home and correspondence.

### **4. Equal Opportunities**

- 4.1 All officers undertaking enforcement duties will ensure that all recipients of the service receive fair and equitable treatment irrespective of their race, ethnicity, gender or disability. Equalities issues associated with enforcement will be monitored to ensure fairness.

### **5. Commitment to the Protocols and Procedures**

- 5.1 The City and County of Swansea is committed to ensuring that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of this document. All authorised officers must abide by this procedural document whenever making decisions on enforcement. Any departure from these protocols and procedures will be exceptional, documented, justified and approved by the Head of Service unless the delay in decision making would result in a significant risk to the public.
- 5.2 All authorised enforcement officers should be fully trained and authorised in those aspects of legislation relevant to their duties. The authority will ensure that officers are fully competent to carry out their duties and that the level of delegated authority for each officer has been approved.

### **6. Enforcement Principles**

- 6.1 In enforcing any law, the City and County of Swansea recognises and affirms the importance of the following principles:

#### **6.1.1 Standards**

Waste Management's approach to litter, dog fouling, graffiti, and breaches in waste management duty of care (flytipping) is that prevention is better than cure. This involves actively working with residents, community groups and business, to advise and assist with understanding the law.

- We will provide a courteous and efficient service and our staff will identify themselves by name.
- We will provide a contact point and telephone number for further dealings with us and we will encourage recipients to seek advice or information from us, or a solicitor.

- We will ensure, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- We will provide information and advice in plain language on the rules that we enforce. We will be open about how we set about our work, and we will discuss general issues.

## 6.2 Consistency

6.2.1 We will carry out duties in a fair, equitable and consistent manner. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

## 6.3 Proportionality

6.3.1 We will ensure that action taken relates directly to the actual or potential risk to health, safety, the environment or significant economic disadvantage to the consumer or business.

## 6.4 Transparency

6.4.1 We will ensure that the enforcement action taken by the City and County of Swansea is easily understood by individuals, organisations and businesses having to comply with legislation, and that clear distinctions are made between legal requirements and advice or guidance about what is desirable, but not compulsory.

## 6.5 Objectivity

6.5.1 We will ensure that decisions are not influenced by the gender, ethnic origin, religious or political beliefs or sexual preferences of the offender, victim, witnesses or any other person in receipt of the department's services. Sensitive consideration will be given where persons involved are children, elderly, infirm or suffering from a mental disorder.

## 7. Enforcement Options

7.1 The Authority recognises and affirms the importance of achieving and maintaining consistency in its approach to making decisions that concern standards of enforcement action.

7.1.1 In making a decision officers will consider:

- The seriousness of the offence
- Any explanation offered by the defendant
- Any mitigating circumstances
- The previous relevant history, if any
- The likelihood of the defendant being able to establish a defence
- The ability of any important witnesses and their willingness to co-operate

- Whether other action such as the issue of a fixed penalty notice would be more appropriate or effective.
- The advice contained in the Code for Crown Prosecutors

7.1.2 Having considered all relevant information and evidence, one or more of the following choices for action are available to officers:

- Promotion
- No action
- Informal action
- Formal action which may include: Fixed penalty notice, statutory (legal) notices, Simple (formal caution), prosecution

## 7.2 **Promotion**

7.2.1 To raise awareness of documentation regarding anti social behaviour, and about legal standards and good practice. This is typically achieved by issuing of press releases, leaflets, and other forms of written guidance available to the public and businesses, authority web site and by face to face contact.

## 7.3 **No Action**

7.3.1 Where an investigation reveals that at the time of the visit, no offence has occurred or an offence has occurred but no offender can be identified.

## 7.4 **Informal Action**

7.4.1 This will be used to reinforce promotional activities and instances where, although the law may have been broken or a minor offence has been committed, it is not thought appropriate to take any other action. An informal action can be oral or written. In these instances, the enforcement officer will use their discretion but will be called upon to justify the exercise of that discretion.

