

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

This appendix contains Policies, procedures and penalty levels for the following enforcement and licencing activities.

REF	ENFORCEMENT POLICY	PAGE
LEQ01	Fly tipping investigations and enforcement	2
LEQ02	Litter Dropping enforcement	4
LEQ03	Abandoned Vehicle removal	7
LEQ04	Enforcement of Litter Clearing Notices	9
LEQ05	Enforcement of Street Litter Control Notices	11
LEQ06	Fly posting and graffiti	14
LEQ07	Control of Distribution of free literature	17
LEQ08	Obstructions on the highway and Pavement Café licencing, “A” boards and shop displays	19
LEQ09	Nuisance vehicles (cars for sale and vehicle repairs on the highway)	22
LEQ10	Skips, storage containers and building material on the highway	24
LEQ11	Licencing of Street Trading	27
LEQ12	Overhanging hedge, trees or shrubs	29
LEQ13	Miscellaneous highway enforcement	31
WTD01	Enforcement of Waste Transport legislation	33
WTD02	Enforcement of Trade Waste legislation	35
WTD03	Enforcement of domestic waste and recycling policy	37
PLE01	Untidy property and land	40
HPE01	Civil parking enforcement	42
HPE02	Unauthorised Vehicle Crossing (over footway)	44

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ01 – FLY-TIPPING.

POLICY SUMMARY

Enforcement of legislation relating to fly-tipping. Reported incidents of fly-tipping will be investigated and persons or businesses suspected of undertaking such activity may be prosecuted through the Courts. Fly-tipping is unsightly, damages the environment, can be costly to cleanup and if not controlled may encourage further offences. Persons involved in fly tipping are also more likely to be involved in other waste related offences. Robust enforcement together with high media profile of successful action are the main elements of a long term strategy.

POLICY DETAIL

Legislation - Section 33A of the Environmental Protection Act 1990. Persons suspected of fly tipping will be prosecuted through the courts. Due to the seriousness of such offences fixed penalty notices are not considered applicable.

Fine amount – If found guilty the Courts can issue fines of up to a maximum of £20,000, these are collected by the court and paid to Central Government. The Courts can be asked to award costs to the Council for undertaking the prosecution and for any clean up costs. The amount of the fine and any costs awarded is determined by the Court and can vary considerably from case to case, in many cases the full Council costs are not awarded.

Enforcement Procedure – Fly-tipping is the unauthorised depositing of any waste on land open to the public. For the purpose of this policy all such waste other than very small volumes of waste (ie one black bin bag or less) will be treated as fly-tipping. (Fly-tipping of one bin bag or less may be dealt with as a Littering Offence as detailed in Policy LEQ02 below).

Waste which may be considered as fly tipping but which occurs in relation to domestic waste collection will be treated in accordance with the Household Waste Collection And Recycling Enforcement Policy WTD03 below.

Reported incidents of fly-tipping will be investigated to ascertain if information linking the waste to a business or individual is present. In some instances the incident may be observed and reported by a third party and they may be able to provide additional information ie vehicle details or a description of offenders or photographs. If possible written witness statements will be obtained. If required suspected offenders will invited to attend at Council offices and will be interviewed “under caution”, in such instances the interview will be undertake in accordance with home office guidance and will be recorded. At locations where repeated fly-tipping has occurred it is sometimes possible to undertake remote camera surveillance, although this is subject to suitable site conditions including a secure base with power supply for the equipment. Such surveillance operations are undertaken in accordance with relevant RIPA legislation.

Following the investigation and recording of all appropriate information the Waste Team will be notified to clean up the waste and keep a record of any costs incurred.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Following the gathering of all evidence, a case will be prepared and presented to Legal Services for appraisal and listing for appropriate Court action. A breakdown of investigation, legal proceedings and cleanup costs will also be presented.

If the prosecution is successful details of any previous convictions for similar offences will be made available for the courts to consider when setting penalties and fine levels.

Appeal Procedure - Appeals and enquiries must be made in writing and may be considered at any stage prior to the court summons being issued. After a summons has been issued an alleged offender must explain any appeal or mitigating circumstances to the court/magistrates at an appropriate hearing.

Mitigating Circumstances – when considering appeals, if the validity of the evidence, or the identity of the person against whom it is intended to take action is in doubt the case will not be progressed to legal or will be withdrawn. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then not proceeding with the case may be considered.

Payment Options – Collection of fines and costs resulting from successful court action is undertaken by the Court Service. The Court will decide the level and terms of any payments arrangements if appropriate. The Court may use bailiffs to recover unpaid fines and costs.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ02 – DROPPING OF LITTER.

POLICY SUMMARY

Enforcement of legislation relating to dropping litter in a public place. Individuals observed or reported for dropping litter can be issued with a £75 FPN. Litter dropping is anti-social, is detrimental to environment quality, presents a poor image to visitors and is costly to cleanup. Littering is endemic in certain areas and elements of society and in most part is a result of thoughtfulness or laziness. Robust enforcement together with media promotion, education and advice are the main elements of a long term improvement strategy.

POLICY DETAIL

Legislation -The Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005 gives authorities powers to issue FPN's in lieu of court prosecution to persons suspected of dropping litter.

Fixed Penalty Notice (FPN) amount - £75 to be paid within 14 days, reduced to £50 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is a simpler, quicker and less resource intensive process than court proceedings, FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summoned to Court.

Enforcement Procedure – Littering offences may be reported or directly observed and can result in a FPN being issued either immediately or through the post. For more serious cases a FPN would not be appropriate and these cases will be referred for court action. Un-intentional littering such as an item falling from a bag or pocket or very minor littering for example an individual crisp or a small piece of orange peel would not normally attract a FPN. However it is proposed that discarded cigarette butts and chewing gum would constitute littering.

Direct Approach – On the spot FPN's or postal FPN's may be issued to persons observed dropping litter. A person observed dropping litter can be approached, advised that they have committed an offence for which a FPN is considered applicable and be asked to provide their name and address and any other relevant information. An FPN can then either be issued immediately or later through the post after details of any previous offences have been checked. Repeat offenders may be referred to court rather than being issued with a FPN. In certain circumstances it be appropriate for officers to use discretionary judgement and to give an offender the opportunity to correctly dispose of the litter as an alternative to a FPN in which case a formal "caution" would be issued.

This method of enforcement is resource intensive and for this reason it is proposed that this approach will only be used for planned targeted action in known problem areas. In the future, the use of more generic "civil enforcement officers" may allow this type of enforcement to be rolled out into wider areas and at greater frequencies. FPN's can be issued to persons under 18 years of age but only once appropriate procedures and protocols including close liaison with the youth offending teams and juvenile courts are put into place.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Enforcement following Camera Evidence – Video or still photographic evidence with or without an additional witness statement may be used as evidence to issue a postal FPN providing details of the offence can be clearly seen. Examples would include photographs taken by civil parking enforcement officers, CCTV footage from fixed or mobile cameras such as those sited around the borough for public safety, traffic management or other enforcement purposes or photographs submitted by members of the public. The majority of these cases relate to vehicle derived litter ie items thrown out of windows or ashtrays emptied into gutters etc with owner details being obtained through the DVLA. However photographic/video information can also be used if the offender can be identified in some other way or is known to the enforcement officers.

It is not a specific offence for a vehicle owner to allow littering from a vehicle. An FPN can only be issued to the offender, therefore in line with Government Guidance before issuing a FPN, it will be necessary to undertake further enquiries with the vehicle owner to ascertain the identity of the offender. This may be done by a personal visit or through a letter asking appropriate questions “under caution”.

Third Party Information – Written or photographic information provided by a third party may provide sufficient evidence to issue a FPN. Details of the alleged offence, offender identity (if known), photographic evidence and preferably a signed statement would normally be sufficient for an FPN to be issued. Such information can come from a variety of sources including other Departments, members of the public, contractors working on behalf of the Council (for example Biffa), Neighbourhood or Environmental wardens, the Police etc.

Fly-tipping Investigation – In certain circumstances it may be appropriate to treat very low levels of fly tipping as littering. It is suggested that a threshold of one black bin bag or less is adopted. In these circumstances if the contents of the bag reveal information that links the waste to an individual, ie named and addressed utility bills or other similar addressed correspondence then it may be appropriate to issue a FPN. If a repeat offender is identified it may be more appropriate to refer direct to Court or to prosecute under other legislation.

In all cases if an FPN is issued it will require payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment, If still not paid within this period a second reminder letter will be sent warning of possible Court Action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a Court summons.

Appeal Procedure - Appeals must be made in writing and will be considered at any stage prior to a court summons being issued. After a summons is issued all appeals must be made to the court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within corporate customer care response times.

Mitigating Circumstances – when considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Payment Options - In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ 03 - ABANDONED VEHICLE REMOVAL.

