

## APPENDIX A

### TECHNICAL SERVICES ENFORCEMENT POLICIES

This appendix contains Policies and procedures for the following enforcement and licensing activities.

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#### GEN01 - COMMON PROCESSES AND PROCEDURES

The page outlines process and procedures that are standard across most if not all of the various policies.

**Penalties and charges** – In instances where formal enforcement action is appropriate a range of actions and penalties are available including formal and informal warnings, legal notices, fixed penalty notices, cautions and court prosecution. In many circumstances it will be most appropriate to issue a fixed penalty notice (FPN) if this option is available. For serious or repeat offences and in instances where an FPN remains unpaid it is more appropriate for cases to be referred to the magistrate's court.

A table showing the proposed fixed penalty notice amounts for the full range of offences, fees and charges is included in the Schedule attached at the end of this document.

Cases dealt with in court carry a wider range of penalties including imprisonment for the most serious waste offences. The actual amounts imposed will vary case by case with many factors being taken into account including previous convictions and mitigating circumstances and are decided by the courts.

In relation to certain emergency, remedial or default actions undertaken by the Council it may seek to recover its reasonable costs in carrying out these works from those considered responsible or liable.

**Appeals** – In most cases where an FPN is issued there is no formal appeal process. If an alleged offender considers an FPN is unfair or inappropriate or refuses to pay the matter may be referred to the magistrates court where the offender will subsequently have an opportunity to state his case. In practise the Council will normally consider informal appeals at any stage prior to the case being referred to the magistrate's court.

In relation to formal notices issued by the Council there is usually a statutory appeal through the magistrates court if a person wishes to challenge the terms or conditions imposed in a notice.

In relation to licences and permits in some circumstances an aggrieved person may appeal to a magistrates' court in relation to a refusal by the local authority to grant a licence or to the conditions imposed by such.

**Payment options** – Fixed Penalty Notices are normally required to be paid in full within 14 days or in relation to certain offences at a reduced amount for early payment within 10 days. If no payment is received a reminder letter may be sent before the matter is considered for court prosecution. In cases of financial hardship, payment arrangements may also be considered if this is likely to assist in the FPN being paid, in such cases the total amount to be paid will be at the full FPN level with the final payment date fixed to allow the Council sufficient time to refer the case to the courts should the arrangements be defaulted.

Payments of court imposed fines and costs are collected by the courts service.

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Fees and charges may be recovered by monthly invoice, paid annually in advance and in some circumstances through payments arrangements. The Council's sundry debtors team would seek to recover unpaid debts.

**Press and Media Releases** – In situations where the details of a successful prosecutions would be of public interest, for example to raise awareness of an issue or promote the work of the Council a press release will be prepared and made available to the media.

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#### POLICY NAME – LEQ01 – FLY TIPPING.

#### POLICY SUMMARY

Although the investigation and enforcement of Fly Tipping is not a statutory duty local authorities do have a duty to keep relevant land clear of litter and refuse. It therefore stands that any enforcement action to reduce the problems of litter and refuse on land will help the authority fulfil that duty.

Fly-tipping is the illegal dumping of waste. It can vary in scale significantly from a bin bag of rubbish to large quantities of waste dumped from trucks. Fly-tipped waste may be found anywhere, such as roadsides, in lay-bys or on private land.

This policy applies to land within the borough including privately owned land unless there is a valid environmental permit in place authorising the deposit of waste.

The authority will investigate all reported incidents of fly tipping from the public, internal and external sources including those recorded on CCTV cameras. Robust enforcement action will be taken against persons or businesses involved in undertaking such illegal activity including prosecution through the courts. Fly tipping is unsightly, damages the environment especially if chemicals and or hazardous substances are involved, can be costly to cleanup and if not controlled, may encourage further offences. Robust enforcement together with high media profile of successful prosecutions is the main element of a long-term strategy.

#### POLICY DETAIL

**Legislation** - Section 33 of the Environmental Protection Act 1990. Persons suspected of fly tipping may be prosecuted through the courts if sufficient evidence is available. Due to the seriousness of such offences fixed penalty notices are not applicable.

**Investigation** – Fly tipping is the unauthorised deposit of any waste on land not licensed for such use. For the purpose of this policy all such waste other than very small volumes (generally one 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).

Additionally waste which may otherwise be considered as fly tipping but which occurs in relation to the domestic waste collection for that immediate area may be treated in accordance with the Household Waste Collection And Recycling Enforcement Policy WTD03 detailed below.

All reported incidents of fly tipping including incidents of fly tipping captured on the CCTV cameras, will be investigated to ascertain if information linking the waste to an offender is present, the level and detail of the investigation will range from a desk top exercise to a detailed site investigation depending upon the type of waste dumped and the information available at the time of the initial report. Whenever possible written witness statements will be obtained from those who may have observed or reported the offence taking place. If required, suspected offenders will be invited to attend at Council offices for formal interview under caution to explain their actions. Trained officers will undertake such interviews in accordance with the Police and Criminal Evidence Act

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At locations where repeated fly tipping has occurred it is sometimes possible to undertake covert camera surveillance, although this is subject to location and suitable site conditions. Such surveillance operations are only undertaken after they have been considered and authorised in accordance with relevant RIPA legislation.

Following the investigation and recording of all appropriate information, if the waste has been deposited on highway land, the Waste Team will be notified to clean up the waste and to keep a record of any costs incurred. If the waste has been deposited on private land it is normally the responsibility of the landowner to have the waste removed at their own cost.

**Prosecution** - Following the gathering of all evidence including photographs, interviews and statements, if sufficient information is available for there to be a reasonable prospect of a successful prosecution a case file will be prepared and presented to the Council's Legal Services department for appraisal and listing for prosecution. An impact statement together with a breakdown of investigation costs and cleanup costs where appropriate will also be presented.

Investigating officers will attend court hearings and trials to give evidence and provide assistance to the legal representation

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

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#### POLICY NAME – LEQ02 – LITTERING ENFORCEMENT

##### POLICY SUMMARY

Although undertaking litter dropping enforcement is not a statutory duty local authorities do have a duty to keep relevant land clear of litter and refuse. It therefore stands that any enforcement action to reduce the problems of litter will help the authority fulfil that duty.

