

4 July 2019

ITEM: 8

Cleaner, Greener and Safer Overview and Scrutiny Committee

Environmental Enforcement Update

Wards and communities affected: All	Key Decision: N/A
Report of: Phil Carver, Strategic Lead for Enforcement and Community Protection	
Accountable Assistant Director: Daren Spring, Assistant Director for Street Scene and Leisure	
Accountable Director: Julie Rogers, Director of Environment and Highways	
This report is Public	

Executive Summary

This report provides Cleaner, Greener and Safer Overview and Scrutiny Committee the opportunity to review the performance, service achievements and future priorities for the Environmental Enforcement Team.

1. Recommendation(s)

- 1.1 Cleaner, Greener and Safer Overview and Scrutiny Committee are requested to note the performance and service achievements and support the future priorities for Environmental Enforcement, which is linked to the Council's priorities.**
- 1.2 Cleaner, Greener and Safer Overview and Scrutiny Committee to support the adoption of S34 – Duty of Care for domestic waste as stated in point 3.4 of this report, and recommend to Cabinet for approval.**
- 1.3 Cleaner, Greener and Safer Overview and Scrutiny Committee to support the adoption of S42 – Idling engines in parked vehicles as stated in point 3.5 of this report, and recommend to Cabinet for approval.**

2. Introduction and Background

- 2.1 The Environmental Enforcement Team consists of one Senior Environmental Enforcement Officer and four Environmental Enforcement Officers. The purpose of the Environmental Enforcement Team is to investigate breaches of legislation in regards to Environmental Crime and some aspects of Anti-Social Behaviour.**

2.2 The service investigates and enforces within the scheme of delegation, which includes the following:

- Fly-tipping and Accumulated Waste on Public Land
- Abandoned Vehicles
- Littering
- Dog Fouling
- Commercial Waste Offences
- Domestic Waste Offences
- Fly-Posting and Graffiti
- Public Space Protection Orders
- Community Protection Warnings/Notices
- Advertising boards
- Unauthorised Encampments
- Vehicles for sale on the highway
- Vehicle repairs
- Nuisance parking

The above list is not exhaustive.

2.3 When the Officers have concluded their investigations into environmental crime, and there is sufficient evidence to allow Thurrock Council to take enforcement action, there are several options when considering how to deal with an offender. These include; warnings, fixed penalty notices, simple cautions and prosecutions.

3. Issues, Options and Analysis of Options

3.1 Service Outcomes for Financial Year 2018/9

3.1.1 During the financial year 2018/9 the Environmental Enforcement Service increased to four Environmental Enforcement Officers and one Environmental Enforcement Supervisor who covered the whole of Thurrock, dealing with Environmental Crime and some aspects of Anti-Social Behaviour. During 2018/19 the Environmental Enforcement Services achieved the following:

- 3429 Fixed Penalty Notices (FPN's) were issued by Kingdom Services, 663 were issued by Thurrock Council Environmental Enforcement Officers. Combined FPN's achieved a payment rate of 62%, against a target of 70%. The fee increased in April 2018, in line with legislation, which had an impact on payment rates earlier in the financial year. We continue to proactively use the media to promote court outcomes, costs associated and how a fine can significantly increase as a consequence of Court action. The Council are currently liaising with our internal legal services, to explore the use of advertising photo stills in the media, of persons who have committed an offence and walk off without providing their details. The drive behind this is to encourage members of the public and residents to come forward with details of offenders.
- 132 Community Protection Warnings (CPW) and 13 Community Protection Notices (CPN) were issued in respect of various nuisances that were

causing a detrimental effect on the quality of life of those living in the locality.

The majority of CPW's issued were due to HGV Parking on the Manorway. This is parking action that causes issues for local residents and an increase of litter in the vicinity. The drivers were spoken with individually and given details of how to comply with the CPW and where legal, safe parking is available locally.

A CPW and subsequent CPN was issued to a garage based in Tilbury. This was due to persistently parking un-roadworthy vehicles on the street whilst repairs were taking place. Further FPN's were issued due to non-compliance with the CPN.