POLICY SUMMARY

Enforcement of legislation relating to the removal of vehicles that have been abandoned or appear to be have been.

Vehicles can be removed where it appears that the vehicle has been abandoned and may become a target for anti-social behaviour or a danger to young people or other groups of the community as well as loss of amenity to an area.

In addition, where it appears that a person has committed the offence of abandoning a vehicle that person can be issued with a £200 FPN as an alternative to prosecution through the Courts.

FPN's will normally only be issued when the owner has been given an opportunity to remove or reclaim the vehicle and has refused or failed to do so.

POLICY DETAILS

Legislation – The Refuse Disposal (Amenity) Act 1978 and Clean Neighbourhoods and Environment Act 2005 gives authorities powers for the removal of abandoned vehicles and to issue a FPN in lieu of Court prosecution to the registered keeper/owner of a vehicle who has failed to comply with requests by the local authority to remove or reclaim the abandoned vehicle.

Fixed Penalty Notice (FPN) amount - £200 to be paid within 14 days, reduced to £150 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will result in the case being referred to Court. The FPN process is simpler, quicker and less resource intensive than Court proceedings. FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summoned to Court.

Enforcement Procedure

The issuing of a FPN and the removal of an abandoned vehicle would only be considered after the registered keeper or local keeper/owner has been given an opportunity to remove or reclaim the vehicle voluntarily except in cases where the vehicle is considered to be a danger.

In all instances attempts will be made to ascertain if there is a registered keeper or local keeper/owner following a DVLA check where necessary. If a local owner can be contacted they will be advised of the legislative powers available to the local authority if they do not voluntarily take action to remove the vehicle and advised that the vehicle should be removed forthwith.

If at any stage, the vehicle is considered unsafe, insecure or if acting upon instructions from the Police an instruction may be given to have the vehicle removed immediately (4 hour response).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

If an owner/keeper cannot be identified or following contact and no progress has been made and the condition of the vehicle indicates it has been abandoned, ie it is damaged, vandalised, has flat tyres and /or no tax etc. an instruction may be given to have the vehicle removed within 24 hrs.

If a keeper has been identified they will then be advised by letter that the vehicle has been removed and requested to make arrangements to reclaim the vehicle, they will also be advised that if they do not reclaim the vehicle they may be issued with an FPN for vehicle abandonment. The FPN will state why the notice has been issued and offer payment of the fixed penalty in lieu of Court prosecution.

Once a vehicle has been removed it will be stored for a period of not less than 7 days and then destroyed. The registered keeper/owner of the vehicle will be liable for all costs incurred in any such removal, storage and/or destruction.

If after a vehicle has been removed and before the vehicle is destroyed, a person satisfies the local authority that he is its owner and pays to the local authority the removal and storage fees, then the owner may remove the vehicle from the approved contractor at their own cost. If the owner does not claim the vehicle, he will still be liable to pay any resulting costs incurred by the local authority for its removal, storage and destruction. The debt will be pursued through the Councils debt recovery process should it remain unpaid.

Appeal Procedure – Appeals against a FPN must be made in writing and will be considered at any stage prior to a Court summons being issued. After a summons has been issued all appeals must be made to the Court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Mitigating Circumstances – When considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered.

Payment Options – In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative, payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ04 – LITTER CLEARING NOTICE.

POLICY SUMMARY

Enforcement of legislation relating to litter and waste accumulation on private land.

The authority can issue Litter Clearing Notices to the occupier/owner of private land where accumulated litter is considered detrimental to the amenity of the area. It should however, not be used against victims of fly tipping. Litter Clearing Notices are not applicable in the following situations, land that is defaced by litter or waste likely to harbour pests. This is dealt with by the Environmental Health Team and untidy land or building which is dealt with under planning legislation.

Notices should only be issued when occupiers/owners have been given an opportunity and have either refused or have failed to rectify the problem. Defacement of private land by litter is detrimental to the local environment quality and presents a poor image to visitors.

Failure to comply with the requirements of a Litter Clearing Notice can result in a £100 FPN being issued as an alternative to prosecution through the Courts. Encouragement followed up with robust enforcement will form the main elements of a long term improvement strategy.

POLICY DETAIL

Legislation – The Environmental Protection Act 1990 as amended by the CNE Act 2005 gives authorities powers to issue FPN's in lieu of court prosecution to persons who have failed to comply with the requirements of a Litter Clearance Notice within a prescribed timescale typically 28 days.

Fixed Penalty Notice (FPN) amount - £100 to be paid within 14 days, reduced to £70 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summoned to Court.

Enforcement Procedure

The issuing of a Litter Clearing Notice (LCN) would usually only be considered after the occupier/owner has been given an opportunity to rectify the problem voluntarily.

Persons responsible for land which is defaced by litter will be contacted, after undertaking a land registry check if necessary, and advised of the problem which has been identified and the potential remedies available to them. They will also be advised of the legislative powers available to the authority if they do not voluntarily take action. They will be encouraged to voluntarily make arrangements to resolve the issues within an agreed timescale typically 28 days.

Follow up visits will be made to identify if any action has been taken or if voluntarily agreed measures have been undertaken.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

If no progress on resolving the issues has been made, the occupier/owners will be advised that a Litter Clearing Notice is to be issued.

A Litter Clearing Notice will state why it is being issued and can specify that a person must remove all litter from within the defined area, to a specified standard within a specified time period typically 28 days. It can also require that the area is regularly inspected and cleaned to maintain the specified level of cleanliness.

An appeal against such a Notice may be made to a magistrates' court within 21 days from the date on which it is served. If it can be proved that the duty imposed by the Environmental Protection Act 1990 in respect of the land has been complied with the appeal must be allowed.

Once a LCN has been issued the land/area will be subject to further follow up visits to ensure compliance. Failure to comply with the requirements of a LCN either in whole or part within the specified timescale, may result in a £100 FPN being issued or in more serious cases or for repeat offenders a case may be prepared for prosecution in the courts.

In all cases that an FPN is issued it will require payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment, If still not paid within this period a second reminder letter will be sent warning of possible Court Action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a Court summons.

Appeal Procedure – Appeals against a LCN must be made to the magistrate's court within 21 days of issue. Appeals against an FPN must be made in writing and will be considered at any stage prior to a court summons being issued. After a summons is issued all appeals must be made to the court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Mitigating Circumstances – when considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered

Payment Options - In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ05 – STREET LITTER CONTROL NOTICE.

POLICY SUMMARY

Enforcement of legislation relating to litter and waste arising outside premises and mobile catering facilities. It is intended primarily to help deal with food and drink packaging and other litter caused by eating 'on the go', as well as litter from cash points and lottery tickets dropped outside shops and smoking-related litter, where it is discarded outside of a pub, club, restaurant or other premises that serves food or drink.

Notices can be issued by the authority only if it is satisfied that litter or refuse is causing the 'recurrent defacement' of the street or open land adjacent to it, or the condition of such is of detriment to the amenity of the local environment. Notices should only be issued when other avenues of education, advice and partnership arrangements have been explored and have either been rejected or have failed for some other reason. Street litter is detrimental to environment quality, presents a poor image to visitors and is costly to cleanup.

Failure to comply with a Street Litter Control Notice can result in a £100 FPN being issued as an alternative to prosecution through the Courts. Education and advice, backed up with robust enforcement will form the main elements of a long term improvement strategy.

POLICY DETAIL

Legislation – The Environmental Protection Act 1990 as amended by the CNE Act 2005 gives authorities powers to issue FPN's in lieu of court prosecution to persons who have failed to comply with the requirements of a Street Litter Control Notice within a prescribed timescale typically 7 days.

Fixed Penalty Notice (FPN) amount - £100 to be paid within 14 days, reduced to £70 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summoned to Court.

Enforcement Procedure

The issuing of a Street Litter Control Notice (SLCN) would usually only be considered when other avenues of partnership arrangements, education and advice have been promoted and have either been rejected, ignored or unsuccessful. Information on partnership arrangements is included within the Voluntary Code of Practice - Reducing litter caused by 'food on the go'.

Within Wirral promotion of the "Tidy Business Awards" is also being rolled out to businesses, initially within the Super Output Areas.

Premises considered to be responsible for generating street litter will be contacted and advised of the problems they are creating and potential remedies including legislative powers available to the authority. They will be encouraged to voluntarily make

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

arrangements to resolve the issues, this could be through an informal agreement or preferable a more formal partnership arrangements.

If either formal or informal arrangements are agreed follow up visits will be made to ensure compliance with any agreed standards. If standards are not being maintained businesses will be encouraged to comply and a date for a follow up visit will be set.

If businesses have either failed to make voluntary improvements or not agreed to enter into formal or informal arrangements, or have failed to achieve standards agreed in any such arrangements they will be advised that a Street Litter Control Notice is to be issued.