Individuals observed or reported for dropping litter can be issued with a fixed penalty notice (FPN) either on the spot or by post. Litter dropping is anti-social, is detrimental to environment quality, presents a poor image to visitors and is costly to cleanup. Littering can blight areas and in most part is a result of thoughtfulness or laziness. Regular planned enforcement together with media promotion, education and advice are the main elements of a long term improvement strategy.

##### POLICY DETAIL

**Legislation** –Section 88 of The Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005 gives local authorities powers to issue FPN's in lieu of court prosecution to persons guilty of dropping and leaving litter.

**Enforcement Procedure** – Littering offences either reported or directly observed by Council officers' may result in a FPN being issued either immediately or through the post if the offender can be identified.

For more serious cases or in the case of repeat offenders a FPN would not be considered appropriate and these matters will be referred directly to court for prosecution.

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 discarded cigarette butts, matches and chewing gum would constitute littering and attract a FPN.

**Direct Approach** – Authorised enforcement officers including Council officers and contracted civil enforcement officers, undertake litter campaigns on a planned regular basis in targeted areas. In addition the Community Patrol Team and the Anti- Social Behaviour Team have been trained and are equipped to carry out litter enforcement whilst undertaking their other duties.

Where an offence has clearly been committed and a person is observed dropping and leaving litter, that person 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 will only be issued where the alleged offender is compliant and understands why they have been challenged, the issuing enforcement officer believes that they have provided their correct name and address and there are no aggravating circumstances. A FPN will not be issued where the person when approached is obstructive and non-cooperative, when it is suspected they have failed to provide their correct name and address or when the person seems confused, either through some form of impairment or through drugs or alcohol. A homeless person should not be offered an FPN.

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Although technically FPN's can be issued to persons between the ages of 10 years to 18 years this should only be undertaken as a last resort once all other avenues of enforcement and education have been undertaken. Prior to embarking upon this type of enforcement procedures and protocols must be put into place in partnership with youth offending teams and juvenile courts. At the present time these systems and processes are not in place in Wirral, significant additional resources for education, promotion and training would be required to facilitate setting up and operating an enforcement regime to tackle juvenile littering.

**Enforcement following Camera Evidence** – Video or still photographic evidence with or without an additional witness statement may be used as evidence to investigate littering offences and could result in the issue of a postal FPN providing details of the offender can be identified. This could 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. For cases related to vehicle derived litter ie items thrown out of windows or ashtrays emptied into gutters etc it should be noted that under current legislation the vehicle keeper cannot automatically be issued with an FPN. In these circumstances the keeper details are obtained through the DVLA and they are written to and requested to provide details of the person responsible, who will then be subsequently issued with an FPN.

**Via 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 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 and the Police etc. In some circumstances it may be appropriate for the alleged offender to be interviewed under caution prior to the issue of a FPN. In such instances trained officers will undertake the interview in accordance with the Police and Criminal Evidence Act

**Investigation** – In certain circumstances it may be appropriate to treat very low levels of fly tipping as littering. It is proposed that a threshold of one bin bag or less is adopted. In these circumstances if the investigation reveals 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 an FPN. If a repeat offender is identified it may be more appropriate to prepare a case directly for court prosecution.

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#### POLICY NAME – LEQ 03 - ABANDONED VEHICLE REMOVAL.

#### POLICY SUMMARY

The removal of abandoned vehicles is a statutory duty of the Council.

The legislation relates to the removal of vehicles that have been abandoned or appear to have been abandoned on any land in the open air including privately owned land or on any other land forming part of a highway.

Vehicles can be removed where it appears to the local authority that the vehicle has been abandoned without lawful authority 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. The local authority can also claim the costs of removal, storage and/or disposal of the vehicle from the registered keeper/owner.

#### POLICY DETAILS

**Legislation** – Section 2(1) of The Refuse Disposal (Amenity) Act 1978 makes it an offence to for any person to abandon a motor vehicle on any land in the open air or on any other land forming part of a highway.

Section 3(1) of The Refuse Disposal (Amenity) Act 1978 imposes a duty on the local authority to remove any motor vehicle in their area that appears to be abandoned without lawful authority.

Section 2A of the Clean Neighbourhoods and Environment Act 2005 gives local authorities powers to issue a FPN in lieu of prosecution to any person who has abandoned a vehicle.

#### Enforcement Procedure

The removal of an abandoned vehicle and the issuing of a FPN 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 an immediate danger to the public (this could include a combination of any of the following - significant damage, rundown, unroadworthy with flat tyres, wheels and/or other parts removed, broken windows, fluids leaking, substantial road traffic accident damage, or is in a dangerous location).

In all instances the Council must contact the Police on notification of a vehicle being abandoned to check that the vehicle has not been stolen or involved in a crime, unless notification has been received from the Police in the first instance. In all cases attempts will be made to ascertain if there is a registered keeper or local keeper/owner following a DVLA check where necessary. If the DVLA enquiry reveals a Wirral owner, all reasonable efforts will be made to contact the owner before arranging any vehicle removal.

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If a vehicle is located on the highway and an owner/keeper cannot be identified or, following contact with the owner/keeper, no progress has been made and the condition of the vehicle indicates it has been abandoned, then an instruction may be given to have the vehicle removed normally within 24 hours. Vehicles that are unquestionably abandoned and pose an immediate danger to the public will be removed within 4 hours.

In all cases, if a keeper has been identified and the vehicle is considered to be secure and does not pose a danger, the keeper will be notified by letter that the vehicle should be removed. If the vehicle is located on highway land and the owner/keeper fails to remove the vehicle within the timescale requested, then the Council will arrange for the vehicle to be removed. Where a vehicle, which is deemed to be abandoned, is on private land, the local authority must write to the owner/occupier of that land giving 15 days notice that they propose to remove the vehicle. The local authority is not entitled to remove the vehicle if the occupier objects to the proposal within that period. However, if the occupier gives the local authority permission to remove the vehicle (e.g. if the vehicle was abandoned without their consent), the 15-day notice automatically lapses and the vehicle can be removed immediately.

In all cases once a vehicle has been removed, a letter will be issued to the registered owner/keeper to advise them that the vehicle has been removed and that they should 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.

Once a vehicle has been removed it will be stored for a period of not less than 10 days after which time it may be destroyed. If the owner/keeper fails to make contact or reclaim the vehicle an instruction will be given to destroy the vehicle. The owner/keeper will still be liable to pay for all costs incurred in any such removal, storage and/or destruction. A letter will be issued to the owner/keeper requesting payment of the full costs of removal, storage and/or destruction. If the owner/keeper fails to make payment as requested, the debt may be recovered through the Council's debt recovery process.

