



## Report of the Cabinet Member for Environment and Infrastructure Management

### Environmental Enforcement Scrutiny Working Group – 5 February 2019

#### OVERVIEW – ENVIRONMENTAL ENFORCEMENT

<b>Purpose</b>	To provide an overview of the current procedures in place to deal with fly tipping, dog fouling, littering, pavement parking and overhanging branches.
<b>Content</b>	<p>This report includes:</p> <p>Section A) <u>Fly Tipping, Dog Fouling and Littering</u> - a breakdown of enforcement actions carried out from April 2018 to January 2019. It also contains an overview of preventative and educational actions taken to support cleansing work carried out.</p> <p>Section B) <u>Pavement Parking and Overhanging Branches</u> - an overview of the current policies in place and the actions taken to deal with these issues.</p>
<b>Councillors are being asked to</b>	<ul style="list-style-type: none"> <li>• Give their views</li> <li>• Make recommendations to Cabinet Member as necessary</li> </ul>
<b>Lead Councillor(s)</b>	Mark Thomas, Cabinet Member for Environment and Infrastructure Management
<b>Lead Officer(s)</b>	Chris Howell, Head of Waste Management, Parks and Cleansing Stuart Davies, Head of Highways and Transportation
<b>Report Author</b>	Frances Williams, Team Leader Enforcement; Mark Thomas, Group Leader, Highways and Transportation

#### A) Fly Tipping, Dog Fouling and Littering

##### 1. General Description

- 1.1 The Council has the power to enforce a wide range of legislation including the Environmental Protection Act 1990 (EPA) and the Clean Neighbourhood Act 2005. This covers aspects such as waste management duty of care, fly tipping, litter, and dog fouling. Prevention is regarded as better than cure, as 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 Service promotes the enforcement message and to secure efficient compliance with legislation whilst minimising the burden to the Council, individuals, and businesses. The information within this report explains in general terms the approach adopted when carrying out the Council's enforcement role. This includes the private enforcement company 3GS that have been employed via Swansea Council since September 2013 to address issues of Littering and Dog Fouling.
- 1.3 The Waste Management web site provides information on how to dispose of all waste in the proper manner. It also advises residents on their duty of care in regard to employing 'a man in a van'.
- 1.4 The Authority publicises, where appropriate, details of successful prosecutions in the press and on the Authority and Natural Resource Wales website. Fly Tipping Action Wales.
- 1.5 The Authority takes initiatives to inform the public on the problems created by fly tipping, for example: - officers attending schools to talk to pupils, fly tipping being included on agenda's at meetings of community groups and regular distribution of leaflets on fly tipping. Officers believe this will assist to bring about a change of culture in the long term;
- 1.6 The Authority ensures any overgrowth in known "hotspots" of land in ownership of the Authority, is regularly cleared to make the area more visible to passing pedestrians and traffic;  
The Authority continues to support the removal of fly tipped waste from private land that is in sight of a public highway and continues to work with private landowners to discourage fly tipping on their land. This could include initiatives such as the erection of a barrier or fencing. There may a short term cost implication both the Authority and landowners.
- 1.7 Signage continues to be added to various 'fly tipping hot spots' across the authority and each of these locations is actively monitored. The idea being that if waste is removed quickly, it is not added to by others. Where possible access to some hot spots is removed by way of installing boulders or raised verges.

- 1.8 The use of covert CCTV requires Magistrates' court authorisation with definitive criteria to be met. The use of camera has proved unsustainable in certain areas as cameras are located and stolen or destroyed.
- 1.9 In enforcing any law, the City and County of Swansea recognises and affirms the importance of the following principles:
- Standards
  - Consistency
  - Proportionality
  - Transparency
  - Objectivity
- 1.10 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
- 1.11 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
- 1.12 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
- 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.

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

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. 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.

1.13 The Service Area also manages the recently introduced option to issue Fixed Penalty Notices (FPN) as an alternative to direct prosecutions for less severe fly tipping incidents.

## **2. Why We Do This - Good Enforcement Practice**

2.1 The City and County of Swansea 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.

2.3 Environmental enforcement activities are essential to protect the environment from those, despite extensive promotional and educational activities, still causing harm to the environment through fly tipping, littering, not controlling their household waste, and not clearing up dog fouling.

2.4 The Service contributes directly to the Council's new corporate Priority for Maintaining and enhancing Swansea's Natural Resources and Biodiversity.

## **3. Management and Support**

3.1 The Enforcement Service supporting Cleansing and Waste activities is managed by the Team Leader Enforcement, reporting

directly to the Head of Waste and Parks & Cleansing.

#### **4. Stakeholders**

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.