A Street Litter Control Notice will state why it is being issued and can specify that a business undertakes to remove all litter from within a defined area, usually the premises frontage up to the gutter, to a specified standard within a specified time period usually 7 days. It can also require a business to maintain the specified level of cleanliness by cleaning of the area on a daily basis.

An appeal against a Notice may be made to a magistrates' court within 21 days from the date on which it is served. If it can be proved that the duty imposed by the Environmental Protection Act 1990 in respect of the land has been complied with the appeal must be allowed.

Once a SLCN has been issued the premises/area will be subject to further follow up visits to ensure compliance. Failure to comply with the requirements of a SLCN either in whole or part within the specified timescale, may result in a £100 FPN being issued or in more serious cases or for repeat offenders a case may be prepared for prosecution in the courts.

In all cases that an FPN is issued it will require payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment, if still not paid within this period a second reminder letter will be sent warning of possible Court Action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a Court summons.

Appeal Procedure – Appeals against a SLCN must be made to the magistrate's court within 21 days of issue. Appeals against an FPN must be made in writing and will be considered at any stage prior to a court summons being issue. After a summons is issued all appeals must be made to the court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Mitigating Circumstances – when considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered

Payment Options - In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ06 – FLY POSTING AND GRAFFITI.

POLICY SUMMARY

Enforcement of legislation relating to fly posting and graffiti. Fly posting is the posting of stickers, posters and other advertising without the consent of the owner of the property. Graffiti is the illegal or unauthorised defacement of property usually in the form of drawings, pictures, scribbles, messages or tags that are painted, or written on walls without the owners consent. Offensive graffiti may contain some or all of the following elements, offensive language, language of a politically/racially/religiously insulting/inciting nature, a hate statement, an image which is graphically explicit or offensive by the message that it contains

Street furniture in particular is afflicted. Persons who undertake or authorise the undertaking of fly posting or graffiti can be issued with a £75 FPN or prosecuted through the Courts. Owners of street furniture, statutory undertakers and educational institutions may also be issued with defacement removal notices, which they must comply with within a prescribed timescales usually 28 days. Fly posting and graffiti is unsightly, can distract or hinder visibility at traffic junctions, presents a poor image to visitors, can be offensive and is can be costly to cleanup. Robust enforcement together with media promotion, education and advice are the main elements of a long term improvement strategy.

POLICY DETAIL

Legislation - The Anti-social behaviour Act 2003 together with the Town and Country Planning Act 1990 and the CNEA 2005 gives authorities powers to issue FPN's in lieu of court prosecution to persons suspected of fly posting or benefiting from its display ie advertising and for graffiti. Instances of large scale graffiti or offensive graffiti will always to referred to the Police for potential prosecution under the Criminal Damages Act 1971 or other more appropriate legislation.

Fixed Penalty Notice (FPN) amount - £75 to be paid within 14 days, reduced to £50 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summoned to Court.

Enforcement Procedure

Fly posting offences – The following framework will be used when enforcing fly posting offences.

All observed or reported incidents of fly posting will be recorded and investigated. If possible the identity of the fly poster or beneficiary of the content of the poster will be obtained. The alleged offender will initially be contacted either in person or by letter, and advised that they are committing an offence and be given an opportunity to remove the material. The length of time given to comply will depend upon the scale and nature of the offence, typically local businesses and individuals would be allowed between 48 hours and 7 days to comply.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

If this request is not complied with the enforcement officer will record further details of the offending material, locations, dates times etc including photographs and if possible remove the material.

An FPN may be issued, usually by post, for each individual offence. For the purposes of this policy a group of small identical posters on a wall or hoarding at one location would be classed as one offence, similarly a small number of signs/posters (3 or less) displayed in close proximity, on a verge outside a business would also attract one FPN.

Signs or posters displayed at intervals of more than 10m along a length of road or on opposite sides of a road or junction would be treated as separate offences and each would attract a separate FPN. It is proposed that a maximum of 10 FPN's would be issued under these circumstances to any one individual or business in relation to any one event or promotion. When applying the above would result in more than 10 FPN's being issued, the impact on the local environment would be such that it may be more appropriate to prepare a case and prosecute the offender through the Courts.

Offenders who have previously been warned, advised or previously been issued with either an FPN or prosecuted through the Courts within the previous 12 months will not receive further warnings and will either be issued with further FPN's or prosecuted through the Courts, as appropriate, without further warnings.

Graffiti Offences - All observed or reported incidents of graffiti will be recorded and investigated. Instances of offensive graffiti will be referred to the Police for appropriate action and removed in accordance with graffiti removal policy.

Obtaining the identity of persons responsible for graffiti can be very difficult but sharing information with other agencies may assist with known offenders.

For non offensive graffiti, where the identity of a person responsible is known an FPN may be issued, usually by post, for each individual offence. However, FPN's are only applicable for minor instances of graffiti where the level of defacement or damage is small. Instances of repeated or large scale graffiti or where permanent damage to property by scratching or gauging has occurred should still be referred to the Police for possible prosecution under the Criminal Damages Act 1971.

Where fly posting or graffiti occurs on street furniture, equipment owned by statutory undertakers or on educational institution buildings and has not been removed and/or remains detrimental to the environment, action against the property owner may be taken. Attempts should first be taken to resolve such matters in partnership but if these fail defacement removal notices may be appropriate. Once served they must be complied with within a prescribed timescales usually 28 days, although they can be appealed. If no action results the Council may remove the defacement and recover the costs.

In all cases of fly posting or littering if an FPN is issued it will require payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment, If still not paid within this period a second reminder letter will be sent warning of possible Court Action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a Court summons.

Appeal Procedure - Appeals must be made in writing and will be considered at any stage prior to a court summons being issue. After a summons is issued all appeals must be made

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

to the court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Mitigating Circumstances – when considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered

Payment Options - In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ07 – DISTRIBUTION OF FREE LITERATURE.

POLICY SUMMARY

Enforcement of legislation relating to the distribution of free literature in public spaces.

The authority can designate areas of its own land or highways, by order, in which the distribution of free literature is only permitted with specific consent. Persons who distribute free literature or who commission the distribution of such within these areas without consent may be issued with a £75 FPN.

The distribution of free literature in car parks and pedestrianised streets can blight such areas through the generation of discarded and windblown litter.

POLICY DETAIL

Legislation – The Environmental Protection Act 1990 as amended by the CNE Act 2005 gives authorities powers to designate consent areas and issue FPN's, in lieu of court prosecution, to persons who distribute or commission the distribution of free literature in designated areas without consent.

Fixed Penalty Notice (FPN) amount - £75 to be paid within 14 days, reduced to £50 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summoned to Court.

Enforcement Procedure

Following the designation, by order of areas of land as consent areas for the distribution of free literature, no such literature should be distributed without prior consent.

The Council may refuse any request for a consent or grant consents with limitations and conditions for example, restrictions on times or extent of area and requirements to undertake cleaning operations. A fee may also be charged before consent is granted and it is proposed that this is set below the discount FPN level at £40. It is initially proposed that no consents will be granted for the distribution of literature within the designated areas with an exemption only for local or national initiatives by the Council or other public bodies relating to issues such as crime reduction, health or education etc. Any person who is aggrieved by a decision not to grant consent or by any conditions imposed by such consent may appeal to a magistrates Court.

Distribution of literature from organisations within the meaning of the Charities Act 1993 or for the purpose of political or religious belief is exempt from the consent requirement.

Following designation of the above areas, any person or organisation distributing or commissioning the distribution of free material within the designated areas without consent will be advised of the offence and may be issued with a £75 FPN with the exception that during the first month of such designation warnings will be given for first offences in lieu of an FPN.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

In cases of repeat offenders or where distribution has continued despite a warning and before an FPN has been issued, it is proposed that a case will be prepared for court prosecution. The Council has powers to seize material where it believes an offence has been committed, such material must be returned if ordered by a magistrate's court or following the conclusion of any formal action.

In all cases that an FPN is issued it will require payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment, if still not paid within this period a second reminder letter will be sent warning of possible Court Action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a Court summons.

Appeal Procedure – Appeals against a refusal of consent must be made to a magistrate's court within 21 days. Appeals against an FPN must be made in writing and will be considered at any stage prior to a court summons being issued. After a summons is issued all appeals must be made to the court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Mitigating Circumstances – when considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered

Payment Options - In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ08 – OBSTRUCTIONS ON THE HIGHWAY AND LICENCING OF ‘A’ BOARDS, SHOP DISPLAYS AND PAVEMENT CAFES

POLICY SUMMARY

Enforcement of legislation relating to keeping the highway (footway) free of obstruction including the licencing of ‘A’ boards, shop displays and pavement cafes.