If after a vehicle has been removed and before the vehicle is destroyed, a person satisfies the Council that they are its owner and pays to the Council the costs of removal and storage fees, then the owner may remove the vehicle from the approved contractor at their own cost. If the owner fails to claim the vehicle, they will still be liable to pay any resulting costs incurred by the Council for its removal, storage and destruction.

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#### **POLICY NAME – LEQ04 – LITTER CLEARING NOTICE.**

#### **POLICY SUMMARY**

The issuing of a Litter Clearing Notice is not a statutory duty, but local authorities do have a duty to keep relevant land clear of litter and refuse. It therefore stands that any enforcement action that can help to reduce the problems of litter and refuse on land will help the authority fulfil that duty.

The Council can issue Litter Clearing Notices to the occupier/owner of certain 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 suitable on land that is defaced by refuse such as food waste that is likely to attract or harbour vermin. This will be dealt with by the Environmental Health Team.

Notices should only be issued when occupiers/owners have been given an opportunity and have either refused or have failed to rectify the problem.

Failure to comply with the requirements of a Litter Clearing Notice can result in an FPN being issued as an alternative to prosecution through the Courts.

Education and encouragement followed up with robust enforcement form the main elements of a long term improvement strategy.

#### **POLICY DETAIL**

**Legislation** – Section 92A of 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 who have failed to comply with the requirements of a Litter Clearing Notice within a prescribed timescale typically 28 days.

#### **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 Council 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.

If no progress on resolving the issues has been made and it is considered that the land is detrimental to the amenity of the neighbourhood, then the occupier/owners will be advised in writing that a Litter Clearing Notice is to be issued.

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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.

Once a LCN has been issued the land 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 FPN being issued or in more serious cases or for repeat offenders a case may be prepared for prosecution in the magistrates' court. It is also open to the Council or any person authorised by the authority to enter the land and clear it of litter and refuse and require the person on whom the notice has been served to pay a reasonable charge in this respect.

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#### POLICY NAME – LEQ05 – STREET LITTER CONTROL NOTICE.

#### POLICY SUMMARY

The issuing of a Street Litter Control Notice is not a statutory duty, but local authorities do have a duty to keep relevant land clear of litter and refuse. It therefore stands that any enforcement action that can help to reduce the problems of litter and refuse on land will help the authority fulfil that duty

Enforcement of legislation relating to litter or refuse arising outside retail/commercial 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.

Notices can be issued by the Council only if it is satisfied that litter or refuse is causing the 'recurrent defacement' of the street and 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 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** – Section 93 of the Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005 gives authorities powers to issue Street Litter Control Notices with a view to the prevention of accumulations of litter or refuse in streets arising from retail/commercial premises and mobile catering units and to issue FPN's in lieu of court prosecution to persons who have failed to comply with the requirements of a Notice within a prescribed timescale, typically 7 days.

#### Enforcement Procedure

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

Within Wirral promotion of the "Tidy Business Awards" is also being rolled out to businesses.

Premises responsible for generating street litter that is considered to be detrimental to the amenity of the local environment will be contacted and advised of the problems they are

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creating and potential remedies including legislative powers available to the authority. They will be encouraged to voluntarily make arrangements to resolve the issues, which could be achieved through an informal agreement, or preferably a more formal partnership arrangement.

If either formal or informal arrangements are agreed, follow up visits will be made to ensure compliance. If agreed 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 a formal or informal arrangement, or have failed to achieve standards agreed in any such arrangements they will be advised that a Street Litter Control Notice (SLCN) is to be issued.

A SLCN will state why it is being issued and will specify that the occupier of the premises undertakes to remove all litter or refuse from within a defined area, usually the premises frontage up to the gutter but not including the carriageway, to a specified standard and 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 regular basis and the provision of emptying receptacles used for litter or refuse.

Following the service of a notice, the person on whom the notice has been served will have an opportunity to make representations about the notice to the Council within 21 days from the date of the notice being served, or they may appeal to a magistrates' court.

Once a SLCN has been issued, the premises 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 an FPN being issued or in more serious cases or for repeat offenders a case may be prepared for prosecution in the courts.

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#### **POLICY NAME – LEQ06 – FLY POSTING AND GRAFFITI.**

##### **POLICY SUMMARY**

The investigation and enforcement of fly posting and graffiti is not a statutory function.

Fly posting is the posting of stickers, posters, banners 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 and 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; and/or an image which is graphically explicit or offensive by the message that it contains.

Street furniture in particular is targeted. Persons who undertake or authorise the undertaking of fly posting or graffiti can be issued with an FPN or prosecuted through the Courts. Owners of street furniture, statutory undertakers and educational institutions may also be issued with a graffiti removal notice, 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**

###### **Fly Posting**

- Section 43 of the Anti-social Behaviour Act 2003 together with Part 4 Section 28 of Clean Neighbourhoods and Environment Act (CNEA) 2005 gives authorities powers to issue FPN's in lieu of court prosecution to persons witnessed fly posting;
- Section 48 of the Anti-social Behaviour Act 2003 give the local authority powers to issue a "Graffiti Removal Notice" where they are satisfied that a relevant surface in an area has been defaced by graffiti (which includes painting, writing, soiling, marking or other defacing by whatever means) and that the defacement is detrimental to the amenity of the area or is offensive;
- Section 225(1) of the Town and Country Planning Act (TCPA) 1990 allows the local authority to remove or obliterate any placards and posters displayed in their area and which are in contravention of Section 220 of the TCPA 1990;
- Under Section 225(3) of the TCPA 1990 if the placard or poster identifies the person who displayed it or caused it to be displayed, then the local authority must give that person notice in writing of their intention remove or obliterate the placard or poster and must not do so until the expiry of the notice;
- Section 132 of the Highways Act (HA) 1980 creates an offence for fly posting. It also gives the Council the power to remove placards and posters without contacting the organisation. However, there is no power under the "Recovery of Expenses" (Section 305 of the HA 1980) to recover costs of removal. Legal action can be considered for an offence under this section.