4.2 The Service works closely with other internal service areas such as Parks & Cleansing, Waste, Housing, and Estates, and external partners including the Police, Fire Service, and Natural Resources Wales (NRW).

#### **5. Finance**

5.1 The Service Area has its budget to work within, and does not have any fine based income targets.

5.2 The 3GS contract is run on a cost neutral basis to the Council.

#### **6. Current Performance and Trends**

6.1 In terms of statistics around enforcement of the EPA Section 46 relating to not managing household waste effectively from Jan 18 to Jan19:

Notices Issued	FPN's for breach of Notice	FPN's paid	Prosecutions
2032	160	59	34

6.2 Fly tipping enforcement activity from Jan 18 to Jan19:

FPN's for breach of Notice	FPN's paid	Prosecutions
0	0	4

6.3 Litter enforcement activity by 3GS from Jan 18 to Jan19:

FPNs Issued	FPN's paid	FPN's unpaid	Prosecutions
1718	1138	156	424

6.4 Enforcement activity relating to dog fouling from Jan 18 to Jan19:

FPNs Issued	FPN's paid	FPN's unpaid	Prosecutions
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4	4	0	0
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- 6.5 The combined proactive efforts of the Enforcement Team and cleansing Team over fly tipping have decreased the number of 'flytips' by 39% over the last two years.

	Number of flytips reported	Number of prosecutions
January 2016 – January 2017	4698	1
January 2017 – January 2018	1950	9
January 2018 – January 2019	1848	4

## 7 Future Challenges & Opportunities

- 7.1 As the Welsh Government recycling target increases to 64% next year, and analysis has shown that half of the waste in black bags is recyclable, a further step change in recycling behaviour in the home is being sought through a 'Keep Recycling Out' initiative. This campaign will extend the use of the legislation currently in place to deal with domestic waste/recycling placed out incorrectly. ie Kerbside collected Recyclables put in black bags.
- 7.2 This increase in education and engagement and subsequent, if necessary, enforcement, should encourage the necessary behaviour change to ensure everyone is doing their bit for recycling.
- 7.3 The Authority continues to work closely with other agencies to tackle fly tipping and that full use is made of the statistical information held on the Wastedata Flow Database to identify trends, volume of waste and a true picture of the scale / cost of fly tipping.
- 7.4 3GS the private enforcement company continue to carry out litter and dog fouling patrols across the authority. Dog Fouling continues to be a perceived problem due to perhaps the one dog, visiting an area several times a day, every day. Intelligence to co-ordinate visits by officers continues to be the most effective way of dealing with ongoing complaints. The 3GS contract is due for renewal in July 2019.

## 8. Risks

- 8.1 Enforcement activities are essential in mitigating against the following risks:

- Not meeting the WG Recycling Targets
- Ensuring high quality recyclables to meet the needs of an increasingly volatile recyclates market

## **9. Assessment**

- 9.1 From the information provided in appendix 7.8, statistics show that statutory notices appear to be the most effective method in dealing with domestic waste and recycling issues. However, with increased, targeted, promotional opportunities to educate and engage residents, along with enforcement action, the aim of the waste management campaigns are to increase recycling to reach and possibly exceed the current target of 65% by 2020. Fixed penalty Notices (FPNs) continue to be the most effective way of dealing with littering (including Chewing gum, spitting, cigarettes) and dog fouling, however, it is most effective when carried out with the support of the local community.

The issuing of FPNs in regard to dealing with flytipping is one that has not yet been utilised by the Enforcement Team.

## **B) Pavement Parking and Overhanging Branches**

### **10. General Description**

- 10.1 The Council has powers to act to address overgrowth on the public highway and pavement parking under various sections of the Highways Act 1980.
- 10.2 It is important that the highway is maintained free of obstruction, whether that be overgrowth or inconsiderate parking of vehicles, to minimise inconvenience to all road users, especially the more vulnerable sections of our community who rely on unobstructed pavements to undertake short journeys within their communities or within district shopping centres.
- 10.3 Vegetation overgrowing onto the highway can cause an obstruction to pedestrians and vehicles alike. Where a potential overgrowth issue has been identified during inspection or reported by the public, a highway inspector will make a site visit and evaluate the extent of the overgrowth. Where the necessary criteria are met and an obstruction is identified, the inspector will issue a notice under section 154 of the Highways Act 1980. This requires the owner or occupier of the property to take appropriate action within 28 days of the notice being sent, so as to remove the obstruction. If action is not undertaken by owner or occupier, the Authority will arrange for a contractor (Parks service) to carry out the appropriate work, the cost of which will be recharged to the

property owners or occupiers.

10.4 With regard to the protection of pavements for the use of the general public, a policy has been developed to set out how we will design, manage and maintain our pavements to make sure that they are safe for all users. This policy is entitled 'Pavements are for People', which is published on the Council's internet site.