It is an offence for a person without authority (or licence) to erect or deposit anything on a highway to the interruption of any user of that highway. Items left on the highway without permission should in most circumstances be removed. In relation to ‘A’ boards, shop displays and pavement cafes the local authority can licence these items and request a fee in doing so. Any licences such issued will clearly state any limitations, conditions and the exact area or location for the ‘A’ board, shop display or pavement cafe.

If an application is rejected the application fee will not be refunded but the applicant will be advised in writing why that particular location is unsuitable for example to safeguard the safety and rights of access for other highway users. Charity shops are exempt from payment of fees but must adhere to all other relevant legislation with regards to the display of ‘A’ boards and shop displays on the pavement.

The local authority can remove any unauthorised items including ‘A’ boards, shop displays or pavement cafes where it is deemed that the unauthorised items are causing a danger on the highway, without notice being issued to the owner. In other circumstances the trader will be “noticed” to remove the items or invited to apply for a licence.

Currently there are no legislative powers to issue a FPN where a person obstructs the highway or has failed to apply for a licence or comply with its conditions. Persons who obstruct the highway may be prosecuted in the Courts through use of other legislation in the Highways Act.

POLICY DETAILS

Legislation – Sections 41, 58, 130, 137, 137ZA, and 178 of the Highways Act 1980 (as amended) refers and sections 132 and 143 of the Highways Act 1980 (as amended) gives authorities the powers of removal. Sections 137, 148, 149, 152 and 161 of the Highways Act 1980 (as amended) refers to penalties and offences and The Local Government (Miscellaneous Provisions) Act 1982, Schedule 5 Highway Amenities Part I, addition of part VIIA to Highways Act 1980 (as amended) sections 115A – 115K give authorities’ powers for the licencing of ‘A’ boards, shop displays and pavement cafes on the highway. The Disability Discrimination Act 1995 will also be considered.

Enforcement Procedure

‘A’ Boards, Shop Displays and Pavement Cafes Licences

Proposed application Fee table; (non refundable)

‘A’ Board – 1st year (including initial fee and application, max size approx 600x900mm) is £50 and subsequent years £40

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Shop Displays - 1st year (including fee and application, maximum 5m²) is £75 and subsequent years £60

Pavement Cafes – 1st year (including initial fee and application, total maximum area of 6m²) is £300 and subsequent years £150. Any area above 6m² will be charged at an additional £20 per m² for the initial fee and application with any subsequent years charged at £15 per m².

Applicants must satisfy the Council that they have suitable Public Liability Insurance and indemnify the Council against any action arising from the positioning of the item(s). In all cases a licence will only be granted if there will be a suitable footway width remaining after the items are placed on the highway. This may vary depending upon location and traffic/pedestrian levels.

'A' Board licences will only be considered in relation to boards that are to be placed within the extents of the shop/business frontage ie they cannot be remote from the premises. They will also not be permitted in locations where they would compete with locations currently utilised or identified for Highway Roadside Advertising.

In circumstances where planning permission is required, an owner must have or be in the process of obtaining a valid planning permission before the authority will consider an application for a pavement café licence. There are other legislative requirements that may impact upon the ability of a business to legitimately locate 'A' boards or a shop display within the highway such as the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 2007. It is the responsibility of the trader to ensure that they meet the requirements of these and any other Acts and Regulations that are applicable and apply for the relevant permissions.

The Council may refuse a request for a licence where it is considered that the position of the 'A' boards, shop displays or pavement cafes could constitute a danger on the highway.

If the Council grant a licence it will include various limitations and conditions, for example designated boundaries, sizes and locations of items, permitted times when they may be displayed ie during trading hours only, and requirements to leave the highway in a clean and tidy state. It may also take action against a person who fails to comply with the terms of a licence.

Where the Council issue a licence, follow up visits will be made to ensure compliance with the limitations and conditions of that licence. In all circumstances the licence should be displayed so as to be visible from outside the premises (ie in a shop/cafe window) for inspection by the Council at all times the items are located on the highway.

If an unauthorised 'A' board, shop display or pavement café is observed on the highway but considered to be acceptable in terms of its size and location and any relevant permissions have been obtained, then the trader will be invited to submit an application for a licence within 14 days.

Where a person fails to apply for a licence following a 14 day compliance period, then the Council will issue a 28 Day Removal Notice. If the responsible person fails to comply with the notice the authority may make a complaint to the magistrates' court for a removal and

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

disposal order or if the item(s) is considered to constitute a danger, then an enforcement officer can instruct removal of the item(s) immediately. Any costs incurred by the Council in doing so can be recovered through the Courts and that person will also be found guilty of an offence and liable to a fine not exceeding £100 or, in the case of a second or subsequent conviction, to a fine not exceeding £200.

If any unauthorised item including an 'A' board, shop display or pavement café is observed on the highway in a location which is considered an obstruction to other highway users, the owner will be asked to remove the item immediately. Follow up visits will be made and if no progress has been made a case may be prepared and presented to Legal Services for possible Court prosecution for obstructing the highway. The Council may also formally "notice" the owner requiring them to remove the item within a specified timescale, after not less than one month the Council may remove the item(s) and recharge the owner for doing so.

Appeal Procedure – Where an authority takes action and prosecutes, the right of appeal is made through the Courts. Any subsequent payment arrangements would be determined by the Courts.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ09 - NUISANCE VEHICLES – CARS FOR SALE AND VEHICLE REPAIRS ON THE HIGHWAY

POLICY SUMMARY

Enforcement of legislation relating to cars for sale and vehicle repairs on the highway.

The local authority can issue a £100 FPN to anyone found to be selling, advertising or repairing vehicles on the highway as part of a business. A FPN offers the offender the opportunity to discharge any liability for the offence. Private individuals selling vehicles on the highway may be issued with a formal warning letter.

Prosecution is also open to the Council where a person is selling or advertising for sale as part of a business at any time two or more vehicles parked within 500 metres of each other on a road or; where it is found that a person is repairing, maintaining, servicing or dismantling a motor vehicle in the course of a business or for gain or reward. A person found guilty of an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

POLICY DETAIL

Legislation – The Clean Neighbourhoods and Environment Act 2005 gives authorities the power to issue FPN's in lieu of court prosecution or to prosecute persistent offenders to anyone found to be selling, advertising or repairing vehicles on the highway as part of a business.

Fixed Penalty Notice (FPN) amount - £100 to be paid within 14 days, reduced to £75 for prompt payment if made within 10 days. Repeat offenders may be referred direct to court with potentially higher fines. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, FPN payments are made direct to the Council whereas court fines are paid direct to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summonsed to court.

Enforcement Procedure

The issuing of a FPN would only be considered after the responsible person has been given an opportunity to rectify the problem voluntarily.

Persons responsible for selling, advertising or repairing vehicles on the highway will be identified and advised of the legislative powers available to the local authority and requested to cease the activity immediately.

A follow up visit will be made by officers to identify if the activity has ceased and if no progress on resolving the matter has been made, the responsible person will be issued with a FPN. For more serious cases or for repeat offenders, a case may be prepared for prosecution in the courts. Once a FPN has been issued, further follow up visits will be made to ensure that the responsible person complies and that a repeat offence has not occurred.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

In all cases that a FPN is issued it will require payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent warning of possible court action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a court summons.

In the case of private sales and business sales falling outside the above FPN parameters if following a formal warning letter the matter has not been resolved other courses of action will be considered including the possibility of court prosecution.

Appeal Procedure – Appeals against a FPN must be made in writing and will be considered at any stage prior to a court summons being issued. After a summons has been issued all appeals must be made to the court/magistrate at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Where an authority takes action and prosecutes the right of appeal is made through the courts. Any subsequent payment arrangements would be determined by the courts.

Mitigating Circumstances – When considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered.

Payment Options – In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative, payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ10 - CONTROL OF SKIPS, STORAGE CONTAINERS AND BUILDING MATERIALS ON THE HIGHWAY

POLICY SUMMARY

Enforcement of legislation relating to the licencing of skips, storage containers and building materials deposited on the highway.

The Council licence skips, storage containers and building materials deposited on the highway. Typical permit charges are in the order of £25 per skip (for a maximum of 14 days) and £70 per application for large storage containers and building materials.

Where such items are placed on the highway without a licence or in contravention of any conditions imposed by a licence, the authority can take action against the offenders. In the case of commercial operators who fail to notify the Council prior to placing an item on the highway, it is proposed that an addition £25 administration and inspection fee will be added to the standard permit fee. In the case of individual members of the public, they will be given the opportunity to remove the items or apply for a retrospective permit or licence at the standard rate.

As the legislation does not provide for the issuing of a fixed penalty notice, persons who do not obtain a licence or contravene its conditions may be prosecuted through the courts.