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#### Graffiti

- Section 43 of the Anti-social Behaviour Act 2003 together with Part 4 Section 28 of the CNEA 2005 gives authorities powers to issue FPN's in lieu of court prosecution to persons witnessed and positively identified marking illegally on walls and other surfaces. A FPN must not be issued if the commission of the offence falls within section 44(1)(c) of the Act or in the case that any relevant offence was motivated (wholly or partly) by hostility towards a person based upon his membership of a racial or religious group, or towards members of a racial or religious group based on their membership of that group;
- Section 48 of the Anti-social Behaviour Act 2003 give the local authority powers to issue a "Graffiti Removal Notice" where they are satisfied that a relevant surface in an area has been defaced by graffiti (which includes painting, writing, soiling, marking or other defacing by whatever means) and that the defacement is detrimental to the amenity of the area or is offensive;
- 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.

#### ENFORCEMENT PROCEDURE

**Fly posting offences** – There is no statutory definition of fly posting however, it is widely accepted to be the display of advertising material on buildings and street furniture without consent of the owner, and contrary to the law. 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.

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. Where there are a number of banners, placards or posters displayed in the same location or it is a persistent offender that has been previously warned 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.

In the case of banners, placards or posters being erected on guardrails, street furniture or traffic signals, the Council may remove the fly posting immediately to alleviate any danger to road users and consider prosecution against the responsible person.

**Graffiti Offences** – Graffiti includes painting, writing, soiling, marking or other defacing by whatever means. All observed or reported incidents of graffiti will be recorded and

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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, property owners may wish to refer the matter 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 a "Graffiti Removal Notice" may be appropriate. Once served the notice must be complied with within a prescribed timescales usually 28 days, although the notice can be appealed to the magistrates' court within 21 days of the date of service of the notice. If no action results the Council may remove the defacement and recover the costs.

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#### POLICY NAME – LEQ07 – DISTRIBUTION OF FREE LITERATURE.

##### POLICY SUMMARY

Enforcement of legislation relating to the distribution of free literature in public spaces is not a statutory duty.

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 subsequently distribute free literature or who commission the distribution of such within these areas without consent may be issued with an FPN.

Although Cabinet have previously agreed in principle to the adoption of these powers through a legal order government guidance suggests this should only implemented if there is sufficient evidence to suggest this is a problem. At the present time the evidence does not exist and it would be difficult to justify the implementation of the scheme if it was challenged during the formal process. It is therefore suggested that implementation is deferred and reconsidered in the future if the situation changes.

THE FOLLOWING IS THEREFORE INCLUDE AS BACKGROUND INFORMATION ONLY

##### **POLICY DETAIL**

**Legislation** – Section 94B – SCHEDULE 3A of 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.

##### **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 for a consent. 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 an FPN with the exception that during the first month of such designation warnings will be given for first offences in lieu of an FPN.*

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*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.*

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#### **POLICY NAME – LEQ08(A) – OBSTRUCTIONS AND LICENCING OF ‘A’ BOARDS, SHOP FRONT DISPLAYS AND OTHER ITEMS DISPLAYED ON THE HIGHWAY, AND LEQ08(B) – LICENSING OF PAVEMENT CAFES**

#### **POLICY SUMMARY**

The regulation and licensing of ‘A’ boards, shop displays, pavement cafes and other items displayed on the highway is not a statutory duty, although the authority has a duty to protect the rights of the public in relation to use the highway.

This policy covers ‘A’ boards, shop front displays, pavement cafes, placards, statues and cut-outs, novelty displays, display islands and trestles, pots, plants and planters, furniture, window displays projecting over the footway and other items of a similar nature.

Wirral Council as the local highway authority has powers and duties to manage and maintain highways and footways in the borough. The Highways Act 1980, the Traffic Management Act 2004 and the Equality Act 2010 place duties and responsibilities on authorities to manage and maintain the highway so that amongst other things it provides safe, efficient and obstruction free highways available for all its users.

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 rules and 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 licensing of ‘A’ boards, shop display and other items on the highway.

#### **FEES AND CHARGES**

##### **LEQ08(A) ‘A’ Boards, Shop Front Displays and other items**

For ‘A’ Boards and shop front displays – provided that the applicant can satisfy and meet all of the ‘Standard Rules’ there will be no fee payable upon application. If all of the ‘Standard Rules’ cannot be met then a fee is payable for each item to be displayed. A shop front display counts as one item.

For all other items such as but not limited to:

- Placards
- Statues and cut-outs
- Novelty displays
- Display islands and trestles
- Pots, plants and planters
- Furniture

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- Window displays projecting over the footway  
a fee will be payable in respect of each item to be displayed.

Charity shops are exempt from payment of fees but must adhere to all other relevant legislation with regards to the display of 'A' boards, shop front displays and other items on the footway.

#### **LEQ)08(B) Pavement Cafes**

Fees apply depending upon whether the application is an initial application or a renewal and are also based upon the size of the area occupied.

### **LICENSING CONDITIONS AND ENFORCEMENT PROCEDURES**

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 other items, the Council may licence these items and request a fee in doing so. Any licences issued will clearly state any limitations, conditions and the exact area or location for the 'A' board, shop display or other item.

The Council may remove any unauthorised items including 'A' boards and shop displays 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 may be "noticed" to remove the items, invited to apply for a licence or may be prosecuted for obstruction

#### **Applications and Licensing**

Any person wishing to display an 'A' board, shop front display, pavement cafe or any other item on the highway must complete and submit an application form to the Council and must provide proof of suitable Public Liability Insurance (PLI) before a licence will be issued.

Additionally businesses applying to operate a pavement café on the public highway must have or be in the process of obtaining will require a valid planning permission before the authority will consider an application for a pavement café licence.

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. The location will be assessed for suitability from a highway safety viewpoint having regard for pedestrian and vehicle movements and flow at busiest times. This may vary depending upon location and traffic/pedestrian levels but will include allowance for the presence of vehicle and pedestrian crossing points, traffic signals, sightlines and visibility and existing street furniture or obstructions.

Prior to granting a license, the Council is required to post notices on the street, serve notice on the occupier of any premises appearing to the council to be likely to be materially affected and undertake consultation. The license will not be granted until the Council has taken into consideration all representations made in connection with the proposal within the period specified in the notice.

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If on application all of the 'standard rules' criteria can be met and suitable PLI is in place, then the 'A' board or shop display may continue to be displayed whilst the application is processed. For all other applications the items must not be displayed prior to permission being granted.