10.5 The Policy has been developed in conjunction with:

- Swansea Access for Everyone (SAFE)
- Member Champion for Equality
- The following service areas:
  - Highways & Transportation
  - Waste Management, Cleansing and Parks
  - Planning
  - Performance and Strategic Projects

## **11. Why We Do This**

11.1 There are a number of principles that underpin The Pavements are for People policy and they are:

- Pavements are used by a diverse range of people with different needs and requirements which need to be respected.
- Met as far as possible best practice and legislative requirements.
- The appearance of a pavement is an integral factor in the quality and character of a place.
- Endeavour to ensure that everyone can use our pavements by removing obstacles that cause hazards and designing the layout, selecting street furniture to prevent them from causing a hazard.
- To consult and engage during the process of preparing the guidance documents including local design principles by adhering to the principles and guidance laid out in the Council's Consultation Strategy.

11.2 The primary legislation for this policy is as follows:

- Highways Act 1980
- Equality Act 2010
- Traffic Management Act 2004
- New Roads and Street Works Act 1991

11.3 The policy also relates to the following Council schemes and Policies:

- Regional and national transport plans



- The Active Travel Act
- Unitary Development Plan
- Sustainability Policy
- Equality and Diversity scheme

11.4 With regard to specific enforcement against pavement parking, both the local authority and police can enforce. The Police can enforce and issue a Fixed Penalty Notice to a vehicle, where a Police officer deems that there is a wilful obstruction of free passage along a highway (which includes the pavement). However, where there is sufficient room for the passage of a wheelchair or pushchair, then action is seldom undertaken.

11.5 The local authority can issue a Penalty Charge Notice to vehicles parked on the pavement, but only where a Traffic Regulation Order (TRO) is in place. The vast majority of TRO's relate to the entire width of the highway including the footway (pavement).

## **12. Management and Support**

12.1 Overgrowth obstructing the highway is managed by the Highways Maintenance group, in Clydach. The enforcement of Traffic Regulation Orders rests with the Traffic & Highway Network Group. Both Groups are incorporated into the Highways & Transportation service, which in turn located within the Directorate of Place.

## **13. Stakeholders**

- 13.1
- Swansea Access for Everyone (SAFE)
  - Member Champion for Equality
  - The following service areas:
    - Highways & Transportation
    - Waste Management, Cleansing and Parks
    - Planning
    - Performance and Strategic Projects

## **14. Finance**

14.1 The cost of enforcing TRO's must be self-financing, as set out in the Traffic Management Act, and recovered from Penalty Charge Notice fines. Dealing with the overgrowth on the public highway is part of the Highway Maintenance function for which revenue budget is provided. However, any action to remove the overgrowth is recharged to the landowner.

## **15. Current Performance and Trends**

15.1 Where footways are 'protected' by TRO's then regular enforcement will occur. In the absence of TRO's there is currently

a reliance on Police officers to address any local concerns of obstruction of the footway.

- 15.2 There is no specific code to record the offence of parking on a footway, as the offence is simply non-compliance with the prevailing TRO, irrespective of where on the highway the vehicle is parked, this is common across all authorities in the UK that undertake Civil Parking Enforcement.

## **16. Future Challenges & Opportunities**

- 16.1 Where no TRO exists, then reliance is on Police resources to enforce against wilful obstruction of the footway (pavement), however, police resources are limited and as such not all instances of wilful obstruction of the footway are addressed.

## **17. Risks**

- 17.1 With increased pressure on Police resources, there is a risk that the enforcement of obstruction of the footway, where no TRO exists, will not be considered a priority for South Wales Police. As such there could be a greater reliance on the local authority to intervene. This would necessitate the expansion of TRO's to cover effected footways, where regular abuse occurs. The introduction of a TRO can be an expensive and time consuming affair creating additional pressures on already stretched local authority resources and budgets.

## **18. Assessment**

- 18.1 Clearly, there is a requirement to maintain our pavements for the use of the general public and to protect the most vulnerable sections of our community.

- 18.2 With decreasing resources in all sectors of public service, there is a requirement to consider how best to undertake our statutory functions in the most cost effective manner, whilst managing public expectations. Therefore, consideration is being given to making a bylaw under the West Glamorgan Act, to enable council officers to take action against motorists who consistently park on and obstruct footways and verges. In addition, where regular abuse, by multiple offenders, is detected, then additional TRO's may be necessary to deter this behaviour.

- 18.3 The aim of the service is to ensure that well used pedestrian routes to key local attractions, such as schools, libraries, medical centres and leisure facilities remain unobstructed and available for use by all sections of our community.