

**CITY OPERATIONS – BROADENING ENFORCEMENT POWERS
TO IMPROVE THE PUBLIC REALM - UPDATE**

REPORT OF DIRECTOR OF CITY OPERATIONS

AGENDA ITEM: 11

**PORTFOLIO: ENVIRONMENT (COUNCILLOR BOB DERBYSHIRE),
TRANSPORT, PLANNING AND SUSTAINABILITY
(COUNCILLOR RAMESH PATEL)**

Reason for this Report

1. To provide an update on the work that has been undertaken since 12th November 2015 when the Cabinet delegated authority to the Director of City Operations, in consultation with the Cabinet Member for Environment and Cabinet Member for Transport, Planning and Sustainability to develop and undertake these new wider powers to deliver a cleaner environment across Cardiff.
2. To provide the outcome of Local Member consultation on the proposals to widen enforcement Powers.
3. To provide a recommendation to develop Policy Statements concerning Public Space Protection Orders and Community Protection Notices.
4. To provide a recommendation on the provision of a pilot for a discrete number of identified Public Space Protection Orders.

Background

5. City Operations is committed to delivering on the Council's Corporate Plan commitment to have green flag parks and open spaces, as well as delivering new ways of working across the Directorate. The commitments are designed to ensure that a high quality City environment includes an attractive public realm, having clean and well managed streets as well as challenging poor social responsibility in neighbourhoods

6. The Council has powers to issue Fixed Penalty Notices (FPNs) via a wide range of environmental legislation which the Council use to ensure the streets and open spaces are kept clean and free from litter and nuisance. A review of the existing and new legislation and approaches to protect and enhance the street scene and open spaces has been undertaken.
7. Adopting existing and new legislative powers and delivering alternative approaches to enforcement will help transform ways of working and therefore improve controls on the environment and enable swifter action against those that offend.
8. The wider powers can improve the control over the following areas, but not limited too;
 - i. Dog fouling and control of dogs
 - ii. Litter and nuisance from litter
 - iii. Control of Printed literature (Illegal advertising signage and flyers)
 - iv. Skips on the highway, A-frames, tables and chairs
9. These issues repeatedly appear as a priority in public consultation surveys. Dog fouling, fly poster and litter can quickly spoil an area. Additionally, street clutter and uncontrolled placement of items such as skips and A-frames can cause obstructions to pavements and roads.
10. The transfer of the Waste Enforcement services to City Operations took place in June 2016 following the formation of Neighbourhood Services. Waste Enforcement became Neighbourhood Services Enforcement to support the work that is taking place with regards implementing broader enforcement powers.
11. Enforcement teams (Neighbourhood Services Enforcement, Park Rangers and Highways Area Inspectors) work closely together under Neighbourhood Services to deliver these new powers, as well as ensuring a fair and consistent approach to environmental crimes.
12. With the growing work demands for environmental crime enforcement, the Council are able to enforce activities such as littering and dog fouling fines or delegate to a third party. Often Councils delegate littering and dog fouling enforcement to third parties in order to tackle the problem of littering, while maintaining their own teams to manage processes that are more complex.

Current position

Local Member consultation

13. Consultation took place with Local Members following the support to widen enforcement powers within the City to ascertain the main areas of concern, 9 responses were received from 72 Local Members.

14. All responses supported the extension of enforcement powers and the use of Fixed Penalty Notices for the following.
- Skips – all agreed to enforce but was not seen as a problem in all Wards.
 - A-frames - all agreed to enforce but was not seen as a problem in all Wards.
 - Adopting Community Protections Notices – all supported the adoption.
 - Control of dogs via Public Space Protection Order – support by majority but some stated that it was not an issue.
 - Control of parking on grass verges via Public Space Protection Order – supported by majority but some stated it was not an issue in their Ward.
 - Distribution of free printed literature - all agreed to enforce but was not seen as a problem in all Wards.