#### **Site and location standards**

The minimum clear footway width allowing for the item, display or café must be no less than 2m. In busy or heavily trafficked areas the minimum clear width may be increased to 2.5m or more depending upon individual site conditions and pedestrian flows. Where existing street furniture is located near to the kerb edge i.e. street lighting columns, pedestrians should not be expected to walk between it and the roadway and the clear width must be measured between the item proposed for display and the existing item of street furniture. The minimum clear widths will be increased by a minimum of 1m where the proposed item/display is located adjacent to a dropped pedestrian crossing.

Items will not be permitted in locations that would impede visibility for pedestrians or vehicle users in particular at or near junctions, signals or pedestrian crossing points. The through route for pedestrians must be directly in the line of the main pedestrian flow and not involve kinks, detours or sharp changes of direction.

Licences for 'A' boards or similar will only be considered in relation to boards or items that are displayed near to or adjacent to the frontage of the premises and not located remote or outside other properties. They would also not be permitted in locations where they would compete with locations currently utilised or identified for Highway Roadside Advertising.

The maximum size for 'A' boards is nominally 0.6m wide x 1m high and they must be designed with stable bases and must not rotate or spin. Flag type signs will not be permitted.

Shop displays should normally be displayed immediately adjacent to the frontage of the premises and shall not be remote or outside other properties. The maximum projection from the frontage for shop displays is nominally 1m with a total area of no more than 5m<sup>2</sup>. All shop displays or goods should be displayed on or within a stand, table or enclosure and where appropriate kick boards or similar should be provided in the lower 300mm to assist blind or visually impaired users. Items must be placed and designed so as not to project over the footway beyond the display base by more than 100mm, as this can present a specific hazard to partially sighted and blind users.

Pavement cafes should normally be located immediately adjacent to the frontage of the premises and shall not be remote or outside other properties. The maximum permitted size for pavement cafés will depend upon individual suite circumstances.

#### **Licence**

If granted, subject to satisfying the relevant criteria and having received no substantiated or relevant objections, a licence will normally be issued for an initial period of 2 years but may be reviewed at any time. If an application for an extension is received 8 weeks prior to the licence expiry and this is approved, the licence may be extended for a further period of 2 years. A decision to approve an extension of a licence will depend on a number of factors including continued compliance with any rules or conditions. A breach of the standard rules

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or conditions at any time may result in a range of enforcement action including the licence being revoked depending upon the seriousness of the breach and may affect a future decision to renew or extend a licence. Licences will only remain valid whilst all fees and charges if applicable are fully paid.

The Council may refuse a request for a licence where it is considered that the position of the 'A' board, shop front display, pavement cafe or other item could constitute a danger or hazard to other users of the highway.

If an application is refused, the application fee (if any) will not be refunded but the applicant will be advised in writing why that particular location is unsuitable.

When granted a licence will include various rules and conditions, for example designated boundaries, sizes and locations of items, permitted times when they may be displayed i.e. during trading hours only, and requirements to leave the highway in a clean and tidy state, including regular inspection and removal of any litter.

The licence should be kept on the premises for inspection by the Council at all times that the items are located on the highway.

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

Where a person fails to apply for a licence following a 14-day compliance period, then the Council may in certain circumstances issue a 28-Day Removal Notice or alternatively consider prosecution for wilful obstruction of the highway. If a 28-Day Removal Notice is issued and the responsible person fails to comply with the notice, then the authority may make a complaint to the magistrates' court for a removal and 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 guilty of an offence and liable to a fine if convicted

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 for prosecution.

Other legislative requirements that may impact upon the placing of 'A' boards or a shop display within the highway include the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 2007. It is the responsibility of the applicant to ensure that they meet the requirements of these and any other Acts and Regulations.

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#### **POLICY NAME – LEQ09 - NUISANCE VEHICLES – EXPOSING VEHICLES FOR SALE AND VEHICLE REPAIRS ON THE HIGHWAY**

##### **POLICY SUMMARY**

Enforcement of vehicles being exposed for sale and vehicle repairs taking place on the highway is not a statutory duty.

The local authority can issue an FPN to anyone found to be advertising for sale two or more vehicles parked within 500 metres of each at the same time or repairing vehicles on the highway as part of a business operation. A FPN offers the offender the opportunity to discharge any liability for the offence as an alternative to court prosecution. Private individuals found to be advertising vehicles for sale on the highway may be issued with informal warning notices.

For repeat or persistent offenders it may be more appropriate for a court prosecution as opposed to issuing an FPN

##### **POLICY DETAIL**

**Legislation** – Section 6 of 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 who are found to be selling, advertising or repairing vehicles on the highway as part of a business.

##### **Enforcement Procedure**

We will investigate complaints regarding vehicles for sale or repair on the highway including taking photographs and recording details of adverts including telephone numbers. Attempts will be made to contact the vehicle owner and DVLA check may be made if necessary.

If the person responsible for selling, advertising or repairing vehicles on the highway can be identified they will be issued with a formal letter advising of the legislative powers available to the Council and advised to cease the activity immediately.

The issuing of a FPN would normally only be considered after the person responsible has been given this opportunity to cease the activity.

A follow up visit will normally be made by officers to identify if the activity has stopped and if no progress on resolving the matter has been made, an FPN may be issued. For more serious cases or for repeat offenders, a case may be prepared for prosecution in the courts.

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#### **POLICY NAME – LEQ10 - CONTROL OF SKIPS, STORAGE CONTAINERS, BUILDING MATERIALS, STALLS AND THINGS ON THE HIGHWAY (CHERRY PICKERS/CRANES)**

##### **POLICY SUMMARY**

The licensing of skips, storage containers, building materials, stalls and things deposited on the highway (cherry pickers/cranes) is not a statutory duty although skip operators must seek permission from the Council before depositing skips on the highway.

The Council licence skips, storage containers, building materials, stalls and things deposited on the highway (cherry pickers/cranes). A range of permit charges applies depending upon the size of the container.

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 skip operators who fail to notify the Council prior to placing an item on the highway, an additional penalty 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 fee

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, deemed to be in an unfit condition or are improperly lighted and guarded.

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, building materials, stalls and things on the highway (cherry pickers/cranes).

##### **Licence and enforcement procedure**

Persons wishing to place a skip, container, building material, stalls and things on the highway (cherry pickers/cranes) on the highway must apply for a permit and pay the appropriate fee. Permits for skips are valid for 14 days and for containers or building materials 28 days. Permits for stalls and things on the highway (cherry pickers/cranes) are valid per day or part thereof or per weekend.