POLICY DETAILS

Legislation – Sections 139 and 140 of the Highways Act 1980 and Builder's Skips (Markings) Regulations 1984 gives authorities' powers for the control and removal of skips from the highway where it is considered that they are causing an obstruction on the highway, are sited without a permit or deemed to be in an unfit condition.

Section 171 of the Highways Act 1980 gives authorities the power to control the deposit of building materials and making of excavations in streets. Section 149 of the Highways Act 1980 gives authorities the powers for the removal of things so deposited on highways as to be a nuisance.

The Local Authorities (Transport Charges) Regulations 1998 (S.I. 1998 No. 948) gives authorities the power to make a charge with regard to their consideration of an application for the depositing of skips, storage containers and building materials on the highway.

Enforcement Procedure

Persons wishing to place a skip, container or building material on the highway must pay a licence fee as detailed below:-

- (a) skips including (MIDI) 6 tonne or above (max size 6.1m x 2m) is chargeable at £25 per skip for a maximum period of 14 days with a further application fee of £25 being payable for subsequent periods of 14 days;
- (b) mini skip below 6 tonne is chargeable at £15 per skip for a maximum period of 14 days with a further application fee of £15 being payable for subsequent periods of 14 days;

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

- (c) storage containers and building materials are charged at £70 per licence application and if approved would be valid for a maximum of 28 days. Licence renewals would be granted at a charge of £35 for a further 28 day period. A separate licence is required for each container (max size 12m x 2.4m) the maximum permitted area for building materials is 3m x 1.5m x 1m high. If the application is not approved, for highway safety, or other justifiable reasons the application fee will not be refunded.
- (d) Retrospective applications an additional £25 fee will apply for traders and commercial operators.

The local authority can remove unauthorised skips, storage containers and building materials from the highway where they have been deposited without licences, are causing an obstruction on the highway or are deemed to be in an unfit condition. The local authority can recover the reasonable expenses incurred by them in doing so from the person convicted of the offence. In reality this option is not always practical due to the costs and difficulties of transport, secure storage and ultimate disposal of the waste contained in the skips or the building material.

Currently there are no legislative powers to issue a FPN where operators have failed to apply for a licence or comply with the legislation.

The Council would seek to prosecute through the courts where operators have deposited a skip on the highway without permission and if found guilty of an offence are liable to a fine not exceeding level 3 on the standard scale. With regards to storage containers and building materials, if a person contravenes any condition or duty imposed by a consent he is guilty of an offence and liable to a fine not exceeding £10 in respect of each day on which the contravention or failure occurs.

Skips - Where an operator has failed to apply to the local authority for a permit and an unauthorised skip has been identified either by enforcement staff, highway inspectors during routine highway inspection or by a member of the public or Councillor, the operator is contacted immediately by the local authority and given the opportunity to apply for a retrospective permit. The permit fee will be at the standard rate plus an additional £25 fee to reflect the additional administration and inspection costs.

Notwithstanding whether permission has been granted for the depositing of a skip on the highway, the Council (or a Police Constable in uniform) can require the owner of the skip to remove or reposition it at their own expense.

Permits are issued with various conditions including those relating to lighting and signing of the skip. The local authority can take action against operators who fail to comply with the terms of the licence.

Where an operator has failed to apply for a permit having been given the opportunity to do so, or the permit has expired, or the skip is causing an obstruction on the highway or is deemed to be in an unfit condition, the local authority have powers to take action against the operator. In many instances it could remove the skip from the highway without further notice, however, this may be impracticable as outlined above.

The Council will therefore prepare a case and seek to prosecute such offenders through the courts.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Storage Containers and Building Materials – Where an person/operator has failed to apply for a licence and any unauthorised storage containers or building materials have been deposited on the highway as identified by enforcement staff, highway inspectors during a routine highway inspection or by a member of the public or Councillor, the owner is contacted immediately by the local authority and advised to apply for a licence or to remove the unauthorised storage container(s) and/or building materials immediately. If a licence is applied for it will be at the standard rate plus, for traders and commercial operators only, an additional £25 fee to reflect the additional administration and inspection costs.

If the highway authority considers that any thing unlawfully deposited on the highway constitutes a danger to users of that highway and that the thing in question ought to be removed without the delay (in giving notice or obtaining a removal and disposal order from a magistrates' court under section 149 of the Highways Act 1980), the authority may remove the thing forthwith. The highway authority may then recover any expenses reasonably incurred in removing it through the courts or apply to the courts for a disposal order.

Any licence issued will impose various conditions including those relating to lighting and signing of the skip. The local authority can take action against operators who fail to comply with the terms of the licence.

Where an person/operator has failed to apply for a licence having been given the opportunity to do so, or the licence has expired, or the object is causing an obstruction on the highway, the local authority have powers to take action against the operator. In many instances it could remove the object from the highway without further notice, however, this is impracticable as outlined above.

The Council will therefore prepare a case and seek to prosecute such offenders through the courts.

Appeal Procedure - Where an authority takes action and prosecutes the right of appeal is made through the Courts. Any subsequent payment arrangements would be determined by the Courts.

If a person is aggrieved by the refusal of the local authority to grant a licence or by the conditions imposed by that licence for the depositing of a storage container and/or building materials on the highway, they may appeal to a magistrates' court against the refusal of the licence or the conditions imposed by that licence.

Payments Arrangements – Licence fees must be paid to the Council in full in advance. In the event of enforcement action any subsequent fines or costs awarded will be determined by the Courts including any payment arrangements.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ11 – CONTROL AND LICENCING OF STREET TRADERS

POLICY SUMMARY

Enforcement of legislation relating to the licencing of street traders.

The Council has previously designated many of its streets as being Prohibited or Consent Streets for the purposes of street trading. Within consent streets the Council can licence street traders and request a fee in doing so. Any such licence approved will state clear limitations, conditions and the location of the stall, container or mobile.

The authority may prosecute any person who engages in street trading in a prohibited street; in a consent street without a licence; or contravenes any of the principal terms or conditions of the licence; or knowingly makes a false statement; or who trades without a valid licence. A person found guilty of an offence may be fined an amount not exceeding level 3 on the standard scale. Currently there are no legislative powers to issue a FPN where a person has failed to apply for a licence or comply with legislation.

POLICY DETAIL

Legislation – The Local Government (Miscellaneous Provisions) Act 1982 Part 3 – Schedule 4 gives authorities powers to licence street traders and to prosecute a person in contravention of the terms or conditions of a licence; or who trades in a prohibited street or in a consent street without a licence; or knowingly makes a false statement.

Fees – It is proposed to amend the current flat rate fee of £750 for an annual consent and £75 for an annual application fee as detailed below:-

- (a) An application fee of £75 for all annual applications;
- (b) An annual consent fee of £800 for stalls, catering vans and containers under 8m²;
- (c) An annual consent fee of £1000 for stalls, catering vans and containers between 8 and 10m²;
- (d) An annual consent fee of £1200 for stalls, catering vans and containers between 10 and 12m²; fees for above 12m² by negotiation.
- (e) A daily consent fee of £20 for each stall, catering van and container under 8m² with an application fee of £25 in respect of each application;
- (f) A daily consent fee of £25 for each stall, catering van and container over 8m² with an application fee of £25 in respect of each application.

Annual consent fees can be paid to the authority in instalments.

A street trading licence will remain valid for a period of 12 months from the date on which it is granted or for a shorter period as specified in the licence. The Council may at any time revoke a street trading licence if the holder fails to comply with the terms of the licence or to vary its principal terms and no fee will be refund.

If a trader surrenders his licence before the expiry date, the authority may refund the whole or part of the fee.

Enforcement Procedure – Prosecution would usually only be considered after the owner has been advised of the legislation and given an opportunity to cease trading and remove

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

the unauthorised stall or container within 24 hours if on a prohibited street or sited in an unsuitable location. If the unauthorised stall or van is located in a consent street and the inspecting officer considers that the stall or container is sited in an acceptable location and is not in competition with shops or otherwise, then the owner will be advised of the legislation and given a period of 7 days to apply for a licence. Follow up visits will be made to identify if the trader has complied with the authorities requests. Failure to comply may result in prosecution and it is open to the authority to prosecute persistent offenders.

Appeal Procedure – Appeals against a refusal to grant a licence, to vary the principal terms of a licence or to revoke a licence must be made in writing to the authority within 7 days of the date of receiving the notice.

Appeals to the magistrates' court by a decision of the authority to refuse a licence, vary the principal terms of a licence or revoke a licence must be made in writing to the courts any time before the expiry of 21 days beginning with the date upon which he is notified of the refusal or decision.

Where an authority takes action and prosecutes, the right of appeal is made through the courts. Any subsequent payment arrangements would be determined by the courts.