Issuing of Fixed Penalty Notices (FPNs) by Highways Services

15. At Planning Committee on 14th December 2016, the authority to enforce the Highway functions below transferred from Local Choice Functions Relating to Highways residing with Planning Committee to the Director of City Operations, with the Director having authority to sub-delegate.
16. The functions contained in the following provisions of Part IX of the Highways Act 1980 (lawful and unlawful interference with highways and streets):
- (i) section 130 – protection of public rights;
 - (ii) sections 139 – control of builders’ skips;
 - (iii) section 140 – removal of builders’ skips;
 - (iv) section 140A(1) – builders’ skips: charges for occupation of the highway;
 - (v) section 142 – licence to plant trees, shrubs etc in a highway;
 - (vi) section 147 – power to authorise erection of stiles etc on footpath or bridleway;
 - (vii) section 147ZA(1) – agreements relating to improvements for benefit of persons with mobility problems;
 - (viii) section 149 – removal of things so deposited on highways as to be a nuisance etc;
 - (ix) section 169 – control of scaffolding on highways;
 - (x) section 171 – control of deposit of building materials and making of excavations in streets;
 - (xi) section 171A(2) and regulations made under that section – works under s169 or s171: charge for occupation of the highway;
 - (xii) section 172 – hoardings to be set up during building etc;
 - (xiii) section 173 – hoardings to be securely erected;

- (xiv) section 178 – restriction on placing of rails, beams etc over highways;
 - (xv) section 179 – control of construction of cellars etc under street;
 - (xvi) section 180 – control of openings into cellars etc under streets, and pavement lights and ventilators;’
17. In accordance with the requirements of Section 100G of the Local Government Act 1972 a record of all delegations must be notified to the City and County Solicitor.
 18. The current requirement to obtain a license to place various items on the public highway remain unchanged, but any breach will allow Council officers with delegation to issue an FPN rather than by prosecution through the Courts.
 19. The table in Appendix 1 shows the current position with regard to notification to businesses and existing license holders and the activity that will be commencing within the next 6 months.

Local Environment Quality and the issuing of Fixed Penalty Notices (FPNs) for littering and dog fouling

20. The Local Environment Quality Team have been in post for 6 months although they have not been dedicated to litter and dog fouling due to resource demands within Neighbourhood Services Enforcement. The table below shows the performance relating to littering and dog fouling over the last 3 years. There is a ‘zero tolerance’ approach to littering and dog fouling.

Enforcement Activity	FPN’s issued 2014/15	FPN’s issued 2015/16	FPN’s issues 2016/17 (excluding March)
Dog Fouling	27	49	22
Litter commercial	19	14	14
Litter domestic	108	347	231
Litter from vehicle	3	18	26
Litter general	5	11	19
Litter smoking from car	92	89	133
Litter smoking related	15	31	249

21. The Neighbourhood Services Enforcement team have targeted waste presentation issues in 2016/17 due to change in the waste strategy relating to bin size and the introduction of charging for black bags for waste disposal in locations where bins are not appropriate. The targeted enforcement of litter and dog fouling will improve over the next 6 months with the continuation of a dedicated team to target hot spot areas such as City Centre and District Shopping Centres.

22. The Neighbourhood Services Enforcement team are wearing uniforms, similar to the Civil Enforcement parking team, to improve their aesthetic appearance and to support the work they undertake.

Control of Printed literature (Illegal Advertising & flyposting)

23. Neighbourhood Services Enforcement and Highways Area Inspectors will undertake an operation in March to remove illegal advertising from both the adopted highway and private land in March 2017. The adopted highway utilises the Highways Act 1980 as the principle legislation for enforcement; whereas, advertising on private land will utilise The Town and Country Planning Act 1990.
24. Officers will send correspondence to any business associated with illegal adverts to highlight the offence and the potential risk of receiving a fixed penalty notice if the illegal adverts are on the adopted highway or prosecution if on private land.
25. From 1st April 2017 onwards, Officers will commence to enforce and continue to educate businesses concerning illegal adverts.

Litter Enforcement support

26. The Director of City Operations, in consultation with the Cabinet Member for Environment has authority to explore a 12-month commission based trial, at no additional cost to the council. The third party can undertake a range of fixed penalty notice activity to supplement existing enforcement activities and pay the Council a proportion of the income obtained from fines.
27. The 12-month trial concerning third party enforcement has not proceeded as work continues in-house to deliver service improvements in relation to enforcement processes and digitalisation.
28. Officers continue to monitor public perception of other Local Authority employment of third party providers concerning enforcement and how commission based contracts are working in practice. To date a number of authorities have ceased working with third parties due to issues and concerns relating to costs, companies going into administration and public perception.

Proposed Actions

Community Protection Notices

29. Officers will develop a Policy Statement concerning Community Protection Notices because of the adoption of new powers. Appendix 2 Background - Government Fact sheet: Environmental anti-social behaviour provides an overview of how the Council can use Community Protections Notices.

30. The Policy Statement will include the requirement for consultation to take place with stakeholders such as Local Members, landlords, City Centre businesses, appropriate landowners and also the Chief of Police prior to implementation. Once in place, a breach of a notice would result in an £100 fine or the Council can undertake remedial works and reclaim the costs from the offender.