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Although technically the Council can remove unauthorised skips, storage containers, building materials, stalls, cherry pickers/cranes or any other thing from the highway where they have been deposited without permission, are causing an obstruction on the highway or are deemed to be in an unfit condition, this is not generally undertaken due to the costs and difficulties of storage. If the Council does go down this route it can recover all reasonable expenses incurred in doing so from the person convicted of the offence.

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

The Council will seek to prosecute operators through the courts where operators have deposited a skip or container on the highway without permission or in an unfit condition.

**Skips on the Highway**– Before a permit application is considered operators must provide proof of their Public Liability Insurance and proof that a valid Waste Carriers Licence has been issued by the Environment Agency. They are also required to confirm acceptance of the Council's rules and regulations for placing skips on the highway and to provide an out of hours emergency contact telephone number. Any skip operator who fails to supply the relevant documentation or sign up to the rules and regulations will not be permitted to place skips on the highway. In the event that any skip is placed on the highway without permission, the Council will seek to prosecute the skip operator.

Skip permits can be requested by email, fax or online through Business Link. Permits must normally be requested in advance but will also be accepted no later than the end of the working day on which the skip is first placed on the highway.

Where a skip operator has failed to apply for a permit, and an unauthorised skip has been identified, the operator will be contacted in writing by the Council and given the opportunity to apply for a retrospective permit or make representations within 14 days. If appropriate the permit fee will be applied at the standard rate plus an additional penalty fee.

The Council or a Police Constable can require the owner of a skip to remove or reposition it at their own expense even if permission has been granted.

Skips must not normally be placed on grass verges or the pavement unless precautions have been made to protect such.

Skip permits are issued with various rules and conditions including those relating to lighting, guarding and signing of the skip. All skips must be guarded and lit to comply with the Traffic Signs Manual – Chapter 8. Warning lamp must remain lit throughout the hours of darkness. If an unlit skip is reported the Council will attempt to contact the emergency number that has been provided by the skip operator and they will be given 2 hours to rectify the matter during normal office hours or a period of 1 hour out of normal office hours. If the skip operator fails to comply with the Council's requests and neglects or refuses to properly light the skip within the prescribed timescale, and the Council are required to provide lamps, the skip owner will be re-charged for all costs incurred by the Council. In addition, the Council can prosecute skip operators who fail to comply with the rules and conditions.

Where a skip operator has failed to apply for a permit or make representations 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 or is unlit, unguarded

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and/or unsigned, the Council has powers to prosecute the skip operator. In these circumstances if sufficient evidence exists the Council will prepare a case and seek to prosecute such offenders through the courts.

**Invoicing and outstanding fees and charges** – The Council invoices skip operators monthly in respect of permit fees for the preceding month. To avoid excessively large arrears building up if an invoice remains unpaid for longer than a period of 14 days after the invoice date, the Council will write to the skip operator advising them that no further skip permits will be granted and that the skip operator must not place any more skips on the highway until the invoice has been paid in full. If skips continue to be deposited on the highway without authority, the Council will seek to prosecute the skip operator.

**Storage Containers, Building Materials, Stalls and Other Things on the Highway (cherry pickers/cranes)** – Where a person/operator has failed to apply for a licence and any unauthorised storage containers, building materials, stall or other things have been deposited on the highway, the responsible person 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, stall or other thing on the highway immediately.

If the Council considers that anything 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 the Council may remove the thing forthwith and may then recover any expenses reasonably incurred in removing it through the courts or apply to the courts for a removal and disposal order.

Any licence issued will contain various conditions including those relating to lighting, guarding and signing of the items. The Council can take action against operators who fail to comply with the terms of the licence.

Where a 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 council has powers to take action against the operator. In some instances it may remove the object from the highway without further notice.

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

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#### POLICY NAME – LEQ11 – CONTROL AND LICENCING OF STREET TRADERS

##### POLICY SUMMARY

Regulation and licensing of street traders is not a statutory duty.

The Council has 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. 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** – There will be a non-refundable application fee payable in respect of all new or annual renewal applications. Additionally an annual or daily consent fee will apply.

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 propose to revoke the licence if the licence holder refuses or neglects to pay the relevant consent fees or fails to comply with the terms and conditions of the licence and no fee will be refund in these circumstances.

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

**Licence** - The Council may at any time propose to vary the principal terms of a licence, refuse to grant a licence or the renewal of a licence, grant a licence on principal terms different from those specified in the application, grant a licence confining the applicant's trading to a particular place in a street or revoke a licence if the licence holder fails to comply with the terms and conditions of a licence and/or persistently refuses or neglects to pay fees due to the Council in respect of the consent fees. In these circumstances a notice will be served on the licence holder specifying the grounds on which it proposes to vary, refuse to renew or revoke a licence and allowing a period of not less than 7 days within which the licence holder can make representations to the local authority in this respect.

On the expiry of the notice, the licence holder has 21 days following notification of the Council's decision to appeal to the magistrates' court. The notice will not take effect until the appeal period has expired.

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**Enforcement Procedure** – It is an offence for a person to engage in street trading in a prohibited street, in a consent street without a licence or contravenes any of the principal terms and/or conditions of an existing licence. Prosecution would usually only be considered after the owner has been advised of the legislation and given an opportunity to cease trading and remove the unauthorised stall or container within 24 hours if on a prohibited street or sited in an unsuitable location within a consent street. 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 the Council preparing a case for prosecution.

#### **Consent Streets**

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

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#### **POLICY NAME – LEQ12 – OVERHANGING HEDGE, TREES OR SHRUBS**

##### **POLICY SUMMARY**

The authority has a duty to protect the rights of the public in relation to use 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** – Section 154 of The Highways Act 1980 gives authorities powers to serve notice on owners of dangerous or obstructive hedges, trees and shrubs and to recover costs of remedial works if the notice is defaulted.

##### **Enforcement Procedure**

Where a hedge, tree or shrub overhanging the highway is reported or observed during a routine inspection 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 a subsequent visit by an inspector and a second letter, no progress has been made, a formal Section 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 Section 154 Notice has still not been complied with, arrangements will be made for the Council's contractor to undertake the works. Once completed an invoice will be sent to the owner for the costs incurred by the Council.

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#### POLICY NAME – LEQ13 – MISCELLANEOUS HIGHWAY ENFORCEMENT

##### POLICY SUMMARY

The authority has a duty to protect the rights of the public in relation to use the highway.