Consent Streets

The Environment and Transportation Select Committee on 7th February 2006 considered a report on the Control Of Street Trading, which included a list of current Prohibited and Consent Streets.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ12 – OVERHANGING HEDGE, TREES OR SHRUBS

POLICY SUMMARY

Enforcement of legislation relating to hedges, trees and shrubs adjacent to the highway.

Where a hedge, tree or shrub overhangs the highway and endangers the passage of vehicles or pedestrians or obstructs visibility or obscures street lighting or where the condition of any hedge, tree or shrub is such that it may fall into a highway the Council may serve notice on the owner requiring him to cut, lop or fell it to remove the danger, obstruction or interference within 14 days.

If following such “notice” the danger, obstruction or interference remains the Council may take such action as deemed appropriate to remedy such and may recover the costs from the owner in doing so.

Overhanging vegetation obstructs the highway, reduces visibility at junctions and present hazards to pedestrians particularly the partially sighted and during the hours of darkness.

POLICY DETAIL

Legislation – S.154 of The Highways Act 1980 gives authorities powers to “notice” owners of dangerous or obstructive hedges, trees and shrubs and to recover costs of remedial works if the notice is defaulted.

Fixed Penalty Notice (FPN) amount – Not applicable, only reasonable expenses in undertaking default works can be reclaimed.

Enforcement Procedure

Where a hedge, tree or shrub overhanging the highway is reported an inspector will visit and make an assessment based upon the likely dangers to the passage of vehicles or pedestrians or the obstruction of visibility at junctions or if street lighting or other street furniture /signs are obscured. An assessment of the condition of any hedge, tree or shrub considered likely to fall into the highway will also be made including obtaining expert advice if necessary.

If action is considered necessary the owner will be contacted, advised of the problem and requested by letter to take remedial action voluntarily.

If following further visits and a second letter no progress has been made a formal S.154 Notice would be issued to the owner stating the works to be carried out and giving a 14 day timescale for compliance. The notice will state that if the works are not carried out as required the Council will undertake them itself and recharge the costs.

If after 14 days the S.154 Notice has still not been complied with arrangements will be made for the Councils contractor to undertake the works. Once completed an invoice will be sent to the owner for the costs incurred by the Council.

Appeal Procedure – Appeals against a S.154 Notice to lop, cut or fell a tree can be made to a magistrate’s court.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Mitigating Circumstances – The owner would have to convince a magistrate that the hedge, tree or shrub did not constitute a danger, or obstruction.

Payment Options – the Councils sundry debtors team would process invoices for any works undertaken and pursue unpaid debts.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – LEQ13 – MISCELLANEOUS HIGHWAY ENFORCEMENT

POLICY SUMMARY

Enforcement of various legislation relating to unauthorised activities and damage to highways.

Through use of the Highways Act 1980, various other legislation and the Civil Law system it is possible to control and seek redress for many activities which are considered dangerous, damaging or cause a nuisance to users of the highway.

It is propose that full use of all available legislation is used to give notice to persons responsible for activities which are considered dangerous, damaging or causing a nuisance to users of the highway to cease such activity and where appropriate to penalise through the courts and to recover the costs of any remedial works undertaken. The following are examples of where action could be taken; construction materials mixed on the highway or allowed to flow into drains, anything deposited or placed on or over the highway likely to cause a danger, clean or dirty water or effluent drained on or over the footway, unauthorised roadmarkings or signs on or attached to the highway or a structure on it, damage to the highway by tree roots from adjacent land, defacing or removing signs. This list is not an exhaustive and the Council will seek to prevent any unauthorised use of the highway or anything that causes damage or endangers users of it.

In most instances an informal approach will be taken before any formal action undertaken. If following any informal “notice” the danger, obstruction or interference remains the Council may take such action as deemed appropriate to remedy such and will attempt to recover the costs from the person responsible. Where no physical damage has resulted the Council may still seek a penalty from the Courts to encourage compliance

POLICY DETAIL

Legislation – S131, 132,161,162,163,170 of The Highways Act 1980 gives authorities powers to take action in the instances described above. Additionally redress can be sought through the Civil Court system in certain circumstances.

Fixed Penalty Notice (FPN) amount – Fixed penalty notices are not applicable and variable fine levels apply. If appropriate the Council will attempt to recover the full costs in undertaking any remedial works from the person responsible.

Enforcement Procedure

Where any activity, item or instance is reported an inspector will visit and make an assessment based upon the level of interference, damage or likely dangers to users of the highway.

If action is considered necessary the persons responsible will be contacted, advised of the problem and requested by letter to cease the activity, or take appropriate remedial action and/or pay the Councils costs in taking such action.

If following further visits and a second letter no progress has been made, either a notice of intention to prosecute or seek financial redress or a formal “Notice” would be issued. Any

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

notice so issued would state the work required to be carried out and give an appropriate timescale for compliance.

If after the expiry of the period stated in the Notice no progress has been made, details of the case will be passed to Legal Services for appropriate Court action or prosecution.

Appeal Procedure – Appeals against any Notice, or intended formal action or prosecution can be made to the Council or direct to the court.

Mitigating Circumstances – The person responsible would have to convince the court that the damage, danger or interference had not occurred.

Payment Options – any fines imposed would be collected by the Courts. The Councils sundry debtors team would process invoices for any works undertaken and pursue unpaid debts.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME - WTD01 – ENFORCEMENT OF WASTE TRANSPORT LEGISLATION.

Policy Summary

Enforcement of legislation relating to the transport of non-domestic waste. Failure to provide to the local authority satisfactory proof of a licence or other acceptable documentation to transport waste may result in a £300 FPN being issued. Individuals or operators who transport waste without correct documentation or authority are more likely to be involved in the illegal disposal of waste through domestic waste collection, fly-tipping and littering.

Policy Detail

Legislation -The Control of Pollution (Amendment) Act 1989 as amended by the Clean Neighbourhoods and Environment Act 2005 gives authorities powers to issue FPN's in lieu of court prosecution for failures to produce valid documentation.

Fixed Penalty Notice (FPN) amount - £300 to be paid within 14 days, reduced to £250 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, also FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay the FPN rather than being summoned to Court.

Enforcement Procedure – Generally undertaken as part of a multi-agency operation. Suspect vehicles will be stopped by Police and searched by enforcement officers. If controlled waste is being transported a formal notice to produce documents within 7 days will be issued. If valid documentation is not produced without reasonable cause within the 7 day period a £300 FPN will be issued requiring payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment, if still not paid within this period a second reminder letter will be sent warning of possible Court Action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a Court summons.

Enforcement action may also result from evidence including photographic or CCTV images or observation by an officer where the illegal transportation of waste is suspected. In such cases the vehicle owner will be formally advised in writing that they must produce the documents as per the procedures above. Persons suspected of transporting waste illegally may also be invited to be interviewed under caution prior to formal enforcement action.

Appeal Procedure - Appeals must be in writing and will be considered at any stage prior to a court summons being issued. After a summons is issued all appeals must be made to the court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Mitigating Circumstances – when considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position (ie on benefits) or where pursuit of the case would not be in the public interest then cancellation will also be considered

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Payment Options - In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME - WTD02 – ENFORCEMENT OF TRADE WASTE LEGISLATION.

Policy Summary

Enforcement of legislation relating to making suitable provision for the disposal of non-domestic waste by businesses. Failure to provide to the local authority satisfactory proof of an agreement or other acceptable documentation regarding the disposal of trade waste may result in a £300 FPN being issued. Failure to comply with a notice regarding making suitable provision for the storage and management of waste can result in Court prosecution and fines up to £1000. Businesses that have not made appropriate arrangements for the disposal of trade waste are more likely to be involved in the illegal disposal of waste through domestic waste collection, fly-tipping and littering.

Policy Detail

Legislation –S.34 of the Environmental Protection Act (EPA) 1990 as amended by the Clean Neighbourhoods and Environment Act 2005 gives authorities powers to issue FPN's in lieu of court prosecution for failures to furnish valid documentation. S.47 of the EPA 1990 gives powers to prosecute for failure to comply with a formal notice.

Fixed Penalty Notice (FPN) and fine amount - £300 to be paid within 14 days, reduced to £200 for prompt payment if made within 10 days. Repeat offenders may be referred direct to Court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, also FPN payments are made direct to the Council whereas Court Fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay the FPN rather than being summoned to Court. S.47 offences can only be dealt with by court prosecution with fines up to £1000.

Enforcement Procedure – Initially, it is proposed that a targeted approach to businesses in problem areas will be made, although individual businesses will also be approached in relation to specific complaints. It should be noted that Charity shops are not exempt from this legislation. Information and advice to assist the businesses to comply with the legislation will be provided either through a letter drop or with a personal visit. This will also provide information on any local or national initiatives for example the "Tidy Business Awards" scheme. The information pack will advise what documents must be made available for inspection and will advise of an approximate timescale, (usually 7 –14 days after notification) when the premises will be visited to formally inspect the documentation. Business premises will be visited and if no documentation is available, a formal notice to produce documents within 7 days will be issued. If valid documentation is not produced without reasonable cause within the 7 day period a £300 FPN will be issued requiring payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment, If still not paid within this period a second reminder letter will be sent warning of possible Court Action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a Court summons.