- 77 vehicles were assessed and deemed to meet the criteria for abandonment, these vehicles were issued with FPN's for Abandonment, the fee being £200, equating to a total of £15,400. 14 of the vehicles were removed by the Council's Contractor, the majority of vehicles were claimed by the owner or were no longer on site when our contractor arrived to remove them.
- 3011 service requests were issued, investigated and responded to by the team. Service requests came directly to the team from members of the public through the Portal and cover all aspects of Enviro-Crime, as outlined in 2.2.
- 172 FPN's for littering offences were prosecuted in the Magistrates Court. 96 cases proven; 24 cases withdrawn, 4 adjourned and 48 yet to be heard, Court date set. Upon conviction, the average fines imposed by the Courts are £220 with the Council's Legal Services costs of £200 and victim surcharge £30. These fines are awarded to the Courts and the costs are awarded to the Council.
- Joint tasking operations were set up with the Police and Environmental Enforcement Service to enforce the Public Space Protection Order (PSPO) Zone that came into force in July 2017. These are carried out once a week in Grays Town Centre. A total of 139 FPN's were issued for breaking the conditions of the PSPO:-
 1. *Continuing to drink alcohol or consume intoxicating substances when required to stop doing so by an authorised officer.*
 2. *Being verbally abusive to any person or behaving in a way which causes or is likely to cause harassment, alarm or distress to another person*
- 166 FPN's were issued because of fly tipping incidents, these have a value of £400 each, a total of £66,400.
- Environmental Enforcement Officers have forged close working relationships with a number of teams within Thurrock Council. Information

is regularly passed to the Environmental Enforcement Officers of businesses that are suspected of not meeting their legal obligations concerning their commercial waste. Contact and inspections were carried out in relation to the disposal of commercial waste, 17 businesses were found to be non-compliant with their waste duty of care, resulting in FPN's being issued with a value of £300 each, totalling £5100.

- There were 61 unauthorised encampments reported in 2018 and 72 were reported in 2017, the majority of which were dealt with by the council using the court process.

3.2 Service Achievements for Year 2018/9

- 3.2.1 In July 2018, three Environmental Enforcement Officers were recruited increasing the number of Environmental Enforcement Officers in the Service to four, plus one Senior Environmental Enforcement Officer.
- 3.2.2 This increase allowed for a new way of working to be introduced namely the 'Quadrant Model'. The borough of Thurrock is now split into four areas with one Environmental Enforcement Officer assigned to one quarter of the Borough. This model allows each Environmental Enforcement Officer to concentrate on a specific area and target any activity concerning Environmental Enforcement including Anti-Social Behaviour based on specific Quadrant issues in liaison with the police.
- 3.2.3 From 1st April 2018 the Government increased FPN values and Thurrock Council implemented them accordingly. These increases are detailed below:
 - Littering increased from £80 to £150.
 - Flyposting (included advertising boards) and graffiti increased from £80 to £150.
 - Unauthorised distribution of free printed matter increased from £80 to £150.
 - There were 978 fly tipping incidents that were investigated by Thurrock Council Environmental Enforcement Officers of which 166 were issued Fixed Penalty Notices at £400 each. There are a range of reasons for the low percentage, including lack of sufficient evidence and the size of the waste. In order to follow a fair process, and to ensure that the Environmental Enforcement Officers follow a proportionate process, if the waste illegally deposited is less than two full bin bags then the Fixed Penalty Notice will be issued as Littering at £150 instead.
 - There were 61 unauthorised encampments reported in the year. We continue to promote to our residents that they should directly report to the Police. Public Highway and Council owned land that has been subject to unauthorised encampments are all inspected for preventative measures such as target hardening. There are various ways in which target hardening can be used such as natural planting of trees surrounded by

bunding; wooden/metal fencing; pressure treated wooden bollards; metal or wooden knee rails and various gates with padlocks with special covers which cover the padlock. When assessing the best options for target hardening the Council take into consideration preservation of the locality.