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 proposed 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; activity or storage on land adjoining a street likely to present a danger; clean or dirty water or effluent drained on or over the footway; unauthorised road markings or signs on or attached to the highway or a structure on it; damage to highway verges; 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 is 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 i.e. the illegal discharge of water over the highway, the Council may still seek a penalty from the courts to encourage compliance.

##### POLICY DETAIL

**Legislation** – S131,132,161,162,163,165,170 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.

##### 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 Council’s costs in taking such action. In some instances if the Council consider there is an imminent danger, the Council may take immediate action without first contacting the persons responsible.

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

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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.

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#### POLICY NAME - WTD01 – ENFORCEMENT OF WASTE TRANSPORT LEGISLATION.

##### Policy Summary

Enforcement of legislation relating to the transport of non-domestic waste is not a statutory duty

Persons that fail to provide to the local authority satisfactory proof of a licence or other acceptable documentation to transport waste may be issued with an FPN. Individuals or operators who transport waste without 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 makes it an offence for any person who is not a registered carrier of controlled waste, in the course of any business of his or otherwise with a view to profit, to transport any controlled waste, subject to certain exemptions.

The CNE Act 2005 gives authorities powers where it appears that a person has failed without reasonable excuse to produce an authority to transport waste when required to do so and to issue a FPN in lieu of court prosecution.

**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 may be issued. If valid documentation is not produced without reasonable excuse within the 7 day period, an FPN may be issued requiring payment within 14 days. If payment is not received a case may be prepared for court prosecution.

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 required in writing to produce the required documentation as per the procedures above. Persons suspected of transporting waste illegally may also be invited for formal interview under caution prior to any further action.

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#### POLICY NAME - WTD02 – ENFORCEMENT OF TRADE WASTE LEGISLATION.

##### Policy Summary

The enforcement of legislation relating to businesses that fail to store their commercial waste correctly is not a statutory duty.

This policy covers the enforcement of legislation in respect of businesses that fail to make proper provision for the disposal of their waste or to furnish valid documentation (Waste Transfer Notes) to the local authority upon request.

Businesses that have not made appropriate arrangements for the disposal of commercial waste are more likely to be involved in the illegal disposal of waste through domestic waste collection, fly-tipping and littering.

##### Policy Detail

**Legislation** – Section 47(2) of the Environmental Protection Act 1990 gives authorities powers to issue a formal notice to businesses who fail to store their commercial waste correctly and the waste is likely to cause a nuisance and/or is likely to be detrimental to the amenities of the locality. Section 47ZA of the Environmental Protection Act 1990 as amended by the CNEA 2005 gives authorities powers to issue FPN's in lieu of court prosecution for failure to comply with a formal notice issued under section 47(2) of the EPA 1990.

Section 34(1)(c) of the Environmental Protection Act 1990 imposes a duty on any person who produces and/or disposes of controlled waste to ensure that the waste is only transferred to an authorised person and to keep a written description of that waste (i.e. a waste transfer note [WTN]) for a minimum period of two years. Section 34A of the EPA 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 who have failed to furnish valid documentation (WTN's) to the local authority upon request.

**Enforcement Procedure** – Businesses may be contacted following complaints or as part of a targeted approach to businesses in problem areas and 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 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, an FPN may be issued requiring payment within 14 days. If payment is not received a case may 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, if informal approaches have failed to resolve the situation,

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issue a formal notice setting out the standards to be met. Failure to comply with the requirements of the notice, within a reasonable time period, may result in a FPN being issued or in more serious cases or persistent offenders prosecution in the courts will be considered.

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

##### **POLICY SUMMARY**

Enforcement of Legislation relating to household waste collection and recycling is not a statutory function.

The local authority can serve notice on an individual who is suspected of 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 at a bin collection point, or fails to provide a bin, or places recyclable items in the residual bin.

Failure to comply with the formal notice may result in the issue of a Fixed Penalty Notice (FPN) to the responsible individual. The FPN is issued as an alternative to prosecution through the courts. 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 Council 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.

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 a formal notice.

##### **Enforcement Procedure**

Where a household fails to comply with the Council's requests and warnings to present their waste correctly for collection after having been given education and advice, the Waste and Recycling Team may refer the matter to Highways Enforcement Team for consideration of the issue of a formal notice. A notice can be served on the occupier of an individual property or where there are a number of properties and individual households cannot be identified, then a "blanket" notice can be served on all properties in that location. Providing that the householder complies with the notice, no further action will be taken.

Formal notices generally state the standards and requirements relating to the how, where and when waste must be presented for collection, what receptacles must be used for different waste types and stipulate that bins must be taken back onto the property after they have been emptied.

Residents who do not comply with a formal notice risk being issued with a FPN for non-compliance. Enforcement Officers also have the discretion to issue more warnings before the issue of a FPN.

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The FPN may be issued to the offender by post or in person. Following the serving of a notice, residents may be issued with an FPN at any time during the 12 months period from the date of serving of the notice. After 12 months the notice may be re-served if further breach occur. If there has been a change in occupancy over the 12 month period since date the notice was served, then the notice will no longer be valid.

The Council may consider prosecution in more serious cases or for residents who have had two or more fixed penalties as opposed to being issued with any further FPN's.

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#### POLICY NAME – PLE01 – UNTIDY BUILDINGS AND LAND

#### POLICY SUMMARY

The enforcement of untidy buildings and land is not a statutory function.

The local authority can issue formal notices on an owner/occupier of private land where it is considered that a building and/or land is having an adverse and detrimental impact on the amenity of the area. This can include a building falling into disrepair, gardens littered with cars/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.

Notices cannot be issued against land that is untidy due to its lawful use, i.e. licensed 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 land and untidy buildings 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. The Council will give consideration to the service of a section 215 or section 79 notice as there is a potential financial burden on the Council 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.

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#### **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.

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 for 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 (i.e. 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, the Council will prosecute and the offender will be liable on summary conviction to a fine.

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.

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

##### POLICY SUMMARY

Enforcement relating to vehicles crossing over footways and verges without a proper crossing is a non-statutory function.

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** – Section 184 of The Highways Act 1980 gives authorities powers to serve notice on occupiers or landowners who habitually drive over the footway or verge and to recover the costs of any construction and remedial works undertaken.

##### 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 occupier/owner of the land being accessed advising of the Council's 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 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 day 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.