In circumstances where documentation is in place but where waste is still not being managed correctly, for example insecure containers leading to spillage, bins obstructing the highway etc. The Council will after informal approaches have failed to resolve the situation issue a formal "notice" setting out the standards to be met. Failure to comply with the

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

requirements of the notice, within a reasonable time period, may result in prosecution in the Courts.

Appeal Procedure - Appeals against an FPN or a formal notice must be in writing and will be considered at any stage prior to a court summons being issued. After a summons is issued all appeals must be made to the court/magistrates at a hearing. Appeals against FPN's received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be answered within 15 working days.

Mitigating Circumstances – when considering appeals, if the validity of the FPN or notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered

Payment Options - In cases of financial hardship, payment arrangements may be accepted. The total payment amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should still allow sufficient time for the case to be referred to the Courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

Any fines or costs awarded by the Courts will be collected directly by them.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – WTD03 – ENFORCEMENT OF HOUSEHOLD WASTE COLLECTION AND RECYCLING

POLICY SUMMARY

Enforcement of Legislation relating to household waste collection and recycling.

The local authority can issue Fixed Penalty Notices (FPN) to an individual who is guilty of blatantly and persistently leaving a bin(s) out after collection day, or deliberately contaminates recycling receptacles, or leaves additional waste by the side of the bin ready for collection, or fails to use or provide a bin, or places garden waste in a residual bin or places recyclable items in the residual bin.

FPN's will only be issued when occupiers have been given an opportunity to rectify the problem and have either failed or refused to do so. The local authority has undertaken education and awareness initiatives pre and post implementation of the recycling schemes to encourage residents to manage their waste in a responsible manner and use the recycling schemes available to them.

A £100 FPN may be issued as an alternative to prosecution through the courts. Encouragement followed up with robust enforcement will form the main elements of a long term improvement strategy.

POLICY DETAIL

Legislation – Section 46 of the Environmental Protection Act 1990 and the introduction of the Clean Neighbourhoods and Environment Act 2005 – Section 47A gives authorities powers to issue FPN's in lieu of court prosecution to persons who have failed to comply with the requirements of the authorities household waste collection and recycling policies.

Fixed Penalty Notice (FPN) amount - £100 to be paid within 14 days, reduced to £60 for prompt payment if made within 10 days. Repeat offenders may be referred direct to court with potentially higher fine levels. Failure to pay a FPN will also result in the case being referred to court. The FPN process is simpler, quicker and less resource intensive than court proceedings, FPN payments are made direct to the Council whereas court fines are paid to Central Government. For these reasons in most circumstances offenders will be given every opportunity to pay a FPN rather than being summoned to court.

Enforcement Procedure

A set of advice/warning stickers have been designed that can be placed on householder's waste or recycling containers by officers of Technical Services or Biffa waste collection operatives and supervisors. The set of 5 stickers remind residents how to present their bins correctly for collection.

Once an offence has been identified a sticker will be placed on the bin and the enforcement officer or crew note the address where the bin belongs. If the specific address is not known, then the location is noted. The officer/crew then passes this information to the Waste and Environment Team to issue an advice letter. The advice letter is delivered by hand to the relevant address.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

If refuse is deposited without a bin attempts will be made to identify the property responsible, including street wide letter drops if necessary.

If a subsequent offence occurs an officer from the Waste and Environment Team shall arrange to visit the offending household in an attempt to offer advice and guidance. If the officer is unable to make contact then a final written warning letter will be issued.

Any further breach by a householder may result in an enforcement officer serving a section 46 notice by hand on all the responsible adults in the household. Residents must comply with that notice, or risk being issued with a FPN for non-compliance. Officers have the discretion to issue more warnings before passing the case file onto the Enforcement Team in order to generate a FPN. The decision to issue a FPN will be made by the Enforcement Team. The FPN will be issued by 1st class post if the name of the offender(s) is known or issued in person to the mortgagee or occupier of that property or to whom the Section 46 Notice was served. Residents would be potentially subject to a FPN for up to 12 months from the date a section 46 notice is served. After 12 months the Section 46 notice would be re-served as a result of a further breach.

Once a FPN has been issued, officers will make follow up visits to ensure compliance. The local authority may consider prosecution in more serious cases or for residents who have had two or more fixed penalties issued to them for Section 46 contraventions as opposed to being issued with any further FPN's.

In all cases that a FPN is issued it will require payment within 14 days. If no payment is made, after 15 days a reminder letter will be sent allowing a further 14 days for payment. If still not paid within this period a second reminder letter will be sent warning of possible court action and allowing a final 7 days to pay. If payment is still not received a case will be prepared for legal to issue a court summons.

Appeal Procedure – Appeals against a Section 46 notice must be made to the magistrates' court within 21 days from the notice being served.

Appeals against a FPN must be made in writing and will be considered at any stage prior to a court summons being issued. After a summons is issued all appeals must be made to the court/magistrates at a hearing. Appeals received within the initial discount period, if not successful will be re-offered a further discount payment period. Appeals will be decided by the Director of Technical Services in consultation with the Cabinet Member in appropriate circumstances and answered within 15 working days.

Mitigating Circumstances – When considering appeals, if the validity of the notice, or the identity of the person on whom it is served is in doubt the notice will be cancelled. If the person is considered to be vulnerable by virtue of health or financial position or where pursuit of the case would not be in the public interest then cancellation will also be considered.

Payment Options – In cases of financial hardship, payment arrangements may be accepted. The total amount will be at the full FPN level, ie the prompt payment discount will not be applicable. It is proposed that payments are spread over a maximum of 12 weeks from the initial FPN issue date. As an alternative, payment of the full amount could be deferred to a mutually agreed date. In all payment options the final payment date should

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

still allow sufficient time for the case to be referred to the courts should arrangements be defaulted (maximum 6 months from initial FPN issue to summons).

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – PLE01 – UNTIDY BUILDINGS AND LAND

POLICY SUMMARY

Enforcement of legislation relating to untidy buildings and land.

The local authority can issue a Section 215 Notice and/or a Section 79 Notice on the owner/occupier of private land where it is considered that a building and/or land is having an adverse affect on the amenity of the area. This can include a building falling into disrepair, land being littered, gardens littered with car parts, overgrown trees and vegetation (but not effective for grassed areas), land littered with bricks and rubble, replacement of broken windows and frames, repair of doors, roofs and gutters, repair of fences, walls and other means of enclosures. The notices cannot be issued against land that is untidy due to its lawful use, ie scrap yards.

Notices should only be issued when occupiers/owners have been given an opportunity to rectify the problem and have failed or refused to do so. Fly tipped rubbish, overgrown and untidy buildings and land can create a local sense of neglect and if left can begin to adversely affect the amenity of an area.

Encouragement followed by a robust enforcement policy will deal with these problems more effectively. Consideration should be given in the service of a section 215 or section 79 notice as there is a potential financial burden on the local authority arising from costs incurred in default action. Other enforcement options for land defaced by litter only are Litter Clearing Notices as per Policy LEQ04.

POLICY DETAIL

Legislation – The Town and Country Planning Act 1990 Sections 215, 216, 217, 218 and 219 and the Building Act 1984 Sections 79 and 99 gives authorities powers to require the owner of a building and/or land which is considered to be seriously detrimental to the amenity of an area, to undertake works to remedy the condition of the building and/or land within a prescribed timescale and to undertake default action and/or prosecution in the event of non compliance.

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 – Requisition for Information allows the authority to require information from a person with regards to the nature of their interest in the land.

In exercise of its powers under section 79 of the Building Act 1984, the local authority also has powers under the Law of Property Act 1925, if they have incurred debts as a result of undertaking works in default in accordance with their statutory powers, the Act gives the local authority the power to sell the property for 'Best Price', when an owner has allowed the property to deteriorate and not maintained it to the basic standards as set out in Statute Acts of Parliament. Under section 101 of the Law of Property Act 1925, the local authority is able to apply to the District Land Registry to have a land charge registered as a priority local interest, giving the local authority the same claim as a mortgagee, including the power of sale.

Enforcement Procedure

The issuing of a section 215 or section 79 notice would usually only be considered after the owner/occupier has been given an opportunity to rectify the problem voluntarily.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Persons responsible for buildings and/or land which has become detrimental to the amenity of an area will be contacted, after undertaking a land registry check if necessary, and advised of the problem which has been identified, the potential remedies available to them and also the legislative powers available to the local authority if they voluntarily do not take action. They will be encouraged to voluntarily undertake the works required to bring the building and/or land back to an acceptable standard and the works to commence within a timescale typically 28 days. The local authority will not accept the boarding of doors and windows of properties, unless in an emergency or in special circumstances, as this is unsightly and has a negative impact on the area. In any event, this will only be allowed for a temporary period until more substantive works can be carried out.