7.4.2 When an informal approach is used, officers will ensure that any written documentation provided must:

- Contain all information necessary to identify the breach of legislation
- Indicate specific legislation contravened
- Clearly indicate any recommendations of good practice and explain that they are not legal requirements

7.4.3 Officers should always make clear, even when giving verbal advice, what are legal requirements as opposed to recommendations of good practice.

7.4.4 If it is believed that such a warning is inappropriate or unjustified, then this procedure allows for the decision to be reviewed by a senior officer.

## 7.5 Formal Action

7.5.1 Authorised officers will consider the use of formal action as appropriate and this action could be:

- (i) Fixed Penalty Notices – These may only be served/cancelled by authorised officers who are deemed to be competent, suitably qualified and experienced.

The following circumstances are likely to warrant the use of a fixed penalty notice:

- Officer has witnessed the offence
  - Officer believes there are “reasonable grounds” to consider an offence has been committed
  - There is a suitable witness or witnesses to the offence and the offender can be clearly identified
  - The alleged offender has not received a fixed penalty notice before, or has previously received no more than two notices in the previous twelve months
  - At present, in Wales, there is no fixed penalty notice option for dealing with flytipping
- (ii) Statutory Legal Notices – Many Acts of Parliament enforced by the Authority provide for the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements. When a formal notice is served, the method of appealing against the notice (i.e. if you feel that the notice is unjustified or excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and what will happen if the notice is not complied with satisfactorily.

In general, failure to comply with a properly written and served statutory notice makes the recipient liable to prosecution. In some cases the Authority is able to carry out works to comply with the notice and recover the costs of doing so from the recipient of the notice. In such cases, works will be carried out in default. In certain circumstances, it is possible to prosecute as well as serve a notice; failure to comply with the notice would be an additional offence.

- (iii) Simple (Formal) Cautions – Under certain circumstances, a Simple caution may be an alternative to prosecution and this will be considered prior to any decision to prosecute. A Simple caution is a serious matter and it is recorded on the Central Register of Convictions. It may be used to influence any decision, to determine whether or not to instigate proceedings, if the person should offend again and it may be referred to in any subsequent court proceedings. It will not be considered in respect of any offence committed more than three years prior to the caution.

The purposes of Simple (formal) cautions are:

- (a) To deal quickly and simply with less serious offenders



- (b) To avoid unnecessary appearance in criminal courts
- (c) To reduce the chance of offenders re-offending

Before issuing a caution, which will usually be administered by letter, the following conditions must be satisfied:

- (a) All cautions will be issued in accordance with Council procedures
  - (b) There must be evidence of guilt sufficient to give a realistic prospect of conviction
  - (c) The suspected offender must admit the offence, usually by signing a declaration
  - (d) The suspected offender must understand the significance of a formal caution and given an informal consent to the caution
  - (e) Should the offer of a formal caution not be accepted by a possible defendant, prosecution will be recommended to the Authority's Legal Department
- (iv) Prosecution – The Authority will use discretion in deciding whether to initiate Prosecution, but where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may take place.

7.5.2 Any decision to recommend prosecution will be the subject of peer review of all relevant evidence and information to enable a consistent, fair and objective decision to be made by the appropriate Head of Service.

The Authority will consider prosecution when:

- It is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken, or where, through the conviction of offenders, others may be deterred from similar failures to comply with the law: or
- Where there is the potential for considerable harm arising from the breach: or
- The gravity of the offence, taken together with the general record and approach of the offender warrants it.

7.5.3 The decision to prosecute will always take account of the criteria set down in the Code for Crown Prosecutors.

7.5.4 The Authority will also identify and prosecute or recommend the prosecution of individuals, including company directors and managers, if they consider that such a conviction is warranted and can be secured.

7.5.5 Before deciding to prosecute, there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available, and it must be in the public interest.