- The restructure within Environment and Highways Directorate brings together the Environmental Enforcement Officers, Civil Enforcement Officers, Kingdom Enforcement, Community Safety Partnership and CCTV. This structure provides greater collaboration and efficient ways of working, providing greater capacity and ability to tackle Enviro-Crime within Thurrock; it also assists with achieving our goal of improving safety within the community.
- Environmental Enforcement Officers are now equipped with Digital Radios to ensure their safety whilst lone working and to enable them to communicate with other officers including; CCTV, Parking, Community Safety and Kingdom Enforcement. The sophisticated Digital Radio system allows the Senior Environmental Enforcement Officer to efficiently deploy officers and CCTV when a priority investigation is reported, which greatly improves efficiency of the service and officers, especially those assigned to the Quadrant Model.
- The Environmental Enforcement Officers are also now equipped with Body Worn Cameras. This allows all interactions with the public to be recorded. The videos are used to deal with any complaints that arise and ensures that officers can capture evidence at the scene. The system is fully compliant with GDPR and the videos that are marked as evidential are stored by the camera supplier on the remote cloud.
- The Environmental Enforcement Officers have all attended CSAS (Community Safety Accreditation Scheme) training in 2019 and have successfully passed their CSAS assessment tests. This means that the Enviro-crime officers are able to use certain devolved powers from Essex Police, for example seizing and confiscating alcohol, demand of names and addresses in respect of anti-social behaviour, seizure of tobacco from under legal age and those cycling on footpaths.
- New uniform was purchased in 2018 for the Environmental Enforcement Officers and comprises of high visibility jackets, black trousers, safety boots and polo t-shirt. The t-shirt details Thurrock Council logo and Officer's designation on the left hand pocket. This provides a visual presence when officers are working on the streets of Thurrock. When all Officers have received the CSAS Accreditation a new uniform will be purchased with the additional badges that this involves.
- The Police and Environmental Enforcement services have initiated a new joint partnership operation where once every three weeks they will be targeting known hotspot areas for Environmental, and some aspects of ASB, crime in Thurrock.

- The Environmental Enforcement Officers have had a number of high profile operations this year that have been reported in the local press.

The first was a Joint Operation with Essex Police and the Environment Agency to stop vehicles and ensure that they were complying with the laws surrounding Commercial Waste and the Waste Carriers License Scheme. On this operation, the team issued the following: -

- 1 Fixed Penalty Notice for Failing to Produce a Waste Carriers License.*
- 1 Section 34 Notice to provide Waste Transfer Notes*
- 1 Fixed Penalty Notice for Fly tipping*
- 7 Fixed Penalty Notice for Littering*
- 1 Community Protection Warning to require the removal of waste from land.*

The second was when two off-duty Environmental Enforcement Officers saw two men offloading a number of used tyres into a layby on the old A13. The Officers called Essex Police and jointly the men were stopped, interviewed and made to remove the tyres. This is an ongoing case and the Environmental Enforcement Team intend to prosecute the alleged offenders.

- 3.2.4 Thurrock Council working in partnership with Essex Police introduced a target hardening strategy aimed at reducing ASB and protecting open spaces from unauthorised encampments. Twenty-one sites were identified for target hardening and three sites are awaiting completion due to waiting for the fabrication of fencing and gates

3.3 Future

- 3.3.1 Unauthorised encampments have been dealt with through applications at a Magistrate's Court for Eviction Orders. However, this process takes approximately two weeks and further time to evict the individuals, which can cause distress for the local residents. Therefore, Thurrock Council with the support of the Police and Essex Countywide Traveller Unit began the process of applying for a High Court injunction Borough Wide. Should the Injunction be granted and in place, this will mean that any individual who has an encampment within the area of the injunction order maybe removed much faster than the current process via a Magistrate Court.