A follow up visit will be made to identify if any action has been taken voluntarily and if no action has been taken a further letter will be issued giving the owner/occupier a further 14 days to comply.

If the breach continues, then the local authority will consider the issue of either a section 215 or section 79 notice. Once a notice has been issued the land will be subject to further follow up visits to ensure compliance. Failure to comply with the notice may result in the local authority taking direct action (ie undertaking the remedial work itself) and/or prosecution. If it is deemed that direct action should be taken, a report will be placed before the appropriate Committee indicating the approximate costs of the works involved and to seek approval to undertake the works in default.

Prior warning should be given of any intended direct action or prosecution by letter. If a person fails to take the steps required within either of the notices within the specified time period, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale under section 215 and level 4 on the standard scale under section 79.

Following default works in contravention of a section 215 notice, any expenditure incurred is recoverable from the owner as a simple contract debt through the courts or can be registered as a local land charge. These charges become recoverable when the land is sold.

Following default works in contravention of a section 79 notice, the local authority can recover from the owner the costs incurred as a simple contract debt through the courts or can apply to the District Land Registry to have a land charge registered as a priority local interest, giving the local authority the same claim as a mortgagee, including the power of sale.

Appeal Procedure – An appeal against a section 79 notice must be made to the magistrates' court within 21 days of the date upon which the notice was served. An appeal against a section 215 notice must be made to the magistrates' court at anytime within the period specified in the notice as the period at the end of which the notice is to take effect.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – HPE01 – CIVIL PARKING ENFORCEMENT.

POLICY SUMMARY

Enforcement of on and off street parking regulations.

The enforcement of parking regulations by the Council using Civil Parking Enforcement Powers through an appointed enforcement contractor. Contraventions of waiting, loading and parking regulations including residents parking, zig-zag markings, P&D bays and blue badge bays, footway parking (with an appropriate yellow line or footway/verge order) and car park regulations will attract a Penalty Charge Notice (PCN) of either £70 or £50 dependant upon the contravention. PCN's are discounted to 50% of the initial charge for early payment (within 14 days).

Appeals against PCN's are considered both internally and also externally via the Traffic Penalty Tribunal. Persons with unpaid PCN's will be pursued for payment through the civil debt recovery procedure.

Management of parking has benefits in traffic management, reduces congestion, improves road safety, reduces parking intrusion in residential and other environmentally sensitive areas, it can also assist retail commerce by promoting a turnover of parking space and by better management of commuter parking.

POLICY DETAIL

Legislation – Part 6 of the Traffic Management Act 2004 gives authorities the powers to decriminalise certain parking offences and undertake Civil Parking Enforcement. The Council has previously taken up these powers under the Road Traffic Act 1991 (now superseded).

Fine amount – Penalty Charge Notices are either £70 or £50 depending upon the contravention. The relevant PCN amount is set by legislation and a full list has previously been reported to members. If paid within 14 days the amount due is reduced by 50%. Unpaid PCN's will be incremented by a further 50% if they remain due despite formal reminders and a further £5 administration cost will be added if the debt is registered at County Court.

Enforcement Procedure – The Council contract out the issuing of PCN's to a commercial enforcement contractor. Streets and car parks are patrolled by civil enforcement officers who issue PCN's to any vehicle who they believe has contravened a parking regulation. Data is collected on hand held computers and pocket books, photographs are also taken of each contravention.

All locations with enforceable restrictions will be patrolled however, the frequency and duration of patrols will vary. More frequent patrols will take place in town centres, main traffic routes, car parks and within resident parking schemes.

Full details of enforcement procedures, appeal and mitigating circumstances are included in previous detailed reports to members.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

Once issued a PCN has been issued the driver has the option to pay or appeal within 28 days. In many instances PCN's are ignored.

If a PCN is ignored, enquiries will be made with the DVLA and after 28 days a Notice to Owner will be sent to the registered keeper advising of the PCN and allowing a further 28 days to pay or appeal. If no response is received a Charge Certificate (CC) will be sent which increases the debt by a further 50% and which must be paid within 14 days, there is no statutory appeal process at this stage. If no response is received a Pre-debt registration letter will be sent advising of possible court action (this is an optional non statutory stage).

If no payment or response is received the debt will be registered at Northampton County Court (Traffic Enforcement Centre), which increases the debt, by a further £5. Once registered the debtor will be advised and has a further 21 days to file a Statutory Declaration, otherwise a warrant may be obtained and issued to certificated bailiffs to collect the debt.

Appeal Procedure – All appeals and enquiries must be made in writing and may be considered at a number of stages. Depending on what stage the appeals is made at it may be considered by the Council or by an independent parking adjudicator. However, appeals to an adjudicator can only be made if the Council have rejected an earlier appeal. If the appeal is made during the initial discount period and is rejected a further discount period will normally be allowed. Appeals made to the independent parking adjudicator may be considered in writing or with a local hearing, the adjudicators decision is final and binding on both sides.

Mitigating Circumstances – when considering appeals, if the validity of the evidence, or the identity of the person against whom it is intended to take action is in doubt the PCN will be withdrawn. PCN's issued to Blue badge holders, valid ticket and permit holders who subsequently provide details of a permit, ticket or badge will normally be cancelled on the first 2 occasions. If the person is considered vulnerable by virtue of age, health or financial position or where pursuit of the case would not be in the public interest then not proceeding with the case may be considered. Full details on mitigating circumstances have previously been reported in detail to members.

Payment Options – The Council will accept payment arrangements or deferred payments on the proviso that further contraventions are not committed. Once defaulted the full amount becomes payable immediately and debt recovery actions will continue.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

POLICY NAME – HPE02 - UNAUTHORISED VEHICLE CROSSING (OVER FOOTWAY)

POLICY SUMMARY

Enforcement of legislation relating to vehicles crossing over the footway without a proper crossing.

Where the owner of land adjacent to a highway habitually drives vehicles over a footway or verge the Council may serve notice on the owner advising them that the Council can execute works to construct a crossing and recharge the costs to the landowner (including the costs of any damage to the footway or apparatus contained within it). The owner will also be invited to cease driving over the footway/verge or to voluntarily apply for a crossing.

If following such “notice” no request for a crossing is received and the footway is still being driven over, the Council may undertake the works and recharge the landowner.

Vehicles which cross over the footway/verge without a properly constructed crossing cause damage to the highway structure and can potentially damage underground services laid within it. Damaged footways and verges are costly to repair, look unsightly and present trip hazards to pedestrians.

POLICY DETAIL

Legislation – S.184 of The Highways Act 1980 gives authorities powers to “notice” landowners who habitually drive over the footway or verge and to recover the costs of any construction and remedial works undertaken.

Fixed Penalty Notice (FPN) amount – Not applicable, only reasonable expenses in undertaking the works can be reclaimed.

Enforcement Procedure

Where it is reported or observed that a vehicle(s) is being regularly driven over a footway or verge an inspector will visit and make a note of the site conditions and any evident damage.

A letter will be sent to the owner of the land being accessed advising of the Councils powers and requesting that the activity ceases or that the landowner applies for a properly constructed crossing. Developers may be permitted to construct a temporary crossing.

If no request to construct a crossing is received and following further site visits it is evident that the footway/verge is still being habitually crossed, a formal notice will be issued.

The “notice” will advise of that the Council intends after the expiry of a 14 day period from service of the notice to execute works to construct a crossing and recharge the costs to the landowner. The amount charged may include the costs of repairing any damage to the footway or apparatus contained within it. The owner will also be given an estimate for the works and invited to voluntarily complete and return within the 14 period an order for the works to be undertaken. The notice will also state that the person on whom it is served has a right to object to the notice.

APPENDIX C

TECHNICAL SERVICES ENFORCEMENT POLICIES

If after the expiry of 14 days no order for the works or objection has been received the Council may instruct its contractor to undertake the default works.

All reasonable costs in undertaking the works including any remedial works will be recharged to the landowner.

This procedure will also be applied in circumstances where a footway crossing already exists but is of insufficient quality or size to accommodate the type of vehicles using it.

Appeal Procedure – Appeals against a S.184 Notice can be made to the Council or a magistrate's court.

Mitigating Circumstances – The owner would have to convince the Council or a magistrate that the footway/verge was not being habitually driven over.

Payment Options – Voluntary payments for footway crossings may be in full or by payment arrangement (for which an additional administrative charge will apply). The Councils sundry debtors team would process invoices for any works undertaken and pursue unpaid debts.