7.5.6 The following public interest criteria will be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

The prevalence of the type of offence:

- The need for a suitable deterrent
- The risk of danger or injury to the public
- The failure to comply with a statutory notice or respond to advice about legal requirements
- The disregard of legal requirements for financial reward
- Significant financial loss, potential or actual, to a third party
- Was the investigation the result of a complaint by a third party?
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Minor breaches of a number of statutes

7.5.7 Where possible, an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow.

7.5.8 All prosecutions will be brought without unnecessary delay.

## **8. Fixed Penalty Notices (as previously mentioned, there is no facility at present, to issue FPNs for flytipping in Wales).**

8.1 On issue of the notice the recipient are given the opportunity of discharging any liability to conviction for the offence by payment of the fixed penalty notice within 14 days from the date of issue.

8.2 In the event of non –payment of a fixed penalty an offender will be notified in writing that if at the expiry of a further 14 days payment is not received, the matter will be referred to the local authority’s legal services and may result in a prosecution.

8.3 At present in Wales there is no FPN available for dealing with issues of Flytipping, however this is currently under review as the legislation has been made available in England in early 2016.

## **9. Application of procedures and protocols**

9.1 All officers will refer to this document when making enforcement decisions.

9.2 It must be read in conjunction with relevant approved guidance on enforcement action. Regard must also be given to any relevant internal procedures. An easily accessible appeals procedure, including detailed guidance and a hotline for members of the public as detailed on fixed penalty notice forms and web site.

9.3 Any departure from this procedural document must be exceptional, capable of justification and be fully considered by the Head of Service before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

## **10. Review**

10.1 It is intended that this procedural document will be subject to regular review, and changes introduced to accommodate new legislation and local needs.

## **OPERATIONAL PROCEDURES FOR THE REMOVAL OF FLYTIPPING**

As previously discussed for the purpose of this review fly tipping is defined as “the illegal deposit of any waste onto land i.e. waste dumped or tipped on a site with no licence to accept waste”. Fly tipped waste generally consists of large items of rubbish dumped illegally on land instead of being disposed of properly at a landfill site or tip. The Law it states that “It is also an offence to permit or authorise fly tipping on land where a Waste Management Licence is not held. Where fly tipping involves the use of a vehicle, the driver can be prosecuted, as can the owner of the vehicle. The police have powers to seize vehicles used for fly tipping”. This applies whether it is publicly or privately owned land.

The Authority investigates waste on both registered private land and publicly owned land.

Private land owners have to remove the waste on their land but costs may be retrieved through the courts upon conviction of an individual. However the procedure for dealing with flytipping on unregistered land is currently under review due to the cost implications of the removal of the waste.

Domestic and commercial waste that is placed out for collection on the wrong day, time, week, coloured bag, is also classed as flytipping or littering but dealt with under the Environmental Protection Act 1990 Section 46 and section 47 respectively.

At present there are 3 primary ways in which flytipping is recorded and dealt with across the Authority.

FLARE is the authority’s recording procedure for dealing with complaints and service requests across the former Environmental Health Department.

1. Calls are received and logged onto FLARE via the Customer Call Centre
2. Information is received via email/telephone to Supervisors and/or Enforcement Officers from Councillors/public then added to FLARE
3. Flytipping is removed by operatives during the course of their working day and recorded on paper for administration to update FLARE

## Daily Operational Activity

Calls that relate to flytipping are received and logged onto FLARE via the Customer Call Centre are automatically printed out in the enforcement office and allocated to area supervisors on a daily basis.

Supervisors then allocate the work according to the areas that staff are working in on that particular day.

Operatives are deployed from various sites across Swansea at present, these include, Clydach depot, Pipehouse Depot and Home Farm Depot.

Cleansing Operatives deploy to various designated areas across the authority on a daily basis to carry out their statutory duties of street cleansing. Statutory work tends to be Monday – Friday, unless we receive a call for essential work to be undertaken on the weekend. Such working patterns will be considered during the current Parks & Cleansing commissioning review

Calls that are received regarding flytipping via FLARE throughout the working day are given to area supervisors for them to allocate to operatives accordingly.