Public Space Protection Orders (PSPO)

31. Officers will develop a Policy Statement concerning Public Space Protection Orders because of the adoption of new powers. Appendix 2 Background - Government Fact sheet: Environmental anti-social behaviour provides an overview of how the Council can use Public Space Protection Orders.
32. The Policy Statement will include the requirement for consultation to take place with stakeholders such as Local Members, landlords, City Centre businesses, appropriate landowners and also the Chief of Police prior to implementation. Once in place, a breach of a notice would result in a £100 fine.
33. Officers propose a pilot for Public Space Protections Orders to take place on agreed anti-social behaviour issues. Examples of Public Space Protection Orders are:
- Dog Control in place in a specific area of concern. An example would be areas where dogs would be required to be on a lead due to evidence of issues associated with the interaction of dogs with wildlife on our land.
 - Control over the congregation of groups of youths in a specific area of concern. An example would be a location where youths are gathering and creating concerns for local businesses and communities.
 - Control over parking on grass verges in specific areas of concern. An example would be a residential street with grass verges that have damage by inconsiderate parking. Consideration to citywide control over grass verge parking may be appropriate due to damage to the street scene and cost for reinstatement that is a burden on financial resources.
 - Control of vehicular access to roads adjacent to Schools concerning dropping children off at school. An example would be to ban the access and stopping of any vehicle in an area during a prescribed time.

Reason for Recommendations

34. To ensure that Policy Statements are in place for the implementation of Community Protection Notices and Public Space Protections Orders.

35. To ensure that any implementation of Public Space Protection Order to control specific concerns achieves the outcome required prior to extending to other areas / locations.
36. To provide assurance through quarterly reporting on updates and performance that the widening enforcement powers are achieving the outcomes required.

Financial Implications

37. No additional financial resource requirements are anticipated from the implementation of the recommendations in this report. Any additional expenditure will be self-funded from fine income or funded from existing budgets.
38. This report references the November 2015 Cabinet decision to delegate authority to undertake a potential trial involving an external third party enforcement operator. There are no plans at present to undertake a trial with a current alternative focus on in-house service improvements. If a trial is taken forward then the financial implications included in the November 2015 Cabinet report will need to be addressed. In particular, the assumption of no additional cost to the Council is market tested and that any chosen Third Party Operator has adequate insurance arrangements in place.

Legal Implications

47. The Legal Implications are set out in detail in the body of this report.
48. The procedures (including consultation) for making Public Spaces Protection Orders and designating land for the free distribution of printed matter zones must be followed fully as set out in the legislation.
49. With respect to the proposed 12 months trial, for any procurement the council should comply with its contract procedure rules, EU procurement regulations (as applicable) and the EU treaty principles of transparency, equal treatment and non-discrimination. As to the process and contractual arrangements further advice should be sought from legal and procurement before commencement.
50. The relevant authorisations must be given to the successful company and its staff for issuing FPNs on behalf of the Council, or they will be invalid.
51. Data Protection implications (proposed 12 months trial with external partner) – The Council would be the data controller in that it is the body with the enforcement powers. The external partner, as a data processor operating on behalf of the Council would be required to comply with the principles of the Data Protection Act and would have to act on the authority of the Council. These requirements would either be set out in the contractual terms and conditions (there are currently data protection provisions in the council's standard contracts) or via a separate data

processing agreement. Any processing of this nature with a third party would also need to undergo a Privacy Impact Assessment before operational activities take place to assess any privacy risks.

52. Enforcement of the various legislation must be in line with the Council's Enforcement Policy.

HR Implications

53. It is not envisaged that any changes will impact on the number of employees required. This additional work may provide protection from future financial cuts through additional income from third parties. The proposals which are included in this report have been initially discussed with the Trade Unions and employees concerned and further consultation will take place following a Cabinet decision, however the basic principles are in line with the work the employees already carry out.

RECOMMENDATIONS

Cabinet are recommended to;

1. agree that a Policy Statement is developed and submitted to Cabinet for approval with regards to both Community Protection Notices and Public Space Protection Orders.
2. agree to a pilot concerning a discrete number of Public Space Protection Orders following the development of a Policy Statement.
3. agree that quarterly updates and performance reports be provided to Cabinet Members informally with regards enforcement in Neighbourhood Services.

ANDREW GREGORY

Director

10 March 2017

The following appendices are attached:

Appendix 1 – Highway enforcement and licensing – The current position

Appendix 2 – Background - Government Fact sheet: Environmental anti-social behaviour