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.

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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.

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#### SCHEDULE OF PENALTIES, FEES AND CHARGES

##### FIXED PENALTY NOTICES LEVELS - EFFECTIVE FROM 1<sup>st</sup> APRIL 2012

Policy Name	Act	Section of Act	Full amount of penalty, payable within 14 days	Discounted amount for prompt payment if paid within 10 days
LEQ 02 Depositing Litter.	Environmental Protection Act 1990, as amended by Section 19 of the Clean Neighbourhoods and Environment Act 2005.	88	£75	£50
LEQ 07 Unauthorised distribution of free printed matter on designated land.	Environmental Protection Act 1990, as amended by Section 23 of the Clean Neighbourhoods and Environment Act 2005.	Schedule 3A, para 7(2)	£80	N/A
LEQ 06 Graffiti and fly posting.	Anti-Social Behaviour Act 2003, as amended by Section 28 of the Clean Neighbourhoods and Environment Act 2005.	43	£80	N/A
WTD 03 Failure to comply with a formal notice - domestic waste.	Environmental Protection Act 1990, as amended by Section 48 of the Clean Neighbourhoods and Environment Act 2005.	46/47ZA/47ZB	Currently £110 to be reduced to £80 following changes in legislation in Spring 2012	Currently £60 to be reduced to £40 following changes in legislation in Spring 2012
LEQ 05 Failure to comply with a street litter control notice and failure to comply with a litter clearing notice.	Environmental Protection Act 1990, as amended by Section 22 of the Clean Neighbourhoods and Environment Act 2005.	92C/94/94A	£110	N/A
LEQ 09 Nuisance vehicles.	Clean Neighbourhoods and Environment Act 2005	s.6(1)	£100	N/A
LEQ 03 Abandoning a vehicle.	Refuse Disposal (Amenity) Act 1978, as amended by Section 10 of the Clean Neighbourhoods and Environment Act 2005.	s.2A(1)	£200	N/A
WTD 01 Failure to furnish documentation (waste carrier's licence).	Environmental Protection Act 1990, as amended by Section 45 of the Clean Neighbourhoods and Environment Act 2005.	s.34A(2)	£300	N/A
WTD 02 Failure to produce authority (waste transfer notes).	Control of Pollution (Amendment) Act 1989, as amended by section 38 of the Clean Neighbourhoods and Environment Act 2005	s.5B(2)	£300	N/A
WTD 02 Failure to comply with formal notice - trade waste	Environmental Protection Act 1990, as amended by Section 48 of the Clean Neighbourhoods and Environment Act 2005.	47/47ZA/47ZB	£110	N/A

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#### FEEES AND CHARGES - EFFECTIVE FROM 1<sup>st</sup> APRIL 2012

Policy Name	Act	Amount of Licence Fee / Permit Charge
LEQ 08 'A' Board	Highways Act 1980 (as amended) sections 115A – 115K.	Free if standard conditions can be met. If standard conditions cannot be met, there will be a £52 licence fee payable in respect of each 'A' board to be displayed. Subsequent years charged at £42.
LEQ 08 Shop front display	Highways Act 1980 (as amended) sections 115A – 115K.	Free if standard conditions can be met. If standard conditions cannot be met there will be a £52 licence fee payable in respect of the shop front display. Subsequent years charged at £42.
LEQ 08 Other items displayed on the highway such as but not limited: <ul style="list-style-type: none"> <li>• Placards</li> <li>• Statues and cut-outs</li> <li>• Novelty displays</li> <li>• Display Islands and trestles</li> <li>• Planters</li> <li>• Furniture</li> <li>• Window displays projecting over the footway.</li> </ul>	Highways Act 1980 (as amended) sections 115A – 115K.	£ 52 licence fee payable in respect of each item to be displayed. Subsequent years charged at £42.
LEQ 08 Pavement cafe	Highways Act 1980 (as amended) sections 115A – 115K.	<b>Licence Fees:</b> 1 <sup>st</sup> year £310 subsequent years £155 (max area 6 m <sup>2</sup> ). 1 <sup>st</sup> year above 6 m <sup>2</sup> charged at an additional £21 per m <sup>2</sup> subsequent years charged at £16 per m <sup>2</sup> .
LEQ 10 Skips, storage containers, building materials, stalls and things on the highway (cherry pickers/cranes)	The Local Authorities (Transport Charges) Regulations 1998 (S.I 1998 No 948).	<b>Permit Fees:</b> £25 per skip 6 tonne or above (max size 6.1m X 2m) for a maximum period of 14 days. £15 per skip below 6 tonne for a maximum period of 14 days. £25 penalty fee will be applied in respect of all retrospective skip permit applications (traders and commercial operators only). £75 per application for storage containers up to 6m and building materials for a maximum period of 28 days. Permit renewals containers up to 6m and building materials charged at £37.50 for a further 28 days. £150 per application for storage containers over 6m for a maximum period of 28 days. Permit renewals for containers over 6m charged at £75 for a further 28 days. Stall on Highway (Commercial) Application Fee £25 Stall on Highway (Commercial) £206 per day or part thereof Stall on Highway (Charity/Public Service) FREE Things on the Highway (Cherry pickers) £75 per day or weekend Things on the Highway (small crane) £75 per day or weekend Things on the Highway (large crane) £150 per day or weekend

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Policy Name	Act	Amount of Licence Fee / Permit Charge
<p>LEQ 11 Street traders</p>	<p>The Local Government (Miscellaneous Provisions) Act 1982 Part 3 – Schedule 4.</p>	<p><b>Annual Consent Fees:</b> Subject to formal order making process £75 non-refundable application fee will be payable in respect of all new or annual renewal applications in addition to consent fees below. £825 – stalls, catering vans and containers under 8m<sup>2</sup>. £1025 - stalls, catering vans and containers between 8m<sup>2</sup> and 10m<sup>2</sup>. £1250 - stalls, catering vans and containers between 10m<sup>2</sup> and 12m<sup>2</sup>. Stalls, catering vans and containers above 12m<sup>2</sup> fees by negotiation.</p> <p><b>Daily Consent Fees:</b> £25 non-refundable application fee will be payable in respect of each application in addition to daily fees shown below. £21 per day consent fee per stall, catering unit and container under 8m<sup>2</sup>. £26 per day consent fee per stall, catering unit and container 8m<sup>2</sup> and above.</p>