Where area supervisors are not based at Pipehouse Wharf depot, these calls are placed into area filing drawers, to be collected by supervisors or operatives throughout the day.

There are cleansing operational teams that carry out manual cleansing across 6 designated areas throughout the Authority, this includes the City Centre. There are 6 area supervisors.

There are 3 enforcement officers at present and 1 team leader. Enforcement officers rely on the removal and retrieval of evidence from flytipping, to be collected by the cleansing operatives.

Whilst carrying out their cleansing duties, where operationally possible:-

- operatives examine and remove domestic waste bags that have been incorrectly left out for collection
- Operatives open the bags to see if there is any evidence left in the bag from a householder
- Operatives make a note of the date, time and place of where the waste was found. They also sign the relevant paperwork should a witness statement be required for court proceedings
- If evidence is found this is then brought into the enforcement office, either by the area supervisor or the operative, at the end of the working day.

The enforcement office then write to the householder advising them of the correct day of collection etc. and advise what action may be taken in the future should problems persist. See Appendix 1 (section 46 EPA 1990 letter), Statutory Notice (21 days appeal time), Fixed Penalty Notice (£100 or early repayment £60), court action.

Larger scale flytipping on the highway that has been reported in the area, is also examined for evidence and removed. This evidence is brought into the enforcement office. Enforcement officers then carry out investigations as to

- where the waste has come from
- who removed the waste from the householder
- why it was flytipped.

Enforcement – where evidence is available every effort is made to gather enough evidence to proceed to court, however, in many cases, the waste is removed but no traceable evidence is available and no further action can be taken.

As flytipping is a criminal offence and can result in a criminal conviction officers carry out investigations in accordance to the PACE 2000 regulations. This includes officers obtaining further evidence, gathering witness statements, carrying out recorded interviews under caution (PACE 2000) and compiling prosecution case files.

On completion of the prosecution case file. These files are then forwarded to the Head of Service who in accordance with the Council's Enforcement Concordat approves the case file for legal action.

The files are then forwarded to our legal department for their review and subsequent court summons.

Flytipping offences can be heard at either a Magistrates court or Crown Court. Upon conviction, fines can be unlimited and result in a prison sentence of up to 5 years.

In reality however, fines at either court, usually rely on information from means testing and include legal and court costs.

All cases regarding flytipping are reported to our public relations department.

### **Use of Cameras**

There are restrictions on the use of cameras for surveillance purposes. The Regulations of Investigatory Powers Act (RIPA) requires magistrates court permission, with stringent criteria to be met and reviewed regularly and Closed Circuit Television Surveillance (CCTV).

Where operationally possible, limited use, covert cameras are used for monitoring areas that have been highlighted as flytipping 'hot spots'. Due to the poor quality of evidence retrieved there are no cases pending court action.

## **Additional operational information**

Welsh Government Performance indicators currently state that all reported flytipping is to be removed from relevant land within 5 working days.

Removal of flytipping is not carried out weekdays 'out of hours' or on Saturday or Sunday, unless there is an imminent public safety issue. Specific teams are in on weekend and will be re-directed to any emergency work

Removal of flytipping is carried out as part of cleansing operations daily duties. This may result in flytipping being left down for longer than 5 working days if anything of a larger scale takes longer due to arrangements of all logistics.

Cleansing operatives often have to return to Pipehouse Wharf depot to retrieve additional work, which could be avoided if work could be electronically sent to operatives.

Failure to complete the necessary paperwork at all stages of investigation and removal may result in no further action being taken. Again, electronic means of logging actions on the ground would assist.

At present only some waste is segregated for disposal. Most of the flytipped waste collected goes to landfill at a cost of approximately £100 per tonne.

The service level agreement with Housing will come to an end in August 2016 and waste on housing land will be removed by housing staff only. However, individual flytips could be addressed upon request at a fee, with additional resources.