The injunction has been delayed because of the LB Bromley V person's unknown case, which was appealed. As a result of this, the High Court ruled that obtaining a borough wide injunction against persons unknown was against the travellers Human Rights and was discrimination. It is not known at this time if the LB Bromley will appeal this decision. Within the application of Thurrock Council's injunction, measures have been put in place to ensure that we negate the points raised in the Bromley case.

A barrister has been appointed and is fine tuning the case and will be requesting a hearing date at earliest opportunity.

3.3.2 A letter will be submitted to the Secretary of State requesting approval for the same powers that London Boroughs have for certain offences under the Highways Act. These offences include for example, depositing skips on the highway without permission, depositing materials etc. on a made-up carriageway, depositing anything on the highway to the interruption of the user. The benefits to the Council and residents being the ability to enforce the Highways Act, ensuring a cleaner, greener and safer environment for those who visit, live and work in Thurrock.

3.4 Duty of Care for Domestic Waste

- 3.4.1 The Department for Environment, Food and Rural Affairs (DEFRA) has published guidance which has been addressed to local authorities, who are now able to issue fixed penalty notices (FPN's) for breaching the duty of care for household waste in England under the provisions of the Environmental protection Act 1990.
- 3.4.2 Householders must ensure that household waste is properly disposed of at all times, which includes waste from domestic properties, caravans and residential homes. Householders must fulfil the duty of care and ensure that:
- The person who takes control of their waste is licensed to do so.
 - Take steps to prevent it from escaping from their control.
 - Store it safely and securely.
 - Prevent it from causing environmental pollution or harming anyone.
- 3.4.3 Guidance from Government states that FPN's can be issued when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:
- Where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person
 - Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property
 - Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption
- 3.4.4 The FPN for such breaches of the household waste duty of care provides an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. The duty of care requires occupiers of domestic property to take **all reasonable** measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it. Residents should take steps to check the waste carrier is registered with

the Environment Agency web site, record details of vehicles that removes waste, record details of the waste carrier/contact details/receipts.

- 3.4.5 The following penalties are for consideration. However. It should be noted that Thurrock Council always seek the maximum penalty due to the wide spread effect that fly tipping has on our local communities, members of the public and environment.

Minimum full penalty	Maximum full penalty
£150	£400

- 3.4.6 There is no right of appeal against an FPN issued as it simply offers an optional means of discharging liability for the offence. However, liability for that alleged offence can be disputed or the appropriateness of enforcement challenged.

3.5 Idling Engines in a parked vehicle

- 3.5.1 The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 enable local authorities to request vehicle users to switch off engines when parked and to issue Fixed Penalty Notices to those who refuse to co-operate. The aim is to reduce polluting emissions from unnecessary engine idling vehicles.
- 3.5.2 It is a requirement of Regulation 98 of the Road Vehicles (Construction and Use) Regulations 1986, as amended, that drivers switch off engines in parked vehicles. Local Authorities have been given the power to carry out enforcement of the offence in an effort to address the growing concerns about pollution and the environment by reducing unnecessary exhaust emissions from vehicles.
- 3.5.3 Local authorities are able to instruct motorists to switch off their engines while their vehicles are parked and to issue FPN's to those who refuse to co-operate. The powers are designed to encourage all motorists to have due regard to the local environment when parking. Emissions from stationary vehicles are only a small contributor to overall levels of air pollution, but they can cause discomfort to people in the immediate vicinity, particularly where they occur in sensitive areas such as schools or hospitals.
- 3.5.4 Guidance issued by the Secretary of State for Transport in 2002 ("Guidance on powers to require drivers to switch off engines") under section 88 of the Environment Act 1995 states that FPNs would mainly be used as a deterrent and should be issued only as a last resort. FPNs would be issued in limited circumstances, and only if a driver refused to turn their vehicle engine off when asked to do so by an authorised officer of the Council.
- 3.5.5 Regulation 98(2) of the Road Vehicles (Construction and Use) Regulations 1986 sets out the circumstances where vehicles are permitted to be stationary with the engine running:

- When vehicles are queuing at traffic lights,
 - Where an engine is being run so that a defect can be traced and rectified,
 - Where machinery on a vehicle requires the engine to be running e.g. where the engine powers refrigeration equipment or the compaction equipment in a refuse vehicle
- 3.5.6 The guidance encourages that a common sense approach should be followed when using these powers. FPNs should only be issued when a driver is uncooperative and refuses to switch off engine when advised to do so by an authorised officer.
- 3.5.7 The regulation stipulates the penalty for an offence as £20, which will increase to £40 if not paid within 28 days. There is no discretion to amend the charge.
- 3.5.8 A further FPN could be issued if a vehicle is found stationary during the initial 28-day period with its engine running unnecessarily on a second or subsequent occasion. The offence is absolute and applies equally on every occasion the offence occurs.
- 3.5.9 There is no formal appeal procedure to support this type of enforcement, but a recipient of an FPN could informally query it with the Council, using the complaints process. Alternatively, a request in writing for a hearing can be made no later than 28th day after the day the FPN was issued.
- 3.5.10 It is important for publicity to be carried out before the scheme is implemented to ensure that it is understood, accepted and supported by the majority of motorists. A full communications plan will be created which will include information on the Council website, appropriate signage, media messaging and press releases.

4. Reasons for Recommendation

- 4.1 This report provides Overview and Scrutiny Committee the opportunity to review the performance, service achievements and future priorities for the Environmental Enforcement Team.
- 4.2 This report seeks support from Overview and Scrutiny Committee to recommend to Cabinet to adopt the section 34 Duty of Care for domestic waste and section 42 idling engines in parked vehicles and authorise the enforcement service to issue fixed penalty notices in respect of breaches of these regulations.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 N/A

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 There has been continuous improvement in the quality of the environment due to the work that the Environmental Enforcement Service has carried out to

date. This ensures that Thurrock Council's priorities regarding People, Place and Prosperity are being met.

7. Implications

7.1 Financial

Implications verified by: **Laura Last**

Management Accountant (Environment)

The Environmental Enforcement team has increased from two Environmental Enforcement Officers to four. The two additional posts are required to be self-funding through income generation. Payment rates for Litter, Fly Posting and Graffiti and Free Printed Literature Fixed Penalty Notices have increased from £80 to £150.

7.2 Legal

Implications verified by: **Adam Rulewski**

Barrister - Litigation and Prosecutions Law and Governance

All relevant Codes such as the Police and Criminal Evidence Act 1984; the Criminal Procedures and Investigations Act 1996, along with all relevant policies and procedures are adhered to by all Environmental Enforcement Officers of the Council.

The Local Authority has a duty to prevent crime and disorder (s17 Criminal Justice Act 1988). The Local Authority has wide-ranging powers and duties under The Environmental Protection Act 1990, Anti-Social Behaviour Crime and Policing Act 2014, Town and Country Planning Act 1990, Building Act 1984, Highways Act 1980, Traffic Management Act 2004 and related subordinate and primary legislation, to address those areas of responsibility outlined at 2.2 above.

Where it is necessary or expedient to protect or promote the interests of the inhabitants of its area, the Local Authority may institute proceedings (s222 Local Government Act 1972

7.3 Diversity and Equality

Implications verified by: **Roxanne Scanlon**

Community Engagement and Project Officer

The wide spread illegal activity in respect of Enviro-Crime and some aspects of Anti-social behaviour, a zero tolerance approach taken will ensure that all offenders who commit offences will be penalised consistently regardless of any protected characteristics as defined by the Equalities Act 2010.

Concessions are made for young people under 16 and those who are classified as vulnerable including those who suffer from relevant mental health conditions.

A Community Equality Impact Assessment will inform any further actions required to ensure fair enforcement.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

The Council's Environmental Enforcement and the Contracted Enforcement Service will continue to involve police officers enforcing the Grays Town Centre Public Space Protection Order. Regular Joint Patrols will also continue [in accordance with section 17 of the Criminal Justice Act 1988] to take place with Officers from Thurrock Council and Essex Police.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

None

9. Appendices to the report

None

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