There could be an income generated if the opportunity to work with public health and housing regarding house clearances under statutory notice were explored. This would prevent waste being flytipped by householder in order to comply with the statutory notice that had been served.

There could also be an opportunity for the Authority to deal with the removal of flytipped waste on private land on a commercial basis if resourced appropriately. This is something which will be raised during the current commissioning review process.

## Appendix 1

The Occupier (s)  
Address

P Manley

01792 635600

FAW/PM/

2016

Dear Sir / Madam

### **Re: ENVIRONMENTAL PROTECTION ACT 1990, SECTION 46**

You have been sent this letter to inform you of the correct methods of waste disposal. The Council has to advise you that it provides a kerbside collection for your domestic waste and recycling provided you use:

- 3 Black sacks for domestic refuse.
- Green recycling sacks for paper and card.
- A separate green sack should be used for glass and cans.
- **Do not use Green recycling sacks for domestic waste.**
- Food waste should be placed in the green plastic bins.
- Garden waste should be placed in the council issued garden waste sack.
- Pink sacks for plastics.

The Council also provides a chargeable service to collect up to three bulky items provided prior arrangements are made by phoning 635600.

- Black sacks and Pink sacks are collected **fortnightly** on **Wednesday**.
- Green sacks and White garden waste are collected **fortnightly** on the alternate **Wednesday**.
- The green food waste bin is collected every **Wednesday**.



Your next fortnightly collection for green sacks and garden waste is on **2016 and fortnightly thereafter.**

Your next fortnightly collection for pink and black sacks is on **2016 and fortnightly thereafter.**

**N.B. Collections for the Bank holiday weeks will run one day behind indicated from the dates above.**

You are asked to present your waste for collection:

- On the kerbside at the front of **your** property.
- **No earlier than 7.00pm** the evening before and **no later than 7.00am** on the morning of collection.

**I am writing to inform you that in future officers of the authority will be in the area monitoring the situation and serving enforcement notice specifying refuse and recycling collection arrangements. Failure to comply with the requirements of the notice may bring a fine of up to £1,000.**

**Please help us to keep your local neighbourhood clean.**

If you are not sure about what you have to do or need any information and advice or want to discuss this matter further, **please contact me on Tel. No: (01792) 635600.**

Yours faithfully

# Agenda Item 7

## DEVELOPMENT CAC - 17 August 2016

### WORK PROGRAMME 2016-2017

<b>Date</b>	<b>Subject Area</b>	<b>Lead Officers</b>
15 June 2016	Pedestrianisation of Wind Street	Stuart Davies / Mark Thomas
15 June 2016	Fly Tipping Policy	Ian Whettleton / Frances Williams
15 June 2016	Waste Management – Re-Use shop	Keith Coxon
6 July 2016 (Special)	Open Spaces Strategy	Andrew McTaggart Mark Russ Ian Beynon Jackie Rees- Thomas
20 July 2016	Draft Fly Tipping Policy	Ian Whettleton / Frances Williams
20 July 2016	Tree Policy	Martin Bignall
17 August 2016	Open Spaces Strategy	Andrew McTaggart Mark Russ Ian Beynon Jackie Rees- Thomas/Stephen Cable
17 August 2016	Review of Fly Tipping	Ian Whettleton / Frances Williams
TBC	Regional District Shopping Centres (2 <sup>nd</sup> site visit to Morriston)	Development CAC Members
21 September 2016	Swansea Market (Provision of a Public Toilet)	Lisa Wells
21 September 2016	Tree Policy	Martin Bignall
19 October 2016	Waste Management – Re-Use shop (Update)	Keith Coxon
TBC	Pedestrianisation of Wind Street	Stuart Davies / Mark Thomas
TBC	Housing Estates Containing Unadopted (Private) Streets	
TBC	Regional District Shopping Centres (site visit to Mumbles )	Development CAC Members
TBC	Civic Amenity Sites	